



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL

April 12, 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 March 22, 2021
5. City Manager Update/ Gerente de la ciudad pone al día a la audiencia de los planes de cada departamento

Presentations/Presentaciones

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

6. Resolution No. 63 - 2021 - Proposal with QUEST for Asbestos Testing at 104 South Lander Street

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for professional services related to testing of suspected asbestos containing material for the 104 South Lander Street Roof Replacement Project at a cost not to exceed \$1,800.00.

Resolución que autoriza al Gerente Municipal a aceptar una propuesta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. (QUES&T) para servicios profesionales relacionados con pruebas de materiales sospechosos que contienen asbesto para el proyecto de reemplazo de Techos en la 104 de la Calle Lander a un costo no superior a \$1,800.00.

7. Resolution No. 64 - 2021 - Proposal with QUEST for Asbestos Testing at 300 Broadway (Courthouse)

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for professional services related to testing of suspected asbestos containing material for the Broadway Courthouse Roof Replacement Project at a cost not to exceed \$1,700.00.

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. (QUES&T) para servicios profesionales relacionados con pruebas de material sospechoso que contiene asbesto para el Proyecto de reemplazo de Techo de la Corte de Broadway a un costo no superior a \$1,700.00.

8. Resolution No. 65 - 2021 - QUEST Proposal Asbestos Services at 2 Renwick Street (WWTP)

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for asbestos abatement management and third-party air monitoring services at the Wastewater Treatment Plant in an amount not to exceed \$2,800.00.

Resolución que autoriza al Gerente municipal a aceptar una propuesta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. para la gestión de la reducción del amianto y servicios de monitoreo de aire de terceros en la Planta de Tratamiento de Aguas Residuales por un monto no superior a \$2,800.00.

9. Resolution No. 66 - 2021 - Proposal with BSB Construction, Inc. for asbestos abatement at 2 Renwick Street (Wastewater Treatment Plant)

Resolution authorizing the City Manager to accept a proposal and execute an agreement with BSB Construction, Inc. for asbestos abatement at the Wastewater Treatment Plant at a cost of \$7,625.00.

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con BSB Construction, Inc. para la reducción del amianto en la Planta de Tratamiento de Aguas Residuales a un costo de \$7,625.00.

10. Resolution No. 67 - 2021 - Rejecting All Bids Associated with Bid No. 2.21 PIN#8761.57 Lake Street (Route 32) Bridge Rehabilitation

Resolution rejecting all bids received in connection with the Route 32/ Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project PIN#8761.57 (BIN NO. 2022260)

Resolución que rechaza todas las ofertas recibidas en relación con el Proyecto de Rehabilitación pin#8761.57 del Proyecto de Rehabilitación de la Ruta 32/ Puente Culvert del Arco de Metal (Puente de la Calle Lake)

11. Resolution No. 68 - 2021 - Agreement with Wright-Pierce Engineering Associates, PC for Headworks Analysis Study

Resolution authorizing the City Manager to accept a proposal and execute a contract with Wright-Pierce Engineering Associates P.C. for a Wastewater Headworks Analysis and Study at the Wastewater Treatment Plant at a cost of \$132,800.00.

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un contrato con Wright-Pierce Engineering Associates P.C. para un Análisis y Estudio de Obras Residuales en la Planta de Tratamiento de Aguas Residuales a un costo de \$132,800.00.

12. Resolution No. 69 - 2021 - CON Investment Policy

Resolution adopting the City of Newburgh Investment Policy.

Resolución por la que se aprueba la Política de Inversiones de la Ciudad de Newburgh.

13. Resolution No. 70 - 2021 - Surplus Property - DPW & Police Department vehicles & Water Department equipment

Resolution declaring Police Department and Department of Public Works vehicles and Water Department equipment as surplus.

Resolución que declara excedentes los vehículos del Departamento de Policía y del Departamento de Obras Públicas y del Departamento de Agua.

14. Resolution No. 71 - 2021 - Payment gateway with TD Bank

Resolution authorizing an agreement with T. D. Bank, N.A. to enable the City of Newburgh to accept credit card payments through Authorize.Net

Resolución que autoriza un acuerdo con T. D. Bank, N.A. para permitir a la Ciudad de Newburgh aceptar pagos con tarjeta de crédito a través de Authorize.Net

15. Resolution No. 72 - 2021 - Solitude Lake Management 2021 Water Quality Sampling and Analysis

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Solitude Lake Management for professional services for water quality sampling and analysis of Browns Pond at a cost of \$8,975.00.

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Solitude Lake Management para servicios profesionales para el muestreo y análisis de la calidad del agua de Browns Pond a un costo de \$8,975.00.

16. Resolution No. 73 - 2021 - Solitude Lake Management Treatment Services Contract

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Solitude Lake Management for professional services for algae treatment at Washington Lake and Browns Pond.

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Solitude Lake Management para servicios profesionales para el tratamiento de algas en Washington Lake y Browns Pond.

17. Resolution No. 74 - 2021 - 77 Chambers Street - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to Malina Nealis to the Premises known as 77 Chambers Street (Section 23, Block 3, Lot 14).

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y el derecho de reingreso de una escritura emitida a Malina Nealis a las instalaciones conocidas como 77 de la Calle Chambers (Sección 23, Bloque 3, Lote 14).

18. Resolution No. 75 - 2021 - 145 Chambers Street - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to One Forty Five Chambers St., LLC to the Premises known as 145 Chambers Street (Section 18, Block 4, Lot 17)

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y el derecho de reingreso de una escritura emitida a One Forty Five Chambers St., LLC a las instalaciones conocidas como 145 de la Calle Chambers (Sección 18, Bloque 4, Lote 17)

19. Resolution No. 76 - 2021 - 92 Overlook Place - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to Kurt Schreiber to the Premises known as 92 Overlook Place (Section 45, Block 8, Lot 24).

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y el derecho de reingreso de una ley escritura a Kurt Schreiber a las instalaciones conocidas como 92 Overlook Place (Sección 45, Bloque 8, Lote 24)

20. Resolution No. 77 - 2021 - 379 First Street - Release of Restrictive

Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to Waldina Almazan to the Premises known as 379 First Street (Section 28, Block 1, Lot 16).

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y el derecho de reingreso de una escritura emitida a Waldina Almazán a las instalaciones conocidas como 379 de la Calle First (Sección 28, Bloque 1, Lote 16)

21. Resolution No. 78 - 2021 - Purchase of 140 Third Street

Resolution to authorize the conveyance of real property known as 140 Third Street (Section 18, Block 9, Lot 17) at private sale to Bunny Escava, Michael Mamiye and Hyman Mamiye d/b/a Nutopia Development LLC for the amount of \$13,500.00.

