



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL

February 22, 2021
7:00 PM

Mayor/Alcaldesa

1. Moment of Silence / Momento de Silencio
2. Pledge of Allegiance/ Juramento a la Alianza

City Clerk:/Secretaria de la Ciudad

3. Roll Call/ Lista de Asistencia

Communications/Comunicaciones

4. Approval of the Minutes of the City Council Meeting on February 8, 2021
5. City Manager Update/ Gerente de la ciudad pone al día a la audiencia de los planes de cada departamento

Presentations/Presentaciones

6. Fire Chief Swearing-in Ceremony
Ceremonia de juramentación del Jefe de Bomberos

7. Public Hearing - Community Choice Aggregation

There will be a public hearing on Monday, February 22, 2021 to receive comments from the public concerning "A Local Law adding Chapter 156 to the Code of Ordinances of the City of Newburgh entitled 'Energy' and enacting Article I entitled 'Community Choice Aggregation Energy Program'.

Se llevara a cabo una audiencia pública el lunes, 22 de febrero de 2021 para recibir comentarios del público con respecto a "Una Ley Local agregando el Capítulo 156 al Código de Ordenanzas de la Ciudad de Newburgh titulado 'Energía' y promulgando el Artículo I titulado 'Programa de Energía de Agregación de Opciones Comunitarias'

8. Public Hearing - Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER) for FY2020

There will be a public hearing on Monday, February 22, 2021 to receive public comments concerning the FY2020 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).

Se llevara a cabo una audiencia pública el lunes 22 de febrero de 2021

para recibir comentarios públicos con respecto a la Subvención de Bloques de Desarrollo Comunitario (CDBG) Reporte de Evaluación y Rendimiento Anual Consolidado (CAPER).

Comments from the public regarding agenda and general matters of City Business/Comentarios del público con respecto a la agenda y sobre asuntos generales de la Ciudad.

Comments from the Council regarding the agenda and general matters of City Business/Comentarios del Consejo con respecto a la agenda y sobre asuntos generales de la Ciudad

City Manager's Report/ Informe del Gerente de la Ciudad

9. Resolution No. 28 - 2021- Master Federal Aid Agreement for PIN 8761.39 Lake Drive/Quassaick Creek Bridge Replacement BIN: 2223630

Resolution authorizing the City Manager to execute a Master Federal-Aid Local Project Agreement with the New York State Department of Transportation to fund in the first instance 100% of the federal aid and non-federal aid eligible costs for the construction of the Lake Drive Over Quassaick Creek Bridge Replacement Project (PIN8761.39/BIN223630).

Resolución que autoriza al Gerente Municipal a ejecutar un Acuerdo Maestro para un Proyecto Local con Ayuda Federal con el Departamento de Transportación del Estado de Nueva York para financiar en primera instancia 100% de la ayuda federal y costos elegibles de ayuda no federal para la construcción del Proyecto de Reemplazo del Puente en Lake Drive Sobre Quassaick Creek (PIN8761.39/BIN223630).

10. Resolution No. 29 - 2021 - Master Federal Aid Agreement for PIN 8761.40 Walsh Road/Quassaick Creek Bridge Replacement BIN: 2223620

Resolution authorizing the City Manager to execute a Master Federal-Aid Local Project Agreement with the New York State Department of Transportation to fund in the first instance 100% of the federal aid and non-federal aid eligible costs for the construction of the Bridge Replacement of Walsh Road over Quassaick Creek (PIN 8761.40/BIN 2223620).

Resolución que autoriza al Gerente Municipal a ejecutar un Acuerdo Maestro para un Proyecto Local con Ayuda Federal con el Departamento de Transportación del Estado de Nueva York para financiar en primera instancia 100% de la ayuda federal y costos elegibles de ayuda no federal para la construcción del Puente de Reemplazo en Walsh Road Sobre Quassaick Creek (PIN8761.40/BIN223620).

11. Resolution No. 30 - 2021 - 162 South Street & 187 Lander Street - Extension of Time to Close

Resolution authorizing the extension of time to close title on the properties

located at 162 South Street (Section 11, Block 3, Lot 21) and 187 Lander Street (Section 11, Block 3, Lot 26) sold at private sale to Nicole Chung.

Resolución que autoriza la extensión de tiempo para cerrar sobre el título en las propiedades ubicadas en la 162 de la Calle South (Sección 11, Bloque 3, Lote 21) y la 187 de la Calle Lander (Sección 11, Bloque 3, Lote 26) vendidas en ventas privadas a Nicole Chung.

12. Resolution No. 31 - 2021 - Scheduling a Second Public Hearing Concerning Police Reform and Reinvention Collaborative Plan

Resolution scheduling a second public hearing for March 8, 2021 to hear public comment concerning the City of Newburgh Police Reform & Reinvention Collaborative Plan.

Programando una segunda audiencia publica el 8 de marzo de 2021 para escuchar comentarios publicos con respecto al Plan Colaborativo de Reinencion y Reforma de la Ciudad de Newburgh.

13. Resolution No. 32 - 2021 - Subrecipient Agreement - Community Development Block Grant (CDBG) Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (CDBG-CV3) Project, Food Security in the City of Newburgh In Response to the Coronavirus - Newburgh Urban Farm and Food

Resolution authorizing the City Manager to enter into a Community Development Block Grant (CDBG-CV3) Sub-recipient Grant Agreement in the amount of \$25,000.00 with Newburgh Urban Farm and Food, Inc. for the allocation of Coronavirus Aid, Relief, and Economic Security Act funding to support food distribution programs and services.

Resolución que autoriza al Gerente Municipal a entrar en un Acuerdo de Subvención como Subrecipiente de la Subvención de Bloques de Desarrollo Comunitario (CDBG-CV3) por el monto de \$25,000.00 con la Granja Urbana de Newburgh, Inc. para la distribución fondos de la Ley de Ayuda, Socorro y Seguridad Económica de Coronavirus para apoyar a los programas y servicios de distribución de alimentos.

14. Resolution No. 33 - 2021 - Subrecipient Agreement - Community Development Block Grant (CDBG) Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (CDBG-CV3) Project, Food Security and Emergency Income Payments in the City of Newburgh In Response to the Coronavirus - Catholic Charities Orange, Sullivan, Ulster

Resolution authorizing the City Manager to enter into a Community Development Block Grant (CDBG-CV3) Sub-recipient Grant Agreement in the amount of \$30,000.00 with Catholic Charities of Orange, Sullivan & Ulster for the allocation of Coronavirus Aid, Relief, and Economic Security Act funding to support food distribution programs and services.

Resolución que autoriza al Gerente Municipal a entrar en un Acuerdo de Subvención como Subrecipiente de la Subvención de Bloques de Desarrollo Comunitario (CDBG-CV3) por el monto de \$30,000.00 con

Caridades Católicas de Orange, Sullivan y Ulster para la distribución fondos de la Ley de Ayuda, Socorro y Seguridad Económica de Coronavirus para apoyar a los programas y servicios de distribución de alimentos.

15. Resolution No. 34 - 2021 - Subrecipient Agreement - Community Development Block Grant (CDBG) Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (CDBG-CV3) Project, Food Security in the City of Newburgh In Response to the Coronavirus - Newburgh Armory Unity Center (NAUC)

Resolution authorizing the City Manager to enter into a Community Development Block Grant (CDBG-CV3) Sub-recipient Grant Agreement in the amount of \$45,000 with the Newburgh Armory Unity Center, Inc. for the allocation of Coronavirus Aid, Relief, and Economic Security Act funding to support food distribution programs and services.

Resolución que autoriza al Gerente Municipal a entrar en un Acuerdo de Subvención como Subrecipiente de la Subvención de Bloques de Desarrollo Comunitario (CDBG-CV3) por el monto de \$45,000.00 con el Centro de Unidad de la Armería de Newburgh, Inc. para la distribución fondos de la Ley de Ayuda, Socorro y Seguridad Económica de Coronavirus para apoyar a los programas y servicios de distribución de alimentos.

16. Resolution No. 35 - 2021 - Ownership Transfer & Donation Acceptance

Resolution declaring surplus one 1991 International Armored vehicle (VIN#1HTSCNMP3MH361897) and authorizing disposition to Motorcyclepedia Inc. and the Gerald A. Doering Foundation and accepting a donation of one 2020 Harley Davidson police package motorcycle (VIN# 1HD1FMP16LB6677168 from Motorcyclepedia Inc. and the Gerald A. Doering Foundation.

Resolución que declara como excedente un vehículo armado internacional de 1991 (VIN#1HTSCNMP3MH361897) y autorizando la disposición a Motorcyclepedia, Inc. y la Fundación Gerald A. Doering y aceptando una donación de una motocicleta policial Harley Davidson 2020 (VIN#1HD1FMP16LB6677168) de Motorcyclepedia, Inc. y la Fundación Gerald A. Doering.

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

Final Comments from the City Council/ Comentarios Finales del Ayuntamiento:

Adjournment/ Aplazamiento:

RESOLUTION NO.: 24 - 2021

OF

FEBRUARY 8, 2021

RESOLUTION SCHEDULING A PUBLIC HEARING FOR FEBRUARY 22, 2021
TO HEAR PUBLIC COMMENT CONCERNING "A LOCAL LAW ADDING
CHAPTER 156 TO THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
ENTITLED "ENERGY" AND ENACTING ARTICLE I ENTITLED "COMMUNITY
CHOICE AGGREGATION ENERGY PROGRAM"

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law adding Chapter 156 entitled 'Energy' and enacting Article I entitled 'Community Choice Aggregation Energy Program' to the Code of Ordinances of the City of Newburgh"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 22nd day of February, 2021; and

BE IT FURTHER RESOLVED, that due to public health and safety concerns related to COVID-19, the City Council will not be meeting in-person. In accordance with the Governor's Executive Order 202.1, as amended, the February 22, 2021 City Council meeting will be held via videoconferencing, and a transcript will be provided at a later date. The public will have an opportunity to see and hear the meeting live and provide comments on the proposed local law as follows:

To view the livestream of the City Council Work Session and Meeting visit:
<https://www.cityofnewburgh-ny.gov/live-video-streaming>.

To access the City Council Work Session and Meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device through the Zoom App:
https://zoom.us/webinar/register/WN_Ls3H6j2fRkKCKoMbhsaLLw. Please note that there is an underscore between the "N" and "L").

To register in advance for this webinar in order to provide comments during the hearing:
https://zoom.us/webinar/register/WN_Ls3H6j2fRkKCKoMbhsaLLw. Please fill out the required information (First Name, Last Name, E-mail Address). After registering, you will receive a confirmation email containing information about joining the webinar.

Comments can be provided by email before the meeting to comments@cityofnewburgh-ny.gov with the Subject Line in this format: "PUBLIC HEARING ITEM" by 4:00 p.m. on Monday, February 22, 2021. Please check the meeting Agenda posted on the website for further instructions to access the virtual meeting and for updated information.

I, Lorene Vitek, City Clerk of the City of Newburgh,
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held 2/8/21
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 9 day of Feb 20 21

City Clerk

LOCAL LAW NO.: _____ - 2021

OF

_____, 2021

**A LOCAL LAW ADDING CHAPTER 156 TO THE CODE OF ORDINANCES
OF THE CITY OF NEWBURGH ENTITLED “ENERGY” AND ENACTING
ARTICLE I ENTITLED “COMMUNITY CHOICE AGGREGATION ENERGY PROGRAM”**

BE IT ENACTED, by the Council of the City of Newburgh, New York that Chapter 156 “Energy” be and is hereby added and enacted as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law adding Chapter 156 entitled ‘Energy’ and enacting Article I entitled ‘Community Choice Aggregation Energy Program’ to the Code of Ordinances of the City of Newburgh”.

SECTION 2 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 156 entitled “Energy”, Article I entitled “Community Choice Aggregation Energy Program” to read as follows:

ARTICLE I. COMMUNITY CHOICE AGGREGATION ENERGY PROGRAM

§ 156-1 Legislative findings, intent and purpose; authority.

- A. It is the policy of both the City of Newburgh and the State of New York to reduce costs and provide price certainty for the purpose of consumer protection and economic development, to expand access and opportunities for consumers in retail energy markets, as well as to promote the sustainability and resilience of energy systems through the proliferation of renewable energy, energy efficiency, and distributed energy resources (“DER”, as defined in this Chapter). Among the initiatives that may advance these objectives in New York is Community Choice Aggregation (“CCA”), which is a policy that empowers local governments to determine the source of electricity and/or natural gas supply on behalf of its residents and small businesses, reflecting local resources, priorities, and challenges. Energy delivery remains the responsibility of the distribution utility.
- B. The purpose of CCA is to allow participating local governments to procure energy supply service for eligible consumers, who will have the opportunity to opt out of the procurement, while maintaining transmission and distribution service from the existing distribution utility.

This Chapter establishes the authority for the City of Newburgh, in connection with the implementation of a CCA program, to acquire utility data, to select, through a competitive solicitation, energy supplier(s) on behalf of default consumers within the jurisdictional boundaries of the City of Newburgh, and to maximize value for participating consumers through enhanced services related to DER. The City of Newburgh may choose to collaborate with other local governments to form an intermunicipal program. As a result, consumers will have the opportunity to lower and stabilize their energy costs, to spur local clean energy innovation and investment, and to reduce their environmental impact; thereby fulfilling the purposes of this Chapter and fulfilling an important public purpose.

- C. The City of Newburgh is authorized to implement this Community Choice Aggregation Program pursuant to Section 10(1)(ii)(a)(12) of the New York State Municipal Home Rule Law; and consistent with State of New York Public Service Commission Case No. 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs (issued April 21, 2016) as may be amended, including subsequent orders of the Public Service Commission (PSC) issued in connection with or related to Case No. 14-M-0224, to the extent that orders related to Case No. 14-M-0224 enable actions by the municipality.
- D. This Chapter shall be known and may be cited as the Community Choice Aggregation Energy Program Law of the City of Newburgh.

§ 156-2 Definitions.

For purposes of this Chapter, and unless otherwise expressly stated or unless the context otherwise requires, the terms in this Chapter shall have the meanings employed in the State of New York Public Service Commission's Uniform Business Practices or, if not so defined there, as indicated below:

AGGREGATED DATA – Aggregated and anonymized information including the number of consumers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class.

CCA ADMINISTRATOR – The City of Newburgh or third-party CCA Administrator duly authorized by the City of Newburgh to request aggregated and customer specific data, competitively solicit suppliers for the aggregated demand for electricity and/or natural gas on behalf of default consumers, and to offer participating consumers additional opportunities to participate or enroll in programs or projects related to distributed energy resources. CCA administrator is responsible for program organization, administration, procurement, communications, and for meeting all requirements for program implementation specified in the PSC CCA order, unless otherwise specified.

CUSTOMER SPECIFIC DATA – Customer specific information, personal data and utility data for all consumers in the municipality eligible for opt-out treatment based on the terms of PSC CCA Order and the CCA program design including the customer of record's name, mailing address, telephone number, account number, and primary language, if available, and any customer-specific alternate billing name, address, and phone number.

DEFAULT CONSUMERS – Customers of electricity and/or natural gas within opt-out eligible service classes, as defined in the PSC CCA order, who receive supply service from the distribution utility as of the date the supply contract goes into effect, or consumers within these service classes that subsequently become eligible to participate in the program including those that have terminated a supply contract with an ESCO, removed a freeze or block on their account, have voluntarily suspended service pursuant to a special rate, or are new residents to the City of Newburgh. Consumers within opt-out eligible service classes, as of the date the supply contract goes into effect, taking service from an ESCO, those that have placed a freeze or block on their account, and those for whom enrollment in the CCA program would interfere with a choice they have already made to take service pursuant to a special rate are not considered default customers and will not be enrolled on an opt-out basis. All default customers must reside or be otherwise located at one or more locations within the geographic boundaries of the City of Newburgh, as such boundaries exist as of the date the supply contract goes into effect.

DEFAULT SERVICE – Supply service provided by the distribution utility to consumers who are not currently receiving service from an energy service company (ESCO). Default consumers within the City of Newburgh that receive default service, and have not opted out, will be enrolled in the program as of the effective date.

DISTRIBUTED ENERGY RESOURCES (DER) – Local renewable energy projects, community distributed generation, such as shared solar, peak demand management, energy efficiency, demand response, energy storage, community resilience microgrid projects, and other innovative Reforming the Energy Vision (REV) initiatives that further engage and/or reduce cost of service for participating consumers, optimize system benefits, and/or address infrastructure and demand challenges within geography of the CCA.

DISTRIBUTION UTILITY – Owner or controller of the means of distribution of the natural gas or electricity in the municipality. The distribution utility also serves as the default supplier of electricity and natural gas preceding the establishment of a CCA program.

ENERGY SERVICES COMPANY (ESCO) – an entity duly authorized to conduct business in the State of New York as an ESCO.

PARTICIPATING CONSUMERS – Default consumers who have not opted out, and non-default consumers of any service class that have voluntarily enrolled in the program.

PROGRAM ORGANIZER – The group responsible for initiating and organizing the CCA. This group will typically secure buy-in from local governments and engage in preliminary outreach and education around CCA. The Program Organizer may be a non-profit organization, local government, or other third party. The Program Organizer and the CCA Administrator may be the same.

PSC CCA ORDER – the PSC’s Order Authorizing Framework for Community Choice Aggregation Opt-Out Program, issued on April 21, 2016 in Case 14-M-0224, “Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.”

PUBLIC SERVICE COMMISSION (PSC) – New York State Public Service Commission.

SUPPLIER(S) – an ESCO(s) that procures electric power and natural gas for eligible consumers in connection with this Chapter or, alternatively, generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

§ 156-3 Authorization/Establishment of a Community Choice Aggregation (Energy) Program.

- A. Community Choice Aggregation (Energy) Program is hereby established by the City of Newburgh, New York, whereby the City of Newburgh may implement a CCA Program to the full extent permitted by the PSC CCA Order, as set forth more fully herein.
- B. The City of Newburgh may act as aggregator or broker for the sale of electric supply, gas supply, or both to eligible consumers and may enter into contracts with one or more Suppliers for energy supply and other services on behalf of eligible consumers.
- C. The City of Newburgh may enter into agreements and contracts with other municipalities, non-profits, consultants, and/or other third parties to:
 - (1) develop and implement the CCA Program;
 - (2) act as CCA Administrator; and/or
 - (3) develop offers of opt-in DER products and services to participating consumers, including but not limited to opportunities to participate in local renewable energy projects, shared solar, energy efficiency, microgrids, storage, demand response, energy management, and other innovative initiatives and objectives designed to optimize system benefits, target and address load pockets/profile within the CCA zone, and reduce costs for CCA customers.
- D. The operation and ownership of the utility service shall remain with the distribution utility. The City of Newburgh’s participation in a CCA program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The City of Newburgh shall not take over any part of the electric or gas transmission or distribution system and will not furnish any type of utility service, but will instead negotiate with suppliers on behalf of participating consumers.
- E. The Public Service Commission supervises retail markets and participants in these markets through legislative and regulatory authority and the uniform business practices, which includes rules relating to the eligibility of participating ESCOs, the operation by which ESCOs provide energy services, and the terms on which customers may be enrolled with ESCOs.

§ 156-4 Eligibility.

- A. All default consumers shall be enrolled on an opt-out basis. Default consumers will have the right to opt out before the supply contract goes into effect, or disenroll any time thereafter with no penalty. Those that do not opt out before the supply contract goes into effect will be enrolled automatically.
- B. All non-default consumers within the municipality, regardless of service class, shall be eligible to participate in the CCA program on an opt-in basis.
- C. The CCA Administrator, on behalf of the City of Newburgh, shall issue one or more requests for proposals to suppliers to provide energy to participants and then may award a contract in accordance with the CCA program.

§ 156-5 Opt-out process.

- A. A program notification letter, printed on City of Newburgh letterhead, shall be mailed to default consumers at least 30 days prior to customer enrollment. The letter shall include the information on the CCA program and the contract signed with the selected supplier(s) including specific details on rates, services, contract term, cancellation fee, and methods for opting out of the CCA program. The letter shall explain that consumers that do not opt out will be enrolled in the program under the contract terms and that information on those consumers, including energy usage data and APP status, will be provided to the ESCO.
- B. After the thirty-day opt-out period, all consumers shall have the option to disenroll from the CCA program at any time without penalty.

§ 156-6 Customer service.

Participating Consumers shall be provided customer service, including a toll-free telephone number available during normal business hours (9:00 a.m. to 5:00 p.m., Eastern time, Monday through Friday) to resolve concerns, answer questions, and transact business with respect to the service received from the supplier(s).

§ 156-7 Data protection requirements.

- A. The City of Newburgh, or CCA administrator on its behalf, may request aggregated data and customer-specific data from the distribution utility. However, a request for customer-specific data is limited to only those eligible consumers who did not opt-out after the initial opt-out period closed.
- B. Customer-specific data shall be protected in a manner compliant with, collectively:

- (1) All national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the municipality or its representative's processing of confidential utility information;
 - (2) The utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the municipality or its representative's processing of confidential utility information; and
 - (3) The PSC CCA order and PSC rules, regulations and guidelines relating to confidential data.
- C. For the purpose of protecting customer data, the City of Newburgh must enter into an agreement with the distribution utility that obligates each party to meet, collectively:
- (1) All national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual default customer or participating consumer with respect to the CCA administrator or its representative's processing of confidential information;
 - (2) The distribution utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify the individual default consumer or participating consumer with respect to the CCA administrator or its representative processing of confidential information; and
 - (3) The PSC CCA order and PSC rules, regulations and guidelines relating to confidential data.

§ 156-8 Administration fee.

The City of Newburgh or CCA Administrator may collect, or cause to be collected, funds from customer payments to pay for administrative costs associated with running the CCA program.

§ 156-9 Reporting.

- A. Annual reports shall be filed with the City Clerk by March 31 of each year and cover the previous calendar year.
- B. Annual reports shall include, at a minimum: number of consumers served; number of consumers cancelling during the year; number of complaints received; commodity prices paid; value-added services provided during the year (e.g., installation of DER or other clean energy services); and administrative costs collected. The first report also shall include the number of consumers who opted-out in response to the initial opt-out letter or letters.
- C. If a CCA supply contract will expire less than one year following the filing of the annual report, the report must identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

§ 156-10 When effective.

This Chapter shall be effective immediately upon adoption and after filing with the Secretary of State.

§ 156-11 Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

SECTION 3 - SEVERABILITY

The provisions of this Local Law are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part here of is held inapplicable had been specifically exempt therefrom.

SECTION 4 - CODIFICATION

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Local Law shall be included in the Code of Ordinances of the City of Newburgh; that the sections and subsections of this Local Law may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term “Local Law” shall be changed to “Chapter”, “Article”, “Section”, or other appropriate word as required for codification; and that any such rearranging of the numbering and/or lettering and editing shall not affect the validity of this Local Law or the provisions of the Code of Ordinances affected thereby.

SECTION 5 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 6 - EFFECTIVE DATE

This Local Law and shall be effective immediately after the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

RESOLUTION NO.: 22 - 2021

OF

FEBRUARY 8, 2021

A RESOLUTION SCHEDULING
THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER)
PUBLIC HEARING AND OPENING OF
THE 15-DAY PUBLIC COMMENT PERIOD FOR FISCAL YEAR 2020

WHEREAS, the City of Newburgh has prepared a five-year Consolidated Housing and Community Development Strategy and Plan in accordance with the planning requirements of the Housing and Community Development Act of 1974 and applicable regulations; and

WHEREAS, a jurisdiction is required to submit an annual report to the U.S. Department of Housing and Urban Development (HUD) that summarizes accomplishments and progress toward Consolidated Plan goals in the Consolidated Annual Performance and Evaluation Report (CAPER) within 90 days after the program year; and

WHEREAS, the CAPER provides the community with information regarding how HUD entitlement funds were used to address housing, community development and essential service needs; and

WHEREAS, prior to submitting the CAPER, the City publishes a draft of the report and provides the general public with an opportunity to submit comments;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the 15-day period to receive written public comment on the City of Newburgh's proposed City of Newburgh's proposed Consolidated Annual Performance and Evaluation Report (CAPER) with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2020 shall commence on February 23, 2021 and close on March 10, 2021; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that there is scheduled a public hearing to receive public comment on the Consolidated Annual Performance and Evaluation Report (CAPER) with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2020; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 22nd day of February, 2021; and

BE IT FURTHER RESOLVED, that due to public health and safety concerns related to COVID-19, the City Council will not be meeting in-person. In accordance with the Governor's Executive Order 202.1, as amended, the February 22, 2021 City Council meeting will be held via videoconferencing, and a transcript will be provided at a later date. The public will have an opportunity to see and hear the meeting live and provide comments on the Consolidated Annual Performance and Evaluation Report (CAPER) as follows:

To view the livestream of the City Council Work Session and Meeting visit:
<https://www.cityofnewburgh-ny.gov/live-video-streaming>.

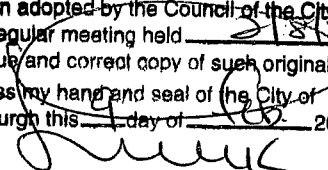
To access the City Council Work Session and Meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device through the Zoom App:
https://zoom.us/webinar/register/WN_Ls3H6j2fRkKCKoMbhsaLLw. Please note that there is an underscore between the "N" and "L").

To register in advance for this webinar in order to provide comments during the hearing:
https://zoom.us/webinar/register/WN_Ls3H6j2fRkKCKoMbhsaLLw. Please fill out the required information (First Name, Last Name, E-mail Address). After registering, you will receive a confirmation email containing information about joining the webinar.

Comments can be provided by email before the meeting to comments@cityofnewburgh-ny.gov with the Subject Line in this format: "PUBLIC HEARING ITEM" by 4:00 p.m. on Monday, February 22, 2021. Please check the meeting Agenda posted on the website for further instructions to access the virtual meeting and for updated information.

I, Lorene Vitek, City Clerk of the City of Newburgh,
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held 2/18/21
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 18 day of Feb 2021


City Clerk

CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

Although several projects were placed on-hold due to the Coronavirus Pandemic, the City of Newburgh was still able to carry out several projects in 2020:

In Rem Property Program: Maintenance of the habitability of 100 residential properties returned to the City of Newburgh through the foreclosure process.

Neighborhood Services: Neighborhood Services project for the "Socially-Distanced" Summer Film Festival.

Park Improvements: Park signage for "Socially-Distanced" activities.

Administration: Support services to the Community Development Block Grant, including publishing public notices, processing payment vouchers, report preparation, Spanish translation and interpretation services and salary of the Director of Community Development.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Administration	Administration	CDBG: \$	Other	Other	1	1	100.00%	1	1	100.00%

Economic Development	Non-Housing Community Development Economic Development	CDBG: \$	Facade treatment/business building rehabilitation	Business	3	0	0.00%	3	0	0.00%
Economic Development	Non-Housing Community Development Economic Development	CDBG: \$	Businesses assisted	Businesses Assisted	15	0	0.00%			
Economic Development	Non-Housing Community Development Economic Development	CDBG: \$	Other	Other	0	0		1	0	0.00%
Housing	Affordable Housing	CDBG: \$	Housing Code Enforcement/Foreclosed Property Care	Household Housing Unit	100	100	100.00%	80	100	125.00%
Infrastructure Improvements	Non-Housing Community Development Infrastructure Improvements	CDBG: \$	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	28000	0	0.00%	28000	0	0.00%
Quality of Life Improvements	Non-Housing Community Development	CDBG: \$	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	28000	0	0.00%			

Quality of Life Improvements	Non-Housing Community Development	CDBG: \$	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	1000	1500	150.00%	500	500	100.00%
Quality of Life Improvements	Non-Housing Community Development	CDBG: \$	Other	Other	0	0		1000	1000	100.00%

Table 1 - Accomplishments – Program Year & Strategic Plan to Date

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

Priority Needs

Note: Due to the Coronavirus Pandemic, several scheduled projects were placed on-hold:

Housing: The In Rem property team provided maintenance of the habitability of 100 residential properties returned to the City of Newburgh through the foreclosure process. This project meets several goals, including preserving housing stock and reducing slum and blight.

Quality of Life -Public Services: Neighborhood Services provided a much-needed "Socially-Distanced" Summer Film Festival. This program provides public service outreach as well activities for youth.

Quality of Life - Park Improvements: Installation of park signage to encourage socially-distanced activities.

Administration: Support services to the Community Development Block Grant, including publishing public notices, processing payment vouchers, report preparation, Spanish translation and interpretation services and salary of the Director of Community Development.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

	CDBG
White	500
Black or African American	500
Asian	0
American Indian or American Native	0
Native Hawaiian or Other Pacific Islander	0
Total	1,000
Hispanic	500
Not Hispanic	500

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

The data in Table 2 is approximate. Of the families and individuals participating in the Neighborhood Services "Socially Distanced" Summer Film Festival, 70% were minorities. The City of Newburgh Summer Film Festival was open to all City of Newburgh residents. However, in order to reach as many low-income families who may have transportation restrictions, as well as provide a socially-distanced location, the festival was held at the Ann St. Parking Lot, located between Ann St. and Washington St., in Census Tract 5.0. This is a walkable location on the East-End of the City of Newburgh, a target area for low-income activities. The festival was attended by families and individuals, approximately 80% minority.

The In Rem Project assisted the following ethnic groups: 39% Latino or Hispanic, 61% Not-Hispanic or Latino. The racial categories assisted by the In Rem Project include: 6% Asian, 14% Black or African American, 77% White, 2% identify as Other.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	872,788	416,621

Table 3 - Resources Made Available

Narrative

\$416,620.85 was expended for activities during the 2020 program year. Note: Due to the Coronavirus Pandemic, several planned projects we placed on-hold, including the Ann St./Liberty St. Sidewalk Repair project.

"Other" Funds include \$23,686.27 expended as part of the CARES Act CDBG-CV allocation. This funding was expended on a Food Security Project through the Newburgh Urban Farm & Food Initiative (NUFFI).

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
Census Tracts 4 & 5	70	70	In Rem Property Project, Summer Film Festival
City Wide	30	30	In Rem Property Project, Summer Film Festival

Table 4 – Identify the geographic distribution and location of investments

Narrative

The majority of the CDBG projects took place in Census Tracts 4 and 5, including the "Socially-Distanced" Summer Film Festival.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

Complete Streets, Liberty Street Streetscape and Sidewalk Project: The City of Newburgh was awarded a Transportation Alternatives Program (TAP) grant from the New York State Department of Transportation in the amount of \$400,000.00. The funds are to be used for a (new) complete street oriented streetscape design replacement of one block of City sidewalks in the heart of the City of Newburgh's Historic downtown, along Liberty St, between Broadway and Ann Street. Community Development Block Grant (CDBG) funding is used to match the TAP funds.

ADA Curb Cuts: The "ADA Curb Cuts" project is part of a larger City of Newburgh street improvement project. Street paving funds are provided through the New York State Consolidated Local Street and Highway Improvement Program (CHIPS) program. Federal (CDBG) funds are used for the ADA Curb Cut compliance portion of the project.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	3	1
Number of Special-Needs households to be provided affordable housing units	0	0
Total	3	1

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	0	0
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	3	1
Number of households supported through Acquisition of Existing Units	0	0
Total	3	1

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

After evaluating the previous City of Newburgh CDBG-funded Emergency Homeowner Repair program, it was determined that a previous Emergency Homeowner Repair program was not meeting home-owner needs. In 2020, the Emergency Homeowner Repair Program was re-introduced.

In 2018, the City of Newburgh Water Department was awarded \$544,000.00 from the New York State

NYS) Department of Health (DOH) in order to identify and replace lead water service lines from the City of Newburgh's water main to the Homeowner's water meter. This funding was used to create the City of Newburgh Lead Service Line Replacement Program (LSLRP). In 2020, as part of the larger LSLRP, the City of Newburgh offered a Homeowner Emergency Lead Line Repair program for low-moderate income residents for emergency lead water service line repairs. 1 low-moderate income homeowner was served through the program in 2020.

Discuss how these outcomes will impact future annual action plans.

The City of Newburgh will consider an increase in program funding as the program has been successful in assisting homeowners with lead service line replacement needs.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	0	0
Low-income	1	0
Moderate-income	0	0
Total	1	0

Table 7 – Number of Households Served

Narrative Information

In 2020, the City of Newburgh offered an Emergency Homeowner Lead Line Assistance program as part of the larger City of Newburgh LSLRP. The one year goal was to assist at least 3 income-qualified homeowner with lead line replacement. 1 homeowner was assisted.