Resolución para autorizar el transporte de bienes inmuebles conocidos como 140 de la Calle Third (Sección 18, Bloque 9, Lote 17) en una venta privada a Bunny Escava, Michael Mamiye y Hyman Mamiye d/b/a Nutopia Development LLC por un monto de \$13,500.00

22. Resolution No. 79 - 2021 - NYS Office of Childrent and Family Services Youth Development Program Grant for \$5,000 for the 2021 Youth Soccer Program

Resolution authorizing the City Manager to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in the amount of \$5,000.00 requiring no City match for the 2021 youth soccer program.

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una Subvención del Programa de Desarrollo Juvenil de la Oficina de Niños y Servicios Familiares del Estado de Nueva York por un monto de \$5,000.00 que no requiere que la Ciudad iguale los fondos para el programa de fútbol juvenil de 2021.

23. Resolution No. 80 - 2021 - NYS Office of Children and Family Services Youth Development Grant for \$6,500 for the 2021 Summer Playground Program.

Resolution authorizing the City Manager to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in an amount not to exceed \$6,500.00 requiring no City match for the 2021 Summer Playground Program.

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una Subvención del Programa de Desarrollo Juvenil de la Oficina de Niños y Servicios Familiares del Estado de Nueva York por un monto no superior a \$6,500.00 que no requiere que la Ciudad iguale los fondos para el programa de juegos de verano.

24. Resolution No. 81 - 2021 - NYS DEC Municipal Waste Reduction and Recycling Grant

Resolution authorizing the City Manager to accept a New York State Department of Environmental Conservation Municipal Waste Reduction and Recycling State Assistance Program Grant in the amount of \$41,139.00 with a hundred percent City match.

Resolución que autoriza al Gerente de la Ciudad a aceptar una Subvención del Programa de Asistencia Estatal de Reducción y Reciclaje de Residuos Municipales del Departamento de Conservación Ambiental del Estado de Nueva York por un monto de \$41,139.00.

25. Resolution 82 - 2021 - to Accept a Proposal from Greenman-Pedersen, Inc. (GPI) for Design, Bidding, and Construction Phase Services for a City of Newburgh Park Improvements Project at the Delano-Hitch Recreation Park - "Tot Lot" Park

Resolution authorizing the City Manager to accept a proposal and execute a contract with Greenman-Pedersen, Inc. in the amount of \$25,250.00 for professional engineering design and construction management services in the Delano-Hitch Recreation Park "Tot-Lot" Improvements Project.

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un contrato con Greenman-Pedersen, Inc. por un monto de \$25,250.00 para servicios profesionales de diseño de ingeniería y gestión de la construcción en el Proyecto de Mejoras del Parque Recreativo Delano-Hitch "Tot-Lot".

26. Resolution No. 83 - 2021 - DHS 2021 Port Security Grant

Resolution authorizing the City Manager to apply for and accept if awarded a Department of Homeland Security 2021 Port Security Grant in an amount not to exceed \$25,000.00 with no City match required.

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una Subvención de Seguridad Portuaria 2021 del Departamento de Seguridad Nacional 2021 por un monto que no exceda \$25,000.00 el cual no requiere que la Ciudad iguale los fondos.

27. Resolution No. 84 - 2021 - Municipality - Change Order No. 1

Resolution authorizing the City Manager to execute Change Order No. 1 with General Code, CMS, LLC for additional training services and data migration costs in the amount of \$26,100.00.

Resolución que autoriza al Administrador de la Ciudad a ejecutar la Orden de Cambio N° 1 con Código General, CMS, LLC para servicios de capacitación adicionales y costos de migración de datos por un monto de

\$26,100.00.

28. Resolution No. 85 - 2021 - 2021-2022 Gun Involved Violence Elimination(GIVE) Initiative

Resolution authorizing the City Manager to apply for and accept if awarded a grant from the New York State Department of Criminal Justice Services under the Gun Involved Violence Elimination ("GIVE") Partnership to enhance law enforcement in the City of Newburgh to achieve sustained, long-term crime reduction in the amount of \$364,284.00 with no City match for the period July 1, 2021 to June 30, 2022.

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una subvención del Departamento de Servicios de Justicia Criminal del Estado de Nueva York bajo la Asociación para la Eliminación de la Violencia Con Armas Involucradas ("GIVE") para mejorar la aplicación de la ley en la Ciudad de Newburgh para lograr una reducción sostenida largo plazo de los delitos a en la cantidad de \$364,284.00 el cual no requiere que la Ciudad iguale los fondos durante el período del 1 de julio de 2021 al 30 de junio de 2022.

29. Resolution No. 86 - 2021 - Endeavor Municipal Development, Inc. - renewal contracts

Resolution authorizing three renewal agreements with Endeavor Municipal Development, Inc. for grant consulting services in an amount not to exceed \$18,000.00 per agreement for a 9 month period.

Resolución que autoriza tres acuerdos de renovación con Endeavor Municipal Development, Inc. para servicios de consultoría de subvenciones por un monto no superior a \$18,000.00 por acuerdo por un período de 9 meses.

30. Resolution No. 87 - 2021 - Fire Department Scheduling Software

Resolution authorizing the City Manager to execute an agreement with TargetSolutions Learning, LLC, d/b/a Vector Solutions for scheduling software and services for the City of Newburgh Fire Department.

Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo con TargetSolutions Learning, LLC, d/b/a Vector Solutions para la programación de software y servicios para el Departamento de Bomberos de la Ciudad de Newburgh.

31. Resolution No. 88 - 2021 - Group Fitness Instruction, Downing Park

Resolution authorizing the City Manager to enter into agreements with various parties to provide group fitness instruction classes in Downing Park through November 26, 2021.

Resolución que autoriza al Gerente de la Ciudad a celebrar acuerdos con

varias partes para proporcionar clases de instrucción de entrenamiento grupal en Downing Park hasta el 26 de noviembre de 2021.

32. Resolution No. 89 - 2021 - Supporting H.R. 2307 to Enact a Carbon Dividend Trust Fund

Resolution of the City Council of the City of Newburgh urging the United States Congress to pass H.R. 2307 to enact a carbon dividend trust fund.

Resolución del Ayuntamiento de la ciudad de Newburgh instando al Congreso de los Estados Unidos a aprobar H.R. 2307 para promulgar un fondo fiduciario de dividendos de carbono.

33. Resolution No. 90 - 2021 - Authorizing a Payment of Claim

A resolution authorizing the City Manager to execute a payment of claim with New York Municipal Insurance Reciprocal A/S/O City of Beacon in the amount of \$3,488.00

Resolucion que autoriza al Gerente de la Ciudad a ejecutar un reclamo de pago con New York Municipal Insurance Reciprocal A/S/O City of Beacon por el monto de \$3,488.00.