A Homeowner Repair program has been funded for 2021. It is anticipated that the City of Newburgh Water Department will receive additional LSLRP funding from the NYS DOH. If needed, the Homeowner Repair program will fund additional low-moderate homeowner lead service line replacements, in the event that the NYS DOH funds are depleted.

After review of homeowner assistance needs in the City of Newburgh, it was determined that most homes in need of repair have multiple issues. For example, the home may have hole in the roof, in addition to broken front step railings.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The Newburgh Ministry provides a homeless shelter on Johnston St. Social service assistance, as well as healthcare is provided. In conjunction with the ESPRI-funded "Fragile Economies" project, the Newburgh Ministry provides financial stability assistance, as well as improved health and wellness and resiliency through peer coaching to several at-risk families in the City of Newburgh.

In 2020, the Newburgh Ministry also operated a seasonal walk-in shelter at a City of Newburgh-owned building, 104 S. Lander St. Social Service assistance was provided to the walk-in guests of the shelter.

Addressing the emergency shelter and transitional housing needs of homeless persons

City of Newburgh partners with services such as Regional Economic Community Action Program (RECAP) and Orange County Department of Social Services to address emergency shelter and transitional housing needs of homeless persons. Other partners include Safe Harbors of the Hudson, the Newburgh Ministry and a growing number of organizations providing services to the formerly incarcerated.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

Social service agencies and organizations in the City of Newburgh such as Exodus Transitional Community, Bridges of New York and Renwick Recovery, Inc., work to address and promote programs for vulnerable persons and families. In 2017, the NYS Governor's Office commenced the Empire State Poverty Reduction Initiative (ESPRI). ESPRI held a community listening session, as well as convened several task forces, including housing, workforce development, healthcare and wellness. The focus of ESPRI 2020 was to continue implementation of several support projects, including the "Fragile Economies Project."

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that

individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

RECAP and Orange County Department of Social Services address the housing transition needs for homeless individuals and families, as do a growing number of service organizations, such as Exodus Transitional Community, Bridges of New York, Renwick Recovery, Inc. and Project L.I.F.E.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

City of Newburgh staff continue to meet with the Director of the Newburgh Housing Authority (NHA) on a regular basis regarding any public housing needs. All CDBG programs and City of Newburgh jobs are advertised at the NHA site.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

The "City of Newburgh - Housing Resource Guide" and information on how to apply for a finance a City-owned property are shared with public housing residents. The Newburgh Community Land Bank has been awarded funding through the New York State Attorney General for a "Neighbors for Neighborhoods" Affordable Rental Housing Program. The purpose of the program is to encourage neighborhood residents to rehabilitate properties in their own neighborhood, and maintain the property as affordable rental housing.

Actions taken to provide assistance to troubled PHAs

This section is not applicable.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

The City of Newburgh supports affordable housing throughout the City of Newburgh. Fees related to land use procedures have been significantly reduced and zoning relaxed to provide more accessibility. The City of Newburgh Zoning is reviewed regularly to identify barriers to affordable housing projects.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The City of Newburgh has a population in which at least 50% identify as Latinx. Spanish interpretation is provided at CDBG-related meetings (ex. Public Hearings). Spanish translation and dissemination of program materials into Spanish, as well as in English, is required by the City of Newburgh under the Language Access Plan. "La Voz" provides Spanish language announcements for City of Newburgh residents.

The City of Newburgh has contracted with Language Link to provide additional language translation and interpretation services.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

Coordination between Lead Safe Orange and City of Newburgh Code Compliance of City of Newburgh-owned properties.

The City of Newburgh is planning to apply for a Lead remediation grant through HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH).

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

In 2017, the NYS Governor's Office commenced the Empire State Poverty Reduction Initiative (ESPRI) in the City of Newburgh. The City of Newburgh ESPRI is managed by United Way of Dutchess-Orange Region.

ESPRI held a community listening session, as well as convened several task forces, including housing, workforce development, healthcare and wellness. The focus of ESPRI 2020 was to continue implementation of the Newburgh Ministry managed "Fragile Economies Project." The Fragile Economies Project aims to help low income families achieve financial goals and establish a savings cushion to help with life's unexpected events and emergencies. Families work with peer coaches to set goals, create an action plan, and stay on track. Families are connected to support where needed.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

Fees related to land use procedures have been significantly reduced and zoning relaxed to provide more accessibility. In addition, the City of Newburgh has developed a more streamlined land use board process, to enhance accessibility.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The City of Newburgh takes a lead in the Newburgh Housing Coalition, which includes Habitat for Humanity of Greater Newburgh, PathStone (HUD Homeowner training), Orange County Social Services, Safe Harbors of the Hudson and the Newburgh Community Land Bank. The City of Newburgh also participates in the Orange County Housing Planning Committee, which has even broader outreach and member organizations.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

Homeownership preparation and training through Pathstone, Independent Living and Habitat for Humanity of Greater Newburgh. Introduction of Tenants Responsibilities and accompanying public workshops are also provided.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

The City of Newburgh CDBG Advisory Group, comprised of several residents of the City of Newburgh recommended by the City Council, reviews proposed Activities for current and future Annual Action Plans. Members of the CDBG Advisory Group receive CDBG program updates. Activities are reviewed using the exhibits found in the CPD Monitoring Handbook. The "Guide for Review of Eligibility" as well as the guides for review of National Objectives, are used as Activities are selected and subsequently set-up.

In order to provide better outreach to minority-owned and women-owned businesses, a Section 3 and minority/women-owned business Workshop was held in 2020. The workshop was co-sponsored by the Small Business Administration (SBA), through renewed the SBA/City of Newburgh Co-Sponsorship Agreement. Additional partners for the workshop included HUD and the Orange County Employment & Training. Additional workshops are planned for 2021, including a "Business Basics Bootcamp," as well as a low-income City of Newburgh resident "On-the-Job" training program.

A joint Planning and Development/Community Development/Grants Administration meeting is held bi-weekly in order to ensure that the CDBG program is in align with other City of Newburgh community needs. In addition, the whole CDBG program is monitored for "Timeliness" using a spreadsheet, which tracks Activity spending, as well as Public Service and Administration caps.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

In compliance with City of Newburgh procedures, the Notice of a 15-Day Public Comment Period for the 2020 CAPER was submitted to 4 local newspapers as well as a Spanish language publication/social media. The newspapers include the Times Herald Record, Orange County Post, Hudson Valley Press and the Times Community Papers (Mid-Hudson Times). La Voz provides Spanish language outreach for the 2020 CAPER.

The 2020 CAPER Public Hearing is scheduled for 02/22/2021. The 2020 CAPER will be available for public comment from 02/23/2021 - 03/10/2021.

The 2020 CAPER will be posted on the City of Newburgh website. Hard-copies of the CAPER will be available at City of Newburgh, City Hall, 83 Broadway, in the City of Newburgh Clerk's Office and in the City of Newburgh Department of Planning & Development office, 123 Grand St., and at the Newburgh Free Library, 124 Grand St.

The 2020 CAPER will also be distributed to the Community Development Block Grant [Citizens] Advisory Group.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There were no changes in the City of Newburgh's program objectives.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

CR-45 - CDBG 91.520(c)

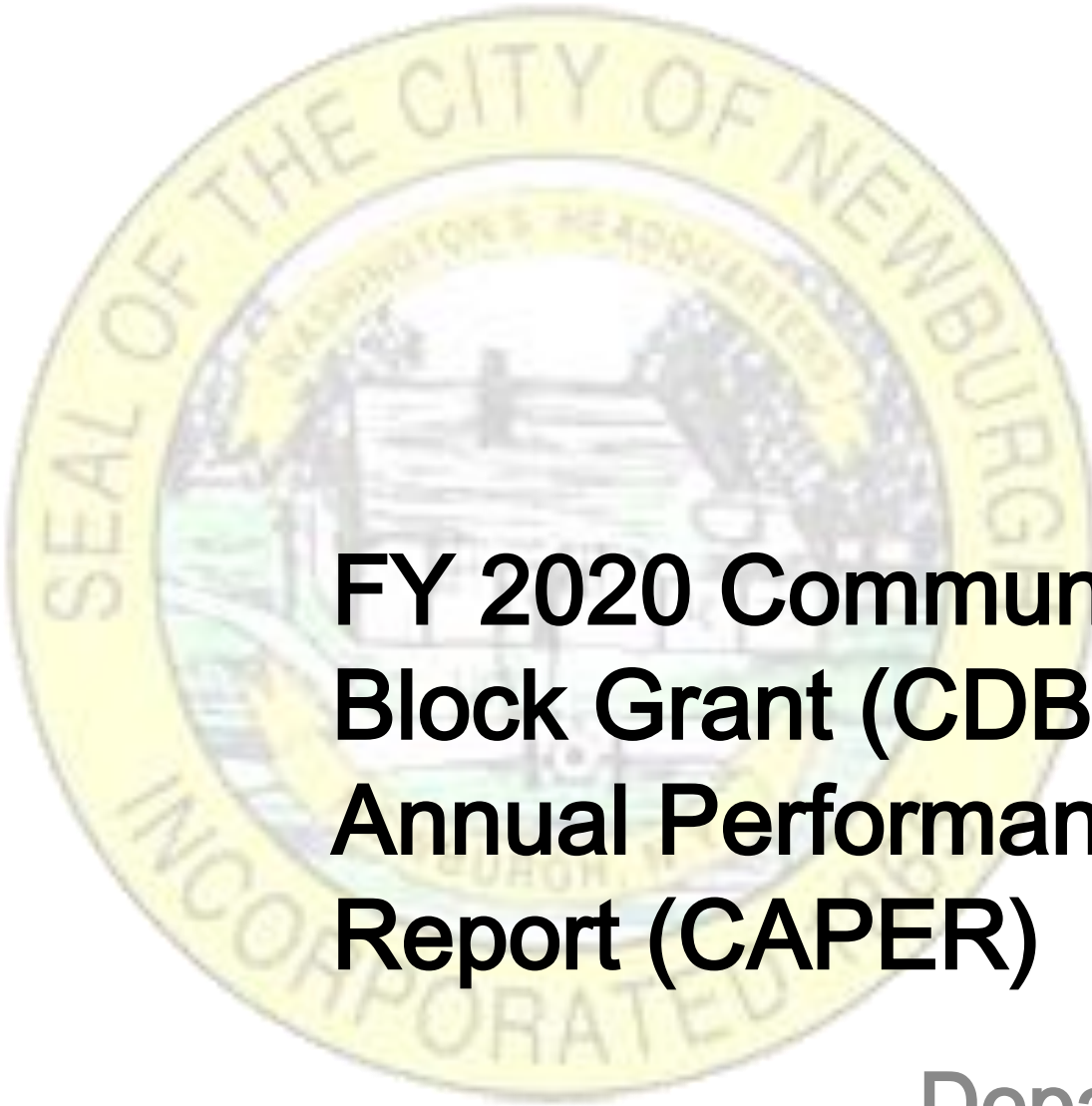
Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There were no changes in the City of Newburgh's program objectives.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

The seal of the City of Newburg is a circular emblem. The outer ring is yellow with the text "SEAL OF THE CITY OF NEWBURG" at the top and "INCORPORATED 1805" at the bottom. The inner circle features a landscape with a river, a bridge, and a building, with the text "WASHINGTON'S HEADQUARTERS" above the building.

FY 2020 Community Development Block Grant (CDBG): Consolidated Annual Performance and Evaluation Report (CAPER)

Department of Planning &
Development
February 2021



Consolidated Annual Performance and Evaluation Report (CAPER)



- The primary purpose of the CAPER is to report on accomplishments of funded activities within the program year and to evaluate the grantee's progress in meeting one-year goals described in the Annual Action Plan and long-term goals described in the Consolidated Plan.
- Also provides grantees an opportunity to evaluate the effectiveness of their programs.



Consolidated Annual Performance and Evaluation Report (CAPER)



- The CAPER is submitted to the United States Department of Housing and Urban Development (HUD) within 90 days after the end of its program year.
- Submitted to HUD through the Integrated Disbursement and Information System or “IDIS.”



FY2020: Year 1 of the 5 Year Plan 2020 - 2024



Summary of FY2020 Projects/Activities



FY2020 Projects/Activities

- Housing
- Park Improvements
- Complete Streets
- Neighborhood Services
- Administration

FY2020 Projects/Activities

In Rem Property Project

Priority Need Supported: Housing

Summary:

- 3 City of Newburgh employees
- In Rem Property Team maintained the habitability of 100 properties returned to the City of Newburgh through the foreclosure process.

Activities included:

- Securing properties/Adding New locks
- Light property maintenance such as mowing, snow removal
- CDBG In Rem Property funds spent in 2020: \$206,748.66



FY2020 Projects/Activities

Homeowner Assistance Project Priority Need Supported: Housing

- Summary: Homeowner Assistance Project to assistance income-qualified (low-moderate income) homeowner with lead service line replacement.
- CDBG Homeowner Assistance funds spent in 2020: \$21,300.00



FY2020 Projects/Activities

Park Improvements Project

Priority Need Supported: Quality of Life

Summary:

- Provide improvements to City of Newburgh Parks.

Activities included:

- Park signage for parks to encourage social distancing.
- CDBG Park Improvements funds spent in 2020: \$7,145.25

**SEASONAL
STREET
CLOSURE
NO THRU
TRAFFIC**

FY2020 Projects/Activities

Complete Streets Project

Priority Need Supported: Infrastructure

Summary:

- Projects to support upgrades to safe street access/reconfiguration in the City of Newburgh.

Activities included:

- Purchase of traffic barriers and signs for social distancing activities in the City of Newburgh.
- CDBG Complete Streets funds spent in 2020: \$ 13,705.06



FY2020 Projects/Activities

Neighborhood Services Project

Priority Need Supported: Quality of Life

Summary: Neighborhood Services activities in the City of Newburgh.

- Social Distanced Summer Film Festival: Outreach to approximately 1,000 film attendees over 6 weeks.
- CDBG Neighborhood Services funds spent in 2020: \$13,705.06



**City of Newburgh**
Drive-In
Movies
Ann Street Parking Lot @ 8:30pm

Aug 6 - Frozen II
Aug 13 - The Lion King
Aug 20 - Abominable
Aug 27 - Space Jam

Walk-Ins
Welcome!



Visit the City of
Newburgh online
for details



FY2020 Projects/Activities

Administration

Summary: Supports the Administrative activities for the Community Development Block Grant, including salary and benefits for the Director of Community Development, as well as public notice and mail costs, Spanish interpretation and translation.

CDBG Administration funds spent in 2020: \$123,134.16



FY2020 Projects/Activities

“CDBG CV”

Additional CDBG allocation received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to fund the following projects, referred to as “CDBG-CV”:

- Food Security
- Emergency Income Payments (Rent)
- Grant Administration

CDBG-CV Projects/Activities

Food Security

Summary: Funding for the Newburgh Urban Farm and Food Initiative (NUFFI) to support food security needs for residents of the City of Newburgh.

The Pandemic changed growing plans for the Downing Park Urban Farm (DPUF). Farms were classified as essential businesses, which made it possible for DPUF to be put into production even when the City of Newburgh was in lock-down in March, 2020.



CDBG-CV Projects/Activities

Food Security (Continued)

Increased the growing areas at the farm. Both sides of the in-ground paddock area were put into production yielding early crops of lettuce, kale, and swiss chard. A newly designed system for growing tomatoes in the hoop house freed up the side raised beds so that lettuce/greens could be planted on the margins and the new system increased the yield of tomatoes. In addition, raised beds were continuously replanted throughout the season.

More vegetables to meet the ethnic/cultural needs of Newburgh residents, including cilantro, tomatillos, radishes, Malabar (Caribbean) spinach, collards, kale, Callaloo (amaranth) and an assortment of lettuces.



CDBG-CV Projects/Activities

Food Security (Continued)

Donated 5,000 lbs. of produce grown at the DPUF to over 15 feeding programs in the City of Newburgh in 2020.

CDBG-CV Food Security funds spent in 2020: \$23,686.27



CDBG-CV Projects/Activities

CDBG-CV Administration

Summary: Supports the administration of the CDBG-CV grant. Support includes development of CDBG-CV specific Policy & Procedures documents (ex. Duplication of Benefits), CDBG-CV Environmental Review Records, the publication of public notices, and the translation of documents into Spanish.

CDBG-CV Administration funds spent in 2020: \$10,831.48





Office of Community Planning and Development
U.S. Department of Housing and Urban Development
Integrated Disbursement and Information System
PR26 - CDBG Financial Summary Report
Program Year 2020
NEWBURGH , NY

DATE: 02-04-21
TIME: 12:19
PAGE: 1

PART I: SUMMARY OF CDBG RESOURCES

01 UNEXPENDED CDBG FUNDS AT END OF PREVIOUS PROGRAM YEAR	387,060.38
02 ENTITLEMENT GRANT	872,788.00
03 SURPLUS URBAN RENEWAL	0.00
04 SECTION 108 GUARANTEED LOAN FUNDS	0.00
05 CURRENT YEAR PROGRAM INCOME	0.00
05a CURRENT YEAR SECTION 108 PROGRAM INCOME (FOR SI TYPE)	0.00
06 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
06a FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
07 ADJUSTMENT TO COMPUTE TOTAL AVAILABLE	0.00
08 TOTAL AVAILABLE (SUM, LINES 01-07)	1,259,848.38

PART II: SUMMARY OF CDBG EXPENDITURES

09 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	294,218.26
10 ADJUSTMENT TO COMPUTE TOTAL AMOUNT SUBJECT TO LOW/MOD BENEFIT	0.00
11 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 09 + LINE 10)	294,218.26
12 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	142,928.33
13 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	0.00
14 ADJUSTMENT TO COMPUTE TOTAL EXPENDITURES	(72,354.24)
15 TOTAL EXPENDITURES (SUM, LINES 11-14)	364,792.35
16 UNEXPENDED BALANCE (LINE 08 - LINE 15)	895,056.03

PART III: LOWMOD BENEFIT THIS REPORTING PERIOD

17 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
18 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
19 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	294,218.26
20 ADJUSTMENT TO COMPUTE TOTAL LOW/MOD CREDIT	0.00
21 TOTAL LOW/MOD CREDIT (SUM, LINES 17-20)	294,218.26
22 PERCENT LOW/MOD CREDIT (LINE 21/LINE 11)	100.00%

LOW/MOD BENEFIT FOR MULTI-YEAR CERTIFICATIONS

23 PROGRAM YEARS(PY) COVERED IN CERTIFICATION	PY: PY: PY:
24 CUMULATIVE NET EXPENDITURES SUBJECT TO LOW/MOD BENEFIT CALCULATION	0.00
25 CUMULATIVE EXPENDITURES BENEFITING LOW/MOD PERSONS	0.00
26 PERCENT BENEFIT TO LOW/MOD PERSONS (LINE 25/LINE 24)	0.00%

PART IV: PUBLIC SERVICE (PS) CAP CALCULATIONS

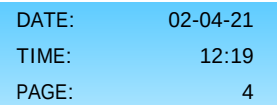
27 DISBURSED IN IDIS FOR PUBLIC SERVICES	14,705.06
28 PS UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
29 PS UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
30 ADJUSTMENT TO COMPUTE TOTAL PS OBLIGATIONS	0.00
31 TOTAL PS OBLIGATIONS (LINE 27 + LINE 28 - LINE 29 + LINE 30)	14,705.06
32 ENTITLEMENT GRANT	872,788.00
33 PRIOR YEAR PROGRAM INCOME	683,029.37
34 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PS CAP	0.00
35 TOTAL SUBJECT TO PS CAP (SUM, LINES 32-34)	1,555,817.37
36 PERCENT FUNDS OBLIGATED FOR PS ACTIVITIES (LINE 31/LINE 35)	0.95%



Office of Community Planning and Development
U.S. Department of Housing and Urban Development
Integrated Disbursement and Information System
PR26 - CDBG Financial Summary Report
Program Year 2020
NEWBURGH , NY

DATE: 02-04-21
TIME: 12:19
PAGE: 2

PART V: PLANNING AND ADMINISTRATION (PA) CAP		
37	DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	142,928.33
38	PA UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
39	PA UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
40	ADJUSTMENT TO COMPUTE TOTAL PA OBLIGATIONS	(19,794.17)
41	TOTAL PA OBLIGATIONS (LINE 37 + LINE 38 - LINE 39 +LINE 40)	123,134.16
42	ENTITLEMENT GRANT	872,788.00
43	CURRENT YEAR PROGRAM INCOME	0.00
44	ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PA CAP	0.00
45	TOTAL SUBJECT TO PA CAP (SUM, LINES 42-44)	872,788.00
46	PERCENT FUNDS OBLIGATED FOR PA ACTIVITIES (LINE 41/LINE 45)	14.11%



PR26 - Activity Summary by Selected Grant

Date Generated: 02/04/2021

Grantee: NEWBURGH

Grant Year: 2020

Formula and Competitive Grants only

Total Grant Amount for 2020 Grant year = \$872,788.00														
State	Grantee Name	Grant Year	Grant Number	Activity Group	Matrix Code	National Objective	IDIS Activity	Activity to prevent, prepare for, and respond to Coronavirus	Activity Status	Amount Funded From Selected Grant	Amount Drawn From Selected Grant	% of CDBG Drawn From Selected Grant/Grant	Total CDBG Funded Amount (All Years All Sources)	Total CDBG Drawn Amount (All Years All Sources)
NY	NEWBURGH	2020	B20MC360119	Administrative And Planning	21A		593	No	Open	\$132,666.30	\$120,368.77		\$132,666.30	\$120,368.77
				Total Administrative And Planning						\$132,666.30	\$120,368.77	13.79 %	\$132,666.30	\$120,368.77
NY	NEWBURGH	2020	B20MC360119	Economic Development	14E	LMA	599	No	Open	\$27,791.30	\$0.00		\$27,791.30	\$0.00
				Total Economic Development						\$27,791.30	\$0.00	0.00 %	\$27,791.30	\$0.00
NY	NEWBURGH	2020	B20MC360119	Housing	14A	LMH	595	No	Open	\$51,674.78	\$0.00		\$51,674.78	\$0.00
NY	NEWBURGH	2020	B20MC360119	Housing	14J	LMH	594	No	Open	\$227,257.38	\$204,345.27		\$227,257.38	\$204,345.27
				Total Housing						\$278,932.16	\$204,345.27	23.41 %	\$278,932.16	\$204,345.27
NY	NEWBURGH	2020	B20MC360119	Public Improvements	03F	LMA	597	No	Open	\$178,907.82	\$0.00		\$178,907.82	\$0.00
NY	NEWBURGH	2020	B20MC360119	Public Improvements	03K	LMA	596	No	Open	\$233,932.16	\$16,284.80		\$233,932.16	\$16,284.80
				Total Public Improvements						\$412,839.98	\$16,284.80	1.87 %	\$412,839.98	\$16,284.80
NY	NEWBURGH	2020	B20MC360119	Public Services	05D	LMC	598	No	Open	\$20,558.26	\$13,705.06		\$20,558.26	\$13,705.06
				Non CARES Related Public Services						\$20,558.26	\$13,705.06	1.57 %	\$20,558.26	\$13,705.06
				Total 2020						\$872,788.00	\$354,703.90	40.64 %	\$872,788.00	\$354,703.90
				Grand Total						\$872,788.00	\$354,703.90	40.64 %	\$872,788.00	\$354,703.90

RESOLUTION NO.: 28 - 2021

OF

FEBRUARY 22, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A MASTER FEDERAL-AID LOCAL PROJECT AGREEMENT
WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION
TO FUND IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND NON-FEDERAL
AID ELIGIBLE COSTS FOR THE CONSTRUCTION OF
THE LAKE DRIVE OVER QUASSAICK CREEK BRIDGE REPLACEMENT PROJECT
(PIN 8761.39/BIN2223630)**

WHEREAS, a Project for the Lake Drive over Quassaick Creek Bridge Replacement (BIN 2223630) in the City of Newburgh, Orange County, PIN 8761.39 (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, the City of Newburgh desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of construction and construction inspection;

NOW, THEREFORE, the Newburgh City Council, duly convened does hereby

RESOLVE, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of construction and construction inspection work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$850,000.00 is hereby appropriated from the OCTC TIP Reserve Fund A.0000.0882.0000 and the 2016 BAN H1.5110.0208.8102.2016 and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Newburgh City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the City Manager thereof, and it is further

RESOLVED, that the Newburgh City Manager be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Newburgh with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for

the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that in addition to the City Manager, the following municipal titles: Mayor, City Engineer, City Comptroller, and Superintendent of Public Works are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further

RESOLVED, this Resolution shall take effect immediately.

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, _____, Clerk of the City of Newburgh, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said _____ at a meeting duly called and held at the _____ on _____ by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the City of Newburgh, New York, this _____ day of _____, 20__.

Clerk, City of Newburgh



February 2, 2021

Mr. Jason Morris, P.E., City Engineer
City of Newburgh
83 Broadway
Newburgh, NY 12550

**RE: PIN 8761.39, LAKE DRIVE/QUASSAICK CREEK
CITY OF NEWBURGH, ORANGE COUNTY**

MASTER AGREEMENT - HPP FUNDS

Dear Mr. Morris:

Enclosed are eight (8) Supplemental Agreements to include the repurposed earmark funds for the construction and construction inspection funds for the above-referenced project. Seven (7) executed copies of the agreement, **EACH with original signatures, notarizations and certified, seal-stamped resolutions,** should be returned to this office. A sample resolution is attached for your use.

As a reminder per Chapter 15, Administering Construction Contracts; Section 15.4.8 Civil Rights Reporting:

The Contractor and all subcontractors and suppliers will utilize New York State Department of Transportation Equal Employment Opportunity reporting software, which is currently "Equitable Business Opportunities" (EBO). The Sponsor will monitor prime's payments to subcontractor and ensure that subcontractors are paid promptly per specifications. In addition, the sponsor is to monitor EEO goals on a monthly basis and take corrective action if goals are not being met; reference NYSDOT Standard Specifications Section 102-11, Equal Employment Opportunity Requirements.

Your assistance in having the agreement approved by the City Council and signed by the City Manager and City Attorney is appreciated. Of course, if you have any questions, please call me at (845) 431-5774 or e-mail at danialanziani@dot.ny.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dania Anziani".

Dania Anziani
Transportation Analyst
Region 8 Local Projects Unit

Enclosures

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

Federal aid Local Project Agreement

COMPTROLLER'S CONTRACT NO _____

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and

the City of Newburgh (the "Municipality/Sponsor")
acting by and through City Manager
with its office at 83 Broadway, Newburgh NY 12550.

This Agreement covers eligible costs incurred on or after 1 / 1.

This Agreement identifies the party responsible for administration and establishes the method or provision for funding of applicable phases of a Federal aid project for the improvement of a street or highway, not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement or one or more Supplemental Schedule(s) A to this Agreement as duly executed and approved by the parties hereto. The phases that are potentially the subject of this Agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The Federal aid project shall be identified for the purposes of this Agreement as _____ (as more specifically described in such Schedule A, the "Project").

WITNESSETH:

WHEREAS, the United States has provided for the apportionment of Federal aid funds to the State for the purpose of carrying out Federal aid highway projects pursuant to the appropriate sections of Title 23 U.S. Code as administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of Transportation (hereinafter referred to as "Commissioner") to use Federal aid available under the Federal aid highway acts and provides for the consent to and approval by the Municipality/Sponsor of any project under the Federal aid highway program which is not on the State highway system before such Project is commenced; and

WHEREAS, pursuant to Highway Law §10(34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991, as further amended by Chapter 57 of the Laws of New York of 2014, the State has established the "Marchiselli" Program, which provides certain State-aid for Federal aid highway projects not on the State highway system; and

WHEREAS, funding of the "State share" of projects under the Marchiselli Program is administered through the New York State Office of the Comptroller ("State Comptroller"); and

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

WHEREAS, Highway Law §80-b authorizes the funding of eligible costs of Federal aid Municipal/Sponsor streets and highway projects using State-aid and Federal aid; and

WHEREAS, project eligibility for Marchiselli Program funds is determined by NYSDOT; and

WHEREAS, pursuant to authorizations therefore, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under the Federal aid and, if applicable, Marchiselli-aid Programs; and

WHEREAS, The Legislative Body of the Municipality/Sponsor by Resolution No. _____ adopted at meeting held on _____ approved the Project, the Municipality/Sponsor's entry into this Agreement, has appropriated necessary funds in connection with any applicable Municipal/Sponsor Deposit identified in applicable Schedules A and has further authorized the _____ of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution is attached to and made a part of this Agreement (where New York City is the Municipality/Sponsor, such resolution is not required).

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:

- Agreement Form - this document titled "Federal aid Local Project Agreement";
- Schedule "A" - Description of Project Phase, Funding and Deposit Requirements;
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- Appendix "A" - New York State Required Contract Provisions
- Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act)
- Appendix "B" - U.S. Government Required Clauses (Only required for agreements with federal funding)
- Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating the funding required therefore. (Where New York City is the Municipality/Sponsor, such resolution is not required).

***Note – Resolutions for Bridge NY projects must also include an express commitment by the Municipality/Sponsor that construction shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction.**

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more Supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements.

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the "Procedures for Locally Administered Federal Aid Projects" (available through NYSDOT's web site at <https://www.dot.ny.gov/plafap>, and as such may be

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

amended from time to time.

3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered into with NYSDOT, or by NYSDOT forces, and unless the total non-Federal share of the Project phase is under \$5,000, the Municipality/Sponsor shall deposit with the State Comptroller, prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the non-Federal share of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply Federal aid and the required Municipality/Sponsor Deposit for the non-Federally aided portion, and, if applicable, shall request State Comptroller funding of Marchiselli aid to the Municipality/Sponsor as described below. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse the Municipality/Sponsor with Federal aid and, if applicable, Marchiselli aid as described below. NYSDOT will periodically make reimbursements upon request and certification by the Sponsor. The frequency of reimbursement requests must be in conformance with that stipulated in the NYSDOT Standard Specifications; Construction and Materials (section 109-06, Contract Payments). NYSDOT recommends that reimbursement requests not be submitted more frequently than monthly for a typical project. In all cases, reimbursement requests must be submitted at least once every six months.

4.1 *Federal aid.* NYSDOT will administer Federal funds for the benefit of the Municipality/Sponsor for the Federal share and will fund the applicable percentage designated in Schedule A of Federal aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse Federal aid-eligible expenditures in accordance with NYSDOT policy and procedures.

4.1.1 *Participating Items.* NYSDOT shall apply Federal funds only for that work and those items that are eligible for Federal participation under Title 23 of U.S. Code, as amended, that requires Federal aid eligible projects to be located on the Federal Aid Highway System ("FAHS"), except for bridge and safety projects which can be located off the FAHS. Included among the Federal participating items are the actual cost of employee personal services, and leave and fringe benefit additives. Other participating costs include materials and supplies, equipment use charges or other Federal Participating costs directly identifiable with the eligible project.

4.2 *Marchiselli Aid (if applicable).* NYSDOT will request State Comptroller reimbursement to the Municipality of the upset amount and designated percentage in Schedule A of the non-overmatched non-Federal share of Federal participating cost, (the "State share"), incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. Not all Federal aid-eligible participating costs are eligible for Marchiselli aid. Only "Eligible Project Costs" (as defined in Marchiselli Program instructions issued by NYSDOT) incurred after April 1, 1991 are reimbursable.

4.2.1 *Marchiselli Eligible Project Costs.* To be eligible for Marchiselli Aid, Project costs must: (a) be eligible for Federal participation as described under 4.1 above; (b) be for work which, when completed, has a certifiable service life of at least 10 years; (c) be for work that relates directly and exclusively to a municipally-owned highway, bridge or highway-railroad crossing located off the State Highway System; and (d) be submitted for reimbursement in accordance with 4.2.2.

4.2.2 *Marchiselli Reimbursement Requests.* A Sponsor's reimbursement requests are

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

restricted to eligible project costs. To be classified as an "eligible project cost", in addition to other requirements of this agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law (26 CFR 1.150-2 (d)(2)(i)) which governs fund disbursements from the issuance of tax-exempt bonds. Hence, expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

4.2.3 Marchiselli Extended Records Retention Requirements.

4.2.3.1 To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations, Part 26, and to ensure that NYSDOT may authorize the use of funds for this project, notwithstanding any other provision of this Contract to the contrary, the Sponsor must retain the following documents in connection with the Projects:

- a) Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property financed with proceeds of the bonds; and
- b) Documents, if any, evidencing the sale or other disposition of the financed property.

4.2.3.2 The Sponsor covenants to retain those records described above, which are used by the Sponsor in connection with the administration of this Program, for thirty-six (36) years after the date of NYSDOT's final payment of the eligible project cost(s).

4.2.3.3 Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor's repayment of funds distributed, to the Sponsor under this agreement.

4.3 In no event shall the State be obligated to fund or reimburse any costs exceeding:

- (a) the amount stated in Schedule A for the Federal Share; or
- (b) the amount stated in Schedule A as the State (Marchiselli) share.

4.4 All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State, the federal government or their representatives.

4.5 If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To effect such payment, the reimbursement to the Municipality/Sponsor provided for in sections 4.1 and 4.2 above may be reduced by NYSDOT by the amounts thereof in excess of the Municipality/Sponsor Deposit available for such payment to NYSDOT.

5. *Supplemental Agreements and Supplemental Schedule(s) A.* Supplemental Agreements or Supplemental Schedule(s) A may be entered into by the parties, and must be executed and approved in

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

the manner required for a State contract. A Supplemental Schedule A is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for Federal aid or Marchiselli Aid hereunder.

7. *Loss of Federal Participation.* In the event the Municipality/Sponsor withdraws its approval of the project, suspends or delays work on the Project or takes other action that results in the loss of Federal participation for the costs incurred pursuant to this Agreement, the Municipality/Sponsor shall refund to the State all reimbursements received from the State, and shall reimburse the State for 100% of all preliminary engineering and right-of-way incidental costs incurred by NYSDOT. The State may offset any other State or Federal aid due to the Municipality/Sponsor by such amount and apply such offset to satisfy such refund.

8. *Municipal/Sponsor Liability.*

8.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

8.2 The Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the Municipality/Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Additionally, the Municipality/Sponsor shall defend the State in any action arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement.

8.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

8.4 The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor. In the event of such suspension, the Municipality/Sponsor will be given written notice outlining

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

8.5 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate Department of Transportation officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

9. *Maintenance.* The Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another, any necessary maintenance agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT; and during the useful life of the Project, the Municipality/Sponsor shall not discontinue operation and maintenance of the Project, nor dispose of the Project, unless it receives prior written approval to do so from NYSDOT.

9.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the Municipality/Sponsor either causes the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or agrees immediately to reimburse NYSDOT for the pro-rata share of the funds received for the project, plus any direct costs incurred by NYSDOT, over the remaining useful life of the Project.

9.2 If a Municipality/Sponsor fails to obtain prior written approval from NYSDOT before discontinuing operation and maintenance of the Project or before disposing of the project, in addition to the costs provided, above in 9.1, Municipality/Sponsor shall be liable for liquidated damages for indirect costs incurred by NYSDOT in the amount of 5% of the total Federal and non-Federal funding provided through NYSDOT.

9.3 For NYSDOT-administered projects, NYSDOT is responsible for maintenance only during the NYSDOT administered construction phase. Upon completion of the construction phase, the Municipality/Sponsor's maintenance obligations start or resume.

10. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

11. *Contract Executory; Required Federal Authorization.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies available to the State and no liability on account thereof shall be incurred by the State beyond monies available for the

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

12. *Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

13. *Term of Agreement.* As to the Project and phase(s) described in the Schedule A executed herewith, the term of this Agreement shall begin on the date of this Agreement as first above written. This Agreement shall remain in effect so long as Federal aid and Marchiselli-aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a Federal or State budgetary hiatus will not by itself be construed to cause a lapse in this Agreement provided any necessary Federal or State appropriations or other funding authorizations therefore are eventually enacted.

13.1 *Time is of the essence (Bridge NY Projects).* The Municipality/Sponsor understands and agrees that construction of Bridge NY Projects shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction.

14. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

15. *Offset Rights.* In addition to any and all set-off rights provided to the State in the attached and incorporated Appendix A, Standard Clauses for New York Contracts, NYSDOT shall be entitled to recover and offset from the Municipality/Sponsor any ineligible reimbursements and any direct or indirect costs to the State as to paragraph 6 above, as well as any direct or indirect costs incurred by the State for any breach of the term of this agreement, including, but not limited to, the useful life requirements in paragraph 9 above. At its sole discretion NYSDOT shall have the option to permanently withhold and offset such direct and indirect cost against any monies due to the Municipality/Sponsor from the State of New York for any other reason, from any other source, including but not limited to, any other Federal or State Local Project Funding, and/or any Consolidated Highway and Local Street Improvement Program (CHIPS) funds

16. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and the Procedures for Locally Administered Federal aid Projects manual and in accordance with current Federal and State laws, rules, and regulations.

17. *Notice Requirements.*

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

- 17.1 All notices permitted or required hereunder shall be in writing and shall be transmitted:
- (a) Via certified or registered United States mail, return receipt requested;
 - (b) By facsimile transmission;
 - (c) By personal delivery;
 - (d) By expedited delivery service; or
 - (e) By e-mail.

Such notices shall be address as follows or to such different addresses as the parties may from time -to-time designate:

New York State Department of Transportation (NYSDOT)

Name: Orietta Trocard

Title: Local Projects Manager

Address: Eleanor Roosevelt State Building,

4 Burnett Blvd, Poughkeepsie NY 12603

Telephone Number: 845-431-5788

Facsimile Number: 845-431-5988

E-Mail Address: Orietta.Trocard@dot.ny.gov

[Municipality/Sponsor] City of Newburgh

Name: Joseph Donat

Title: City Manager

Address: 83 Broadway Newburgh NY 12550

Telephone Number: 845-569-7448

Facsimile Number: 845-569-7349

E-Mail Address: jmorris2cityofnewburgh-ny.gov

- 17.2 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

18. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible local expenditures as required by this Agreement, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting local Municipality/Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available on the State Comptroller's website at

MUNICIPALITY/SPONSOR: **City of Newburgh**

PROJECT ID NUMBER: **8761.39** BIN: **2223630**

CFDA NUMBER: **20.205**

PHASE: PER SCHEDULES A

www.osc.state.ny.us/epay/index.htm or by email at epunit@osc.state.ny.us. When applicable to State Marchiselli and other State reimbursement by the State Comptroller, registration forms and instructions can be found at the NYSDOT [Electronic Payment Guidelines](#) website.

The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this agreement if it does not comply with the applicable State Comptroller and/or NYS State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

19. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:

19.1 Title 49 of the Code of Federal Regulations Part 26 (49 CFR 26), Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Title 23 Code of Federal Regulations Part 230 (23 CFR 230), External Programs; and, Title 41 of the Code of Federal Regulations Part 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, including the requirements thereunder related to utilization goals for contracting opportunities for disadvantaged business enterprises (DBEs) and equal employment opportunity.

19.1.1 If the Municipality/Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with Federal requirements, the Municipality/Sponsor will not be reimbursed for ineligible activities within the affected contracts. The Municipality/Sponsor must ensure that the prime contractor has a Disadvantaged Business Enterprise (DBE) Utilization Plan and complies with such plan. If, without prior written approval by NYSDOT, the Municipality/Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the DBE Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement or (2) assess liquidated damages in an amount of up to 20% of the pro rata share of the Municipality/Sponsor's contracts and subcontracts funded in whole or in part by this agreement for which contract goals have been established.

19.2 New York State Environmental Law, Article 6, the State Smart Growth Public Infrastructure Policy Act, including providing true, timely and accurate information relating to the project to ensure compliance with the Act.

19.3 28 CFR 35.105, which requires a Municipality/Sponsor employing 50 or more persons to prepare a Transition Plan addressing compliance with the Americans with Disabilities Act (ADA).

20. *Compliance with Procedural Requirements.* The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the Procedures for Locally Administered Federal Aid Projects (PLAFAP) manual, which, as such, may be amended from time to time. Locally administered Federal aid transportation projects must be constructed in accordance with the current version of NYSDOT Standard Specifications; Construction and Materials, including any and all modifications to the Standard Specifications issued by the Engineering Information Issuance System, and NYSDOT-approved Special Specifications for general use. (Cities with a population of 3 million or more may pursue approval of their own construction specifications and procedures on a project by project basis).

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.39 BIN: 2223630

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

MUNICIPALITY/SPONSOR:

MUNICIPALITY/SPONSOR ATTORNEY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF **ORANGE**)

On this _____ day of _____, 20____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____; that he/she is the _____ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the _____ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that he/she signed his name thereto by like order.

Notary Public

APPROVED FOR NYSDOT:

**APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL**

By: _____
For Commissioner of Transportation

By: _____
Assistant Attorney General

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

COMPTROLLER'S APPROVAL:

Date: _____

By: _____
For the New York State Comptroller
Pursuant to State Finance Law §112

A. Summary of <u>allocated</u> MARCHISELLI Program Costs FOR ALL PHASES For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.							
PIN Fiscal Share	"Current" or "Old" entry indicator	Federal Funding	Total Costs	FEDERAL Participating Share	STATE MARCHISELLI Match	LOCAL Matching Share	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

NYSDOT/State-Local Agreement – Schedule A

B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
8761.39.322	Current	HPP	\$850,000.00	\$680,000.00	\$	\$170,000.00
	Old		\$ 0.00	\$	\$	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$	\$0.00	\$0.00
.	Current		\$ 0.00	\$	\$	\$0.00
	Old		\$ 0.00	\$	\$	\$0.00
.	Current		\$ 0.00	\$	\$	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$850,000.00	\$680,000.00	\$ 0.00	\$170,000.00

C. Local Deposit(s) from Section A:

	\$ 0.00
Additional Local Deposit(s)	\$
Total Local Deposit(s)	\$ 0.00

D. Total Project Costs All totals will calculate automatically.

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total OTHER STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$680,000.00	\$ 0.00	\$ 0.00	\$170,000.00	\$850,000.00

E. Point of Contact for Questions Regarding this Schedule A (Must be completed)

Name: Dania Anziani
Phone No: 845-431-5774

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

(See [LPB](#)'s website for link to sample footnotes)

- Description continued: This project will replace the existing structure that carries Lake Drive over the Quassaick Creek in the City of Newburgh, Orange County.
- The project is using repurposed Demo funds from ID#NY548 that is capped at an amount of \$680,000 (federal aid)
- This Schedule A includes the construction and construction inspection phase and funds.

SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

Instructions: Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

A1. Preliminary Engineering (“PE”) Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	☐	☒
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	☐	☒
3. Smart Growth Attestation (NYSDOT ONLY).	☒	☐
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	☐	☒
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	☐	☒
6. Obtain aerial photography and photogrammetric mapping.	☐	☒
7. Perform all surveys for mapping and design.	☐	☒
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	☐	☒
9. Perform landscape design (including erosion control).	☐	☒
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	☐	☒

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	☐	☒
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	☐	☒
13. Conduct any required soils and other geological investigations.	☐	☒
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	☐	☒
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	☐	☒
16. Prepare and execute any required agreements, including: - Railroad force account - Maintenance agreements for sidewalks, lighting, signals, betterments - Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities	☐	☒
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	☐	☒

A2. Right-of-Way (ROW) Incidentals

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
1. Prepare ARM or other mapping, showing preliminary taking lines.	☐	☒
2. ROW mapping and any necessary ROW relocation plans.	☐	☒
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	☐	☒
4. Secure Appraisals.	☐	☒
5. Perform Appraisal Review and establish an amount representing just compensation.	☐	☒

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.	☐	☒
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	☐	☒

B. Right-of-Way (ROW) Acquisition

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.	☐	☒
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.	☐	☒
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	☐	☒
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	☐	☒
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.	☐	☒
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.	☐	☒
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.	☐	☒

C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Advertise contract lettings and distribute contract documents to prospective bidders.	☐	☒
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	☐	☒
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	☐	☒
4. Compile and submit Contract Award Documentation Package.	☐	☒
5. Review/approve any proposed subcontractors, vendors, or suppliers.	☐	☒
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.	☐	☒
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	☐	☐
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	☐	☐
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	☐	☒
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	☐	☒
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	☐	☒
11. Administer all construction contract claims, disputes or litigation.	☐	☒

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.	☒	☒
13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.	☒	☒

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6-7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The

Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and

improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State

or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B
REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS
(June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](http://www.cfda.gov/)²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215	Highway Training and Education
20.219	Recreational Trails Program
20.XXX	Highway Planning and Construction - Highways for LIFE;
20.XXX	Surface Transportation Research and Development;
20.500	Federal Transit-Capital Investment Grants
20.505	Federal Transit-Metropolitan Planning Grants
20.507	Federal Transit-Formula Grants
20.509	Formula Grants for Other Than Urbanized Areas
20.600	State and Community Highway Safety
23.003	Appalachian Development Highway System
23.008	Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by

² <http://www.cfda.gov/>

prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

RESOLUTION NO.: 29 - 2021

OF

FEBRUARY 22, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A MASTER FEDERAL-AID LOCAL PROJECT AGREEMENT
WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION
TO FUND IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND NON-FEDERAL
AID ELIGIBLE COSTS FOR THE CONSTRUCTION OF
THE BRIDGE REPLACEMENT OF WALSH ROAD OVER QUASSAICK CREEK
(PIN 8761.40/BIN 2223620)**

WHEREAS, a Project for the Bridge Replacement of Walsh Road over Quassaick Creek (BIN 2223620) PIN 8761.40 (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, the City of Newburgh desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of construction and construction inspection;

NOW, THEREFORE, the Newburgh City Council, duly convened does hereby

RESOLVE, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of construction and construction inspection work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$826,965.00 is hereby appropriated from the OCTC TIP Reserve Fund A.0000.0882.0000 and the 2016 BAN H1.5110.0208.8102.2016 and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Newburgh City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the City Manager thereof, and it is further

RESOLVED, that the Manager of the City of Newburgh be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Newburgh with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for

the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that in addition to the City Manager, the following municipal titles: Mayor, City Engineer, City Comptroller, Superintendent of Public Works are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further

RESOLVED, this Resolution shall take effect immediately.

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, _____, Clerk of the _____, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said _____ at a meeting duly called and held at the _____ on _____ by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the _____, New York, this _____ day of _____, 20__.

Clerk, City of Newburgh

PIN 8761.40



Department of Transportation

ANDREW M. CUOMO
Governor

MARIE THERESE DOMINGUEZ
Commissioner

LANCE MacMILLAN, P.E.
Regional Director

February 2, 2021

Mr. Jason Morris, P.E., City Engineer
City of Newburgh
83 Broadway
Newburgh, NY 12550

**RE: PIN 8761.40, WALSH ROAD/QUASSAIC CREEK
BRIDGE REPLACEMENT 2223620
CITY OF NEWBURGH, ORANGE COUNTY

MASTER AGREEMENT - HPP FUNDS**

Dear Mr. Morris:

Enclosed are eight (8) Supplemental Agreements to include the repurposed earmark funds for the construction and construction inspection funds for the above-referenced project. Seven (7) executed copies of the agreement, **EACH** with original signatures, notarizations and certified, seal-stamped resolutions, should be returned to this office. A sample resolution is attached for your use.

As a reminder per Chapter 15, Administering Construction Contracts; Section 15.4.8 Civil Rights Reporting:

The Contractor and all subcontractors and suppliers will utilize New York State Department of Transportation Equal Employment Opportunity reporting software, which is currently "Equitable Business Opportunities" (EBO). The Sponsor will monitor prime's payments to subcontractor and ensure that subcontractors are paid promptly per specifications. In addition, the sponsor is to monitor EEO goals on a monthly basis and take corrective action if goals are not being met; reference NYSDOT Standard Specifications Section 102-11, Equal Employment Opportunity Requirements.

Your assistance in having the agreement approved by the City Council and signed by the City Manager and City Attorney is appreciated. Of course, if you have any questions, please call me at (845) 431-5774 or e-mail at danialanziani@dot.ny.gov.

Sincerely,

Dania Anziani
Transportation Analyst
Region 8 Local Projects Unit

Enclosures

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

Federal aid Local Project Agreement

COMPTROLLER'S CONTRACT NO _____

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and

the City of Newburgh (the "Municipality/Sponsor")
acting by and through City Manager
with its office at 83 Broadway, Newburgh NY 12550.

This Agreement covers eligible costs incurred on or after 1 / 1.

This Agreement identifies the party responsible for administration and establishes the method or provision for funding of applicable phases of a Federal aid project for the improvement of a street or highway, not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement or one or more Supplemental Schedule(s) A to this Agreement as duly executed and approved by the parties hereto. The phases that are potentially the subject of this Agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The Federal aid project shall be identified for the purposes of this Agreement as PIN 8761.40 Walsh Road/Quassaic Creek Bridge Replacement BIN 2223620, City of Newburgh, Orange County (as more specifically described in such Schedule A, the "Project").

WITNESSETH:

WHEREAS, the United States has provided for the apportionment of Federal aid funds to the State for the purpose of carrying out Federal aid highway projects pursuant to the appropriate sections of Title 23 U.S. Code as administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of Transportation (hereinafter referred to as "Commissioner") to use Federal aid available under the Federal aid highway acts and provides for the consent to and approval by the Municipality/Sponsor of any project under the Federal aid highway program which is not on the State highway system before such Project is commenced; and

WHEREAS, pursuant to Highway Law §10(34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991, as further amended by Chapter 57 of the Laws of New York of 2014, the State has established the "Marchiselli" Program, which provides certain State-aid for Federal aid highway projects not on the State highway system; and

WHEREAS, funding of the "State share" of projects under the Marchiselli Program is administered through the New York State Office of the Comptroller ("State Comptroller"); and

MUNICIPALITY/SPONSOR: City of Newburgh
PROJECT ID NUMBER: 8761.40 BIN: 2223620
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A

WHEREAS, Highway Law §80-b authorizes the funding of eligible costs of Federal aid Municipal/Sponsor streets and highway projects using State-aid and Federal aid; and

WHEREAS, project eligibility for Marchiselli Program funds is determined by NYSDOT; and

WHEREAS, pursuant to authorizations therefore, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under the Federal aid and, if applicable, Marchiselli-aid Programs; and

WHEREAS, The Legislative Body of the Municipality/Sponsor by Resolution No. _____ adopted at meeting held on _____ approved the Project, the Municipality/Sponsor's entry into this Agreement, has appropriated necessary funds in connection with any applicable Municipal/Sponsor Deposit identified in applicable Schedules A and has further authorized the _____ of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution is attached to and made a part of this Agreement (where New York City is the Municipality/Sponsor, such resolution is not required).

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:

- Agreement Form - this document titled "Federal aid Local Project Agreement";
- Schedule "A" - Description of Project Phase, Funding and Deposit Requirements;
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- Appendix "A" - New York State Required Contract Provisions
- Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act)
- Appendix "B" - U.S. Government Required Clauses (Only required for agreements with federal funding)
- Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating the funding required therefore. (Where New York City is the Municipality/Sponsor, such resolution is not required).

***Note – Resolutions for Bridge NY projects must also include an express commitment by the Municipality/Sponsor that construction shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction.**

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more Supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements.

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the "Procedures for Locally Administered Federal Aid

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

Projects" (available through NYSDOT's web site at <https://www.dot.ny.gov/plafap>, and as such may be amended from time to time.

3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered into with NYSDOT, or by NYSDOT forces, and unless the total non-Federal share of the Project phase is under \$5,000, the Municipality/Sponsor shall deposit with the State Comptroller, prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the non-Federal share of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply Federal aid and the required Municipality/Sponsor Deposit for the non-Federally aided portion, and, if applicable, shall request State Comptroller funding of Marchiselli aid to the Municipality/Sponsor as described below. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse the Municipality/Sponsor with Federal aid and, if applicable, Marchiselli aid as described below. NYSDOT will periodically make reimbursements upon request and certification by the Sponsor. The frequency of reimbursement requests must be in conformance with that stipulated in the NYSDOT Standard Specifications; Construction and Materials (section 109-06, Contract Payments). NYSDOT recommends that reimbursement requests not be submitted more frequently than monthly for a typical project. In all cases, reimbursement requests must be submitted at least once every six months.

4.1 *Federal aid.* NYSDOT will administer Federal funds for the benefit of the Municipality/Sponsor for the Federal share and will fund the applicable percentage designated in Schedule A of Federal aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse Federal aid-eligible expenditures in accordance with NYSDOT policy and procedures.

4.1.1 *Participating Items.* NYSDOT shall apply Federal funds only for that work and those items that are eligible for Federal participation under Title 23 of U.S. Code, as amended, that requires Federal aid eligible projects to be located on the Federal Aid Highway System ("FAHS"), except for bridge and safety projects which can be located off the FAHS. Included among the Federal participating items are the actual cost of employee personal services, and leave and fringe benefit additives. Other participating costs include materials and supplies, equipment use charges or other Federal Participating costs directly identifiable with the eligible project.

4.2 *Marchiselli Aid (if applicable).* NYSDOT will request State Comptroller reimbursement to the Municipality of the upset amount and designated percentage in Schedule A of the non-overmatched non-Federal share of Federal participating cost, (the "State share"), incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. Not all Federal aid-eligible participating costs are eligible for Marchiselli aid. Only "Eligible Project Costs" (as defined in Marchiselli Program instructions issued by NYSDOT) incurred after April 1, 1991 are reimbursable.

4.2.1 *Marchiselli Eligible Project Costs.* To be eligible for Marchiselli Aid, Project costs must: (a) be eligible for Federal participation as described under 4.1 above; (b) be for work which, when completed, has a certifiable service life of at least 10 years; (c) be for work that relates directly and exclusively to a municipally-owned highway, bridge or highway-railroad crossing located off the State Highway System; and (d) be submitted for reimbursement in accordance with 4.2.2.

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

4.2.2 *Marchiselli Reimbursement Requests.* A Sponsor's reimbursement requests are restricted to eligible project costs. To be classified as an "eligible project cost", in addition to other requirements of this agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law (26 CFR 1.150-2 (d)(2)(i)) which governs fund disbursements from the issuance of tax-exempt bonds. Hence, expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

4.2.3 *Marchiselli Extended Records Retention Requirements.*

4.2.3.1 To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations, Part 26, and to ensure that NYSDOT may authorize the use of funds for this project, notwithstanding any other provision of this Contract to the contrary, the Sponsor must retain the following documents in connection with the Projects:

- a) Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property financed with proceeds of the bonds; and
- b) Documents, if any, evidencing the sale or other disposition of the financed property.

4.2.3.2 The Sponsor covenants to retain those records described above, which are used by the Sponsor in connection with the administration of this Program, for thirty-six (36) years after the date of NYSDOT's final payment of the eligible project cost(s).

4.2.3.3 Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor's repayment of funds distributed, to the Sponsor under this agreement.

4.3 In no event shall the State be obligated to fund or reimburse any costs exceeding:

- (a) the amount stated in Schedule A for the Federal Share; or
- (b) the amount stated in Schedule A as the State (Marchiselli) share.

4.4 All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State, the federal government or their representatives.

4.5 If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To effect such payment, the reimbursement to the Municipality/Sponsor provided for in sections 4.1 and 4.2 above may be reduced by NYSDOT by the amounts thereof in excess of the Municipality/Sponsor Deposit available for such payment to NYSDOT.

5. *Supplemental Agreements and Supplemental Schedule(s) A.* Supplemental Agreements or

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

Supplemental Schedule(s) A may be entered into by the parties, and must be executed and approved in the manner required for a State contract. A Supplemental Schedule A is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for Federal aid or Marchiselli Aid hereunder.

7. *Loss of Federal Participation.* In the event the Municipality/Sponsor withdraws its approval of the project, suspends or delays work on the Project or takes other action that results in the loss of Federal participation for the costs incurred pursuant to this Agreement, the Municipality/Sponsor shall refund to the State all reimbursements received from the State, and shall reimburse the State for 100% of all preliminary engineering and right-of-way incidental costs incurred by NYSDOT. The State may offset any other State or Federal aid due to the Municipality/Sponsor by such amount and apply such offset to satisfy such refund.

8. *Municipal/Sponsor Liability.*

8.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

8.2 The Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the Municipality/Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Additionally, the Municipality/Sponsor shall defend the State in any action arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement.

8.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

8.4 The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor.

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

In the event of such suspension, the Municipality/Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

8.5 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate Department of Transportation officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

9. *Maintenance.* The Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another, any necessary maintenance agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT; and during the useful life of the Project, the Municipality/Sponsor shall not discontinue operation and maintenance of the Project, nor dispose of the Project, unless it receives prior written approval to do so from NYSDOT.

9.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the Municipality/Sponsor either causes the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or agrees immediately to reimburse NYSDOT for the pro-rata share of the funds received for the project, plus any direct costs incurred by NYSDOT, over the remaining useful life of the Project.

9.2 If a Municipality/Sponsor fails to obtain prior written approval from NYSDOT before discontinuing operation and maintenance of the Project or before disposing of the project, in addition to the costs provided, above in 9.1, Municipality/Sponsor shall be liable for liquidated damages for indirect costs incurred by NYSDOT in the amount of 5% of the total Federal and non-Federal funding provided through NYSDOT.

9.3 For NYSDOT-administered projects, NYSDOT is responsible for maintenance only during the NYSDOT administered construction phase. Upon completion of the construction phase, the Municipality/Sponsor's maintenance obligations start or resume.

10. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

11. *Contract Executory; Required Federal Authorization.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies available to the

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

State and no liability on account thereof shall be incurred by the State beyond monies available for the purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

12. *Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

13. *Term of Agreement.* As to the Project and phase(s) described in the Schedule A executed herewith, the term of this Agreement shall begin on the date of this Agreement as first above written. This Agreement shall remain in effect so long as Federal aid and Marchiselli-aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a Federal or State budgetary hiatus will not by itself be construed to cause a lapse in this Agreement provided any necessary Federal or State appropriations or other funding authorizations therefore are eventually enacted.

13.1 *Time is of the essence (Bridge NY Projects).* The Municipality/Sponsor understands and agrees that construction of Bridge NY Projects shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction.

14. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

15. *Offset Rights.* In addition to any and all set-off rights provided to the State in the attached and incorporated Appendix A, Standard Clauses for New York Contracts, NYSDOT shall be entitled to recover and offset from the Municipality/Sponsor any ineligible reimbursements and any direct or indirect costs to the State as to paragraph 6 above, as well as any direct or indirect costs incurred by the State for any breach of the term of this agreement, including, but not limited to, the useful life requirements in paragraph 9 above. At its sole discretion NYSDOT shall have the option to permanently withhold and offset such direct and indirect cost against any monies due to the Municipality/Sponsor from the State of New York for any other reason, from any other source, including but not limited to, any other Federal or State Local Project Funding, and/or any Consolidated Highway and Local Street Improvement Program (CHIPS) funds

16. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and the Procedures for Locally Administered Federal aid Projects manual and in accordance with current Federal and State laws, rules, and regulations.

17. *Notice Requirements.*

MUNICIPALITY/SPONSOR: City of Newburgh
PROJECT ID NUMBER: 8761.40 BIN: 2223620
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A

- 17.1 All notices permitted or required hereunder shall be in writing and shall be transmitted:
- (a) Via certified or registered United States mail, return receipt requested;
 - (b) By facsimile transmission;
 - (c) By personal delivery;
 - (d) By expedited delivery service; or
 - (e) By e-mail.

Such notices shall be address as follows or to such different addresses as the parties may from time -to- time designate:

New York State Department of Transportation (NYSDOT)

Name: Orietta Trocard

Title: Local Projects Manager

Address: Eleanor Roosevelt State Building,

4 Burnett Blvd, Poughkeepsie NY 12603

Telephone Number: 845-431-5788

Facsimile Number: 845-431-5988

E-Mail Address: Orietta.Trocard@dot.ny.gov

[Municipality/Sponsor] City of Newburgh

Name: Joseph Donat

Title: City Manager

Address: 83 Broadway Newburgh NY 12550

Telephone Number: 845-569-7448

Facsimile Number: 845-569-7349

E-Mail Address: jmorris2cityofnewburgh-ny.gov

- 17.2 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

18. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible local expenditures as required by this Agreement, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting local Municipality/Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments.

MUNICIPALITY/SPONSOR: **City of Newburgh**

PROJECT ID NUMBER: **8761.40** BIN: **2223620**

CFDA NUMBER: **20.205**

PHASE: PER SCHEDULES A

Authorization forms are available on the State Comptroller's website at www.osc.state.ny.us/epay/index.htm or by email at epunit@osc.state.ny.us. When applicable to State Marchiselli and other State reimbursement by the State Comptroller, registration forms and instructions can be found at the NYSDOT [Electronic Payment Guidelines](#) website.

The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this agreement if it does not comply with the applicable State Comptroller and/or NYS State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

19. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:

19.1 Title 49 of the Code of Federal Regulations Part 26 (49 CFR 26), Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Title 23 Code of Federal Regulations Part 230 (23 CFR 230), External Programs; and, Title 41 of the Code of Federal Regulations Part 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, including the requirements thereunder related to utilization goals for contracting opportunities for disadvantaged business enterprises (DBEs) and equal employment opportunity.

19.1.1 If the Municipality/Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with Federal requirements, the Municipality/Sponsor will not be reimbursed for ineligible activities within the affected contracts. The Municipality/Sponsor must ensure that the prime contractor has a Disadvantaged Business Enterprise (DBE) Utilization Plan and complies with such plan. If, without prior written approval by NYSDOT, the Municipality/Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the DBE Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement or (2) assess liquidated damages in an amount of up to 20% of the pro rata share of the Municipality/Sponsor's contracts and subcontracts funded in whole or in part by this agreement for which contract goals have been established.

19.2 New York State Environmental Law, Article 6, the State Smart Growth Public Infrastructure Policy Act, including providing true, timely and accurate information relating to the project to ensure compliance with the Act.

19.3 28 CFR 35.105, which requires a Municipality/Sponsor employing 50 or more persons to prepare a Transition Plan addressing compliance with the Americans with Disabilities Act (ADA).

20. *Compliance with Procedural Requirements.* The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the Procedures for Locally Administered Federal Aid Projects (PLAFAP) manual, which, as such, may be amended from time to time. Locally administered Federal aid transportation projects must be constructed in accordance with the current version of NYSDOT Standard Specifications; Construction and Materials, including any and all modifications to the Standard Specifications issued by the Engineering Information Issuance System, and NYSDOT-approved Special Specifications for general use. (Cities with a population of 3 million or more may pursue approval of their own construction specifications and procedures on a project by project basis).

MUNICIPALITY/SPONSOR: City of Newburgh

PROJECT ID NUMBER: 8761.40 BIN: 2223620

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

MUNICIPALITY/SPONSOR:

MUNICIPALITY/SPONSOR ATTORNEY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF **ORANGE**)

On this _____ day of _____, 20____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____; that he/she is the _____ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the _____ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that he/she signed his name thereto by like order.