34. Resolution No. 91 - 2021 - Authorizing a Payment of Claim

A resolution authorizing the City Manager to execute a payment of Claim with the Town of Newburgh in the amount of \$13,875.26.

Resolucion que autoriza al Gerente de la Ciudad a ejecutar un pago de reclamo con el Pueblo de Newburgh por el monto de \$13,875.26.

35. Ordinance 3 - 2021 - Amending Chapter 249, Sidewalk Cafes

Ordinance amending Chapter 249, Sidewalk Cafes, of the Code of Ordinances of the City of Newburgh to permit temporary sidewalk cafe operations in designated public parking areas.

Ordenanza por la que se modifica el Capítulo 249, Cafeterias en las Aceras, del Código de Ordenanzas de la Ciudad de Newburgh para permitir las operaciones temporales de cafés en aceras en áreas de estacionamiento público designadas.

36. Local Law 3 - 2021 - City Charter Section C4.01 - amendment to Rules of Order

Local Law amending Section C4.01 entitled "Rules of Order" of the Charter of the City of Newburgh.

Ley Local por la que se modifica la Sección C4.01 titulada "Reglas de Orden" de los Estatutos de la Ciudad de Newburgh.

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

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

Adjournment/ Aplazamiento:

RESOLUTION NO.: 63 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)
FOR PROFESSIONAL SERVICES RELATED TO TESTING OF
SUSPECTED ASBESTOS CONTAINING MATERIAL FOR
THE 104 SOUTH LANDER STREET ROOF REPLACEMENT PROJECT
AT A COST NOT TO EXCEED \$1,800.00**

WHEREAS, the City of Newburgh wishes to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for a pre-renovation asbestos roof survey for the 104 South Lander Street Roof Replacement Project; and

WHEREAS, the proposal provides for the collection, testing and sampling of suspected asbestos containing materials and the preparation of one Final Asbestos Report identifying asbestos containing material, estimated quantities, locations, types and/or conditions; and

WHEREAS, the cost for these services will be \$1,800.00 which shall be derived from H1.1620.0208.2020; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work 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 the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for professional services for a pre-renovation asbestos roof survey in an amount not to exceed \$1,800.00 for the 104 South Lander Street Roof Replacement Project.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

March 12, 2021

City of Newburgh
83 Broadway
Newburgh, NY 12550

Attn: Jason Morris

Re.: 104 South Lander Street, Newburgh, NY 12550
Request for Proposal – Pre-Renovation Asbestos Roof Survey

Dear Mr. Morris,

Quality Environmental Solutions & Technologies, Inc. (**QuES&T**) is pleased to submit the attached proposal to perform a Pre-Renovation Asbestos Roof Survey in support of the anticipated roof replacement project at the building located at 104 South Lander Street, Newburgh, NY 12550.

QuES&T is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of your future liability.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

QuES&T offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos

Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet your specific needs.

QuES&T provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T**'s facility or yours.

For additional information concerning any of our services, please contact us at (845) 298-6031. We look forward to working with you in the environmental consulting and remediation services area.

Sincerely,



Todd J. McAfee
Project Manager, Field & Technical Services
NYS/AHERA Inspector/Project Designer
Cert. #AH 12-10881

PRE-RENOVATION ASBESTOS ROOF SURVEY
for
CITY OF NEWBURGH
83 Broadway
Newburgh, NY 12550
At
104 South Lander Street
Newburgh, NY 12550

QuES&T agrees to provide the following services:

➤ **PRE-RENOVATION ASBESTOS ROOF SURVEY**

- Provide licensed NYS/AHERA Asbestos Inspector(s) to perform a Pre-Renovation Asbestos Survey of the above-referenced location(s), in support of the anticipated renovation project.
- Perform collection and analysis of suspect friable materials using Polarized Light Microscopy (PLM) analytical protocols.
- Perform collection and analysis of suspect “non-friable organically-bound” material using both Polarized Light Microscopy-NOB (PLM-NOB) and Quantitative Transmission Electron Microscopy (QTEM) analytical protocols.
- Perform collection and analysis of vermiculite-containing surfacing materials using Surfacing Materials with Vermiculite (SM-V) analytical protocols.
- Sample collection and analysis will be in compliance with 29 CFR 1926.1101(k)(4) and Title 12 NYCRR Part 56-5.1.
- Discussion of laboratory results for all bulk samples (PLM/QTEM/SM-V).
- Documentation of all analytical laboratory certifications.
- Preparation of one (1) Final Asbestos Report identifying ACM, estimated quantities, locations, types and/or conditions.

The attached proposal is based on the following assumptions:

- **QuES&T** shall perform all inspections visually, using reasonable care and judgement. No demolition will be performed to access representative concealed surfaces. **Client** recognizes & agrees that ACM concealed within structural components & accessible only through extensive mechanical or structural demolition may not be identified as part of this survey.
- A licensed roofer will be provided by the Owner and/or the Owner’s Representative for patching of all core locations made by **QuES&T** inspector(s).
- **QuES&T** shall not be responsible for damage caused to building finishes, surfaces or equipment by sampling. Responsibility and cost for repair of damaged building finishes, surfaces and equipment shall be by others.
- **QuES&T** will exercise reasonable caution to minimize disturbance of ACM during the inspection process. However, clean up of disturbed or dislodged materials shall be the responsibility of **Client**.
- Inspection work to be conducted during normal weekday business hours (Mon–Fri, 8am–5pm).
- Turnaround time for all sample analysis shall be from receipt in the laboratory and does not include weekends or holidays.

**83 Broadway
Newburgh, NY 12550
At
104 South Lander Street
Newburgh, NY 12550**

RESOLUTION NO.: 64 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)
FOR PROFESSIONAL SERVICES RELATED TO TESTING OF
SUSPECTED ASBESTOS CONTAINING MATERIAL FOR
THE BROADWAY COURTHOUSE ROOF REPLACEMENT PROJECT
AT A COST NOT TO EXCEED \$1,700.00**

WHEREAS, the City of Newburgh wishes to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for a pre-renovation asbestos roof survey for the Broadway Courthouse Roof Replacement Project; and

WHEREAS, the proposal provides for the collection, testing and sampling of suspected asbestos containing materials and the preparation of one Final Asbestos Report identifying asbestos containing material, estimated quantities, locations, types and/or conditions; and

WHEREAS, the cost for these services will be \$1,700.00 which shall be derived from H1.1121.0208.2020; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work 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 the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for professional services for a pre-renovation asbestos roof survey in an amount not to exceed \$1,700.00 for the Broadway Courthouse Roof Replacement Project.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

March 12, 2021

City of Newburgh
83 Broadway
Newburgh, NY 12550

Attn: Jason Morris

Re.: 300 Broadway, Newburgh, NY 12550
Request for Proposal – Pre-Renovation Asbestos Roof Survey

Dear Mr. Morris,

Quality Environmental Solutions & Technologies, Inc. (**QuES&T**) is pleased to submit the attached proposal to perform a Pre-Renovation Asbestos Roof Survey in support of the anticipated roof replacement project on the north roof at the courthouse building located at 300 Broadway, Newburgh, NY 12550.

QuES&T is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of your future liability.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

QuES&T offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors,

Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet your specific needs.

QuES&T provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T**'s facility or yours.

For additional information concerning any of our services, please contact us at (845) 298-6031. We look forward to working with you in the environmental consulting and remediation services area.

Sincerely,



Todd J. McAfee

Project Manager, Field & Technical Services
NYS/AHERA Inspector/Project Designer
Cert. #AH 12-10881

PRE-RENOVATION ASBESTOS ROOF SURVEY
for
CITY OF NEWBURGH
83 Broadway
Newburgh, NY 12550
At
300 Broadway
Newburgh, NY 12550

QuES&T agrees to provide the following services:

➤ **PRE-RENOVATION ASBESTOS ROOF SURVEY**

- Provide licensed NYS/AHERA Asbestos Inspector(s) to perform a Pre-Renovation Asbestos Survey of the above-referenced location(s), in support of the anticipated renovation project.
- Perform collection and analysis of suspect friable materials using Polarized Light Microscopy (PLM) analytical protocols.
- Perform collection and analysis of suspect “non-friable organically-bound” material using both Polarized Light Microscopy-NOB (PLM-NOB) and Quantitative Transmission Electron Microscopy (QTEM) analytical protocols.
- Perform collection and analysis of vermiculite-containing surfacing materials using Surfacing Materials with Vermiculite (SM-V) analytical protocols.
- Sample collection and analysis will be in compliance with 29 CFR 1926.1101(k)(4) and Title 12 NYCRR Part 56-5.1.
- Discussion of laboratory results for all bulk samples (PLM/QTEM/SM-V).
- Documentation of all analytical laboratory certifications.
- Preparation of one (1) Final Asbestos Report identifying ACM, estimated quantities, locations, types and/or conditions.

The attached proposal is based on the following assumptions:

- **QuES&T** shall perform all inspections visually, using reasonable care and judgement. No demolition will be performed to access representative concealed surfaces. **Client** recognizes & agrees that ACM concealed within structural components & accessible only through extensive mechanical or structural demolition may not be identified as part of this survey.
- A licensed roofer will be provided by the Owner and/or the Owner’s Representative for patching of all core locations made by **QuES&T** inspector(s).
- **QuES&T** shall not be responsible for damage caused to building finishes, surfaces or equipment by sampling. Responsibility and cost for repair of damaged building finishes, surfaces and equipment shall be by others.
- **QuES&T** will exercise reasonable caution to minimize disturbance of ACM during the inspection process. However, clean up of disturbed or dislodged materials shall be the responsibility of **Client**.
- Inspection work to be conducted during normal weekday business hours (Mon–Fri, 8am–5pm).
- Turnaround time for all sample analysis shall be from receipt in the laboratory and does not include weekends or holidays.

**for
CITY OF NEWBURGH
83 Broadway
Newburgh, NY 12550
At
300 Broadway
Newburgh, NY 12550**

Inspection Labor (2 inspectors, ½ Day Shift)	\$ 640.00
PLM-NOB/QTEM Bulk Sample Analysis (14 @ \$41/each)	\$ 574.00
PLM Bulk Sample Analysis (10 @ \$16/each)	\$ 160.00
Travel, Tolls & Misc. Expense	\$ 25.00
Pre-Renovation Asbestos Report	\$ 250.00

**NOTES:*

- 0 Client will be charged for actual samples analyzed. Unit rates to be applied: 1-week TAT
0 Turnaround time begins when samples are received at laboratory and does not include weekends or holidays.

A. *As per the testing requirements, for surfacing materials, set forth in the NYSDOH communication, dated May 6, 2016 (See Attached), if vermiculite is present (regardless of the amount), one of the two approved methods must be used for the detection and quantitation of asbestos content.*

If Vermiculite is detected, within surfacing materials sampled (NYS ELAP 198.1), as per the new guidelines, samples will be analyzed in conformance with NYS ELAP 198.8. Sample analysis is \$285/sample analyzed on a one week turnaround time. Prior to sample analysis, the lab will notify **QuES&T** the number of samples containing vermiculite, who in turn will review associated costs with ***the Client*** for approval to proceed with analysis.

To Execute This Agreement, Please Review, Sign, Date & Return to QuES&T.

Payment Terms : Payment shall be net 15 days following receipt of final invoice. Late payments shall be assessed a penalty of 1.5% per month.

City of Newburgh – Authorized Signature:

By _____
Signature Print Name & Title Date

RESOLUTION NO.: 65 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL
AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC.
FOR ASBESTOS ABATEMENT MANAGEMENT AND THIRD-PARTY AIR
MONITORING SERVICES AT THE WASTEWATER TREATMENT PLANT
IN AN AMOUNT NOT TO EXCEED \$2,800.00**

WHEREAS, asbestos were found in various locations in the Administration Building at the City of Newburgh Wastewater Treatment Plant; and

WHEREAS, Quality Environmental Solutions & Technologies, Inc. has submitted a proposal for asbestos abatement management and monitoring and third-party asbestos air monitoring for the asbestos abatement at the Wastewater Treatment Plant; and

WHEREAS, the cost for these services will not exceed \$2,800.00 and funding shall be derived from G.8130.0200; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work 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 the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for asbestos abatement management and monitoring and third-party asbestos air monitoring at a cost not to exceed \$2,800.00 for asbestos abatement at the City of Newburgh Wastewater Treatment Plant.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

March 27, 2021

City of Newburgh
83 Broadway
Newburgh, NY 12550

ATTN: Jason C. Morris

Via E-mail: JMorris@cityofnewburgh-ny.gov

Re.: 2 Renwick Street, Newburgh, NY 12550 – WWTP Admin Building
Request for Proposal – Limited Asbestos Bulk Sampling Survey and Asbestos Abatement
Monitoring & Management Services

Dear Mr. Morris,

Quality Environmental Solutions & Technologies, Inc. (**QuES&T**) is pleased to submit the attached proposal to perform a Limited Asbestos Bulk Sampling Survey and provide Asbestos Abatement Monitoring & Management Services at the City of Newburgh's Waste Water Treatment Plant Administration Building, located at 2 Renwick Street, Newburgh, NY 12550 in compliance with the requirements of Title 12 NYCRR Part 56-5.1 and all other applicable federal, state and local regulations.