Notary Public

APPROVED FOR NYSDOT:

**APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL**

By: _____
For Commissioner of Transportation

By: _____
Assistant Attorney General

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

COMPTROLLER'S APPROVAL:

Date: _____

By: _____
For the New York State Comptroller
Pursuant to State Finance Law §112

A. Summary of <u>allocated</u> MARCHISELLI Program Costs FOR ALL PHASES For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.							
PIN Fiscal Share	"Current" or "Old" entry indicator	Federal Funding	Total Costs	FEDERAL Participating Share	STATE MARCHISELLI Match	LOCAL Matching Share	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00 *	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$.	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

NYSDOT/State-Local Agreement – Schedule A

B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
8761.40.322	Current	HPP	\$826,965.00	\$661,572.00	\$0.00	\$165,393.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$826,965.00	\$661,572.00	\$ 0.00	\$165,393.00

C. Local Deposit(s) from Section A:

\$ 0.00

Additional Local Deposit(s)

\$0

Total Local Deposit(s)

\$ 0.00

D. Total Project Costs All totals will calculate automatically.

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total OTHER STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$661,572.00	\$ 0.00	\$ 0.00	\$165,393.00	\$826,965.00

E. Point of Contact for Questions Regarding this Schedule A (Must be completed)
Name: Dania AnzianiPhone No: 845-431-5774

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

(See [LPB](#)'s website for link to sample footnotes)

- [illegible]

SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

Instructions: Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

A1. Preliminary Engineering ("PE") Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	☐	☒
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	☐	☒
3. Smart Growth Attestation (NYSDOT ONLY).	☒	☐
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	☐	☒
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	☐	☒
6. Obtain aerial photography and photogrammetric mapping.	☐	☒
7. Perform all surveys for mapping and design.	☐	☒
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	☐	☒
9. Perform landscape design (including erosion control).	☐	☒
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	☐	☒

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u> <u>Sponsor</u>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	☐ ☒
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	☐ ☒
13. Conduct any required soils and other geological investigations.	☐ ☒
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	☐ ☒
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	☐ ☒
16. Prepare and execute any required agreements, including: - Railroad force account - Maintenance agreements for sidewalks, lighting, signals, betterments - Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities	☐ ☒
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	☐ ☒

A2. Right-of-Way (ROW) Incidentals

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u> <u>Sponsor</u>
1. Prepare ARM or other mapping, showing preliminary taking lines.	☐ ☒
2. ROW mapping and any necessary ROW relocation plans.	☐ ☒
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	☐ ☒
4. Secure Appraisals.	☐ ☒
5. Perform Appraisal Review and establish an amount representing just compensation.	☐ ☒

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.	☐	☒
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	☐	☒

B. Right-of-Way (ROW) Acquisition

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.	☐	☒
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.	☐	☒
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	☐	☒
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	☐	☒
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.	☐	☒
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.	☐	☒
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.	☐	☒

C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Advertise contract lettings and distribute contract documents to prospective bidders.	☐	☒
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	☐	☒
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	☐	☒
4. Compile and submit Contract Award Documentation Package.	☐	☒
5. Review/approve any proposed subcontractors, vendors, or suppliers.	☐	☒
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.	☐	☒
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	☐	☐
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	☐	☐
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	☐	☒
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	☐	☒
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	☐	☒
11. Administer all construction contract claims, disputes or litigation.	☐	☒

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.	☒	☒
13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.	☒	☒

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6-7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The

Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and

improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State

or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B
REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS
(June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](http://www.cfda.gov/)²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215	Highway Training and Education
20.219	Recreational Trails Program
20.XXX	Highway Planning and Construction - Highways for LIFE;
20.XXX	Surface Transportation Research and Development;
20.500	Federal Transit-Capital Investment Grants
20.505	Federal Transit-Metropolitan Planning Grants
20.507	Federal Transit-Formula Grants
20.509	Formula Grants for Other Than Urbanized Areas
20.600	State and Community Highway Safety
23.003	Appalachian Development Highway System
23.008	Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by

² <http://www.cfda.gov/>

prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

RESOLUTION NO. ____30____ - 2021

OF

FEBRUARY 22, 2021

**A RESOLUTION AUTHORIZING THE EXTENSION OF TIME TO CLOSE TITLE
ON THE PROPERTIES LOCATED AT 162 SOUTH STREET (SECTION 11, BLOCK 3,
LOT 21) AND 187 LANDER STREET (SECTION 11, BLOCK 3, LOT 26)
SOLD AT PRIVATE SALE TO NICOLE CHUNG**

WHEREAS, by Resolution No.: 206-2020 of September 14, 2020, the Council of the City of Newburgh, New York, authorized the sale of 162 South Street (Section 11, Block 3, Lot 21) and 187 Lander Street (Section 11, Block 3, Lot 26) Nicole Chung; and

WHEREAS, the purchaser requested a 60-day extension of time to close title for the purpose of completing her financing requirements, and the City Manager granted the request to extend the time to close title until February 11, 2021; and

WHEREAS, the resolution of the issues took longer than expected but are now complete and the purchaser has requested additional time to close title; and

WHEREAS, this Council has determined that granting the additional requested extension would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title for the properties located at 162 South Street and 187 Lander Street is hereby authorized until April 9, 2021.

RESOLUTION NO.: 31 - 2021

OF

FEBRUARY 22, 2021

**RESOLUTION SCHEDULING A SECOND PUBLIC HEARING FOR MARCH 8, 2021
TO HEAR PUBLIC COMMENT CONCERNING THE CITY OF NEWBURGH
POLICE REFORM & REINVENTION COLLABORATIVE PLAN**

WHEREAS, by Executive Order 203, Governor Andrew M. Cuomo has required each local government entity which has a police agency operating with police officers as defined under 1.20 of the criminal procedure law to perform a comprehensive review of current police force deployments, strategies, policies, procedures, and practices, and develop a plan to improve such deployments, strategies, policies, procedures, and practices, for the purposes of addressing the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color; and

WHEREAS, the City of Newburgh has commenced a comprehensive review of current police force deployments, strategies, policies, procedures, and practices in order to develop a plan to improve such deployments, strategies, policies, procedures, and practices; and

WHEREAS, and the comprehensive review requires consulting with community residents and stakeholders in developing its plan;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a second public hearing to receive comments concerning “The City of Newburgh Police Reform & Reinvention Collaborative Plan”; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 8th day of March, 2021; and

BE IT FURTHER RESOLVED, that due to public health and safety concerns related to COVID-19, the City Council will not be meeting in-person. In accordance with the Governor’s Executive Order 202.1, as amended, the March 8, 2021 City Council meeting will be held via videoconferencing, and a transcript will be provided at a later date. The public will have an opportunity to see and hear the meeting live and provide comments on the proposed City of Newburgh Police Reform & Reinvention Collaborative Plan follows:

To view the livestream of the City Council Work Session and Meeting visit:
<https://www.cityofnewburgh-ny.gov/live-video-streaming>.

To access the City Council Meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device through the Zoom App:

https://zoom.us/webinar/register/WN_25aqMmBJR0iOHPiRti5-Wg. Please note that there is an underscore between the “N” and “2”).

To register in advance for this webinar in order to provide comments during the hearing:

https://zoom.us/webinar/register/WN_25aqMmBJR0iOHPiRti5-Wg. Please note that there is an underscore between the “N” and “2”). Fill out the required information (First Name, Last Name, E-mail Address and check appropriate box to comment during the public hearing). After registering, you will receive a confirmation email containing information about joining the webinar.

Comments can be provided by email before the meeting to comments@cityofnewburgh-ny.gov with the Subject Line in this format: “PUBLIC HEARING ITEM” by 4:00 p.m. on Monday, March 8, 2021. Please check the meeting Agenda posted on the website for further instructions to access the virtual meeting and for updated information.

NYS Executive Order 203 Final Report

City of Newburgh



Police Reform & Reinvention Collaborative Plan

INTRODUCTION

The City of Newburgh is fully committed to implementing NYS Executive Order 203, and in doing so reforming and reinventing its Police Department. As you will see in the pages to follow, a tremendous amount of collaboration went into compiling this report, and the same amount of dedication will be applied to implementing the recommendations of this plan and continuing to work with the community and the wide array of stakeholders involved in the process.

In order to understand the issues that exist between the community and the police, it is important to note some background and historical information on the subject. As such, an honest and open history of policing in the City has been included below.

The City of Newburgh Police Department has existed since the late 1800's. As with most police departments of that time, officers were often ill-trained, if trained at all. It was not until the mid-1900's that police officers were mandated to attend formalized police training.

With specific regard to the last seventy-five year history of the City of Newburgh Police Department, many who are alive today can recall times of scandal. In the early 1970's several members of the Police Department were arrested and incarcerated for crimes ranging from on-duty burglaries, receiving graft from various criminals including houses of ill repute, gambling activities and other nefarious actions. Stories of police corruption resonate to this day.

Some officers, while not all, were believed to enforce the law arbitrarily, engage in discriminatory practices, routinely use excessive force and oftentimes not adhere themselves to the very laws they were sworn to enforce. The officers who chose not to participate remained complicit, and did nothing to address the activities of their co-workers. It was during those times that the department, consisting of mostly white males, policed the minority neighborhoods much differently than other areas of the City where the white population resided.

These facts served to entrench and fortify a serious mistrust of the police by the minority population, especially the Afro-American citizens, and much of this mistrust exists to this day despite strong efforts to improve police-community relations.

There is disconnect between the City of Newburgh Police Department and a segment of the community. More positive interactions undoubtedly need to take place moving forward. This should be in the form of ongoing public forums, whereby opinions, experiences and discussions can take place between the police and the community in order to gain better mutual understanding.

Any effort towards bringing about positive change must include an ongoing, sincere and committed dialogue between the elected officials, the police and the entire community.

In order to truly accomplish any attempt to remedy the issues as they exist today our history has to be acknowledged, for both the good and the bad, and reconciliation must take place before we can move forward in a positive direction.

In the pages to follow, you will find a detailed account of our Police Reform and Reinvention Collaborative. The entire City of Newburgh wishes to thank all of those who were involved in this process including members of the public who provided valuable and insightful input all of which has been incorporated into the report included below.

The process of addressing these problems needs to remain fluid, ongoing and must be adaptable when addressing the many variables that exist in order to positively affect change.

We all must acknowledge that New York State Executive Order 203 process is a starting point, and all stakeholders must remain committed in the long-term in working collaboratively to remedy the mistakes of the past.

Moving forward, the City of Newburgh will continue to meet with the stakeholders involved in this process and expand its outreach throughout the City and host community meetings aimed at increasing communication and gaining a better mutual understanding.

This is the Executive Order in its entirety copied directly from the Governor's website (<https://www.governor.ny.gov/news/no-203-new-york-state-police-reform-and-reinvention-collaborative>).

No. 203

E X E C U T I V E O R D E R

NEW YORK STATE POLICE REFORM AND REINVENTION COLLABORATIVE

WHEREAS, the Constitution of the State of New York obliges the Governor to take care that the laws of New York are faithfully executed; and

WHEREAS, I have solemnly sworn, pursuant to Article 13, Section 1 of the Constitution, to support the Constitution and faithfully discharge the duties of the Office of Governor; and

WHEREAS, beginning on May 25, 2020, following the police-involved death of George Floyd in Minnesota, protests have taken place daily throughout the nation and in communities across New York State in response to police-involved deaths and racially-biased law enforcement to demand change, action, and accountability; and

WHEREAS, there is a long and painful history in New York State of discrimination and mistreatment of black and African-American citizens dating back to the arrival of the first enslaved Africans in America; and

WHEREAS, this recent history includes a number of incidents involving the police that have resulted in the deaths of unarmed civilians, predominantly black and African-American men, that have undermined the public's confidence and trust in our system of law enforcement and criminal justice, and such condition is ongoing and urgently needs to be rectified; and

WHEREAS, these deaths in New York State include those of Anthony Baez, Amadou Diallo, Ousmane Zango, Sean Bell, Ramarley Graham, Patrick Dorismond, Akai Gurley, and Eric Garner, amongst others, and, in other states, include Oscar Grant, Trayvon Martin, Michael Brown, Tamir Rice, Laquan McDonald, Walter

Scott, Freddie Gray, Philando Castile, Antwon Rose Jr., Ahmaud Arbery, Breonna Taylor, and George Floyd, amongst others,

WHEREAS, these needless deaths have led me to sign into law the Say Their Name Agenda which reforms aspects of policing in New York State; and

WHEREAS, government has a responsibility to ensure that all of its citizens are treated equally, fairly, and justly before the law; and

WHEREAS, recent outpouring of protests and demonstrations which have been manifested in every area of the state have illustrated the depth and breadth of the concern; and

WHEREAS, black lives matter; and

WHEREAS, the foregoing compels me to conclude that urgent and immediate action is needed to eliminate racial inequities in policing, to modify and modernize policing strategies, policies, procedures, and practices, and to develop practices to better address the particular needs of communities of color to promote public safety, improve community engagement, and foster trust; and

WHEREAS, the Division of the Budget is empowered to determine the appropriate use of funds in furtherance of the state laws and New York State Constitution; and

WHEREAS, in coordination with the resources of the Division of Criminal Justice Services, the Division of the Budget can increase the effectiveness of the criminal justice system by ensuring that the local police agencies within the state have been actively engaged with stakeholders in the local community and have locally-approved plans for the strategies, policies and procedures of local police agencies; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, in particular Article IV, section one, I do hereby order and direct as follows:

The director of the Division of the Budget, in consultation with the Division of Criminal Justice Services, shall promulgate guidance to be sent to all local governments directing that:

Each local government entity which has a police agency operating with police officers as defined under 1.20 of the criminal procedure law must perform a comprehensive review of current police force deployments, strategies, policies, procedures, and practices, and develop a plan to improve such deployments, strategies, policies, procedures, and practices, for the purposes of addressing the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color.

Each chief executive of such local government shall convene the head of the local police agency, and stakeholders in the community to develop such plan, which shall consider evidence-based policing strategies, including but not limited to, use of force policies, procedural justice; any studies addressing systemic racial bias or racial justice in policing; implicit bias awareness training; de-escalation training and practices; law enforcement assisted diversion programs; restorative justice practices; community-based outreach and conflict resolution; problem-oriented policing; hot spots policing; focused deterrence; crime prevention through environmental design; violence prevention and reduction interventions; model policies and guidelines promulgated by the New York State Municipal Police Training Council; and standards promulgated by the New York State Law Enforcement Accreditation Program.

The political subdivision, in coordination with its police agency, must consult with stakeholders, including but not limited to membership and leadership of the local police force; members of the community, with emphasis in areas with high numbers of police and community interactions; interested non-profit and faith-based community groups; the local office of the district attorney; the local public defender; and local elected officials, and create a plan to adopt and implement the recommendations resulting from its review and consultation, including any modifications, modernizations, and innovations to its policing deployments, strategies, policies, procedures, and practices, tailored to the specific needs of the community and general promotion of improved police agency and community relationships based on trust, fairness, accountability, and transparency, and which seek to reduce any racial disparities in policing.

Such plan shall be offered for public comment to all citizens in the locality, and after consideration of such comments, shall be presented to the local legislative

body in such political subdivision, which shall ratify or adopt such plan by local law or resolution, as appropriate, no later than April 1, 2021; and

Such local government shall transmit a certification to the Director of the Division of the Budget to affirm that such process has been complied with and such local law or resolution has been adopted; and

The Director of the Division of the Budget shall be authorized to condition receipt of future appropriated state or federal funds upon filing of such certification for which such local government would otherwise be eligible; and

The Director is authorized to seek the support and assistance of any state agency in order to effectuate these purposes.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this twelfth day of June in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

REIMAGINING POLICING IN THE CITY OF NEWBURGH:

The diverse community that compromises the City of Newburgh, with a specific emphasis on the persons of color along with the leadership of the City of Newburgh Police Department, collectively acknowledge that serious and systematic issues regarding policing exist.

The process of addressing these problems needs to remain fluid, ongoing and must be adaptable when addressing the many variables that exist in order to positively affect change.

We all must acknowledge that New York State Executive Order 203 process is a starting point, and all stakeholders must remain committed in the long-term in working collaboratively to remedy the mistakes of the past.

INTRODUCTION AND THE COLLABORATIVE PROCESS:

On June 12, 2020 Governor Andrew Cuomo issued EXECUTIVE ORDER 203, known as the New York Statewide Police Reform & Reinvention Collaborative.

The requirements as set forth in this is as follows:

“The local government entity which has a police agency operating with police officers as defined under Section 1.20 of the Criminal Procedure Law must perform a comprehensive review of current force deployments, strategies, policies, procedures and practices, for the purpose of addressing the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness and legitimacy, and to address any racial bias and disproportionate policing of communities of color.”

NYS Executive Order 203 requires a process which:

- Review the needs of the community served by its police agency, and evaluate the department’s current policies and practices;
- Establishes policies that allow police to effectively and safely perform their duties;
- Involve the entire community in the discussions;
- Develops policy recommendations resulting from this review;
- Offers a plan for public comment
- Presents the plan for the local legislative body to ratify or adopt it, and;
- Certifies adoption of the plan to the State budget Director on or about April 1st, 2021

The City of Newburgh, and its police department in accordance with Executive Order 203, hereby submit this plan. It has been developed with the assistance of the resources provided by the State of New York, pursuant to the New York State Police Reform & Reinvention Collaborative.

It is important to note that at the time of issuance, the City of Newburgh Police Department was without a Chief-of-Police. The Department was being supervised by a lieutenant, serving in that capacity, until a new chief could be hired.

On July 20, 2020 the City of Newburgh announced its new police leadership team. Arnold W. Amthor would be hired back to his former position as deputy chief-of-police (acting) chief, and Senior Advisor Robert McLymore would be hired to assist with regards to the New York State Police Reform & Reinvention Collaborative (Executive Order #203).

Chief Amthor had previously served almost twenty years with the City of Newburgh Police Department, attaining the rank of deputy chief. At the time of re-hire he was serving as chief-of-police for the Town of Montgomery and Village of Maybrook police departments. In total, Chief Amthor has thirty-five years of cumulative police experience, over twenty of which has been at the supervisory level.

Senior Advisor Robert McLymore is a police lieutenant with the Town of Wallkill Police Department, and is approaching twenty years-of-service as a police officer. He is also Pastor of RDM Ministries/Life Restoration Church in the City of Newburgh. He and his family have deep roots in the City, and are well-respected members of the community.

It was during this time that the City of Newburgh began the process of reinventing and reforming its police department as required by Executive Order 203. The process was broken down into three separate phases pursuant to the guidance provided by the State of New York and the Division of Criminal Justice Services.

PLANNING PHASE:

In response to the directive to convene a group of local stakeholders, the City of Newburgh formed a committee that would ultimately serve as the cornerstone to this process. In doing so, the City named the local NAACP President, Ray Harvey, to chair this group and help the City with naming additional stakeholders to the committee.

The Committee was formed based off of the guidance and directives provided in the Executive Order, namely:

“Each chief executive of such local government shall convene the head of the local police agency, and stakeholders in the community to develop such plan, which shall consider evidence-based policing strategies, including but not limited to, use of force policies, procedural justice; any studies addressing systemic racial bias or racial justice in policing; implicit bias awareness training; de-escalation training and practices; law enforcement assisted diversion programs; restorative justice practices; community-based outreach and conflict resolution; problem-oriented policing; hot spots policing; focused deterrence; crime prevention through environmental design; violence prevention and reduction interventions; model policies and guidelines promulgated by the New York State Municipal Police Training Council; and standards promulgated by the New York State Law Enforcement Accreditation Program”.

Multiple public announcements were made soliciting interested candidates to serve on the newly created **Police Advisory Committee**, later referred to as the **Police Reform Committee** and ultimately named the **EO 203 Oversight Committee**. Each name change was made at the request of the Committee Chair, and was done in an effort to further illustrate the task at hand.

The Committee selection process was achieved collaboratively with the Committee Chair and culminated into the selection of the following individuals to serve on the Committee:

- Mr. Ray Harvey, Chairman and President of the Newburgh/Highland Falls Chapter of the NAACP*
- Mr. Phil Howard, retired Newburgh firefighter and Newburgh Enlarged City School District (NECSD) vice president*
- Bishop Jeff Woody, Christian Ministerial Fellowship
- Pastor Willie Mays, Christian Ministerial Fellowship*
- Bishop Terry Dorsey**(*)
- Ms. Tanika Amicy, Community Voices Heard
- Mr. Rene Mejia, Nobody Leaves Mid-Hudson
- Mr. Isaiah Valentine, N.U. Voters Movement
- Pastor Obed Alymeda, Fountain of Life Church

- Ms. Sertaira Boyd, Chairperson of the Police Community Review & Relations Board
- Michelle McKeon*, Chief Operating Officer of RECAP
- Philippe Pierre, resident and restaurateur
- Barbara Smith, resident
- Ramona Monteverde, Councilmember (Ex Officio)
- Robert Sklarz, Councilmember (Ex Officio)
- Omari Shakur**, Councilmember (Ex Officio), not originally on Committee but replaced Councilwoman Patty Sofokles
- Ms. Luisa Fuentes, Attorney**

*Denotes a resignation from the Committee

**Denotes an add-on from the original Committee

All official meetings of the Committee were live-streamed so that the community could observe and participate in the overall process.

The scope of the Committee remained unchanged throughout the process, and included addressing the following elements of policing:

- Use of Force
- Training
- Data collection, disclosure and transparency
- Community Engagement
- Oversight and Discipline
- Complaint Procedure
- Equipment

In August the State of New York issued a *Resource Guide for Public Officials and Citizens* pursuant to the New York State Police Reform and Reinvention Collaborative. The intent of this manual was to provide guidance and suggestions on how to proceed with the process. It was made clear that each municipality utilize it in formulating a plan that is specifically designed for each individual locale, while following the mandates as set forth in E.O. #203.

Also, on October 1st, 2020 the entire command staff of the City of Newburgh Police Department had a staff meeting and attended the NYS Division of Criminal Justice Services ***“Perspectives on Police Reform”***.

Police Reform & Reinvention Collaborative Plan

Pursuant to the process initiated in the City of Newburgh as per the mandates set for the New York State Executive Law 203, the following is our plan of action. The implementation process has already begun, and will continue throughout 2021 until all aspects of this plan have been completed.

ITEM #1-Increase the annual department-wide training in-service curriculum to include the following:

- COMMUNITY RELATIONS Minimum of Four (4) Hours Annually
- IMPLICIT-BIAS Minimum of Four (4) Hours Annually
- CULTURAL AWARENESS/ANTI-RACISM Minimum of Four (4) Hours Annually
- DE-ESCALATION Minimum of Four (4) Hours Annually

ITEM #2-Data Collection Management and Disclosure:

The police department, as of January 1st 2021 will conduct an annual review of the following:

- All incidents whereby any Use-of-Force/Response to Resistance event occurs, type(s) of force utilized and the findings of the follow-up investigations.
- All Civilian-Complaints, type(s) of complaints, and their findings.
- All Field Interviews/Stops conducted as per the “Right-to-Know” Local Law, including race, gender and locations of contacts.

This data will be compiled and included in a formal Annual Report of the Police Department.

ITEM #3-The police department will increase its transparency to the community it serves:

- All General Orders, Policies & Procedures will be placed on the police website.

- The police website will be improved in order to be more informational.
- Monthly crime statistics, police activity reports by shift and productivity will be added.
- A Community Opinion Survey will be added.
- An online Civilian Complaint Form will be added.

ITEM #4-Equipment:

- The police department will examine additional less-than-lethal options that may exist and may not be presently deployed.
- The existing Body Worn Camera (B.W.C.) system, over five years old, will be replaced with a new one.

ITEM #5-General Orders Review:

During the 203 process the Committee reviewed several policies, as a result several changes were made based upon some recommendations made by Committee members. During our meetings the following General Orders of the Department were reviewed:

- General Order #A-011 (Response to Resistance)
 - Ban the use of chokeholds
 - Place K-9 use in the Force Continuum
 - Add "Duty to Intervene" section
- General Order #O-005 (Vehicle & Traffic Stops)
- General Order #O-039 (Crisis Intervention & Assisting the Mentally Ill)
- General Order #T-002 (In-Service Training)
 - Add above-stated additional training annually
- General Order #A-021 (Warrants)
- General Order #O-038 (Body Worn Cameras)
 - Upgrade existing system
- General Order #O-039 (Crisis Intervention Team)
- General Order #A-015 (Department Discipline)
 - Remove any reference to NYS Civil Service Law 50-A
- General Order #A-014 (Internal Affairs)
 - Create new Civilian Complaint Forms in English & Spanish
 - Send two supervisors to Internal Affairs Investigation Training

ITEM #6-Police Practices:

- The problem of homelessness, including many who are mentally ill, is clearly evident in our City. This population needs to be provided services and treatment, including case management and appropriate clinical follow-up, which is beyond the scope of responsibilities our law enforcement staff is trained to provide. The police department will issue a letter to several outside agencies requesting participation in joint meetings, in order to discuss the utilization of mental health services to assist with police in responding to and handling of persons in crisis.

ITEM #7-Police Operations:

- The police department will examine its current deployment of uniformed patrol officers by the present “zone system”, and consider re-aligning the system to better reflect the current demographics of the City.
- The City will prioritize the re-location of the current police headquarters to a new location, while remaining downtown, within 12-18 months.
- The police department will conduct a comprehensive review of the use of canines for apprehension and crowd control.

ITEM #8-Recruitment Process:

- The police department is committed to, and will remain so, the hiring of minority police officers.
- In 2021 and beyond members of the community will be encouraged to participate in the hiring process of all new police officers.

ITEM #9-Community Meetings:

- Community meetings will be held routinely, and conducted by Ward. The process will be overseen by the Chief-of-Police and a designated “ward contact” (Sergeant) from within the department. Opportunities for all to engage in an honest, open and transparent dialogue with police representatives will take place regularly. Additionally, any one of many organizations including the N.A.A.C.P. and others will be encouraged to attend.

ITEM #10-Police Chaplaincy Unit

- The police department will organize a diverse group of members of the clergy, equally balanced to reflect current City of Newburgh demographics. This unit will work with the police and the community in order to enhance relationships, respond to critical incidents and serve to support officers,, crime victims and families in times of crisis

ITEM #11-“Subpoena Power” for the Police Community Relations & Review Board (PCRRB) and/or City Council.

- The City commits to a thorough and complete legal review of increasing the current authority of the PCRRB and/or City Council to have subpoena power when investigating complaints against members of the police department.

ITEM #12-“Hopes not Handcuffs”

- The police department will introduce this program within the City of Newburgh in an effort to provide alternatives to arrest when dealing with persons who suffer from substance abuse addiction. The Newburgh Christian Ministerial Fellowship will also be an active participant in this collaborative.

ITEM #13-Enhance the SNUG Program to include the Christian Ministerial Fellowship as a stakeholder

- The police department and its SNUG partners have recently began, and will continue to develop an action plan for engaging at-risk individuals of gun violence, along with the newly joined Christian Ministerial Fellowship.

Upon review of the NYS Executive Law 203, and its mandates this Report, reflects that the City of Newburgh is in full compliance despite many hurdles. We acknowledge that much work needs to be done, and are committed to fulfilling all of the recommendations as outlined herein.

In the pages to follow, you will find a narrative elaborating on the work that went into the plan listed above. Once the local Committee was formed, its efforts were focused primarily on the two phases listed below. Guidance on these phases and the work that went into them, was taken directly from the resource guide provided by the State of New York.

LISTENING & LEARNING PHASE:

The listening and learning sessions were conducted by the Committee along with the Chief-of-Police, and Senior Advisor. The City Manager attended multiple pre-planning meetings, along with facilitating all interactive sessions held with the general public.

The Committee, absent the Chief-of-Police, Senior Advisor or City Manager held an unofficial meeting on or about September 16th, 2020. Members specifically expressed concerns over the fact that an unknown individual attended. When asked, she stated she was a former assistant district attorney. According to multiple Committee members, she appeared to “take over” the meeting, making demands for all of the Police Department’s general orders. Sources also advised she made mention to working in some capacity with an elected official from the City of Newburgh.

After looking into the incident, it was learned that this person was Ms. Luisa Fuentes. Ms. Fuentes is a former assistant district attorney with the Orange County District Attorney’s Office, and is presently a defense attorney.

The issue with regard to Ms. Fuentes required a formal decision. Several members of the Committee expressed the desire that she not be allowed to continue to participate, and that Councilman Shakur should not be allowed to expand the Committee or designate a “proxy”.

Ms. Fuentes continued her involvement with the Committee and in doing so served as a proxy for City of Newburgh Councilman Omari Shakur.

MEETING PHASE:

The first formal meeting of this phase was held on October 6th, 2020. The Committee opted for in-person meetings and allowed for members and the public to participate and observe via Zoom.

The following items were discussed:

- Collective dialogue regarding the purpose and intent of the Committee, the process, general questions and answers.
- A demand from Ms. Fuentes that the police department provide the Committee with all of the General Orders of the Police Department. The chief-of-police stated publicly that there was no objection of providing all of the Departmental General Orders as part of the process.
- Review of the Department's **Response to Resistance General Order #A-011**. At that time specific emphasis was on the recommended changes that were made pursuant to the September 2020 New York State Division of Criminal Justice Services recommendations, as well as the use of chokeholds.
- Demographic information regarding the current make-up of the police department.
- Hiring practices with an emphasis on minority, city-resident and Spanish-speaking persons interested in becoming city police officers.
- Review of the Department's **Vehicle & Traffic Stop General Order #O-005**.
- Review of the Department's **Crisis Intervention & Assisting the Mentally Ill General Order #O-039**.
- Review of the Department's **In-Service Training General Order #T-002**.
- Review of the Department's **Warrants General Order #A-021**.
- Questions were asked and answered regarding police equipment, role and purpose of the Department, and total number of officers.
- Questions were asked regarding the utilization of outside law-enforcement agencies in the City of Newburgh. This included specific references to the New York State Police and Orange County Sheriff.

- The chief-of-police and senior advisor were given a letter which contained several questions (a copy of which is contained in this Report). The Committee-at-Large began to question its origins, and many members stated they had no part whatsoever in drafting the letter. It was nevertheless received and the questions were responded to by the chief-of-police in a subsequent e-mail to Chairman Harvey directly.
- Members stated that moving forward all items of correspondence should be discussed with the entire Committee.

The second Committee meeting of this phase was cancelled by Chairman Harvey due to an unexpected scheduling conflict. The meeting was rescheduled for October 27th, 2020 and took place on that date. The following items were discussed at that time:

- The name change of the Committee.
- Placing periodic updates of the progress being made on the City's website.
- Discussion as to whether or not it could be possible to include city resident(s) in collective bargaining negotiations between City and the Police Benevolent Association (PBA) and Police Superior Officer's Association (PSOA).
- Recommendations regarding mandatory yearly drug testing for all sworn members of the Department. This would include mandatory drug and alcohol testing immediately following any critical incident involving the use of deadly physical force.
- The Committee recommended the current aged Body Worn Camera (BWC) system be replaced with a more up-to-date one. It was recommended to consider changing the BWC policy so as to mandate that every time an officer exits his cruiser that he shall activate the camera.
- The Committee opined regarding having sworn officers qualify with their service weapons once, instead of twice per-year, and instead replace the second session with de-escalation training. Some felt that the practice of

qualifying twice per-year should still take place, but that additional suggested training cycles focus on other recommended areas

- Recommendations were made to significantly increase annual training for all sworn personnel to cover areas such as Implicit-Bias, Verbal Judo, and Race Relations. Recommendations to add annual training in the areas of physical restraint tactics, impact weapons, and less-than-lethal alternatives.
- The Committee recommended that the police department consider discontinuing the utilization of police K-9's for criminal apprehension and crowd control.
- A dialogue took place when one member expressed the need to bring people to the meetings who have had negative experiences with the police. It was advised that this would be part of a public comment forum to be held later.

The third meeting of this phase was held on November 13th, 2020. The following General Orders were reviewed, and recommendations made:

- **Crisis Intervention Team General Order #O-39**

Note: This General Order has been combined with an extended section and is now called the Crisis Intervention Team & Assisting the Mentally Ill. The Committee discussed the need to review the current Curriculum for the training received by CIT officers. Additionally, they recommended that professional mental health providers respond to all calls related to mental health-related issues.

- **Department Discipline General Order #A-015**

The Committee requested that the Department consider modifying Section XI. (D), to increase the number of years from two (2). No recommendation was made as to the actual number for it to be increased to. It was also suggested that the Department issue an annual report of all incidents involving use of force, and civilian complaints with dispositions. The chief-of-police recommended that these items be made part of an annual report.

- **Internal Affairs General Order A-014**

The Committee discussed this General Order, with much of the dialogue pertaining to it centered on its relationship to the Police Community Relations Review Board (PCRRB). The chief-of-police advised that certain portions of this Order, as well as certain related items on the City's website needed to be amended based upon the repeal of Section 50A of the NYS Civil Service Law.

PUBLIC INFORMATION & COMMENTS SESSIONS:

A plan was made to move forward and conduct two (2) public information and comment sessions, originally set for December 1st and December 15th, 2020.

The initial public hearing was postponed a week in an effort to increase attendance and further publicize the event.

December 8, 2020 – Public Information & Comment Session

Approximately fifteen (15) people signed up for the public comment forum that was held immediately following the power point presentation meant to update the community on the work achieved by the committee.

Following the presentation public comments were taken. The entire forum was recorded, and is a matter of formal record.

December 15, 2020 – Public Information & Comment Session

A total of five (5) people signed up for the meeting. The Power Point was again presented, this time by the chief-of-police.

The forum was again recorded, and is a matter of formal record.

A copy of the presentation is included in the pages to follow, and was also posted to the City website.

In addition to the two public information and comment sessions listed above, the Newburgh City Council was also provided with an update during the Work Session meeting held on January 7, 2021.

The City Council then scheduled a Public Hearing regarding the City of Newburgh Executive Order 203 Plan on January 25, 2021. Prior to the public hearing, the

draft plan was prepared by the Committee and released to the public. Members of the Committee were on hand during the Public Hearing and provided an additional update to the Council and the community. The overall report contained in this document was subsequently finalized and released to the public for additional comment and feedback.

CONCLUSIONS:

It is clear that there is disconnect between the City of Newburgh Police Department and a segment of the community. More positive interactions undoubtedly need to take place moving forward. This should be in the form of ongoing public forums, whereby opinions, experiences and discussions can take place between the police and the community in order to gain better mutual understanding.

The community is justifiably angered by recent national events, such as the death of George Floyd and others. These events have also affected law-enforcement officers, who feel that they all “own” in some way the actions of the officers involved in these tragic incidents.