QuES&T is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. **QuES&T**'s extensive Nuclear Power Industry experience makes us uniquely qualified to provide technical support in state-of-the-art techniques for engineering and contamination control. Additionally, this experience enables us to integrate the essential concepts of "critical path" schedules and minimizing personnel exposures while maintaining a high level of attention to the specific details of each project. **QuES&T** personnel satisfy numerous ANSI and NUREG experience requirements of the Nuclear Regulatory Commission. Our staff has served in various capacities in the Health Physics and Nuclear Engineering disciplines in operational power reactors, nuclear powered vessels, radio-pharmaceuticals and government prototypes.

We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of future liability to the City of Newburgh.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

QuES&T offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet the specific needs of the City of Newburgh.

QuES&T provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T**'s facility or yours.

For additional information concerning this submittal, please contact us at (845) 298-6031. We look forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,



Rudy Lipinski - LEED® AP
Director of Field Operations
NYS/AHERA Inspector/Project Designer
Cert. #AH 05-09049

**LIMITED ASBESTOS BULK SAMPLING SURVEY AND ASBESTOS ABATEMENT
MONITORING & MANAGEMENT SERVICES**

**for
CITY OF NEWBURGH**

**83 Broadway
Newburgh, NY 12550**

**at
WASTE WATER TREATMENT PLANT
ADMINISTRATION BUILDING**

**2 Renwick Street
Newburgh, NY 12550**

QuES&T agrees to provide the following services:

1.) Limited Asbestos Bulk Sampling Survey

- Provide certified NYS/AHERA Asbestos Inspector(s) to perform a Limited Asbestos Bulk Sampling Survey within the lab room and chlorine room of waste water treatment plant administration building, located at 2 Renwick Street, Newburgh, NY 12550. Sampling to be limited to mudded joint packing within corner base cabinet and linoleum flooring in the lab room and mudded joint packing associated with roof drain line within the chlorine room. In addition, perform a visual condition assessment of accessible mudded joint packing in the balance of the building.
- Perform collection and analysis of suspect friable Asbestos-containing Materials (ACM) using Polarized Light Microscopy (PLM) 198.1 analytical protocol and, as required, approved method 198.8 for Vermiculite.
- Perform collection and analysis of suspect non-friable organically bound Asbestos-containing Materials (ACM) using both Polarized Light Microscopy-NOB (PLM-NOB) and Quantitative Transmission Electron Microscopy (QTEM) analytical protocols.
- Discussion of laboratory results for all bulk samples (PLM 198.1, 198.8 & QTEM/PLM).
- Documentation of all analytical laboratory certifications.
- Preparation of one (1) Final Asbestos Report with Contamination Assessment, identifying estimated quantities, locations, types and conditions of Asbestos-containing Materials (ACM) in the lab room and chlorine room.

2.) Asbestos Abatement Management and Monitoring

Item 1: Supervision of Abatement Activities (Combined Project Monitor/Air Sampling Technician)

- Perform project monitoring, inspection and acceptance of the work.
- Provide coordination to ensure timely completion of the asbestos removal.
- Review construction phasing plans and assist in the coordination of the activities of the various contractors and building occupants to ensure compliance with applicable federal, state and municipal regulatory requirements and bid specifications.
- Complete work step lists and documentation packages for final closeout.

ENVIRONMENTAL CONSULTING & TRAINING

Services Cont'd...

Item 2: Third Party Asbestos Air Monitoring

- **QuES&T** will provide collection and laboratory analysis of the required air samples, in conjunction with Item 1, on a cost per sample basis. To maintain compliance with the requirements of 56-4.3, analysis of the air samples shall be by "an independent laboratory conforming to the requirements of 12 NYCRR 56-4.2". The sampling frequency will be as specified in Title 12 NYCRR Rule 56; Subpart 56-4 and any NYS DOL Applicable Variance or Site-Specific Variances utilized in the conduct of this project.

**2 Renwick Street
Newburgh, NY 12550**

COST ESTIMATE

Inspector Labor	\$ 320.00
12-Hour TAT PLM Bulk Sample Analysis 2 @ \$30/Layer	\$ 60.00*
30-Hour TAT NOB Bulk Sample Analysis 3 @ \$110/Layer	\$ 330.00*
Final Asbestos Report w/Contamination Assessment	\$ 250.00
Travel & Misc. Materials	\$ 30.00
Total:	\$ 990.00

Project Monitor “Weekday” Labor (1 Tech, 3 Shifts @ \$400/shift)	\$ 1,200.00
24-hr. TAT “Background” PCM Air Sample Analysis (4 @ \$15/each)	\$ 60.00
3-hr. TAT “Clearance” PCM Air Sample Analysis (8 @ \$20/each)	\$ 160.00
Travel and Misc. Materials	\$ 100.00
Total:	\$ 1,520.00

Estimated Project Total: \$ 2,510.00

1. Estimated number of samples to be collected. Client will be charged for actual samples analyzed & services rendered.

ACCEPTANCE OF PROPOSAL #P21-7402

Payment Terms: Payment Shall Be Net 30 Days; Following Delivery of Final Report; Late Payments Shall Be Assessed a Penalty of 1.5% per Month.

City of Newburgh – Authorized Representative:

By _____
Signature Print Name & Title Date

RESOLUTION NO.: 66 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
BSB CONSTRUCTION, INC. FOR ASBESTOS ABATEMENT
AT THE WASTEWATER TREATMENT PLANT AT A COST OF \$7,625.00**

WHEREAS, asbestos were found in various locations in the Administration Building at the City of Newburgh Wastewater Treatment Plant; and

WHEREAS, the City solicited proposals from qualified contractors to complete the asbestos abatement at the Wastewater Treatment Plant and BSB Construction, Inc. submitted a proposal for the work at the lowest cost; and

WHEREAS, the cost for the asbestos removal and disposal will be \$7,625.00, and funding shall be derived from G.8130.0200; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work 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 the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with BSB Construction, Inc. for asbestos abatement for the City of Newburgh Wastewater Treatment Plant at a total cost of \$7,625.00.

BSB CONSTRUCTION, INC.

1613 ROUTE 9W MILTON, NY 12547
845-462-5236
WWW.BSBCONSTRUCTIONINC.COM

3/26/21

Attn: Jason Morris – City of Newburgh

Project Address: 2 Renwick St. Newburgh, NY – Water Treatment Plant

Please review the following scopes of work, qualifications and exclusions.

Project Scope: BSB will remove and dispose of less than 25 linear feet of asbestos-containing pipe insulation within the base cabinet located in the laboratory. All work to be accomplished within a HEPA exhausted enclosure with a decontamination area as per NYS ICR 56. In addition, BSB will perform the clean-up, removal and disposal of a minor incidental disturbance located within the chlorine room. All work to be accomplished within a negative-pressure enclosure with a remote decontamination unit as per NYS ICR 56.

BSB will require space in the parking lot for the required remote decontamination unit.

Proposed price reflects current prevailing wage rates for Orange County, NY.

All work to be performed in strict accordance with NYS ICR 56, Federal EPA, OSHA, and all local guidelines.

Exclusions:

Third party monitoring, visual & air clearances
Temp power and Temp water during project
Overtime/Weekend Shifts
Minor damages to surfaces from containment construction

Proposed price for project scope: \$7,625.00

NYS Notification Fee: \$N/A (Minor Projects)

If this is not a capital improvement project please add applicable sales tax to total bid amount. BSB will provide a certificate of capital improvement form as needed.

Please feel free to contact our office with any further questions or comments. We appreciate the opportunity to be of service to you.

Regards,
Nick Bova
BSB Construction Inc.
nickbova@bsbconstructioninc.com
845-705-6783(cell)
845-462-5236(office)

RESOLUTION NO.: 67 - 2021

OF

APRIL 12, 2021

**A RESOLUTION REJECTING ALL BIDS RECEIVED IN CONNECTION WITH
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE (LAKE STREET BRIDGE)
REHABILITATION PROJECT PIN#8761.57 (BIN NO. 2022260)**

WHEREAS, the City of Newburgh has duly advertised for bids in connection with the Route 32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project PIN#8761.57 (BIN#2022260) (the “Project”); and

WHEREAS, six (6) bids were received and opened in response to Bid No. 2.21; and

WHEREAS, the lowest bidder requested and was permitted to withdraw the bid pursuant to General Municipal Law Section 103(11)(a); and

WHEREAS, upon review of the remaining bids it has been determined that the cost of the lowest bid exceeds the budget proposed for the Project; and

WHEREAS, this Council has determined that rejecting all bids for the Project is 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 all bids received for Bid No. 2.21 in connection with the Route 32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project PIN#8761.57 (BIN#2022260) be and are hereby rejected.

BID # 2.21 - Rte. 32 TAP: Lake Street Bridge Rehabilitation

Bid Opening: Began at 11:00 a.m. and closed at 11:35 a.m.

Present: Jason Morris, Elizabeth Harrison, Jocelyn Taylor Due: Tuesday, March 16, 2021 @ 11:00 am (local time)

Contractors: Due to COVID-19 pandemic, this Public Bid Opening was live streamed online for public access.

	Bidder Name	Time Stamped	Sealed & Clearly Marked	Original	Bid Form	Addendum No. 1	Lump Sum Bid Price	Non-Collusion Bidding Affidavit (Notarized)	Form of Security (Bond on City Form or Certified Check)	Affidavit of Workers' Comp	Iranian Energy Sector Div. Act Affidavit (Notarized)	Disclosure of Lobbying Activities	DBE Utilization Goals Document	Statement of Contractor's Apprenticeship Program Compliance (APC-1)	Proof of Ability to do Work in NYS or Covenant to Obtain (obtained from NY Dept of State)
1	ELQ Industries Inc. ELQ Industries Inc.	3/16/2021 C 10:27n	✓	✓	✓	✓	2,395,913 ⁴⁵	✓	Bond	✓	✓	✓	✓		
2	JR Cruz	3/16/2021 C 10:11am	✓	✓	✓	✓	3,735,000 ⁰⁰	✓	Bond	✓	✓	✓	✓		
3	Andrew Bid on 3/16/21 Dayle Contracting	3/16/2021 C 10:03am	✓	✓	✓	✓	1,357,388 ⁰⁰		* Bond Not Witnessed	✓	✓	✓	✓		
4	Agenio Brothers	3/16/2021 C 9:58	✓	✓	✓	✓	3,199,199 ⁰⁰	✓	Bond	✓	✓	blank forms	✓		
5	McName Construction Corp.	3/16/2021 C 9:41am	✓	✓	✓	✓	1,974,000 ⁰⁰	not included	Bond	✓	✓	not included	✓		
6	Torrey Excavating Inc.	3/16/2021 C 10:08am	✓	✓	✓	✓	2,270,432 ⁰⁰	✓	Bond	✓	✓	✓	✓		
7															
8															
9															
10															

DOYLE CONTRACTING, INC.

210 Gilbert Avenue Pearl River, New York 10965

City of Newburgh
Mr. Jason C Morris, PE
City Engineer
83 Broadway
Newburgh NY 12550

March 16, 2021

(via email)

Re: TAP 32, Lake St Bridge Rehab Bid Dated 3/16/21

Subject: Request for Bid Withdrawal

Dear Mr Morris

This letter is written regarding the Lake St Bridge Rehab project that bid today in which we were the low bidder.

We have reviewed our bid and found that we entered the wrong amount in our spreadsheet and on the City Bid sheet for Cofferdam unit price. We entered a unit price of \$54,000.00 instead of a unit price of \$540,000.00. The extended amount for Cofferdam bid item should have been \$1,080,000 (not \$108,000).

We hereby declare a bid error and request that our bid be withdrawn without penalty. Please let us know if this is acceptable to the City.

Sincerely



Edward B. Doyle
President

Copy: Jason P Bridges PE,
McLaren Engineering

City of Newburgh
PIN 8761.57 - Bid No. 2.21
Lake Street Bridge Rehabilitation
Analysis of Bid Results

Introduction

Six bids were received ranging from \$1.357M to \$3.735M. The median bid was \$2.333M and the average bid was \$2.489M. Shortly after the bids results were announced, the apparent low bidder sent a letter to the City requesting that their bid be withdrawn because of an asserted error (this is addressed below).

All bids exceed the engineer's estimate, which was \$1.146M. The amounts over the engineer's estimate range from \$0.212M (18%) for the low bid to \$2.589M (226%) for the high bidder. The median bid was \$1.188M (104%) over the engineer's estimate. The bid results are summarized below:

Bidder	Total Bid	Amount above EE (\$)	Amount above EE (%)
Doyle Contracting, Inc.	\$1,357,388	\$211,719	18%
McNamee Construction Corp.	\$1,974,000	\$828,331	72%
Jorrey Excavation, Inc.	\$2,270,432	\$1,124,763	98%
ELQ Industries, Inc.	\$2,395,913	\$1,250,244	109%
Argenio Bros., Inc.	\$3,199,199	\$2,053,530	179%
JRCRUZ Corp.	\$3,735,000	\$2,589,331	226%
Median Bid	\$2,333,173	\$1,187,504	104%

Low Bidder

Shortly after the bids were announced, Doyle Contracting, Inc., the apparent low bidder, sent a letter to the City requesting that their bid be withdrawn because of an asserted clerical error. Their written bid included a unit bid price of \$54,000 for Item 553.020001 - Cofferdam - Type 2, with an extended amount of \$108,000. In their letter, they assert that the unit bid price for this item should have been \$540,000 with an extended amount of \$1,080,000.