Stories of police-involved encounters flow regularly throughout the community. Oftentimes they are partly or even wholly inaccurate versions of events as they actually have occurred. The level of mistrust is such that even when shown evidence that is contradictory and proves the “street rumors” are untrue, the facts are still not believed. This occurs even when incidents are captured on officer’s Body Worn Cameras (BWC). The false narrative is perpetuated by a few who seem to want to escalate tensions between the police and the community, which ultimately cause harm and further division.

The process of addressing these problems needs to remain fluid, ongoing and must be adaptable when addressing the many variables that exist in order to positively affect change.

We all must acknowledge that New York State Executive Order 203 process is a starting point, and all stakeholders must remain committed in the long-term in working collaboratively to remedy the mistakes of the past.

Moving forward, the City of Newburgh will continue to meet with the stakeholders involved in this process and expand its outreach throughout the City and host community meetings aimed at increasing communication and gaining a better mutual understanding.



OFFICE OF THE
ORANGE COUNTY DISTRICT ATTORNEY

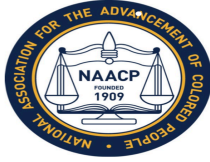
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DAVID M. HOOVLER
District Attorney

February 12, 2021

Statement on City of Newburgh Police Reform and Reinvention Collaborative Plan

District Attorney David M. Hoovler said, “The Orange County District Attorney’s Office has long supported the use of body-worn cameras, police training on topics such as Implicit Bias, and other efforts to improve police-community relations. The Police Reform and Reinvention Collaborative Plan put forth by the City of Newburgh takes important and concrete first-steps toward improving the relationship between police and members of the community that they serve. Police training mandates which focus on community relations and de-escalation, increased transparency through the on-line posting of the rules that the City of Newburgh Police operate under, and specific plans to have more community involvement in the hiring of new police officers, can only improve police-community relations. Most importantly, this plan recognizes that it is only part of an ongoing process and provides a mechanism for the collection and review of data to aid in future improvements to the Police Department.”



NAACP

Newburgh-Highland Falls Branch #2162
naacpnewburghhighlandfalls.blogspot.com

November 23, 2020

Mr. Joseph Donat, City of Newburgh Manager
City Hall
83 Broadway
Newburgh, NY 12550

Dear City Manager Donat,

These are indeed times for us to be more systematic and intentional to address racial disparities. Such a tool is the NYS Police Reform & Reinvention Collaborative Executive Order #203.

The City of Newburgh, NY assembled a group now called the "Police Advisory Committee" hereafter to be referred in this letter as "Newburgh, NY EO#203 Commission". It is our position that the use of "Advisory" in the title, the City's selection process and meeting format are not the intent of the NYS Police Reform & Reinvention Collaborative Executive Order #203 (NYS EO #203).

As representatives of the NAACP of Newburgh-Highland Falls (NBHF) we support collaboration and are prompted to write our concerns pertaining to building community trust and about the lack of progress toward Executive Order #203 goals.

Why we need to sound this alarm of concern---

We the NAACP NBHF, are compelled to sound the alarm after numerous attempts to collaborate with the City of Newburgh, and to inform of gross negligence on behalf of the City of Newburgh to carry out the requirements set forth in NYS Police Reform & Reinvention Executive Order #203 (EO#203). What we have experienced causes grave concern. The gravity of ending racial disparities using EO#203, as one tool, continues without a set path for completion, although 5 months into the process.

On or about August 24, 2020, a committee was appointed by elected officials of the City of Newburgh and City Manager to advise the Police Department on strategies to comply with EO#203. The process chosen to convene was in the absence of agreed collaboration and does not build public trust. This directly counters the community trust that is to be nurtured during the described process, which states that the **"chief executive of such local government shall convene..... stakeholders in the community and consult with members of the community, not limited to those listed in EO#203, and all interested parties,to develop such plan tailored to the specific needs of the community, based on trust, fairness, accountability, and transparencyto reduce any racial disparities and bias in policing of communities of color"**.

As the City Manager, (chief executive) it appears you have directed a committee appointment process to be carried out by proxies, the police chief and a senior advisor with some elected government officials. The results of some of those assembled continue to challenge a stakeholder-influenced agenda. One result is that the name "Police Advisory Committee" was adopted with little challenge.

NAACP NBHF Timeline of focus:

- March 2020---NAACP begins adjustments to hold virtual meetings and communicate during COVID.
- April 23, 2020---NAACP NBHF sends a letter of concerns for next steps to City Manager; copies to Council, and Mayor regarding hiring practices, Police Chief selection process, Police shooting , Choke holds vs Strangle holds, Body Cam release and collaboration next steps. Same letter sent to Orange County DA David Hoovler and Attorney General at Large in Poughkeepsie.
- June 12, 2020 ---Governor Andrew Cuomo is joined by Rev. Al Sharpton, Hazel Dukes, NY State NAACP Pres., Valerie Bell; the mother of Sean Bell, Gwen Carr; the mother of Eric Garner, New York State Senator Andrea Stewart-Cousins and Assembly Speaker Carl Heastie, in New York City (fig.1attached)
- June (~10th) ---City held meeting with some stakeholders. Minutes were not recorded or images taken for reference.
- The NAACP contacted the City Manager, in preparation to host a meeting. Phone prep meeting with City Manager between NAACP NBHF and City Manager (audio): 
- July 17, 2020 --(email from City Manager), follow up Community Forums were promised. NAACP NMHF Responded with dates regarding community forums.
- June 18th ---Meeting hosted by NAACP NBHF (video available) . Meeting included the Mayor and other invitees by City Manager. Agenda included issues from April and now added EO#203 process. (Recorded and written minutes available)
- July 20, 2020--- [Police Chief and Senior Advisor Announced](#)
- NAACP is told that members within the Branch may not serve on Committee unless they are residents of the City of Newburgh, NY.
- One meeting was set up then cancelled by the city
- August 7, 2020. City [Announced process to join Committee](#):
- August 24, 2020 [Inaugural Meeting](#) Members Announced
- August 25, 2020 [Inaugural Meeting](#) Held
- Sept.2020----No Newburgh EO#203 activity found
- October 6, 2020---[Meeting posted on City website](#)
- October 20, 2020---Meeting cancelled
- November 12, 2020---(Make up meeting for Nov. 3rd)---Ray addresses committee about receiving data, police culture , and asks for tools not provided. (videos available, image below)
- November 17, 2020---Chair relegated to being referred to by police chief and senior advisor

- November 19, 2020---We find EO#203 meeting videos posted under a different committee title, and outdated information for another policing committee

I. Next steps we support :

- The Name of Commission to be officially changed to reflect the work
- The present composition of the Commission be organized and implemented to reflect the described inclusion of stakeholders that assures ongoing Stakeholder/Community inclusion.
- Using NYS EO#203 provided materials for EO# to build public trust .
- A Digital Platform with easy access by Commission members holding documents and resources for Newburgh EO#203 Commission and information to educate the public and facilitate input and feedback.
- Hard copies be made available to Commission members.
- Meeting norms and procedures that foster respect be established and used :
 1. Posting selection process after applications were received, including how those not accepted for the Newburgh EO#203 Commission were notified.
 2. Publicly listed roster of all current members and who they represent
 3. Technology support to enable the ability to see and hear all meeting participants during meetings, use documents, and make and receive presentations
 4. Robert's Rules of Order implemented
 5. A timeline for intentional progress
 6. Publicly sharing each meeting agenda, dates and establishing additional work sessions to complete the work
 7. Official minutes with meeting outcomes/progress be posted and available for review
 8. The use of published support documents from both NYS and NAACP
 9. Public forums as described in EO#203
 10. Comparable attention to meeting quality be implemented with added language (bylaws/procedures) that govern ongoing public forums.

A timely response is requested to our concerns to be forwarded to our email naacpnewburghhighlandfalls@gmail.com and to the public. It is our fervent position that you intentionally connect the work of addressing racial disparities in policing communities of color to develop the required action plan (with an April 1, 2021 deadline) that qualifies for future funding without changing the titles or described processes found in the NYS Police Reform & Reinvention Collaborative EO#203 upon which the work is to be implemented.

Sincerely,

Ray Harvey, NAACP Newburgh-Highland Falls President

NAACP Newburgh-Highland Falls Support EO#203 Committee:

Sabrina Dolfinger, Treasurer

Kyle Conway, Community Engagement

Booker Curtis, Legal Redress
Malvina Holloway, Media Diversity/Technology, Secretary
Claire Dowdy
Mary Kostenblatt
Richie Rosencrans
Mary Wagner

Cc: Torrence Harvey, City of Newburgh Mayor
City of Newburgh City Council
Steven M. Neuhaus, Orange County Executive
David M. Hoolver, Orange County DA
Robert McClymore, City of Newburgh Senior Advisor
Arnold Amthor, Newburgh Police Chief
James Skoufis, NYS Senator
Jonathan Jacobsen, Assembly member
Sean Patrick Maloney, New York US Representative
Ernest Klepeis District Director
Vinita Kamath, Attorney General At Large Poughkeepsie, NY
Brandon Hicks, NYS Director of African American Affairs
Wilbur Aldridge, NAACP NYS Conference Regional Director

Figure 1:



Gov. Cuomo signs NYS Reform/Reinvention Act June 12, 2020
Rev. Al Sharpton, NAACP NYS Conference Pres. Hazel Dukes with
Valerie Bell, Mother of Sean Bell, Gwen Carr, Mother of Eric Garner
Senate Majority Leader Andrea Stewart-Cousins and Assembly Leader Carl Heastie



CITY OF NEWBURGH

Office of the City Manager

83 Broadway, Newburgh, New York 12550

(845) 569-7301/Fax (845) 569-7370

December 7, 2020

Mr. Ray Harvey
President, NAACP
Newburgh Highland Falls Chapter
PO Box 301
Newburgh, NY 12551

Dear Mr. Harvey,

I write regarding the implementation of New York State Executive Order 203 in the City of Newburgh.

I was surprised and disappointed to receive the NAACP's letter dated November 23, 2020. The contents, allegations, and statements made are misrepresentations of the important work that we have achieved together.

Please know, your involvement with fulfilling the requirements of Executive Order 203 is most certainly needed and by all means welcomed. It is my hope that you will continue to work with the City regarding this and other matters moving forward. However, it is critical that I respond to your letter and ensure that our collaborative efforts are accurately represented.

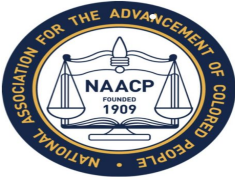
Over the last several months, the City of Newburgh has made significant progress with the Police Reform and Reinvention Collaborative. As seen in our recent community update, we have identified areas where change is needed and compiled those recommendations into a draft report. The City has held multiple public hearings regarding this matter, and will continue to do so throughout the duration of this process. All applicable comments will be incorporated into a final report that will ultimately be presented to the Newburgh City Council.

Aside from opinions expressed regarding lack of progress, the letter sent by the NAACP also questioned the selection process for members of the local committee that you chair. As you may recall, you have stated publicly that you assisted in the recruitment and appointment of committee members, which is a position that current members corroborate. At your suggestion, eligible applicants not selected for appointment were provided with the chance to serve as alternates in the event the committee wished to nominate additional members at a later date. In addition, the NAACP letter requests several items that were previously agreed upon and incorporated prior to the letter being sent, including your suggestion to change the name of our committee to the City of Newburgh 203 Oversight Committee.

I learned from our meeting last month that you may not have been involved with the drafting of the aforementioned letter sent on your behalf. As such, I can understand how such statements contained therein could have been made without your direct involvement, knowledge or approval. Whatever the case may be, I remain open to working together and hope that we can agree upon the need for continued professionalism and respect as we embark upon the critical work ahead.

Sincerely,

Joseph P. Donat
City Manager



NAACP

Newburgh-Highland Falls Branch #2162
naacpnewburghhighlandfalls.blogspot.com

Mr. Joseph Donat, City of Newburgh Manager
City Hall
83 Broadway
Newburgh, NY 12550

Dear City Manager Donat,

I hope this letter finds you safe and well.

I am writing in response to your letter dated December 7, 2020 which is the official City response to the letter we sent dated November 23, 2020. The purpose of this letter will be to respond to points raised in your letter, and to note that we continue to expect meeting norms to be established, transparency throughout the process, and involvement of the community at all stages.

I want to eliminate all doubt. The letter you received dated November 23, 2020 was penned by myself and members of NAACP Newburgh Highland Falls EO #203 Support Team. I personally feel, as does the NAACP Highland-Falls chapter, that the Newburgh Police Department is not adhering to the guidelines established by Governor Cuomo regarding review and reform within the Newburgh PD. It appears to us and to the public with which we have verbally surveyed, that the Newburgh PD is not taking the tasks laid out in EO #203 seriously, and is encouraging obstruction of progress. Such obstruction can be illustrated in the following example: During the December meeting of the Newburgh EO #203 Oversight Committee, I publicly repeated requests for resources which led to my being interrupted by council members and accused of wasting time asking for a website, data and other tools necessary for this work. Accusations about my leadership can also be heard, while Deputy Chief Amthor was appealed to for clarity.

In our November 23rd letter, we neither made allegations nor merely expressed opinions, but rather presented factual issues with the EO #203 process within Newburgh. The following are responses to points raised in your December 7th letter.

A. Regarding our use of allegations and opinions:

We described our experiences. All of what we've written is supported by emails, recordings and notes which correspond to our experiences in seeking collaboration for this EO #203 with the city since April of 2020.

B. Regarding the documentation and committee name:

The Committee name should include "commission" in the name not "oversight". The name connected to the work of our Commission is: Newburgh EO #203 Commission.

C. Regarding Roster of Commission members:

1. We are glad to see member names finally posted. Further action is needed. The role of each member and who they represent within the community is needed. Missing are the names of

Deputy Chief and Special Advisor. Your role should also be included for public trust and information to know that you are (I believe) the responsible person that uses the “Plan Certification Form” (Page 122, EO #203 Handbook)

2. A list of all applicants as well as resumes are requested. Additionally, we are requesting documentation of the screening procedures and process for choosing candidates for the committee. We also request copies of the resignation letters from all applicable committee members.
3. Those that **must** be included still are needed. Your website details an abbreviated list from the Handbook, leaving out local district attorney and local public defender (Page 113).
4. We **need** to hear from those with experiences. Detailed below are those who have been left out of the process, and who should be included based on recommendations of the EO 203 Handbook and in order to fully represent the Newburgh community:

- Residents who have had interactions with the police;
- Residents who have been incarcerated
- Any local police unions;
- Local education officials and educators;
- Local neighborhood, homeless, and housing advocates;
- LGBTQIA+ leaders and advocates;
- The Local Health Department and healthcare leaders and advocates;
- Mental health professionals;
- Business leaders;
- Transportation and transit officials; and
- Legal and academic experts.

D. Regarding the City of Newburgh holding multiple public hearings on EO #203:

1. Two “public comment” sessions were held, one on December 8, 2020 and one on December 15, 2020. The sessions were advertised as interaction with the public, but both meetings included presentations by the police department and a lack of response to the statements and questions from the public. The meetings were absent the required dialogue necessary to foster a positive relationship with the public and failed to address concerns of the public. Speaking limit was 3 minutes per person, despite numerous comments from the public that 3 minutes was not sufficient for these meetings. Only these two meetings have been advertised to the public to my knowledge.
2. Said advertising occurred only a few days before the first meeting, and only on the website. No other advertisements were originally made on social media or other platforms. Additionally, in order to be able to speak in the meetings, registration was required and the cut off was slated for noon the day before the meeting.
3. Participants who were unable to arrive at the virtual meeting by 6 pm reported that they were unable to enter the meeting.
4. At the December 15th meeting, the microphones were muted when individuals were speaking. Additionally, 19 minutes and 20 seconds of the 33 minute 01 second meeting was a presentation by the police department, not public comment. Multiple individuals were unable to speak due to microphone muting, and Chief Amthor stated that he would come back to those individuals who were not responding. He never called their names again to receive their comments.
5. EO #203 meetings are not included on the calendar on the City’s website, while other meetings are. There are also no Zoom links posted for the public to access EO #203 meetings in order to review Commission progress and participate in the general meetings.

6. Notification and registration for meetings regarding EO #203, as well as Police Community Relations, are often posted only 1-2 days before the scheduled meeting with registration cut-offs at noon the day before the meeting. This is not an acceptable time frame of notification for participation with the public.

The NAACP and myself stand by our claims that Stage 1 of the EO #203 process was not properly carried out. We are now focused on what is to happen during this next segment of time for the Newburgh EO #203 Commission work completion.

For your consideration, I present the following agenda for our upcoming meeting--focusing on time use, inclusion, and how to gauge that we are on track.

- I. Timeline and RoadMap: Getting on track (Page 112) and attached:



Community engagement is imperative throughout the process, with a way for people to provide feedback and for us to post the arising topics. One suggestion is to post upcoming topics on the website, inviting the public to comment and participate in the discussion. We uphold that reliable tech support continues to be needed.

- I. Action Plan Format selection: As action plans are developed during this process the results from “Listening & Learning” and later “Public Comment” would shape what comes from the public. Additional questions from experts and commission members may also shape this.
 - A. Goals---What is to happen
 - B. What policy, deployment, strategy, practice or procedure is being addressed
 - C. Categories—What area within the department
 - D. Person/People responsible
 - E. Budget with timeline for implementation
 - F. Description with Start and End date
 - G. Monitoring criteria with dates

The developing action plan would be filled in as the committee considers the proposals and uses public input. The action planning document and other resources used in meetings would be available to the public. This will show the public that the Newburgh PD desires openness and transparency during this process, and will foster trust and improved relations with the public.

Using the comprehensive review data and establishing a timeline is priority for the January meeting in order to put us on track for completion. Attached is a draft document for use.

Considerations:

- Deciding whether additional meetings need to be added
- Completing the roster for the committee
- Building public trust----For an intentional and transparent process attached is a Working Roadmap

As you should note, the Newburgh EO #203 committee is lacking many of the critical components needed for success in Phase 1 and 2. It is critical to rectify these issues in order to transition into future phases and promote positive, community-centered and community-approved changes. Necessary changes include public access to all documentation (memos, meeting minutes, etc necessary for transparency), engaging the community and specifically persons of color to review current policies, creation of collaborative dialogue with the community, inclusion of missing parties outlined in the above letter under Section C, part 4, and the holding of public forums led by the Mayor, City Manager, or other City Officials. Without including these critical elements, myself nor the NAACP NBHF Support Committee cannot in good-faith condone moving forward with the current Newburgh EO #203 plan, as thus far the community has not had sufficient inclusion or say in the path forward. We fervently hope you will consider making necessary adjustments to the process in order to be in compliance with the EO #203 Handbook.

Sincerely,

Ray Harvey, NAACP Newburgh-Highland Falls President

NAACP Newburgh-Highland Fall Support EO #203 Committee

Sabrina Dolfinger

Kyle Conway, Community Engagement

Booker Curtis, Legal Redress

Claire Dowdy

Malvina Holloway, Media Diversity/Technology

Mary Kostenblatt

Richie Rosencrans

Tamie Hollins

The following is a Newburgh, NY Working Roadmap for EO #203 Work

This document is to be an aid to plot pace and success of Newburgh EO #203 Commission.

PHASE ONE (tentative time frame: [July 2020 - November 2020](#))

Preliminary Scoping and Review --- (driven by public via BIPOC focus group / steering commission/committee)

Goals:

- Ensure that scope of review is determined by BIPOC members of the public, not City officials
- Create a space that protects and prioritizes BIPOC perspective
- Ensure confidentiality and candid dialogue

- Ensure productive and efficient collaboration
- Provide a foundation for broader community discourse in Phase Two

Objectives:

- Establish initial scope of review (administration serving as facilitators/clarifiers)
- Develop preliminary findings and recommendations
- Release preliminary findings and recommendations
- Organize necessary documentation to support community forums in Phase Two

TRANSITION: Planning for Phase Two should include input from broader public (1-2 sessions)

City of Newburgh, New York

Overarching Components : Strategy for Newburgh EO #203 Commission work---

1. Commission Name/Dynamics/Environment
 2. Building, Establishing, Sustaining Community Trust
 3. Accessibility to the Resources and Documents for work through March 2021
 4. Short and Long term goals –Functional [Human Rights Commission](#)
- I. Public documents and Publics experience with police. ---- Reference: EO #203 Section 17
 - A. Brady information regarding lawsuits and settlements, including City Council voting on settlements
 - B. Public inclusion ---For a broader community beginning in PHASE ONE and with support continues discourse in PHASE TWO
 1. 5 minutes for individual to speak to Newburgh EO #203 Commission
 2. Online testimonials
 3. Community Forums as discussed in summer with NAACP
 - a. Documentation to support referencing materials
 - C. Manuals, Policies, Memos and Directives
 - a. Platform to support referencing materials
 - b. Model policies & guidelines promulgated by NYS Municipal Police Training Council & Standard by NYS Law Enforcement Accreditation Program AND How Newburgh rates with the standards
 - D. Work sessions to review and understand documents
 1. Schedule
 2. Discuss and prioritize
 - E. How final action plan is to be submitted identified by City of Newburgh government

PHASE TWO (tentative time frame: [November 2020 - January 2021](#))

Community Visioning (driven by public via series of community forums, facilitated by Mayor, Board and Steering Committee)

Goals:

- Foster a shared understanding of existing local systems (governance structure, policies, practices, systems of accountability and responsibility, etc.)
- Allow for public participation in identifying gaps and proposing solutions
- Invite and empower community partners (nonprofits, businesses, individuals)
- Transition responsibility from public to City Board of Trustees

Objectives:

- Utilize first phase documentation to present details of existing local systems
- Share preliminary findings and recommendations
- Confirm (or expand) scope of review
- Generate additional recommendations and reactions from the broader community
- Identify areas that require community and individual action
- Identify areas that require action from the City Board

TRANSITION: Phase Three should commence with acknowledgement of public feedback

Mayor / city official facilitates forums

- I. Community Visioning –Community forums facilitated by Mayor
- II. Identify areas that require Community and individual action
 - A. Forums continue
 - B. Examples
 1. Shooting investigations
 2. Asking passengers in vehicles for identification
 3. Using minor traffic infractions to search vehicles
 4. Walking with open container and searched
- III. Shared preliminary findings recommendations from requested materials
- IV. Checking Progress/Feedback after each meeting

PHASE THREE (tentative time frame: [January 2021 - March 2021](#))

Formalize and implement City's action plan (driven by City Council via Regular Meetings)

Goals:

- Ensure the City Board can commence its formal process with understanding of residents' desires
- Create the conditions for enduring change by fostering buy-in and consensus
- Ensure clarity of purpose for City's action plan
- Promote community commitment to racial equity

Objectives:

- Prioritize key commitments
- Identify necessary budget adjustments
- Elicit feedback from City staff
- Establish timelines for implementation
- Release draft action plan and invite further feedback from public
- Ratify action plan by April 2021
- Implement action plan according to established timelines

TRANSITION : Approval (Public and State) for Implementation

Section 18. ---Action Plan

- I. Commission Action plan directly connected to identified racial disparities is put together and offered for public comment
 - A. Residents and community desires are understood and part of the formal plan
- II. Ratification of the plan---- Section 19

- A. During March
- B. Ratification or adopted by local law or resolution, as Appropriate, no later than April 1, 2021 (City of Newburgh Government confirms procedure during PHASE ONE) to NYS Director of the Division of the Budget.

Source : NYS Police Reform & Reinvention Collaborative

Revised: 11/11/2020-----NAACP NBHF EO #203 ST

City of Newburgh Community Update

Police Reform & Reinvention Collaborative

“The key to effective police-community relations is building trust between members of the community and members of law-enforcement, community members should be encouraged to play an active role in the policing process.”

NYS Executive Order 203



New York State Executive Order 203

This law, signed by Governor Andrew Cuomo on June 12th, 2020, set forth statewide mandates for all municipalities that have police departments.

The process as specified in this law must be completed no later than April 1st 2021.



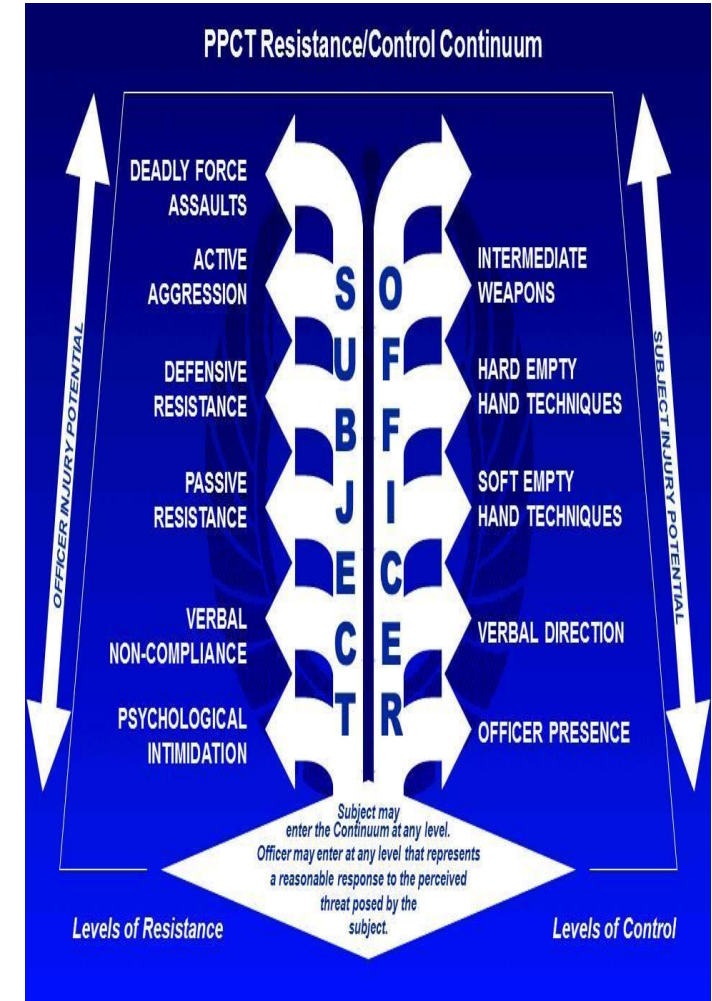
New York State Executive Order 203

- Perform a comprehensive review of policing operations, with a focus on any issues that may exist regarding racial bias and disproportionate policing of communities of color.
- Convene the head of the police agency, along with community stakeholders, to develop a plan aimed at improving policing operations and functions.
- Offer plan for public comment to all citizens, and after consideration of such comments present the plan to the legislative body, which shall ratify by local law or resolution no later than April 1, 2021.



Use of Force

- The Use of Force/Response to Resistance General Order has been amended to include the “Duty to Intervene” provision as recommended by the NYS Division of Criminal Justice Services.
- The department will conduct a comprehensive review of the use of canines for apprehension and crowd control.
- The department will issue an annual report of use of force incidents.



Civilian Complaint Procedure

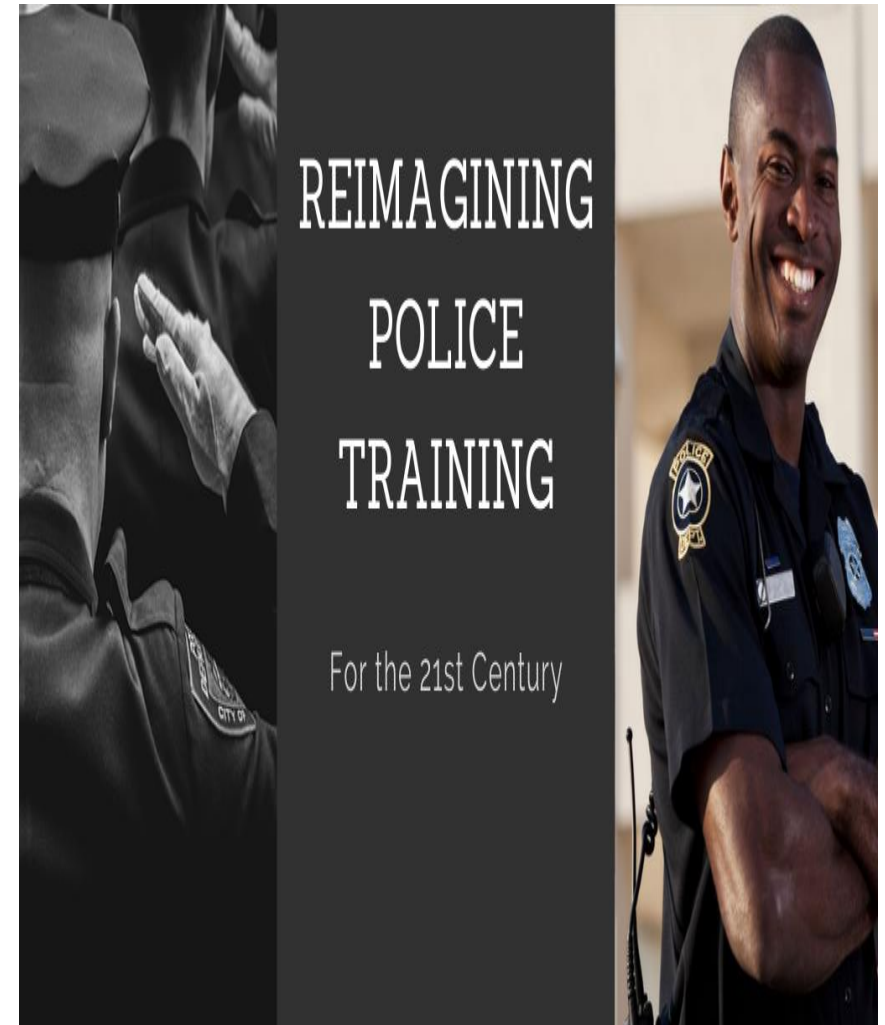
- The police department will create an Online Complaint Form.
- A Civilian Complaint Report will be done annually, and disseminated. It will include the types of complaints, dispositions and demographic information.

The screenshot shows a web form titled "Submit a complaint". It has three input fields: "Name" with the placeholder "Enter your name", "Email" with the placeholder "Enter your email", and "Details of the complaint" with the placeholder "Enter your message". Below these fields is a blue "Submit" button. To the right of the form is an illustration of a person with dark hair, wearing a blue long-sleeved shirt and black pants, sitting at a desk and typing on a laptop.

Training

Annual In-Service Training will include:

- Implicit-Bias Training
- Cultural Awareness
- Verbal Judo
- De-Escalation Tactics
- Impact Weapons
- Less-than-Lethal & Defensive Tactics



Data Collection & Management

- Will collect data that details racial, ethnic, gender and location related to all police stops and daily blotter reports.
- Will conduct an annual review of the data collected, and publish the information in a Departmental Annual Report.

“Law enforcement must be transparent with respect to discipline, misconduct and data integrity”. (NYS EO 203).

Collected citizen-driven data plays a key role in decision making and planning.



 SoukTel



CITY OF NEWBURGH POLICE DEPARTMENT

SERVICE, COURAGE AND COMMITMENT

Transparency

- All police policies, practices, and procedures will be made public and accessible on the police website.
- The police department will improve the use of social media to better inform the public and disseminate information.
- A community opinion survey will be created and put on the police website.



“ Information must be disseminated quickly and accurately in order to dispel inaccurate or erroneous information.”
(NYS EO 203)



Equipment

- New Body Worn Cameras
- Examine less-than-lethal options not currently deployed
- New Duty Uniforms
- New 'Field Activity Forms'



General Orders

- Field Interviews, Stops & Field Activity Form 80-3
- Crisis Intervention & Assisting the Mentally Ill
- Addressing Bias Policing
- Disclosure of Status Information
- Internal Affairs



Police Practices

- The police department will consult with various outside agencies with a specific focus on utilizing services in dealing with mentally ill persons (Mobile Crisis Response Unit).
- Other responsibilities currently handled by police that are not directly related to its functions will be discussed with outside agencies, such as dealing with the homeless.



“In order for Police-Community relations engagement to be effective both sides must feel they are valued and mutually respected.” NYS EO 203



Police Operations

- Will consider re-aligning patrol sectors to reflect the changing demographics.
- The PD needs to relocate police headquarters from its present location, while remaining downtown, in order to better serve the citizenry.



Recruitment process

- Selected members of the community will be encouraged to participate in interviews of potential new hires in the police department.
- All current practices that promote the hiring of city residents, minorities and Spanish-Speaking persons should be continued.

**NEWBURGH CITY
POLICE DEPARTMENT**



**IS NOW
RECRUITING**

EXAM WILL BE HELD ON:
Saturday, September 14, 2019
Filing Period: 6/25 - 7/15/19
Police Officer (#68197)
Police Officer Spanish Speaking (#68272)

Open House on 7/13/19
10am - 2pm Newburgh Rec Center
401 Washington St, Newburgh
Special Units will be present
Meet and Greet with Officers

Starting Salary: \$45,058
Requirements to Apply



MORE INFO: (845) 569-7340
<https://www.cityofnewburgh-ny.gov/civil-service>

Preference given to City of Newburgh Residents



Trust & Respect Works Both Ways

- Community members must feel that the police will engage in fair and unbiased policing.
- The police must in turn feel the community will respect and support them.



Sir Robert Peel, the Father of Modern Day Policing said:

“The police at all times should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police are the only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the intent of the community welfare.”

(Principles of Law Enforcement, 1829)





CITY OF NEWBURGH
POLICE DEPARTMENT
PUBLIC SAFETY BUILDING
55 BROADWAY
NEWBURGH, N.Y. 12550-5698
TEL: (845) 561-3131 FAX: (845) 561-9052 or (845) 565-5662

GENERAL ORDER NO. A-011

ISSUE DATE: 11/13/20	EFFECTIVE DATE: 11/30/20	NEW ORDER	LAST REVIEWED: 10/2/20
SUBJECT: RESPONSE TO RESISTANCE			
DISTRIBUTION: Sworn Personnel	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 20.1, 20.4, 20.6, 20.7,	PAGE 1 OF 6
ISSUING AUTHORITY: Chief Arnold Amthor			

I. PURPOSE

To establish use of force guidelines for members of the City of Newburgh Police Department. It is impossible to regulate what kind and to what extent of force may be used in every situation, as this decision is dependent on the actions of the individual and events that are unique to almost every situation where force may be appropriate.

II. POLICY

The policy of the City of Newburgh Police Department is that members exhaust every reasonable means to effectively bring an incident or person under control prior to using force. If force is necessary, members shall use only the amount of force that is reasonable and necessary in light of the circumstances to effectively and safely bring an incident or person under control, while protecting themselves or others. "Reasonable" and "Necessary" must be judged from the perspective of the reasonable officer on the scene at the time of the incident, and must embody allowance for the fact that officers are often called upon to make split-second decisions about whether to use any force, and how much force to use, during situational factors that are tense, dangerous and rapidly-evolving.

III. RESPONSE TO RESISTANCE

- A. Members of this department may use physical force in the performance of official duties only when it is necessary to:
 - 1) Affect an arrest.
 - 2) Prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense.
 - 3) Defend the member or another person from what the officer reasonably believes to be the use or imminent use of physical force.
 - 4) Restrain or subdue an uncooperative or resistant person.
 - 5) Safely and effectively control or prevent an unlawful, hazardous, or dangerous situation.
- B. A number of factors are taken into consideration when an officer selects force options and when evaluating whether the officer used reasonable force. Officers must be able to articulate the facts and circumstances surrounding the force used in a particular situation. Factors that affect an officer's force selection include, but are not limited to:
 - 1) Officer / Subject factors
 - a. Age
 - b. Size
 - c. Strength
 - d. Skill level
 - e. Exhaustion
 - f. Injury
 - g. Officer / subject ratio
 - 2) Seriousness of the offense
 - 3) Influence of drugs / alcohol
 - 4) Subject's emotional condition / mental instability
 - 5) Physical condition / disability
 - 6) Proximity to weapons
 - 7) Immediate availability of other options
- C. Any use of force, which is not reasonably necessary in view of the circumstances confronting the officer is prohibited.
- D. Officers shall at all times applicable, utilize professional presence, communication skills, and verbal direction in an effort to defuse a potential physical confrontation.
- E. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this General Order requires an officer to actually sustain or unreasonably risk physical injury before applying reasonable force.
- F. Members of the department shall follow a force continuum (as outlined in Section V and VI of this General Order) when responding to resistance. It shall be stressed that dependent on actions of the suspect; it will not always be possible for the officer to follow the force continuum in order.

- G. The use of non-department issued or approved impact weapons is permitted only when no other reasonable immediate alternative is present.

IV. DUTY TO INTERVENE

- A. Any officer present and observing another officer using force that he/she believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- B. An officer who observes another officer use force that exceeds the degree of force described in subdivision A of this section shall promptly report these observations to a supervisor.

V. USE OF DEADLY PHYSICAL FORCE

Members of the City of Newburgh Police Department shall resort to the use of deadly physical force only within Department General Orders and New York State Law. City of Newburgh Police Officers shall only use deadly physical force when they possess the objectively reasonable belief that they must protect themselves or another person from imminent death or serious bodily injury.

VI. PROHIBITED FORCE

- A. Force shall not be used by any officer for the following reasons
1. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
 2. To coerce a confession from a subject in custody;
 3. To obtain blood, saliva, urine or other bodily fluid or cells from an individual for the purpose of scientific testing in lieu of a court order where required;
 4. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape or otherwise overcome active or passive resistance posed by the subject.
- B. Warning shots may not be fired under any circumstances.
- C. Firing at or from moving vehicles is prohibited except where the officer reasonably believes that there is imminent threat of death or serious physical injury to himself or a third party and that it is the only reasonable means of protecting themselves and/or a third party.
- D. Strangle / choke holds and other similar holds which restrict the ability to breathe or that restrict the flow of blood to the brain are prohibited, unless in the event that deadly physical force is justified.
- E. Head strikes with any impact weapon are prohibited, unless in the event that deadly physical force is justified.
- F. Officers shall not carry or use any of the below listed weapons during the course of their duties:
- 1) Switchblade knife
 - 2) Metal knuckles
 - 3) Blackjack
 - 4) Non-folding knives

- 5) Knives with blades larger than 4 inches.
- 6) Any other weapon not authorized by the Chief of Police

V11. DOCUMENTATION OF RESPONSE TO RESISTANCE

- A. All incidents whereupon any use of force is exercised, shall be documented within the narrative portion of the Offense/Incident Report as well as on a Response to Resistance Report.

The categories of reportable Use of Force incidents are as follows:

- 1.) **Display a chemical agent-** to point a chemical agent at a subject.
- 2.) **Use/Deploy a chemical agent-** the operation of the chemical against a person in a manner capable of causing physical injury.
- 3.) **Brandishes/Uses/Discharges a firearm-** the operation of a firearm against a person in the manner capable of causing physical injury.
- 4.) **Brandishes/Uses/Deploys an impact weapon or electronic control weapon-** the operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
- 6.) **Conduct that resulted in death**
- 7.) **Serious bodily injury-** bodily injury that causes:
 - A substantial risk of death; or
 - Unconsciousness; or
 - Serious and protracted disfigurement; or
 - Protracted loss or impairment of the function of any bodily member, organ or mental faculty.

- B. The Response to Resistance Report and the Offense / Incident Report shall be reviewed by the officer's immediate supervisor. The officer's immediate supervisor shall determine, based upon the information at the time, if the response was appropriate. The supervisor's determination shall be marked on the Response to Resistance Report in the appropriate area. Both reports shall then be forwarded to a Lieutenant designated by the Chief of Police for review.

- C. The use of force investigator designated by the Chief of Police shall review all Response to Resistance Reports to determine if the response is consistent with New York State Law and the General Orders of the City of Newburgh Police. The use of force investigator designated by the Chief of Police shall also be responsible for forwarding any responses that were

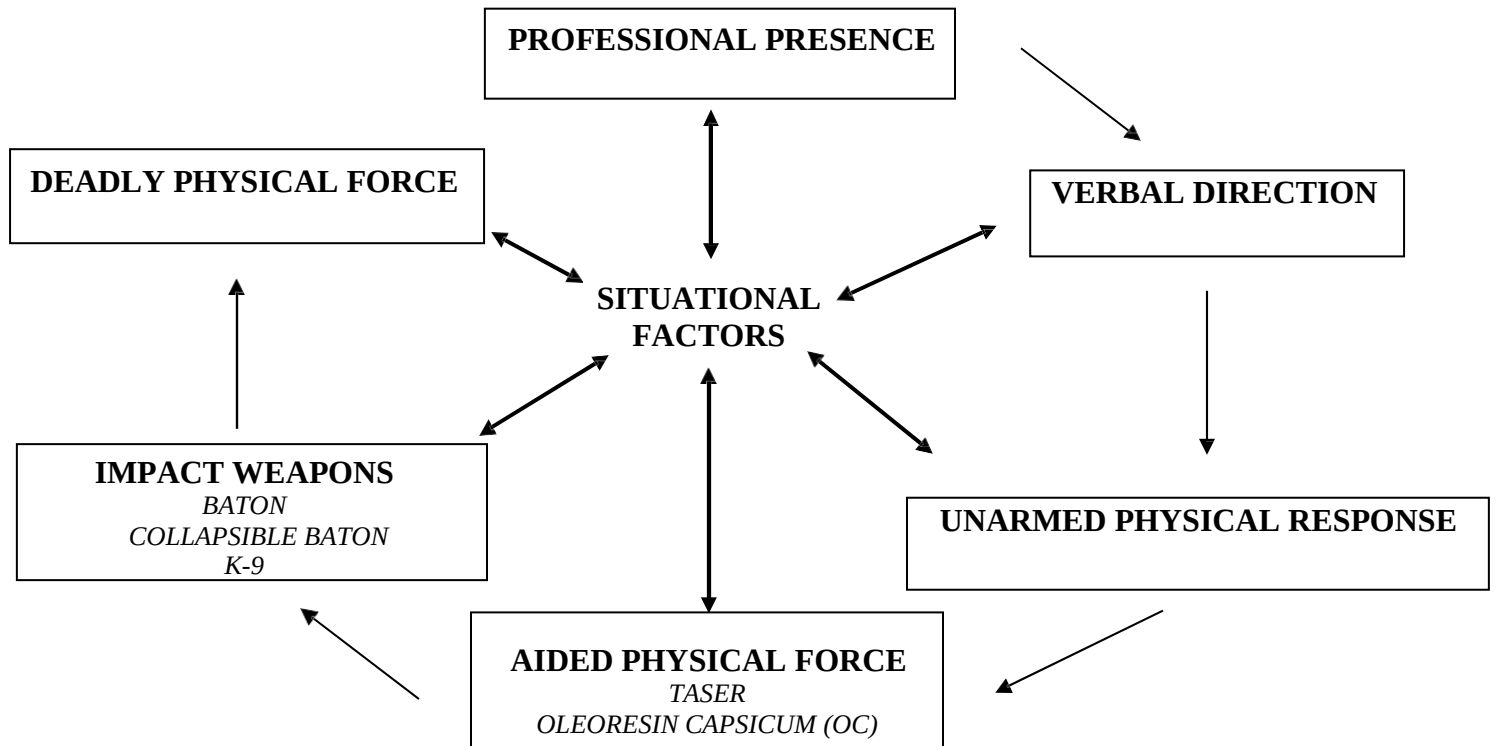
inappropriate to the Chief of Police.

- D. State Reporting Requirements will be handled by an employee designated by the Chief of Police
- E. Response to Resistance Reports shall be maintained indefinitely by the use of force investigator designated by the Chief of Police.

VII. PROCEDURES FOLLOWING USE OF DEADLY PHYSICAL FORCE

- A. Psychological Services: In all cases where any person has been seriously injured or killed as a result of a deadly force incident involving an officer, or any incident as determined by the Chief of Police, the involved officer(s) will be required to undergo a debriefing with a department provided psychological professional as soon as possible after the incident. The purpose of this debriefing is to deal with the emotional and/or psychological after-effects of the incident. The debriefing shall not be related to any department investigation of the incident.
- B. Administrative Leave: Any officer involved in a deadly force incident shall be placed on Administrative Leave directly upon the completion of their preliminary report of the incident. This leave shall be without loss of pay or benefits pending the results of the investigation. The assignment of Administrative Leave shall not be interpreted to imply or indicate that the officer acted improperly. While on Administrative Leave, the officer shall remain available at all times for official department business, including interviews and statements regarding the incident and any legal proceedings, and administrative or internal police department protocols. The officer may be recalled to duty at any time. Upon returning to duty, the officer may be assigned to Administrative Duty for a period of time deemed appropriate by the Chief of Police, in consultation with the officer and any involved psychological professional.

VIII. FORCE CONTINUUM – SITUATIONALLY DEPENDENT OPTIONS



Arnold Amthor
Chief of Police



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GENERAL ORDER NO. A-014

ISSUE DATE: 08/05/16	EFFECTIVE DATE: 08/05/16	NEW ORDER	LAST REVIEWED: 07/16
SUBJECT: INTERNAL AFFAIRS			
DISTRIBUTION: All personnel	RE-EVALUATION DATE 04/17	NYS ACCREDITATION STANDARD NUMBER(S): 25.1, 25.2, 25.6, 25.8	PAGE 1 OF 6
ISSUING AUTHORITY: Chief Daniel C. Cameron			

I. PURPOSE

This General Order sets forth the policy and procedure for the management and supervision of complaints concerning members of the City of Newburgh Police Department, consistent with the goal of maintaining the highest standards of integrity of the members of the Department. The Chief of Police shall designate a Lieutenant with responsibility for administration of this policy and related matters.

II. POLICY

The City of Newburgh Police Department encourages all persons to report legitimate complaints regarding possible misconduct, poor performance and/or inadequate police service. Each allegation shall be received by the Department professionally with courtesy and investigated without delay. Members of the Department are to assist and cooperate in the impartial processing of a complaint consistent with established procedures. A complaint shall be handled with due regard for the rights of member(s) of the Department who may be the subject of a complaint.

III. TYPES OF COMPLAINTS

- A. Platoon / Unit / Individual Complaint: Generally, any alleged violation of department procedure.
- B. Misconduct Complaint: an allegation of improper or unlawful conduct which includes but is not limited to:
 - 1) Abuse of authority;
 - 2) Conduct which is criminal on its face;
 - 3) Unnecessary or excessive use of force;
 - 4) Abusive or discourteous behavior;
 - 5) Unprofessional demeanor.
- C. Informal Complaint: A verbal complaint in which the complainant meets with a police supervisor and the matter is resolved without a formal complaint being filed.
- D. Formal Complaint: A complaint filed on a City of Newburgh Police Citizen Complaint and Compliment Form.
- E. Inter-departmental investigation: Any member of the department may initiate an internal affairs investigation by completing an Internal Affairs Investigation Request and forwarding it to the Lieutenant designated by the Chief of Police.

IV. RECEIVING COMPLAINTS

- A. Any person wishing to make a complaint against a member of the department, a department policy or procedure, or any aspect of the department's operation shall be allowed to make such complaint.
- B. When a complaint involves only whether the party is guilty or innocent of a charge, the complainant shall be instructed to address the matter during a court appearance.
- C. All officers will, upon request, provide and/or explain the procedure for making a complaint as outlined in this General Order. Complaint/compliment forms shall be in both English and Spanish.
- D. Any person wishing to make a complaint shall be directed to the on-duty Patrol Supervisor, or if known, the employee's direct supervisor if the supervisor is on-duty. (Hereafter referred to collectively as "supervisor")
- E. The supervisor shall attempt to resolve the complaint. If the complaint cannot be resolved to the satisfaction of the complainant, or if the substance of the complaint is not considered by the supervisor to be a low-level matter, the complainant shall be given a Citizen Complaint and Compliment Form.

- F. Examples of higher level complaints that should require a formal complaint include but are not limited to: corruption, brutality, death or serious injury, criminal misconduct, interference with a person's civil rights, purposeful violations of department general orders and gross violations of department general orders.
- G. When a person wants to make a formal complaint, or in instances of higher level complaints, the complainant shall be given a Citizens Complaint and Compliment Form (hereafter "complaint form"). The supervisor shall assist the complainant as needed. The substance of the complaint, the identity of the complainant and the identity of the member(s) of the Department involved shall be maintained as confidential and disclosed only by the Lieutenant designated by the Chief of Police as necessary in the course of the investigation or as directed by the Chief of Police.
- H. Upon completion of the complaint form, the supervisor shall photocopy the completed form and give the copy to the complainant. The original form shall then be sealed in a department envelope, clearly marked on the front and back of the envelope "Confidential", and forwarded to the Lieutenant designated by the Chief of Police. In the event that the Lieutenant is not on duty the supervisor shall secure the envelope in the Chief's office.
- I. Upon receiving the formal complaint, the Lieutenant shall assign a log number; enter identifying information in the Department's records system, including the date the complaint form was completed, the date the complaint form was received by the Lieutenant, and the assigned log number.
- J. Upon receipt of the complaint form, the Lieutenant shall commence an investigation of the matters alleged at the earliest possible time.
- K. The Chief of Police may at times designate the Lieutenant to investigate alleged or suspected misconduct within the Department, whether or not a complaint has been filed.
- L. Matters for which there is cause to believe constitute misconduct or incompetence shall be handled according to the Department General Order regarding Department Discipline.

V. INVESTIGATING FORMAL COMPLAINTS

- A. The Lieutenant or any person assigned by the Chief of Police shall investigate all formal complaints.
- B. The Lieutenant shall forward a written acknowledgement of receipt to the complainant within (10) business days. The letter shall inform the complainant that the complaint is being investigated and provide the complainant with the Lieutenants contact information.

- C. All formal complaints shall be thoroughly investigated, and an investigative report completed. The investigative report shall detail the action(s) taken to investigate the matter, summarize the evidence received, and identify all items of evidence, notes, and recordings generated in the course of the investigation. The investigative report shall clearly state a recommendation for the disposition of the complaint, using the categories listed below, and the rationale for the disposition. The investigative report shall be forwarded to the Chief of Police for review.
- D. Materials and files related to completed and pending investigations shall be maintained by the Lieutenant in an orderly manner and afforded confidentiality unless and until directed otherwise the Police Chief.
- E. At the completion of the investigation the Lieutenant shall send a formal letter to the complainant informing them of the disposition of the investigation.
- F. The Chief of Police or his designee will maintain a close liaison with the District Attorney's Office in investigations alleging criminal conduct.

VI. INVESTIGATIVE INTERVIEWS OF EMPLOYEES

Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.

- A. Administrative Interviews: If the Chief of Police or his designee wishes to compel an employee to answer questions directly related to his or her official duties with the understanding that under the law the employee's answer to questions specifically, directly, and narrowly relating to the performance of the employee's duties or fitness for office cannot be used in a criminal prosecution of the employee himself. The Chief of Police or his designee shall advise the employee of the following:
 - 1) The purpose of the interview is to obtain information, which may determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
 - 2) The employee shall be notified in writing that he or she has the right to representation by his or her certified or recognized employee organization and/or an attorney.
 - 3) Any questions specifically related to employment must be answered truthfully, accurately and completely. Refusal to answer may result in disciplinary action for insubordination.
 - 4) No answer given or any information obtained by reason of such statements may be used against the employee at any criminal proceeding involving charges against the employee personally.
 - 5) Officers have the protection of the "Bill of Rights" as stated in the applicable contractual agreements.
 - 6) The employee shall read or have read to them the following:

“I wish to advise you that you are being questioned as part of an official investigation of the police department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the constitution of the United States, including the right not to be compelled to incriminate yourself.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges, which could result in your dismissal from the police department. If you do answer neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding against you personally. However, these statements may be used against you in relation to subsequent departmental charges.”

B. Criminal Interviews: If the Chief of Police or his designee believes criminal prosecution is a possibility and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, the Chief of the Chief’s designee shall:

- 1) Give the employee Miranda rights.
- 2) Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
- 3) The employee shall be notified in writing that he or she has the right to representation by his or her certified or recognized employee organization and/or an attorney.
- 4) If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
- 5) Officers have the protection of the “Bill of Rights” as stated in the applicable contractual agreements.

VII. MEDIATION

A. The Department recognizes that oftentimes complaints arise from miscommunication and/or misunderstanding between an officer and citizen. As such, mediation shall be utilized to address a low-level complaint such as rudeness, discourteous behavior etc.

B. Any formal complaint may be considered for resolution in mediation. The mediation procedure will be arranged by the Chief of Police, or his designee, and may include involvement from the community including but not limited to:

- 1) Involved officer, supervisor;
- 2) City Management;
- 3) Community Leaders;
- 4) Clergy;
- 5) Orange County Mediation Project.

VIII. DISPOSITION

A. After a complete and thorough investigation, the complaint shall be closed under one of the following dispositions:

- 1) UNFOUNDED: Complaint or incident is false or circumstances are not factual.
- 2) EXONERATED: Complaint or incident did occur but the actions of the employee(s) were lawful and proper.
- 3) NOT SUSTAINED: The complaint or incident is not supported by sufficient evidence of misconduct or incompetence by the employee(s).
- 4) SUSTAINED: The complaint or incident is supported by sufficient evidence of misconduct or incompetence by the employee(s).
- 5) POLICY FAILURE: The employee acted properly within department policy; however the complaint was valid and justifiable. The complaint may have given reason or reasons to review current practices, policies and/or procedures.



Daniel C. Cameron
Chief of Police



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GENERAL ORDER NO. A-015

ISSUE DATE: 08/05/16	EFFECTIVE DATE: 08/05/16	NEW ORDER	LAST REVIEWED: 07/16
SUBJECT: DEPARTMENT DISCIPLINE			
DISTRIBUTION: All Personnel	RE-EVALUATION DATE 04/17	NYS ACCREDITATION STANDARD NUMBER(S): 14.4	PAGE 1 OF 7
ISSUING AUTHORITY: Chief Daniel C. Cameron			

I. PURPOSE

This General Order shall provide employees with an understanding of the department's disciplinary system, and the ramifications for non-conformance to the department's code of ethics and standards of performance.

II. POLICY

It shall be the policy of the City of Newburgh Police to maintain an effective disciplinary system in order for the department to effectively achieve its goals and objectives. Discipline issues shall be handled by department supervisors and/or in some cases the Lieutenant designated by the Chief of Police.

III. SUPERVISOR ROLE

- A. The primary responsibility for maintaining and reinforcing employee conformance with the standards of conduct of the department shall be with the employee and the first line supervisors.
- B. Police supervisors shall familiarize themselves with the employees under their supervision, and closely observe their general conduct and appearance on a daily basis.

- C. Police supervisors should remain alert for indications of behavioral problems or changes that may affect an employee's normal job performance. Such information should be documented by the supervisor.
- D. When a police supervisor perceives that an employee may be having or causing problems, the supervisor should assess the situation, and determine the most appropriate action.
- E. Disciplinary matters will be handled in a manner that assures the confidentiality of and privacy for both the employee and for substance of the discipline.
- F. Nothing established herein should preclude the supervisor from regularly instructing members of this department on their performance.
- G. If a police supervisor determines that a policy violation or other incident has occurred and their preliminary investigation cannot determine who is responsible they must complete an Internal Affairs Investigation Request form and forward it to the Lieutenant designated by the Chief of Police.

IV. DISCIPLINARY CONSIDERATIONS

- A. When considering discipline, a supervisor should take into consideration the following factors:
 - 1) The seriousness of the misconduct;
 - 2) The impact of the misconduct on others;
 - 3) The employee's prior disciplinary record; and
 - 4) The length and quality of the employee's service with the department.
- B. Progressive Discipline:
 - 1) When circumstances allow, and in instances of relatively minor misconduct, the concept of progressive discipline should be followed. This entails an administration of increasingly severe disciplinary actions for subsequent acts of misconduct.
 - 2) In instances of serious misconduct the concept of progressive discipline will not be applicable.
- C. Training as a function of discipline:
 - 1) When training / counseling is used as a function of discipline, such training shall be documented in the employee's personnel file.

D. Counseling as a function of discipline:

- 1) Used to determine the extent of any personal or job problems that may be affecting performance, and to offer assistance and guidance.
- 2) Used to review and discuss order violations, and to discuss the substance and importance of the orders with the employee.

E. Suspension, formal departmental charges and/or relief from duty shall be considered for serious misconduct or incidents.

V. VERBAL WARNING

A. A reprimand to the employee from a supervisor describing the way in which the employee's conduct or performance has failed to meet prescribed standards.

B. The verbal warning shall include:

- 1) A statement of the alleged acts or omissions;
- 2) A recommendation for corrective action(s); and
- 3) A warning that additional violations may lead to more stringent disciplinary procedures.

C. Any supervisor of the City of Newburgh Police is authorized to give a verbal warning.

VI. LETTER OF COUNSELING

A. A Letter of Counseling is a formal report documenting a formal contact by a supervisor with an employee.

B. The Letter of Counseling shall include:

- 1) The allegations being made against the employee;
- 2) What order the employee is in violation of;
- 3) What actions need to be taken to correct the problem; and
- 4) Ramifications if the behavior continues.

C. Letters of Counseling shall be signed by the employee and the supervisor issuing the Letter of Counseling.

D. Employees shall be afforded an opportunity to respond to the Letter of Counseling. Any response shall be submitted to the Chief of Police in writing.

- E. Upon completion, a copy of the Letter of Counseling shall be provided to the counseled employee. The original Letter of Counseling shall be sealed in a department envelope, labeled as confidential and either given to the Police Chief in person or secured in the Chief's office.
- F. Letters of counseling shall stay in personnel files for a length of time determined by the Chief of Police per incident.
- G. Any supervisor of the City of Newburgh Police is authorized to issue a Letter of Counseling.

VII. COMMAND DISCIPLINE

- A. The Chief of Police, or his designee, shall have the authority to correct violations through the offering of a Command Discipline option given to the employee charged.
- B. After considering the allegations made against the employee, the Chief of Police, or his designee, may provide the employee with a penalty option in lieu of formal department charges.
- C. Employees have the right to accept the penalty, or have the matter resolved through formal departmental charges and a hearing.
- D. Command Discipline Option is not to be read as a threat in any manner, nor as any sort of coercion or intimidation to waive any employee right, it is merely an option open to the employee if they so desire.
- E. The offering of Command Discipline is the prerogative of the administration and that, as such, it is not a right of any individual employee. The Command Discipline Option is not to be understood as establishing a practice or procedure for any particular violation or violations in particular or in general; and should not be accepted by members of the department as establishing any practice or procedure which they are entitled to as a right.
- F. An offer of Command Discipline shall be in writing and shall advise the employee of the penalty, their rights to decline the discipline and their right to formal departmental charges and a hearing.
- G. To accept the offer of Command Discipline the employee must sign a waiver of their right to formal departmental charges and a hearing.
- H. Command Discipline shall be placed in the employees personnel file for an amount of time determined by the Chief of Police based on the specific Command Discipline incident.

VIII. RELIEF FROM DUTY

- A. Any City of Newburgh Police Supervisor shall have the authority to relieve an employee from duty when the supervisor determines that the employee is unfit for duty, or that there is reasonable cause to believe that the continued presence of the employee represents a potential danger to persons or property, or the employee's presence will interfere with operations.
- B. The supervisor shall immediately notify the Chief of Police and complete a written report prior to the end of the shift.
- C. If the circumstances of the relief from duty require it, the supervisor may mandate that the employee remain at headquarters for further action.
- D. The supervisor and the employee shall be summoned to meet with the Chief of Police, within a reasonable time, as determined by the Chief of Police.
- E. A relief from duty shall not be considered a suspension of any type.

IX. SUSPENSION

- A. The Chief of Police has the authority to suspend an employee.
- B. Upon any suspension, the suspended employee must surrender to a supervisor their City of Newburgh Police Identification Card, any badges, building keys, department-issued equipment, and all handguns they possess under the authority of their City of Newburgh Police Identification.
- C. The supervisor shall see the proper safeguarding of the property by turning the property over to the Crime Scene Unit, who shall secure the property until authorized by the Chief of Police or his designee to return the property.
- D. A suspended employee is not permitted to be inside the City of Newburgh Police Station unless authorized by the Chief of Police and escorted by a supervisor.
- E. Police entrance combination locks shall be immediately changed.
- F. Notification of the suspension shall be made to all employees.
- G. Suspended Police Officers are not permitted to take any police action nor identify themselves as a police officer.
- H. The City Manager, as the legal appointing authority, or the Police Chief may suspend any member(s) of the department who has been charged with a crime.

X. FORMAL DEPARTMENTAL CHARGES

- A. With the exception of a Command Discipline option, no non-probationary member of the police department shall be removed, reduced in rank, suspended, fined, or otherwise punished or disciplined except upon formal charges as prescribed by collective bargaining agreements and Civil Service Law.
- B. Formal charges may be constructed by the Chief of Police or the City Manager.
- C. Charges shall be in writing and sufficiently specific to apprise the employee of what he/she is being charged with to enable him/her to defend them.
- D. The charges may be served to an employee personally or by mail. The employee is then entitled to at least eight days in which to answer the charges in writing. The response must be directed to the charging authority.
- E. After charges have been preferred, they may be altered or amended by the Charging Authority or he/she may cause new charges to be prepared. Slight errors in names, dates, amounts and clerical errors may be corrected by the Charging Authority. All such amendments shall be provided in writing to the member charged.
- F. All subsequent action including hearings and appeals shall be in accordance with the provisions of the New York State Civil Service Law, New York State Public Employment Relations Board and Collective Bargaining Agreements.

XI. RECORDS OF FORMAL DEPARTMENTAL CHARGES

- A. If found guilty, a copy of the charges, his/her written answer thereto, a transcript of the hearing, and the determination shall be filed in the City Manager's office and a copy filed with the City of Newburgh Civil Service Commission.
- B. Any investigative notes or records and if applicable, a transcript of the trial and disposition shall be secured in a separate file in the office of the City Manager and the office of the City of Newburgh Corporation Counsel and/or the office of the City of Newburgh Civil Service Commission.
- C. The complaint form and a disposition of the charges shall be kept in the personnel record of the accused member.
- D. After a lapse of (2) years, the determination that an accused member was guilty of the charges preferred against him/her shall not be considered against him/her upon application for promotion, nor shall it affect, after the lapse of two (2) years, any right or privilege to which he/she would otherwise be entitled were it not for such determination.

XII. RESIGNATIONS, SEPARATION FOR CAUSE

- A. The Chief of Police shall cause to be placed in the personnel file of any member resigning or separating from the department for cause, all the facts pertinent to the action.
- B. All personnel records of resigned or separated employee's shall be kept on file permanently.



Daniel C. Cameron
Chief of Police



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GENERAL ORDER NO. A-021

ISSUE DATE: 08/05/16	EFFECTIVE DATE: 08/05/16	NEW ORDER	LAST REVIEWED: 07/16
SUBJECT: Warrants			
DISTRIBUTION: Sworn Personnel, Dispatchers	RE-EVALUATION DATE 04/17	NYS ACCREDITATION STANDARD NUMBER(S): 8.12, 8.13	PAGE 1 OF 3
ISSUING AUTHORITY: Chief Daniel C. Cameron			

I. PURPOSE

This General Order shall establish the system for requesting, maintaining, and serving warrants of arrest and bench warrants.

II. POLICY

It shall be the policy of the City of Newburgh Police Department to maintain an up to date and active arrest/bench warrant file that is accessible to all sworn personnel and dispatchers 24 hours a day. All sworn personnel are responsible for periodically reviewing the Warrant List in an effort to serve the active warrants.

III. PROCEDURE

A. Requesting Officer's Responsibilities:

- 1) Where practical, officers are permitted to attempt to locate a suspect prior to applying for an arrest warrant. If the officer does not locate the subject within the same tour of duty they must notify their direct supervisor. The supervisor must approve or deny the delay of the warrant based on the circumstances. The responsible officer must keep the supervisor informed as to the status of the case. This section (III. A) does not apply to Detectives.

- 2) Complete a Criminal Information, Warrant Cover Sheet, Warrant, Incident Report, and any other applicable paperwork.
- 3) Attach a photograph of the suspect in either a department wanted poster, or eJustice photo when available.
- 4) Forward all completed paperwork to their immediate supervisor for review.
- 5) Monitor the status of warrants that the officer generated and make attempts, when practical, to serve those warrants. Attempts to serve the warrant shall be listed on the Warrant Cover Sheet.
- 6) Notify the District Attorney's Office if you apply for a felony warrant.

B. Supervisor Responsibilities:

- 1) Review paperwork for thoroughness.
- 2) Forward the Criminal Information, Warrant Cover Sheet, Warrant, photo and any other applicable paperwork to City Court.

C. Employee assigned to warrant administrative duties responsibilities:

- 1) Receiving and filing all City of Newburgh Court active warrants.
- 2) Upon receiving a warrant they shall complete a warrant file folder containing the defendant's name, date of birth, and photo if available.
- 3) Entering the wanted person into eJusticeNY in a timely manner.
- 4) Maintain a current Warrant List and the current warrants in communications. The Warrant List and the current warrants shall be accessible 24 hours a day.