The engineer's estimate for Item 553.020001 was \$50,000, the second low bid amount was \$250,000, and the median bid was \$333,492. The apparent low bidder's written total bid amount for this item was \$58,000 over the engineer's estimate, \$142,000 below the second bid, and \$225,492 below the median bid. Their asserted total for this item was \$1,080,000 which is \$1,030,000 over the engineer's estimate, \$830,000 over the second low bidder, and \$746,508 over the original median bid.

With the asserted error, Doyle Contracting, Inc. bid would increase to a total of \$2,329,388, which would be the third lowest bid.

Top Ten Items

The sum of the median bid amounts for the top ten items is \$1.696M and represents 73% of the actual median bid. This sum of these ten items is \$1.150M (211%) higher than the engineer's estimate of \$545,905 for the same items. All top ten items bid were significantly higher than the engineer's estimate. The list of the ten highest items along with a comparison to the engineer estimate and the median bid are listed below:

Comparison of Top Ten Bid Items (Based on Total Bid Amount)							
Item Number	Description	Low Bid	High Bid	Average	Median Bid	Engineers Est	Median Bid - Engineers Est
602.550105	Relining with steel tunnel liner plate	\$ 360,000	\$ 1,050,000	\$ 780,875	\$ 880,125	\$ 240,000	\$ 640,125
553.020001	Cofferdam - Type 2*	\$ 108,000	\$ 1,450,500	\$ 620,914	\$ 333,492	\$ 50,000	\$ 283,492
699.040001	Mobilization	\$ 50,000	\$ 254,620	\$ 117,358	\$ 103,085	\$ 44,100	\$ 58,985
619.01	Basic Work Zone Traffic Control	\$ 55,350	\$ 157,000	\$ 102,490	\$ 100,000	\$ 55,000	\$ 45,000
202.11	Dismantling and Storing of Existing Superstructures	\$ 24,000	\$ 250,000	\$ 108,883	\$ 82,500	\$ 50,000	\$ 32,500
663.011	DI cem lined water pipe	\$ 18,270	\$ 63,000	\$ 47,775	\$ 52,500	\$ 23,100	\$ 29,400
637.11	Engineers Field Office	\$ 28,800	\$ 60,000	\$ 45,600	\$ 44,400	\$ 24,000	\$ 20,400
663.241003	Insulation for Buried Water Main Pipe	\$ 2,100	\$ 42,000	\$ 21,770	\$ 21,210	\$ 3,780	\$ 17,430
304.11	Subbase Coure - Type 1	\$ 30,000	\$ 50,000	\$ 40,200	\$ 41,600	\$ 30,000	\$ 11,600
603.981015	Polyvinyl Choride sewer pipe and fittings 15 NPS	\$ 28,670	\$ 59,856	\$ 39,409	\$ 37,363	\$ 25,925	\$ 11,438

Two items in particular account for most of the difference. Those two items are discussed below:

1. The engineer's estimate for Item 602.550105 - Relining with Steel Tunnel Liner Plate was \$240,000, with a low bid of \$360,000, and a median bid of \$880,125. The engineer's estimate was based on the bid history for this item from NYSDOT bid history records. We note that steel prices have risen significantly since the engineer's estimate was prepared. We also note that several questions related to the installation of the liner were received during the bid period. From the nature of these questions, it is apparent that the bidders were concerned about fitting the liner into the existing, deformed pipe arch. This likely resulted in an increase in the bid amounts for this item.
2. The engineer's estimate for Item 553.020001 - Cofferdam - Type 2 was \$50,000, with a low bid of \$108,000, and a median bid of \$333,492. The engineer's estimate was based on the bid history for this item from NYSDOT bid history records and a cost analysis. Several questions related to the cofferdams were received during the bid period. From the nature of these questions, it is apparent that the bidders were concerned with the depth of water that could be anticipated during construction. Although clarification was offered by addendum, a contractor submitted an additional concern that the information available for cofferdams would result in high prices. As this was past the deadline for questions and addendums, no further guidance could be offered to bidders. This likely resulted in an increase in the bid amounts for this item.

Analysis

The engineer's estimate was originally prepared for this project in December 2014, updated in 2018, and finalized in late 2019. Since that time, there have been historic price swings in the construction industry. In 2018 high demand and trade tariffs resulted in very high construction material prices. In 2020 low demand during most of the year due to the COVID pandemic resulted in lower prices. In early 2021, when bids were prepared, extreme high demand and low supply of construction materials has resulted in hyperinflation as construction projects resume while the supply chain attempts to recover. Throughout the construction industry materials are in very short supply and prices have risen considerably as a result. Steel products alone have risen 48% since January 2020 (pre-pandemic) according to the information available from NYSDOT. Additional information from a steel fabricator trade group indicates that steel prices have risen to their highest levels since 2008 and will not likely return to a more stable price until after 2021.

Overall inflation since the engineer's estimate was finalized explains a portion of the difference between the engineer's estimate and bids. However, most of the increase is attributed to the following two items:

1. Item 602.550105 - Relining with Steel Tunnel Liner Plate. Two factors appear to account for the large difference between the engineer's estimate. First, as mentioned above, the cost for steel products has risen 48% since January 2020. Second, based on questions from contractors, concern about the level of effort to install the liner.
2. Item 553.020001 - Cofferdam - Type 2. Based on questions received, it is likely that the bidders were concerned with the depth of water that could be anticipated during construction. This likely resulted in the higher than anticipated bid amounts for this item.

Recommendations

McLaren Engineering recommends the following:

1. That the City reject all bids for the following reasons:
 - Shortly after the bids were announced, the apparent low bidder sent a letter to the City asserting that they made a clerical error in their bid. Correction of this error would result in a total bid of \$2,329,388.00, which would become the third lowest bid. Had this bidder not requested that their bid be withdrawn, the low bid amount would have been within 18% of the engineer's estimate. This difference could be justified due to current inflationary trends since the engineer's estimate was completed in late 2019.
 - The second lowest bidder total bid was \$1,974,000.00, which is significantly above the engineer's estimate and the amount of funding available for the project.
 - Construction prices are extremely high and very difficult to predict. A more stable bidding environment may result in more favorable prices.
 - Clarification on the cofferdam and tunnel liner could result in lower prices.

2. Continue maintaining the existing roadway with the temporary bridge. Although the temporary bridge profile requires a low posted speed and creates an inconvenience for the traveling public, the temporary bridge can remain in service, with regular inspections, until a new solution is found.
3. Seek additional funding from the Orange County MPO. Although new funding is limited, we believe that this project would score very high in an evaluation.
4. Rebid the project with the following changes:
 - Cofferdams - clarify the anticipated depth of water.
 - Steel Tunnel Liner - clarify the installation constraints.