D. Communication Personnel Responsibilities:

- 1) Check for active warrants on a subject when requested, or during the course of their duties.
- 2) Upon receiving notification from City of Newburgh Court instructing a warrant to be vacated;
 - a. Remove the name from the Warrant List;
 - b. Remove the warrant from the warrant drawer;
 - c. Remove the warrant from eJusticeNY;
 - d. Forward vacate notice and warrant to the responsible court.
- 3) Assist arresting officers in removing the warrant from eJusticeNY.

E. Arresting Officer Responsibilities:

- 1) Cancel the warrant in eJusticeNY. The responsibility of cancelling the warrant in eJusticeNY rests solely on the arresting officer. If the officer is not familiar with the procedure of cancelling the warrant in eJusticeNY, they must seek out the assistance of communications personnel. If communications personnel are unable to assist then the arresting officer must notify the Patrol Supervisor.
- 2) Remove the name from the Warrant List.

- 3) Write in the date served on the Warrant Cover Sheet and forward it to the Patrol Supervisor who shall then forward it to the employee assigned to warrant administrative duties.
- 4) If officers check an address specifically for the purpose of executing the warrant and do not locate the suspect, the officer shall note the attempt on the Warrant Cover Sheet.



Daniel C. Cameron
Chief of Police



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GENERAL ORDER NO. O-005

ISSUE DATE: 08/05/16	EFFECTIVE DATE: 08/05/16	NEW ORDER	LAST REVIEWED: 07/16
SUBJECT: VEHICLE TRAFFIC STOPS AND UNIFORM TRAFFIC TICKETS			
DISTRIBUTION: SWORN PERSONNEL	RE-EVALUATION DATE 02/17	NYS ACCREDITATION STANDARD NUMBER(S): 47.1, 47.2	PAGE 1 OF 5
ISSUING AUTHORITY: Chief Daniel C. Cameron			

PURPOSE:

The purpose of this General Order is to establish procedures for stopping, approaching and addressing traffic law violators. This General Order also addresses the issuing and accountability of Uniform Traffic Tickets.

POLICY:

Traffic law enforcement involves all activities or operations, which relate to observing, detecting, and preventing traffic law violations and taking appropriate action under the circumstances. Enforcement not only involves arrests and citations, but also includes warnings to drivers and pedestrians, which help prevent them from committing minor violations. Traffic enforcement may involve observed violations, at accidents, or in response to community concerns; or may be proactive to prevent traffic violations.

I. TYPES OF ENFORCEMENT ACTIONS:

- A. Warnings - Officers may issue verbal warnings to a violator whenever a minor traffic infraction was committed in their presence.
- B. Uniform Traffic Ticket - A UTT may be issued by an officer to a violator whenever a minor traffic infraction has been committed in their presence, with the exception of accident investigations.
- C. Physical Arrest - Officers may make a physical arrest where applicable.

II. HANDLING SPECIAL CATEGORIES OF VIOLATORS:

- A. Out-State Residents – Officers may consider use of warnings for non-residents who commit minor, non-hazardous violations.
- B. Juveniles - Persons less than 16 years of age shall be detained and steps for handling juveniles shall be followed as outlined in the departments Juvenile Contact Procedures.
- C. Foreign Nationals - Generally, there are immunity provisions that apply to Foreign Nationals. Refer to the General Order regarding Foreign Nationals.
- D. Lt. Governor and Legislatures - During the session of the General Assembly and for five days before and after the session, the Lieutenant Governor, a member of the Assembly, or the clerk thereof, and their assistants, shall be privileged from custodial arrest except for treason, a felony, or a breach of the peace. Officers may issue traffic summonses for a moving offense.
- E. Military Personnel – Active Military Personnel are permitted under law to lawfully operate a motor vehicle with an expired drivers license. Officers must confirm that the violator is Active Military through Military Identification.
- F. Members of Congress - May not be detained for the issuance of a summons while they are in transit to or from the Congress of the U.S. If a member of Congress is stopped for a traffic infraction, he shall, upon presentation of valid credentials, be immediately released. The officer may then obtain a summons for the member of Congress covering the observed violation and make arrangements to serve the summons at a time when the member of Congress is not in transit to or from Congress, or on official business.

III. TRAFFIC STOPS:

- A. Making the Vehicle Stop - Whenever possible, all traffic stops will be conducted in a safe location while the primary concern of the officer should be his/her safety and that of others. Varying conditions regarding the engineering of the particular traffic way, the urgency to stop the violator, and the existing volume of traffic may require adjusting or altering the recommended procedure. Under ideal conditions, follow these procedures if possible:
 - 1. Locate a safe spot to stop the vehicle.
 - 2. Activate the emergency red lights and, when necessary, siren to signal the vehicle to stop.
 - 3. Officers should position the police vehicle approximately one-half to one car length behind the violator's vehicle. The police vehicle shall be positioned so that it will offer the officer some protection from oncoming traffic. This position provides maximum safety to the violator, the officer, and all other traffic.
 - 4. Advise communications of the location of the stop and the vehicle's license plate number and/or other descriptions when necessary prior to approaching the vehicle.
 - 5. Officers shall properly utilize the emergency lights / spot lights after the vehicle stops to maintain safety.
- B. Approaching the Violator - The following steps in approaching a traffic violator are intended to provide maximum safety for the officer, the violator,

and other users of the roadway.

1. The officer shall leave the patrol vehicle and be continuously alert for any suspicious movement or actions on the part of the violator or other occupants in the violator's vehicle.
 2. Occupants should be directed to remain in the vehicle if they attempt to exit without officer's instruction.
 3. The officer should approach from the rear of the violator's car, looking into its rear seat and stop behind the trailing edge of the left front door. From this position, the officer can communicate with the violator, keeping him in a slightly awkward position and at the same time keep all occupants of the vehicle in view.
- C. Communication with the Violator - In transacting their business with the violator, the officer shall:
1. As soon as practical, request the required paperwork for the stop, and then advise the violator of the reason that they were stopped.
 2. Officers shall remain courteous and professional.
 3. If the driver has no driver's license, obtain another document of identification.
 4. Complete the forms required for the enforcement action taken or exercise a verbal warning, if appropriate.
 5. Explain to the violator exactly what they are supposed to do in response to the action taken.
 6. If the enforcement action requires a court appearance, make sure the violator knows where and when to appear. You may explain any alternatives to the violator, but you may not predict the actions of the court.
- D. Ending the Stop
1. Give a copy of the summons to the violator and explain the process of answering the summons.
 2. Return the violator's driver's license, registration, and insurance card.
 3. Remain at the stop until the violator re-enters the roadway.

IV. HIGH-RISK VEHICLE STOPS:

Officers shall use high risk vehicle stop procedures when necessary to apprehend a suspect, who is or could potentially be dangerous. High-risk stops are vehicle contacts that may increase the probability of violence usually associated with armed suspects or violent criminal activity.

- A. Prior to making the stop
1. Notify communications of a location, description of vehicle and occupants if possible, and request additional units.
 2. The initial officer will now be considered the control officer unless a supervisor takes command.
 3. Request radio silence if necessary.
- B. Making the stop
1. The control officer should maintain radio contact with their back up

- units and coordinate the stop accordingly. The control officer will decide the stop location based on available back up units, terrain, lighting, traffic, and any other circumstance that may apply.
2. Once the location has been decided, the control officer should position themselves behind the violator vehicle and activate emergency lights, and siren if applicable.
 3. Once the violator vehicle is stopped, the control officer should attempt to position their police vehicle approximately two car lengths behind and to the left of the violator vehicle. Back up units should position their vehicles in a manner that creates a barrier between them and the violator vehicle but does not obstruct the control unit or place anyone in a position of possible cross fire scenarios.
 4. The control officer and back up units should be tactically ready to engage the violator and/or any passengers in the vehicle.
 5. If other back up units are available, they may be used to block or divert traffic.
 6. In situations where the stop is conducted in a routine manner and it is determined that the stop has turned high-risk the officer should change the stop to high-risk procedures.
- C. Making contact with the occupants
1. In a clear and loud commanding voice (utilize PA if needed) the control officer should order the occupant's to place their hands in a position determined by the control officer. This position should be in a manner where the occupants hands can be seen by officers.
 2. If possible, the control officer should order that the vehicle's keys be removed from the ignition.
 3. Occupants should be ordered out of the vehicle one at a time in a manner determined by the control officer.
 4. Occupants that have been ordered out should be secured by back up units when so directed by the control officer.
 5. If the occupants of the vehicle do not comply with verbal orders then officers shall refer to the Department General Order regarding Response to Resistance.
 6. Once all occupants are out of the suspect vehicle and secured, officers shall cautiously check the trunk and interior of the suspect vehicle for suspects who may be hiding.

V. ACCOUNTABILITY AND ISSUING OF UNIFORM TRAFFIC TICKETS (UTT):

- A. The Records Division Supervisor or his designee shall be responsible for:
1. The ordering of Uniform Traffic Tickets from the New York State Department of Motor Vehicles.
 2. Accounting of Uniform Traffic Tickets received by the City of Newburgh Police Department.
 3. Reporting any lost, damaged, or voided UTT numbers to the New York State Department of Motor Vehicles.
 4. Approval and retaining all voided UTTs with their Voided Summons Affidavit for a period of not less than five (5) years.

5. Replenishing Patrol Division (Patrol Supervisor's Office) with supplies of new Uniform Traffic Ticket books and accounting of books placed in the Patrol Supervisor's office.
 6. Recording of all issued Uniform Traffic Tickets and forwarding completed white (arrest record) copy to the Department of Motor Vehicles.
 7. The maintenance and data storage of Uniform Traffic Tickets issued via the TraCS (Traffic and Criminal Software) system and the subsequent transmission of the data to the State as prescribed in the City of Newburgh Police Department Use and Dissemination Agreement.
- B. The Patrol Supervisor shall be responsible for:
1. Issuing Uniform Traffic Ticket books and Parking Ticket Books and recording, in a logbook, the Uniform Traffic Ticket numbers and Parking Ticket numbers received by and issued to an officer. All UTT's and parking tickets must be assigned by a supervisor and a supervisor signature must be recorded on the sign out sheet.
 2. The proper distribution of issued and voided Uniform Traffic Tickets to the Records Division.
 3. Voiding TRACS traffic tickets, when authorized, within 48 hours of issuance.
- C. The Officer shall be responsible for:
1. Accounting for all the tickets in the Uniform Traffic Ticket book(s) they receive from the Patrol Supervisor and initialing the logbook for receiving all of their numbered Uniform Traffic Tickets or reporting any missing or damaged UTTs.
 2. Properly preparing and issuing the Uniform Traffic Ticket in accordance with Section I of this General Order.
 3. Completing and forwarding a voided summons request to a patrol supervisor within 24 hours of the issuance of the summons.
 4. Completing a start shift and end shift using the TRACS system to issue a UTT in accordance with training.
 5. Officers who are trained and equipped for the TRACS system must only use the TRACS system when issuing UTT's.
- D. Communications Personnel shall be responsible for recording the officer's status in CAD and reporting the final disposition resulting from the vehicle stop. i.e. - warned, issued, arrested, etc.



Daniel C. Cameron
Chief of Police



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GENERAL ORDER NO. O-038

ISSUE DATE: 08/05/16	EFFECTIVE DATE: 08/05/16	NEW ORDER	LAST REVIEWED: 07/16
SUBJECT: Body Worn Camera (BWC) Pilot Program			
DISTRIBUTION: Sworn Personnel IT Department	RE-EVALUATION DATE 02/17	NYS ACCREDITATION STANDARD NUMBER(S):	PAGE 1 OF 5
ISSUING AUTHORITY: Chief Daniel C. Cameron			

I. POLICY STATEMENT:

It is the policy of the City of Newburgh Police Department to use all available legal means to enhance our ability to gather evidence. One such option is the use of a Body Worn Camera (BWC).

The video and/or audio recordings produced by this device are admissible in a court of law as an impartial witness to events as they occurred.

Recordings shall be used to facilitate the conviction of an arrestee and/or violators and to review situations which result in personnel complaints. Recordings shall not be routinely reviewed to monitor officer performance, but will be reviewed on a regular basis to determine the utilization and functioning of the equipment. Minor policy and procedural violations observed during routine review of a recording shall be the subject of counseling and training only. In the event any illegal activity by Law Enforcement personnel is discovered during the routine review, those recordings will be forwarded to the proper authority.

II. PURPOSE:

The City of Newburgh Police Department recognizes that the use of BWC's in the State of New York is in its infancy and that best practices and practicalities are still being explored by major police departments within the state. As part of this evaluation, the City of Newburgh Police Department has conducted a 90-day pilot program that consisted of the use of 3 BWC's that were assigned to primary volunteer officers and alternate secondary officers. A fourth BWC was designated for training purposes and served as a backup camera if one shall require service. At the completion of the 90-day pilot program a report by the Chief of Police was prepared. The report called for the implementation of 20 BWC's to be utilized by officers working in a patrol capacity. It is recognized that this program is still in development and due to potential unforeseen circumstances, the ability to equip all on duty patrol operations personnel might not be practical at all times. The implementation of the 20 BWC's will be evaluated regularly by the Department Policy Review Board.

III. TRAINING

- A. Officers shall complete a training course provided by the City of Newburgh Information Systems Technology Department and shall familiarize themselves with the BWC prior to being authorized to use and be assigned a BWC.
- B. Supervisors shall complete a training course provided by the City of Newburgh Information Systems Technology Department and shall familiarize themselves with the BWC prior to being authorized to use and be assigned a BWC.
- C. Upon completion of required training, Officers and Supervisors will complete a training credit form and submit it to the Administrative Lieutenant or their designee.
- D. Only those Officers and Supervisors that have completed the required training for the BWC's are authorized to use BWC's.

IV. OPERATING PROCEDURES

- A. BWC's will be assigned to officers working in the capacity of patrol operations and officers assigned to special patrol details which report to the Patrol Supervisor.
- B. At no time will more than one half of the in-service BWC's be assigned on one shift. This is required in order to ensure adequate download and charge time for upcoming shifts.

- C. Priority for assignment of BWC's is as follows:
1. Personnel assigned to routine road patrol
 2. Patrol Supervisor
 3. Patrol Officer partnered up with an officer that is assigned a BWC
 4. Patrol Officer assigned to a special assignment
- D. At the beginning of an officer's tour of duty, officers are to ensure that the BWC is powered on and that the BWC is ready for recording when triggered.
- E. Officers will verify a charged battery on the BWC.
- F. Officers will sign out the BWC.
- G. Officers will secure the BWC on his/her person in accordance with the recommendations of the BWC manufacturer.
- H. The Body Worn Camera (BWC) shall be used and activated prior to initiating or as soon as practical after initiating the following police actions:
1. All enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity. This includes, but is not limited to self-initiated stops and calls for service.
 2. All enforcement encounters where there is reason to believe that the individual is committing a violation or petty offense for which a summons may be issued.
 3. All vehicle stops.
 4. When taking or attempting to take an individual into custody.
 5. Any public interaction, regardless of context, that escalates and becomes adversarial, so long as it is not one of the prohibited situations in subdivision IV-J of this G.O. listed below.
 6. Officers should consider activating the BWC during any activities where, in the Uniformed Patrol Officer's judgment, it would be beneficial to record, so long as it is not one of the prohibited situations in IV-J of this G.O listed below.
 7. The BWC is not required to be activated if it is unsafe or impractical to do so or where a malfunction or other mechanical issue impeding the use of the device exists. Such instances are to be reported immediately to the on-duty Patrol Supervisor.
- I. Authority to stop the recording once it has begun:
1. When the Officer clears the call and is in service for other calls.
 2. When the Officer has not cleared the call but returns to Police Headquarters.
 3. Upon the direction of a Supervisor.
 4. When speaking in regard to the recording of a BWC, Officers and Supervisors shall use the designated 10 code.

- J. The Body Worn Camera (BWC) is not to be activated to record any of the following:
1. Encounter not directly related to official activities in the proper performance of Police duties.
 2. Performance of non-enforcement functions or administrative duties within a department facility.
 3. Any area where a reasonable expectation of privacy exists (unless taking police action as outlined above in IV-H of this G.O.) such as, but not limited to, hospital emergency rooms, locker rooms and restrooms.
 4. A potential witness who requests to speak to an Officer confidentially or desires anonymity, provided that doing so does not violate any other portion of this order.
 5. A victim or witness who requests that he or she not be recorded, the situation is not confrontational and the Officer is comfortable in doing so.
 6. A victim who requests that he or she not be recorded as a condition of their cooperation, the interests of justice requires their cooperation and providing the Officer is comfortable in doing so.
- K. The public does not have to be informed that they are being recorded. If the public inquires if an audio/video recording is being made, the Officer may confirm or deny the presence of the audio/video recording based on the totality of the circumstances.
- L. Officer and public safety are of the utmost importance during any incident. Officers shall not sacrifice safety for the sake of making a video. As soon as practical, turn it on if it applies to IV-H of this G.O.

VI. REQUESTS FOR DOWNLOAD OF RECORDED BWC VIDEO

- A. Only a member of the Command Staff, Administrative Staff or the IT Department may download BWC video.
- B. All requests to download BWC shall be made by completing the BWC Video Requisition form and emailing the form to BWCRequests@cityofnewburgh-ny.gov.
- C. Officers will have access to view BWC footage that they have recorded.

VII. STORAGE AND MAINTENANCE:

- A. At the conclusion of the officer's shift they shall place the BWC and the mounting hardware in the charger docking station.
- B. All recordings downloaded from the BWC onto the server's hard drive will further be preserved for a period of not less than 30 days, with the exception of test recordings which will be preserved for a period of 5 days.

- C. Damage to the BWC or any of its components, as well as malfunctioning components, are to be reported to the Patrol Watch Commander as soon as discovered.
 - 1. The Patrol Watch Commander will then notify the Patrol Lieutenant or their designee.
 - 2. The Patrol Lieutenant shall immediately notify the IT help desk.
 - 3. The City of Newburgh's IT department will maintain a log of BWC downtime and immediately notify the Patrol Lieutenant when the BWC is repaired and back in service.
- D. When a BWC needs to be taken out of service for maintenance or repair, the Patrol Lieutenant shall be notified immediately.
- E. The Patrol Lieutenant or their designee will authorize and maintain the list of users for the BWC's after each user completes his or her training.
- F. No recorded videos shall be used for non-law enforcement purposes without the approval of the Chief of Police.



Daniel C. Cameron
Chief of Police



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GENERAL ORDER NO. O-039

ISSUE DATE: 11/15/20	EFFECTIVE DATE: 11/30/20	NEW ORDER	LAST REVIEWED: 10/2/20
SUBJECT: CRISIS INTERVENTION AND ASSISTING THE MENTALLY ILL			
DISTRIBUTION: SWORN PERSONNEL	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S):	PAGE 1 OF 6
ISSUING AUTHORITY: Chief Arnold Amthor			

I. PURPOSE

The purpose of this policy is to set forth principles and procedures of the Newburgh Police Department regarding persons suffering from mental health issues.

II. POLICY

It is the policy of the Newburgh Police Department to provide a consistently high level of service to all community members. Department personnel shall afford people who have mental health issues/illnesses the same rights, dignity and access to police and other government and community services as are provided to all citizens and provide those services with respect and sensitivity to the person.

III. DEFINITIONS

- A. Mentally Ill: A person who has a mental or emotional condition which has substantial adverse effects on their ability to function and who requires care and treatment.

- B. Americans with Disabilities Act (ADA): A federal law that applies to people who have a physical or mental impairment, a record of such impairment or who are regarded as having such impairment that substantially limits one or more of their major life activities, including the following:
 - 1. The ability to communicate
 - 2. Be gainfully employed or to care for themselves
- C. The term “substantially limits” is not a clinical term. It is a practical term to distinguish between people who have a mild physical or mental impairment and those whose impairment substantially limits one or more life activities.

IV. GENERAL GUIDELINES AND CONSIDERATIONS

- A. The Americans with Disabilities Act (ADA) entitles people with mental health illness or disabilities the same services and protections that law enforcement agencies provide to anyone else. They may not be excluded from services or otherwise be provided with lesser services or protection than are provided to others.
- B. The ADA calls for law enforcement agencies to make reasonable adjustments and modifications in their policies, practices or procedures on a case-to-case basis. For example, if a person exhibits symptoms of mental illness (such as access to medication), officers and dispatchers may need to modify routine practices and procedures, take more time or show more sensitivity to extend the services or protections that would be extended to someone else in a similar circumstance.
- C. This policy is intended to address the varying role officers play in their encounters with people with mental illness. As first responders and law enforcers, they may encounter victims, witnesses or suspects who have mental health illnesses. As service personnel, they may be called upon to help people obtain psychiatric attention or other needed services. Helping people with mental illnesses and their families obtain the services of mental health organizations, hospitals, clinics and shelter care facilities has increasingly become a prominent role for police.
- D. No single policy or procedure can address all of the situations in which officers, communications personnel and other agency personnel may be required to provide assistance to persons who have mental illness. This policy is intended to address the most common types of interactions with people who have mental illness.
- E. In all contacts by members of the Department with persons who are mentally ill or exhibit signs of mental illness, members must show sensitivity, understanding and respect, finding alternatives to address the situation with the use of minimum force.

V. PROCEDURES

A. Training

1. All sworn personnel of the Department will be provided training in the managing of the mentally ill. This training may consist of the New York State Municipal Police Training during the Police Academy or Chief approved equivalent.

B. Recognizing characteristics of mental illnesses

1. While many people with mental illnesses control symptoms successfully with the use of medications, others who do not have access to mental health services, fail to take their medications or do not recognize that they are ill and can experience psychiatric difficulties.
2. Symptoms for different mental illnesses may include , but are not limited to the following
 - a. Loss of memory;
 - b. Delusions;
 - c. Depression, deep feelings of sadness, hopelessness or uselessness;
 - d. Hallucinations;
 - e. Excited Delirium;
 - f. Manic behavior, accelerated thinking and speaking or hyperactivity;
 - g. Confusion;
 - h. Incoherence;
 - i. Extreme paranoia
3. The degree to which these symptoms exist varies from person to person according to the type and severity of mental illness.
4. Many of these symptoms represent internal, emotional states that are readily observable from a distance, but are noticeable in conversation with the individual.
5. The dispatcher or officer responding to the scene is not expected to diagnose a mental illness, but to decide on the appropriate response to the individual and situation. Recognizing that symptoms may indicate mental illness will help officers decide on an appropriate response and disposition.
6. Obtaining relevant information from family members, friends or others at the scene who know the individual and his or her history or seeking advice from mental health professionals, can also assist officers in taking the appropriate action.
7. Officers on the scene will also have to determine the severity of the behavior, the potential for change in the behavior and the potential for danger represented by the individual to themselves and others.

VI. ASSISTING THE MENTALLY ILL

- A. Once sufficient information has been collected about the nature of the situation and the situation has been stabilized, there is a range of

options officers should consider when selecting the appropriate disposition.

1. Referral or transport for medical attention if he or she is injured or abused.
2. Refer or transport to mental health services.
3. Refer or transport to substance abuse services.
4. Assist in arranging voluntary admission to a mental health facility, if requested;
 - a. Release
 - b. Release to care of family, care giver or mental health provider.
 - c. When appropriate, arrest, if probable cause exists that a crime has been committed.

VII. CRISIS INTERVENTION TEAM

A. PURPOSE:

The Crisis Intervention Team initiative involves specialized training for officers in dealing with individuals in crisis due to mental health issues and includes training in suicide intervention. Only those officers that have completed the forty hour Crisis Intervention course will be considered a member of the Crisis Intervention Team.

B. PROCEDURE:

1. Upon receiving a call for service that involves an individual suffering a crisis due to mental health issues or involving an individual known by the caller to have a mental illness, Police Headquarters personnel will make every effort to dispatch on duty Crisis Intervention Team officers to the call.
2. In the event no Crisis Intervention Team officers are available, regular patrol officers may be dispatched. Headquarters personnel will also ensure that calls involving emotionally disturbed persons are properly coded as such in the C.A.D. system.
3. In the event a call for service starts out with a different designation but officers on the scene determine it involves an emotionally disturbed person, it is recommended and encouraged for the officer to request an on duty CIT officer respond to the scene. In this situation, headquarters personnel will also ensure the call type is changed to an E.D.P. call.

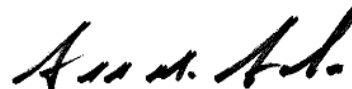
4. All E.D.P. calls for service involving Crisis Intervention Team officers shall be documented with the minimum of a blotter entry.

C. STAFFING:

1. The Chief of Police will designate a department supervisor who has completed the forty hour Crisis Intervention course as the Crisis Intervention Team Coordinator.
2. The Crisis Intervention Team Coordinator or his designee shall:
3. Oversee the daily operation of the Crisis Intervention Team.
 - i. Ensure a City of Newburgh Police Crisis Intervention Team incident report is completed at the conclusion of each call for service.
 - ii. Ensure each completed report is forwarded to the designated entities involved with the Crisis Intervention Team initiative.
 - iii. Maintain the completed reports in the Police Departments computer folder marked "Completed C.I.T. Reports"
 - iv. Complete a monthly report of all E.D.P. related calls for service.
 - v. Maintain a list of current Crisis Intervention trained officers.
 - vi. Provide additional in-service training to Crisis Intervention Team officers as needed.
4. Crisis Intervention Team officers shall:
 - i. Utilize their crisis intervention training and skills to assess the mental health of the subject of the call for service.
 - ii. If, in the assessment of the officer, the individual meets the criteria set forth under M.H.L. 9.41, the officer will ensure the individual is transported to a designated M.H.L. 9.39 facility for a psychiatric evaluation. The transport of the individual may be in a police vehicle or an ambulance provided the officer accompanies the subject to the facility. The officer will ensure the M.H.L. 9.41 paperwork is completed and turned over to hospital staff upon arrival.
 - iii. In the event the County's Mobile Mental Health Team (MMH) is on scene and determines the individual requires transport to a designated M.H.L. 9.39 facility under M.H.L. 9.45, officers will transport the individual. The transport of the individual may be in a police vehicle or an ambulance provided the officer accompanies the individual to the facility. MMH will provide the officer with the M.H.L. 9.45 paperwork, which the officer will turn over to hospital staff upon

arrival.

- iv. Should force be necessary in a situation that involves an individual being mandated for psychiatric evaluation, under either M.H.L. 9.41 or M.H.L. 9.45, officers will write a detailed narrative in the Crisis Intervention Team incident report and complete a response to resistance report in compliance with departmental general orders. A copy of each will be printed out and provided to the patrol supervisor. A copy of each will be submitted through e-mail to "PD-CIT Supervisors"
- v. If, in the assessment of the officer, the individual does not meet the M.H.L. 9.41 criteria, officers will discuss, with the individual and any family or friends present, resources available for assistance.
- vi. Officers, at the conclusion of the call, will complete a crisis intervention incident report, including a brief narrative on their assessment and any recommendations for follow-up.
- vii. Officers will ensure the completed reports are forwarded to the police departments e-mail group headed "PD- CIT supervisors"
- viii. Officers may divert the arrest of an individual who has committed a criminal offense for mental health treatment if they believe the needs of the individual requires immediate psychiatric evaluation. The decision to divert an arrest for mental health treatment must be approved by a supervisor. In the absence of an on duty Crisis Intervention Team supervisor, the Crisis Intervention Team officers shall be under the authority of the patrol watch commander.
- ix. On any call for service, if in the officer's opinion the assessment is not obvious, it is recommended and encouraged that the County Mobile Mental Health team be requested to respond when available.



Arnold Amthor
Chief of Police



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GENERAL ORDER NO. T-002

ISSUE DATE: 08/05/16	EFFECTIVE DATE: 08/05/16	NEW ORDER	LAST REVIEWED: 07/16
SUBJECT: IN-SERVICE TRAINING			
DISTRIBUTION: Sworn	RE-EVALUATION DATE 03/17	NYS ACCREDITATION STANDARD NUMBER(S): 32.4, 33.1, 33.2, 34.1, 34.2, 35.1, 35.2, 35.3	PAGE 1 OF 2
ISSUING AUTHORITY: Chief Daniel C. Cameron			

I. PURPOSE

To establish an on going training program for police officers in order to continually update their skills, knowledge and abilities.

II. IN-SERVICE TRAINING

- A. All police officers must attend a minimum of 21 hours of in-service training each year. Training shall be scheduled in accordance to union contracts. The training must include, but not limited to the following topics:
1. Firearms, at least twice a year.
 2. Use of physical and deadly physical force, at least once per year.
 3. Communicable Diseases and Prevention, at least once a year.
 4. Legal updates as necessary, and as required by the Chief of Police.
 5. Other police related topics as necessary and as required by the Chief of Police, including periodic re-training for those officers's who carry less-than-lethal substances.
- B. To be excused from any scheduled in-service training a written request must be made to the Training Supervisor. The Training Supervisor shall evaluate the request, deny or excuse as appropriate and mandate make-up as required.

- C. All first line supervisors must complete a police supervision course within one year of appointment that meets or exceeds Municipal Police Training Council course requirements. If the one year time limit cannot be met, an extension must be obtained from DCJS. All supervisors shall subsequently receive annual training to enhance supervisory skills.

III. INSTRUCTORS

- A. All in-service training will be given by:
 - 1. Certified instructors whose qualifications meet or exceed those established in Part 6024 or 6025 of the New York State Codes, Rules and Regulations or,
 - 2. Instructors who have sufficient technical expertise and/or advanced academic credentials in the topic in which they instruct, however instructors who are not certified must have a certified instructor review and approve both the qualifications of the presenter and the content of the lesson plans.
- B. All instructors are required to give a copy of their lesson plan to the training supervisor before giving a training course, and the lesson plan will be kept on file indefinitely by the training supervisor.

IV. TRAINING RECORDS

- A. The training supervisor will keep official training records on departmental personnel along with course curriculum and/or lesson plans. These records shall include at a minimum; dates attended, total hours and course name.
- B. All officers must notify the training supervisor upon acceptance to a program or school and a copy of the course curriculum and any documentation received that indicates course completion must be given to the training supervisor for permanent retention in the department's training files.
- C. A copy of lesson plans, course curriculum and/or course description will be maintained indefinitely by the training supervisor for both in-service training and City of Newburgh Police sponsored courses.



Daniel C. Cameron
Chief of Police

RESOLUTION NO.: 32 - 2021

OF

FEBRUARY 22, 2021

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV3)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$25,000.00
WITH NEWBURGH URBAN FARM AND FOOD, INC. FOR THE ALLOCATION
OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT FUNDING
TO SUPPORT FOOD DISTRIBUTION PROGRAMS AND SERVICES**

WHEREAS, by Resolution No. 6-2021 of January 11, 2021, the City Council adopted a second substantial amendment to the City of Newburgh Community Development Block Grant (“CDBG”) FY2019 annual action plan for the allocation of Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding; and

WHEREAS, the new Activities added to the CDBG FY2019 annual action plan include infrastructure assessment for internet access, emergency food service in the form of assistance to non-profit organizations engaged in food distribution programs and services, child care services, and neighborhood service programming for socially distant activities; and

WHEREAS, the City has received proposals from three qualified non-profit organizations to support and expand food distribution programs and services to City of Newburgh residents in need; and

WHEREAS, it is recommended that the Newburgh Urban Farm and Food, Inc. (“NUFFI”) be selected to receive funding to support and expand food distribution programs and services in an amount not to exceed \$25,000.00; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into a sub-recipient grant agreement with NUFFI to provide said food distribution and services as set forth in its proposal;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a sub-recipient grant agreement with the Newburgh Urban Farm and Food, Inc. in the amount of \$25,000.00, with all such terms and conditions as may be required by the Corporation Counsel, to support and expand food distribution programs and services to City of Newburgh residents in need.

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
NEWBURGH URBAN FARM AND FOOD (NUFFI)**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the _____, 2020, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Newburgh Urban Farm and Food (NUFFI), a _____ non-profit corporation ("Subrecipient"), with an address of P.O. Box 541, Newburgh, NY 12551.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is April 2, 2020. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MW-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2021.

SECTION 2 SUBRECIPIENT OBLIGATIONS

- 1. Use of CDBG Funds. Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this Agreement. The project is more particularly set forth in Exhibit A attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as Exhibit B and incorporated herein by reference. The City may approve minor changes to the budget that do not exceed the maximum amount in Section 3 of this Agreement.

2. Representation and Warranties. Subrecipient hereby represents and warrants to the City as follows:
 - a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
 - b. Subrecipient is a non-profit organization permitted to receive CDBG funds under the Act and the Regulations.
 - c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.
3. Compliance with Law. Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and Regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:
 - a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;
 - b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and
 - c. If Subrecipient is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.
 - d. OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."
4. Licenses, Permits, Fees and Assessments. Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.
5. Personnel and Participant Conditions.
 - a. Civil Rights
 - i. Compliance. Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

- ii. Nondiscrimination. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
 - iii. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
 - iv. Section 504. Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program.
- b. Affirmative Action
- i. EO 11246. Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction Agreements. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.
 - ii. Women- and Minority-Owned Businesses (W/MBE). Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
 - iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
 - vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.
- c. Employment Restrictions
- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
 - ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.
- d. "Section 3" Clause
- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

Subrecipient and any sub-Subrecipients, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

- ii. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.
- iii. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of Regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Environmental Requirements. Lead Based Paint. In accordance with 24 CFR Part 570.608, Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five- tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.
- f. Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

SECTION 3 DISBURSEMENT OF FUNDS

1. Maximum Amount of CDBG Funds. The maximum amount of CDBG funds to be provided to Subrecipient is **\$25,000.00** in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. Maximum Amount of General Funds. Not applicable.
3. Termination of Fund Obligation. The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. Method of Payment- CDBG Funds. Unless otherwise specified in **Exhibit A**, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (**Exhibit B**) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. Method of Payment - General Funds, if applicable. City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. Program Income. Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

7. Separation of Funds. The Subrecipient shall certify that Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.
8. Indirect Costs. Not applicable.

SECTION 4 PERFORMANCE SCHEDULE

1. Schedule of Performance. Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" as referenced in **Exhibit A**.
2. Reversion of Assets. Upon the expiration or sooner termination of this Agreement, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

SECTION 5 COORDINATION OF WORK

1. Representative of Subrecipient. The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.
2. Contract Officer. Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
3. Prohibition Against Subcontracting or Assignment. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this

Agreement shall be void. No approved transfer shall release Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.

4. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.
5. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.
6. The Subrecipient hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contractor, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
 - c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

- d. Lobbying Certification - Paragraph d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SECTION 6 INSURANCE REQUIREMENTS

1. Insurance. Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Subrecipient and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Subrecipient shall maintain all required insurance listed herein for the duration of this Agreement.
2. Workers' Compensation. Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subrecipient, its employees, agendas, and subcontractors.
 - a. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:
 - i. Certificate of Liability Insurance in the amounts specified in the section; and
 - ii. Waiver of Subrogation Endorsement as required by the section.
 - b. Commercial General and Automobile Liability Insurance.
 - i. General Requirements. Subrecipient, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not

less than one million dollars (\$1,000,000) and automobile liability insurance for the term of this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- ii. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- [A] The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- [B] City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Subrecipient; or automobiles owned, leased, hired, or borrowed by the Subrecipient.

- [C] Subrecipient hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subrecipient agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

- [D] For any claims related to this Agreement or the work hereunder, the Subrecipient's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

- iii. Submittal Requirements. To comply with Subsection 6.3 Subrecipient shall submit the following:

- [A] Certificate of Liability Insurance in the amounts specified in the section;

- [B] Additional Insured Endorsement as required by the section;

- [C] Waiver of Subrogation Endorsement as required by the section; and

- [D] Primary Insurance Endorsement as required by the section.

- c. Professional Liability Insurance.

- i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - [A] The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - [B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - [C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
 - [D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
 - iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
 - iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- d. All Policies Requirements.
- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
 - ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before

beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- iii. Wasting Policies. No policy required by this Section 6 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).
- iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.
- v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient’s breach:

[A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

[B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles

for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

2. Documentation and Record-Keeping

- a. Records to be Maintained. Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - i. Records providing a full description of each activity undertaken;
 - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
 - iii. Records required determining the eligibility of activities;
 - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - vi. Financial records as required by 24 CFR Part 570.502, and Part 84; and
 - vii. Other records necessary to document compliance with Subpart K of 24 CFR 570.
 - b. Retention. Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.
3. Client Data. Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
 4. Disclosure. Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 5. Property Records. The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
 6. National Objectives. Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG

program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. Close-Outs. Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. Audits and Inspections. All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

SECTION 8 ENFORCEMENT OF CONTRACT

1. Applicable Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of New York and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Supreme Court of the County of Orange, State of York, or the United States District Court for the Southern District of New York. Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
2. Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to

any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.

3. Remedies Upon Default by Subrecipient. In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8:
 - a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
 - b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
 - c. Wholly or partially suspend or terminate the award and this Agreement; and;
 - d. Withhold further awards for the project and/or the facility; and
 - e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the Regulations.
4. Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.
5. Waiver. No delay or omission in the exercise of any right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
6. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
7. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.
8. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be

entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 9 CITY OFFICERS AND EMPLOYEES

1. **Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
2. **Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
3. **Indemnify and Hold Harmless.** Subrecipient agrees to indemnify, defend, and hold harmless City and its officers, agents and employees, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Subrecipient's performance under this Agreement. Nothing herein shall be construed to require Subrecipient to indemnify the City, its officers, agents and employees against any responsibility or liability.

SECTION 10 MISCELLANEOUS PROVISIONS

1. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Newburgh
attn.: City Clerk
83 Broadway, 1st Floor
Newburgh, New York 12550

copy to: City of Newburgh
attn.: Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

To Subrecipient: Newburgh Urban Farm and Food (NUFFI)
P.O. Box 541,
Newburgh, NY 12551

2. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
3. Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
4. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
5. Corporate Authority. The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

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Signature Page

City of Newburgh with Newburgh Urban Farm and Food (NUFFI)
Food Security in the City of Newburgh In Response to the Coronavirus

IN WITNESS WHEREOF, the City and Subrecipient have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2021 CITY OF NEWBURGH

By: _____
Name: Joseph P. Donat
Title: City Manager

DATED: _____, 2021 Newburgh Urban Farm and Food (NUFFI)

By: _____
Name: _____
Title: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On this ____ day of _____, in the year 2020, before me personally appeared Joseph P. Donat, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On this ____ day of _____, in the year 2020, before me 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A – SCOPE OF WORK



P.O. Box 541, Newburgh, NY 12551 • NewburghUrbanFarmandFood@gmail.com
www.NewburghUrbanFarmandFood.org

Proposed Plan

Growing Produce at the Downing Park Urban Farm For Distribution to Feeding Programs in the City of Newburgh in Response to COVID – 19 Emergency

Newburgh Urban Farm and Food, Inc. (NUFFI) will continue to donate the majority of the fresh vegetables and herbs grown at the Downing Park Urban Farm (DPUF) this season to the Feeding Programs in the City of Newburgh who are serving families and older adults impacted by the COVID-19 Pandemic. Produce will include vegetables most often included in the diets of the ethnic/cultural groups in Newburgh. *See attached product list.* The season will be from early May to early November. *

DPUF will also continue to serve as a site where produce from other local farms and food distribution sites can be aggregated for distribution to the Feeding Programs. The produce will be cleaned and held at the Farm in a refrigerated room (Coolbot) until it can be distributed.

In 2021 we will reach out to additional religious congregations and feeding programs to increase DPUF's capacity to make produce available more Feeding Programs in the City of Newburgh.

NUFFI is requesting funding to expand DPUF's growing methods with a new **24'x72' unheated Hoop House** where produce can be grown in raised beds.

EXHIBIT A – SCOPE OF WORK

The Hoop House warms up during the day via penetration of the sun's rays which heat the plants, soil and structure. This will allow us to increase our production (additional raised beds under cover) and extend our growing season (the natural heat generated in the green house will make it possible to grow produce during the colder months of March, November and December.)

Extension of the growing season will make it possible for us to provide fresh greens to the feeding programs earlier in the season when fresh vegetables are usually not available.

* Success on any garden/farm is dependent on a myriad of inter-connected factors within and outside of a farmer's control. This produce list is based on previous years' yields, but is dependent on reasonable weather, a steady central water supply, and control of agricultural pests and diseases, including wildlife.

While we cannot guarantee specific outcomes, practices at the Downing Park Urban Farm mitigate against both weather and unforeseen circumstances.

EXHIBIT B - BUDGET



Proposed Plan
Growing Produce at the Downing Park Urban Farm For
Distribution to Feeding Programs in the City of Newburgh
in Response to COVID – 19 Emergency
Budget Jan. 2021

<u>ITEMS</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Hoophouse	Nolts 24' Gothic Greenhouse	\$15,000.00
Hoophouse Installation	Tim Faoro	\$7,000.00
Lumber for new hoophouse beds		\$2,000.00
Compost for hoophouse		\$1,000.00
TOTAL		\$25,000.00



DPUF 2021 season food pantry offer list

Early May

Radish
Lettuce

Mid May

Radish
Lettuce
Cilantro
Arugula*

Late May

Radish
Lettuce
Cilantro
Arugula
Spinach
Mustard greens
Chard*

Early June

Garlic scapes
Radish
Lettuce
Cilantro
Chard
Tomato (slicer & cherry)
Basil
Spinach
Snap peas

Mid June

Garlic scapes
Snap peas
Green beans
Chard
Parsley
Collard greens
Tomato*
Basil

Late June

Green beans
Tomatoes
Basil
Carrots
Green beans
Collard greens
Swiss chard
kale
Summer squash

Early July

Green beans
Tomatoes
Garlic
Beets
Carrots
Summer squash
Collard greens
Swiss chard
kale

Mid July

Tomatoes
Summer squash
Collard greens
Swiss chard
kale
garlic

Late July

Tomatoes
Peppers*
eggplant*
Summer squash
Collard greens
Swiss chard
Kale
garlic

Early August

Tomatoes
Peppers
Eggplant
Okra
Squash
Collard greens
Swiss chard
Kale
garlic

Mid August

Collard greens
Swiss chard
Kale
Garlic
Tomatoes
Peppers
Eggplant
Okra
Squash
Green beans

Late August

Collard greens
Swiss chard
Kale
Garlic
Tomatoes
Peppers
Eggplant
Okra
Squash
Green beans

Early September

Collard greens
Swiss chard
Kale
Garlic

Tomatoes
Peppers
Eggplant
Okra
Squash
Mustard greens
Green beans

Mid September

Collard greens
Swiss chard
Kale
Garlic
Tomatoes
Peppers
Eggplant
Okra
Squash
Mustard greens

Green beans

Late September

Collard greens
Swiss chard
Kale
garlic

Early October

Collard greens
Swiss chard
Kale
Garlic
Winter squash

Mid October

Collard greens
Swiss chard
Kale

Garlic
Winter squash
Mustard greens

Late October

Collard greens
Swiss chard
Kale
Garlic
Winter squash
Mustard greens

Early November

Collard greens
Swiss chard
Kale
Garlic
Winter squash
Mustard greens

RESOLUTION NO.: _____33_____ - 2021

OF

FEBRUARY 22, 2021

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV3)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$30,000.00
WITH CATHOLIC CHARITIES OF ORANGE, SULLIVAN & ULSTER FOR
THE ALLOCATION OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
FUNDING TO SUPPORT FOOD DISTRIBUTION PROGRAMS AND SERVICES**

WHEREAS, by Resolution No. 6-2021 of January 11, 2021, the City Council adopted a second substantial amendment to the City of Newburgh Community Development Block Grant (“CDBG”) FY2019 annual action plan for the allocation of Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding; and

WHEREAS, the new Activities added to the CDBG FY2019 annual action plan include infrastructure assessment for internet access, emergency food service in the form of assistance to non-profit organizations engaged in food distribution programs and services, child care services, and neighborhood service programming for socially distant activities; and

WHEREAS, the City has received proposals from three qualified non-profit organizations to support and expand food distribution programs and services to City of Newburgh residents in need; and

WHEREAS, it is recommended that Catholic Charities of Orange, Sullivan & Ulster (“Catholic Charities”) be selected to receive funding to support and expand food distribution programs and services in an amount not to exceed \$30,000.00; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into a sub-recipient grant agreement with Catholic Charities to provide said food distribution and services as set forth in its proposal;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a sub-recipient grant agreement with Catholic Charities of Orange, Sullivan & Ulster in the amount of \$30,000.00, with all such terms and conditions as may be required by the Corporation Counsel, to support and expand food distribution programs and services to City of Newburgh residents in need.

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
CATHOLIC CHARITIES ORANGE SULLIVAN ULSTER**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the _____, 2020, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Catholic Charities Orange Sullivan Ulster, a _____ non-profit corporation ("Subrecipient"), with an address of 27 Matthews St. Goshen NY 10924.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is April 2, 2020. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MW-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2021.

SECTION 2 SUBRECIPIENT OBLIGATIONS

- 1. Use of CDBG Funds. Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this Agreement. The project is more particularly set forth in Exhibit A attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as Exhibit B and incorporated herein by reference. The City may approve minor changes to the budget that do not exceed the maximum amount in Section 3 of this Agreement.

2. Representation and Warranties. Subrecipient hereby represents and warrants to the City as follows:
 - a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
 - b. Subrecipient is a non-profit organization permitted to receive CDBG funds under the Act and the Regulations.
 - c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.
3. Compliance with Law. Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and Regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:
 - a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;
 - b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and
 - c. If Subrecipient is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.
 - d. OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."
4. Licenses, Permits, Fees and Assessments. Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.
5. Personnel and Participant Conditions.
 - a. Civil Rights
 - i. Compliance. Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

- ii. Nondiscrimination. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
 - iii. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
 - iv. Section 504. Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program.
- b. Affirmative Action
- i. EO 11246. Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction Agreements. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.
 - ii. Women- and Minority-Owned Businesses (W/MBE). Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.

c. Employment Restrictions

- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

d. "Section 3" Clause

- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

Subrecipient and any sub-Subrecipients, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

- ii. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.
- iii. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of Regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Environmental Requirements. Lead Based Paint. In accordance with 24 CFR Part 570.608, Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five- tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.
- f. Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

SECTION 3 DISBURSEMENT OF FUNDS

1. Maximum Amount of CDBG Funds. The maximum amount of CDBG funds to be provided to Subrecipient is **\$30,000.00** in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. Maximum Amount of General Funds. Not applicable.
3. Termination of Fund Obligation. The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. Method of Payment- CDBG Funds. Unless otherwise specified in **Exhibit A**, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (**Exhibit B**) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. Method of Payment - General Funds, if applicable. City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. Program Income. Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

7. Separation of Funds. The Subrecipient shall certify that Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.
8. Indirect Costs. Not applicable.

SECTION 4 PERFORMANCE SCHEDULE

1. Schedule of Performance. Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" as referenced in **Exhibit A**.
2. Reversion of Assets. Upon the expiration or sooner termination of this Agreement, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

SECTION 5 COORDINATION OF WORK

1. Representative of Subrecipient. The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.
2. Contract Officer. Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
3. Prohibition Against Subcontracting or Assignment. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this

Agreement shall be void. No approved transfer shall release Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.

4. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.
5. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.
6. The Subrecipient hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contractor, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
 - c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

- d. Lobbying Certification - Paragraph d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SECTION 6 INSURANCE REQUIREMENTS

1. Insurance. Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Subrecipient and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Subrecipient shall maintain all required insurance listed herein for the duration of this Agreement.
2. Workers' Compensation. Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subrecipient, its employees, agendas, and subcontractors.
 - a. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:
 - i. Certificate of Liability Insurance in the amounts specified in the section; and
 - ii. Waiver of Subrogation Endorsement as required by the section.
 - b. Commercial General and Automobile Liability Insurance.
 - i. General Requirements. Subrecipient, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not

less than one million dollars (\$1,000,000) and automobile liability insurance for the term of this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- ii. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- [A] The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- [B] City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Subrecipient; or automobiles owned, leased, hired, or borrowed by the Subrecipient.

- [C] Subrecipient hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subrecipient agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

- [D] For any claims related to this Agreement or the work hereunder, the Subrecipient's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

- iii. Submittal Requirements. To comply with Subsection 6.3 Subrecipient shall submit the following:

- [A] Certificate of Liability Insurance in the amounts specified in the section;

- [B] Additional Insured Endorsement as required by the section;

- [C] Waiver of Subrogation Endorsement as required by the section; and

- [D] Primary Insurance Endorsement as required by the section.

- c. Professional Liability Insurance.

- i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - [A] The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - [B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - [C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
 - [D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
 - iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
 - iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- d. All Policies Requirements.
- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
 - ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before

beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- iii. Wasting Policies. No policy required by this Section 6 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).
- iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.
- v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient’s breach:

[A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

[B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles

for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

2. Documentation and Record-Keeping

- a. Records to be Maintained. Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - i. Records providing a full description of each activity undertaken;
 - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
 - iii. Records required determining the eligibility of activities;
 - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - vi. Financial records as required by 24 CFR Part 570.502, and Part 84; and
 - vii. Other records necessary to document compliance with Subpart K of 24 CFR 570.
 - b. Retention. Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.
3. Client Data. Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
 4. Disclosure. Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 5. Property Records. The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
 6. National Objectives. Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG

program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. Close-Outs. Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. Audits and Inspections. All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

SECTION 8 ENFORCEMENT OF CONTRACT

1. Applicable Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of New York and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Supreme Court of the County of Orange, State of York, or the United States District Court for the Southern District of New York. Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
2. Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to

any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.

3. Remedies Upon Default by Subrecipient. In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8:
 - a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
 - b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
 - c. Wholly or partially suspend or terminate the award and this Agreement; and;
 - d. Withhold further awards for the project and/or the facility; and
 - e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the Regulations.
4. Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.
5. Waiver. No delay or omission in the exercise of any right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
6. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
7. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.
8. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be

entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 9 CITY OFFICERS AND EMPLOYEES

1. **Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
2. **Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
3. **Indemnify and Hold Harmless.** Subrecipient agrees to indemnify, defend, and hold harmless City and its officers, agents and employees, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Subrecipient's performance under this Agreement. Nothing herein shall be construed to require Subrecipient to indemnify the City, its officers, agents and employees against any responsibility or liability.

SECTION 10 MISCELLANEOUS PROVISIONS

1. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Newburgh
attn.: City Clerk
83 Broadway, 1st Floor
Newburgh, New York 12550

copy to: City of Newburgh
attn.: Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

To Subrecipient: Catholic Charities Orange Sullivan Ulster
27 Matthews St.
Goshen, NY 10924

2. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
3. Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
4. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
5. Corporate Authority. The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

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Signature Page

City of Newburgh with Catholic Charities Orange Sullivan Ulster

Food Security and Emergency Income Payments in the City of Newburgh In Response to the Coronavirus

IN WITNESS WHEREOF, the City and Subrecipient have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2021 CITY OF NEWBURGH

By: _____

Name: Joseph P. Donat

Title: City Manager

DATED: _____, 2021 Catholic Charities Orange Sullivan Ulster

By: _____

Name: _____

Title: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On this ____ day of _____, in the year 2020, before me personally appeared Joseph P. Donat, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On this ____ day of _____, in the year 2020, before me 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A – SCOPE OF WORK

Catholic Charities will use funds to support City of Newburgh residents dealing with food insecurity, rental arrears, assistance with utilities shortages in personal hygiene products and cleaning supplies for City of Newburgh families that have been put in isolation due to the Coronavirus Pandemic.

Catholic Charities proposes to assist approximately 200 families impacted by the Coronavirus Pandemic. (Actual number of assisted families subject to assistance required and availability of funds.)

EXHIBIT B - BUDGET

Services	Amount	Totals
Food Related Purchases		
Refrigerator for Food Closet	\$3,500.00	
Food	\$3,000.00	
Cleaning Supplies	\$1,500.00	
PPE Items for Clients	\$2,000.00	\$10,000.00
Direct Payment Items		
Rental Arrears	\$10,000.00	
Utilities	\$5,000.00	
Personal Hygiene	\$2,500.00	
Cleaning Supplies	\$2,500.00	\$20,000.00
Grand Total		\$30,000.00

*Allocations may change depending on the identified need of client(s).



Orange
27 Matthews Street
Goshen, NY 10924
845.294.5124

Sullivan
11 Hamilton Avenue
Monticello, NY 12701
845.794.8080

Ulster
6 Adams Street
Kingston, NY 12401
845.340.9170

November 10, 2020

City of Newburgh – City Hall
Attn: Mrs. Ellen J. Fillo
83 Broadway
Newburgh, NY 12550

Dear Mrs. Fillo:

In response to your November 6th Email, Catholic Charities of Orange, Sullivan, Ulster (CCOSU) would like to request a \$30000 for our program. Our plan is to use these funds to support Newburgh Residents dealing with food insecurity, rental arrears, assistance with utilities, shortages in personal hygiene products, cleaning supplies for families that have been put in isolation due to the Pandemic.

Our food closet has supported an estimated 200 families throughout the COVID-19 Pandemic. We have used this resource to provide meals to families and individuals in the Newburgh and other areas in Orange County.

Below you will find our plan for using these funds. Please note that these allocations may change depending on the identified need of the client(s).

Services	Amount	Totals
Food Related Purchases		
Refrigerator for Food Closet	\$3500	
Food	\$3000	
Cleaning Supplies	\$1500	
PPE Items for clients	\$2000	\$10000
Direct Payment Items		
Rental Arrears	\$10000	
Utilities	\$ 5000	
Personal Hygiene	\$ 2500	
Cleaning Supplies	\$ 2500	\$20000
Grand Total		\$30000

Thank you for your support.

Respectfully,

Héctor L. Morell, LMSW
Director of Social and Human Services

RESOLUTION NO.: 34 - 2021

OF

FEBRUARY 22, 2021

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV3)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$45,000.00
WITH THE NEWBURGH ARMORY UNITY CENTER, INC. FOR THE ALLOCATION
OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT FUNDING
TO SUPPORT FOOD DISTRIBUTION PROGRAMS AND SERVICES**

WHEREAS, by Resolution No. 6-2021 of January 11, 2021, the City Council adopted a second substantial amendment to the City of Newburgh Community Development Block Grant (“CDBG”) FY2019 annual action plan for the allocation of Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding; and

WHEREAS, the new Activities added to the CDBG FY2019 annual action plan include infrastructure assessment for internet access, emergency food service in the form of assistance to non-profit organizations engaged in food distribution programs and services, child care services, and neighborhood service programming for socially distant activities; and

WHEREAS, the City has received proposals from three qualified non-profit organizations to support and expand food distribution programs and services to City of Newburgh residents in need; and

WHEREAS, it is recommended that the Newburgh Armory Unity Center, Inc. (“NAUC”) be selected to receive funding to support and expand food distribution programs and services in an amount not to exceed \$45,000.00; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into a sub-recipient grant agreement with NAUC to provide said food distribution and services as set forth in its proposal;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a sub-recipient grant agreement with the Newburgh Armory Unity Center, Inc. in the amount of \$45,000.00, with all such terms and conditions as may be required by the Corporation Counsel, to support and expand food distribution programs and services to City of Newburgh residents in need.

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
NEWBURGH ARMORY UNITY CENTER (NAUC)**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the _____, 2020, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Newburgh Armory Unity Center (NAUC), a _____ non-profit corporation ("Subrecipient"), with an address of 321 S. William St. Newburgh, NY 12550.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is April 2, 2020. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MW-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2021.

SECTION 2 SUBRECIPIENT OBLIGATIONS

- 1. Use of CDBG Funds. Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this Agreement. The project is more particularly set forth in Exhibit A attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as Exhibit B and incorporated herein by reference. The City may approve minor changes to the budget that do not exceed the maximum amount in Section 3 of this Agreement.

2. Representation and Warranties. Subrecipient hereby represents and warrants to the City as follows:
 - a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
 - b. Subrecipient is a non-profit organization permitted to receive CDBG funds under the Act and the Regulations.
 - c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.
3. Compliance with Law. Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and Regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:
 - a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;
 - b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and
 - c. If Subrecipient is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.
 - d. OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."
4. Licenses, Permits, Fees and Assessments. Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.
5. Personnel and Participant Conditions.
 - a. Civil Rights
 - i. Compliance. Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

- ii. Nondiscrimination. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
 - iii. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
 - iv. Section 504. Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program.
- b. Affirmative Action
- i. EO 11246. Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction Agreements. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.
 - ii. Women- and Minority-Owned Businesses (W/MBE). Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
 - iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
 - vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.
- c. Employment Restrictions
- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
 - ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.
- d. "Section 3" Clause
- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

Subrecipient and any sub-Subrecipients, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

- ii. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.
- iii. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of Regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Environmental Requirements. Lead Based Paint. In accordance with 24 CFR Part 570.608, Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five- tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.
- f. Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

SECTION 3 DISBURSEMENT OF FUNDS

1. Maximum Amount of CDBG Funds. The maximum amount of CDBG funds to be provided to Subrecipient is **\$45,000.00** in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. Maximum Amount of General Funds. Not applicable.
3. Termination of Fund Obligation. The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. Method of Payment- CDBG Funds. Unless otherwise specified in **Exhibit A**, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (**Exhibit B**) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. Method of Payment - General Funds, if applicable. City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. Program Income. Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

7. Separation of Funds. The Subrecipient shall certify that Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.
8. Indirect Costs. Not applicable.

SECTION 4 PERFORMANCE SCHEDULE

1. Schedule of Performance. Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" as referenced in **Exhibit A**.
2. Reversion of Assets. Upon the expiration or sooner termination of this Agreement, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

SECTION 5 COORDINATION OF WORK

1. Representative of Subrecipient. The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.
2. Contract Officer. Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
3. Prohibition Against Subcontracting or Assignment. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this

Agreement shall be void. No approved transfer shall release Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.

4. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.
5. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.
6. The Subrecipient hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contractor, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
 - c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

- d. Lobbying Certification - Paragraph d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SECTION 6 INSURANCE REQUIREMENTS

1. Insurance. Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Subrecipient and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Subrecipient shall maintain all required insurance listed herein for the duration of this Agreement.
2. Workers' Compensation. Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subrecipient, its employees, agendas, and subcontractors.
 - a. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:
 - i. Certificate of Liability Insurance in the amounts specified in the section; and
 - ii. Waiver of Subrogation Endorsement as required by the section.
 - b. Commercial General and Automobile Liability Insurance.
 - i. General Requirements. Subrecipient, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not

less than one million dollars (\$1,000,000) and automobile liability insurance for the term of this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- ii. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- [A] The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- [B] City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Subrecipient; or automobiles owned, leased, hired, or borrowed by the Subrecipient.

- [C] Subrecipient hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subrecipient agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

- [D] For any claims related to this Agreement or the work hereunder, the Subrecipient's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

- iii. Submittal Requirements. To comply with Subsection 6.3 Subrecipient shall submit the following:

- [A] Certificate of Liability Insurance in the amounts specified in the section;

- [B] Additional Insured Endorsement as required by the section;

- [C] Waiver of Subrogation Endorsement as required by the section; and

- [D] Primary Insurance Endorsement as required by the section.

- c. Professional Liability Insurance.

- i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - [A] The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - [B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - [C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
 - [D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
 - iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
 - iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- d. All Policies Requirements.
- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
 - ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before

beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- iii. Wasting Policies. No policy required by this Section 6 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).
- iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.
- v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient’s breach:

[A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

[B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles

for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

2. Documentation and Record-Keeping

- a. Records to be Maintained. Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - i. Records providing a full description of each activity undertaken;
 - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
 - iii. Records required determining the eligibility of activities;
 - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - vi. Financial records as required by 24 CFR Part 570.502, and Part 84; and
 - vii. Other records necessary to document compliance with Subpart K of 24 CFR 570.
 - b. Retention. Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.
3. Client Data. Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
 4. Disclosure. Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 5. Property Records. The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
 6. National Objectives. Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG

program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. Close-Outs. Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. Audits and Inspections. All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

SECTION 8 ENFORCEMENT OF CONTRACT

1. Applicable Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of New York and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Supreme Court of the County of Orange, State of York, or the United States District Court for the Southern District of New York. Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
2. Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to

any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.

3. Remedies Upon Default by Subrecipient. In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8:
 - a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
 - b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
 - c. Wholly or partially suspend or terminate the award and this Agreement; and;
 - d. Withhold further awards for the project and/or the facility; and
 - e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the Regulations.
4. Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.
5. Waiver. No delay or omission in the exercise of any right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
6. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
7. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.
8. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be

entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 9 CITY OFFICERS AND EMPLOYEES

1. **Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
2. **Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
3. **Indemnify and Hold Harmless.** Subrecipient agrees to indemnify, defend, and hold harmless City and its officers, agents and employees, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Subrecipient's performance under this Agreement. Nothing herein shall be construed to require Subrecipient to indemnify the City, its officers, agents and employees against any responsibility or liability.

SECTION 10 MISCELLANEOUS PROVISIONS

1. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Newburgh
attn.: City Clerk
83 Broadway, 1st Floor
Newburgh, New York 12550

copy to: City of Newburgh
attn.: Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

To Subrecipient: Newburgh Armory Unity Center
321 S. William St.
Newburgh, NY 12550

2. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
3. Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
4. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
5. Corporate Authority. The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

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DATED: _____, 2021 CITY OF NEWBURGH

Title: City Manager

DATED: _____, 2021 Newburgh Armory Unity Center

Title: _____

[illegible]

NOTARY PUBLIC

[illegible]

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A – SCOPE OF WORK

The Newburgh Armory Unity Center (NAUC) has responded to the unprecedented COVID-19 crisis with a weekly community food distribution. The NAUC is devoted to seeing the needs of our neighbors and continually growing to meet them. The NAUC distribution supports 700+ families each week, aiding to feed 2,600+ individuals. Each week 125 families walk up to the distribution and 575 families drive through. All food packages are pre-packed with the help of 35 dedicated volunteers that show up week after week and is ready to be handed to or placed in the vehicle of each family representative as an effort to limit possible virus spread and keep all those involved as safe as possible. Each family receives a box containing meat, dairy products (which are often milk, cheese, or yogurt), eggs, bread, a large assortment of fresh produce, and varying shelf stable staples. The NAUC assists not only those who meet specific financial qualifications but rather all those in need of support. The NAUC is extremely thankful to the Hudson Valley Food Bank for supplying all of this food to our community during these times of need and to each of one our volunteers for their continued support. We thank the City of Newburgh for all of their support and commitment to our community.

EXHIBIT B - BUDGET

Services	Amount	Totals
Food Related Purchases		
Refrigeration system to prevent waste of perishable food	1	\$6,848
Electric pallet jack to move the tons of food delivered weekly	1	\$4,099
Conveyor belt stands to improve efficiency	1	\$1,216.98
Extra hours for staff Garden Manager to coordinate food distribution	20 hours per week at \$18 per hour for 30 weeks	\$10,800
Reusable shopping bags for residents who are not able to drive through to pick up food	45 weeks' worth of bags for the walk up families	\$4,816.8
Ultraviolet air filtration system to protect our customers, volunteers and staff	1	\$15,905
Tent for shelter during inclement weather	1	\$1,099.98
Traffic Cones	18	\$329.76
Grand Total		\$45,115.52

RESOLUTION NO. 35-2021

OF

FEBRUARY 22, 2021

A RESOLUTION DECLARING SURPLUS ONE 1991 INTERNATIONAL ARMORED VEHICLE (VIN#1HTSCNMP3MH361897) AND AUTHORIZING DISPOSITION TO MOTORCYCLEPEDIA INC. AND THE GERALD A. DOERING FOUNDATION AND ACCEPTING A DONATION OF ONE 2020 HARLEY DAVIDSON POLICE PACKAGE MOTORCYCLE (VIN#1HD1FMP16LB6677168 FROM MOTORCYCLEPEDIA INC. AND THE GERALD A. DOERING FOUNDATION

WHEREAS, the City of Newburgh Police Department possesses one (1) vehicle identified as a 1991 International Armored vehicle (VIN#1HTSCNMP3MH361897) which is no longer of use to the City; and

WHEREAS, Motorcyclepedia, Inc. and the Gerald A. Doering Foundation have offered to donate one (1) 2020 Harley Davidson motorcycle with a police package (VIN#1HD1FMP16LB6677168) to the City; and

WHEREAS, the Police Department and the donors have proposed the disposition of the 1991 International Armored vehicle to the donors and accept the donation of the 2020 Harley Davidson police motorcycle; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to declare the 1991 International Armored vehicle as surplus and authorize the disposition in exchange for the donation of the 2020 Harley Davidson motorcycle as proposed;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the 1991 International Armored vehicle (VIN#1HTSCNMP3MH361897) is hereby declared to be surplus and of no further use or value to the City of Newburgh; and

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to execute any required documents and conduct all necessary transactions to dispose of said surplus 1991 International Armored vehicle to Motorcyclepedia, Inc. and the Gerald A. Doering Foundation; and

BE IT RESOLVED, that the City Manager of the City of Newburgh be and he is hereby authorized to accept the donation of one 2020 Harley Davidson motorcycle with a police package (VIN#1HD1FMP16LB6677168) from Motorcyclepedia, Inc. and the Gerald A. Doering Foundation upon the terms described herein with the appreciation and thanks of the City of Newburgh.