Appendix A - Bid Tabulation

TABULATION OF BIDS

3/26/2021

PIN:	8761.57
Project:	Bid #2.21 - Rte. 32 TAP: Lake Street Bridge Rehabilitation
Letting Date:	2/16/2021
Sponsor:	City of Newburgh

Item	Item Description	Unit	Quantity	Unit Price	Engineer's Estimate	Doyle Contracting, Inc.			McNamee Construction Corp.			Jorrey Excavating, Inc.		
						Doyle Unit Price	Doyle Total Cost	Doyle % of Engineer's Estimate	McNamee Unit Price	McNamee Total Cost	McNamee % of Engineer's Estimate	Jorrey Unit Price	Jorrey Total Cost	Jorrey % of Engineer's Estimate
202.11	Dismantling and Storing of Existing Superstructures	L.S.	1	\$50,000.00	\$50,000.00	\$120,000.00	\$120,000.00	240%	\$173,295.00	\$173,295.00	347%	\$45,000.00	\$45,000.00	90%
203.02	Unclassified Excavation and Disposal	C.Y.	520	\$85.00	\$44,200.00	\$60.00	\$31,200.00	71%	\$50.00	\$26,000.00	59%	\$125.00	\$65,000.00	147%
203.07	Select Granular Fill	C.Y.	350	\$65.00	\$22,750.00	\$60.00	\$21,000.00	92%	\$100.00	\$35,000.00	154%	\$125.00	\$43,750.00	192%
203.21	Select structural Fill	C.Y.	270	\$80.00	\$21,600.00	\$80.00	\$21,600.00	100%	\$100.00	\$27,000.00	125%	\$125.00	\$33,750.00	156%
206.01	Structure Excavation	C.Y.	30	\$150.00	\$4,500.00	\$150.00	\$4,500.00	100%	\$80.00	\$2,400.00	53%	\$800.00	\$24,000.00	533%
206.0201	Trench and Culvert Excavation	C.Y.	700	\$65.00	\$45,500.00	\$60.00	\$42,000.00	92%	\$80.00	\$56,000.00	123%	\$2.00	\$1,400.00	3%
207.20	Geotextile Bedding	S.Y.	100	\$10.00	\$1,000.00	\$10.00	\$1,000.00	100%	\$2.00	\$200.00	20%	\$5.00	\$500.00	50%
304.11	Subbase Course - Type 1	C.Y.	400	\$75.00	\$30,000.00	\$80.00	\$32,000.00	107%	\$115.00	\$46,000.00	153%	\$125.00	\$50,000.00	167%
402.128103	12.5 F1 Top Course HMA, 80 Series Compaction	TON	120	\$150.00	\$18,000.00	\$200.00	\$24,000.00	133%	\$140.00	\$16,800.00	93%	\$300.00	\$36,000.00	200%
402.198903	19 F9 Binder HMA, 80 Series Compaction	TON	160	\$150.00	\$24,000.00	\$200.00	\$32,000.00	133%	\$140.00	\$22,400.00	93%	\$290.00	\$46,400.00	193%
402.378903	37.5 F9 Base HMA, 80 Series Compaction	TON	600	\$150.00	\$90,000.00	\$180.00	\$108,000.00	120%	\$140.00	\$84,000.00	93%	\$280.00	\$168,000.00	187%
407.0102	Diluted Tack Coat	Gal.	400	\$3.25	\$1,300.00	\$5.00	\$2,000.00	154%	\$15.00	\$6,000.00	462%	\$8.00	\$3,200.00	246%
520.0900001	Saw cutting asphalt concrete	LF	1600	\$3.00	\$4,800.00	\$5.00	\$8,000.00	167%	\$7.00	\$11,200.00	233%	\$5.00	\$8,000.00	167%
552.17	Shields and shoring	SF	6000	\$2.00	\$12,000.00	\$0.10	\$600.00	5%	\$5.00	\$30,000.00	250%	\$1.00	\$6,000.00	50%
553.020001	Cofferdam - Type 2*	Ea.	2	\$25,000.00	\$50,000.00	\$54,000.00	\$108,000.00	216%	\$125,000.00	\$250,000.00	500%	\$150,000.00	\$300,000.00	600%
568.33460009	Replace Steel bridge Railing Post	Ea.	1	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00	50%	\$500.00	\$500.00	25%	\$100.00	\$100.00	5%
568.70	Steel Bridge Railing (Two Rail) end transition to box beam railing	LF.	100	\$200.00	\$20,000.00	\$180.00	\$18,000.00	90%	\$350.00	\$35,000.00	175%	\$160.00	\$16,000.00	80%
580.01	Removal of Structural Concrete	C.Y.	15	\$4,000.00	\$60,000.00	\$100.00	\$1,500.00	3%	\$3,500.00	\$52,500.00	88%	\$2,500.00	\$37,500.00	63%
581.01	Removal of Bituminous Concrete Overlay (Bridge)	S.F.	4400	\$2.80	\$12,320.00	\$2.00	\$8,800.00	71%	\$1.00	\$4,400.00	36%	\$2.00	\$8,800.00	71%
587.01	Bridge Railing Removal and Disposal	L.F.	20	\$100.00	\$2,000.00	\$10.00	\$200.00	10%	\$20.00	\$400.00	20%	\$50.00	\$1,000.00	50%
587.75000002	Remove and replace bridge rail Tube	LF	15	\$150.00	\$2,250.00	\$100.00	\$1,500.00	67%	\$15.00	\$225.00	10%	\$200.00	\$3,000.00	133%
602.550105	Relining with steel tunnel liner plate	SF	3000	\$80.00	\$240,000.00	\$120.00	\$360,000.00	150%	\$180.00	\$540,000.00	225%	\$325.00	\$975,000.00	406%
603.98101504	Polyvinyl Chloride sewer pipe and fittings 15 NPS	L.F.	305	\$85.00	\$25,925.00	\$120.00	\$36,600.00	141%	\$115.00	\$35,075.00	135%	\$125.00	\$38,125.00	147%
606.73	Rem and Disp of box Beam Guide Rail	LF	120	\$30.00	\$3,600.00	\$5.00	\$600.00	17%	\$15.00	\$1,800.00	50%	\$10.00	\$1,200.00	33%
608.01030008	Rem and Replace of conc sidewalk and subbase course	SY	180	\$300.00	\$54,000.00	\$120.00	\$21,600.00	40%	\$94.00	\$16,920.00	31%	\$150.00	\$27,000.00	50%
609.0402	Cast-in-Place Concrete Curb	L.F.	727	\$60.00	\$43,620.00	\$40.00	\$29,080.00	67%	\$40.00	\$29,080.00	67%	\$40.00	\$29,080.00	67%
609.06010008	Removal of Curb	L.F.	727	\$27.00	\$19,629.00	\$4.00	\$2,908.00	15%	\$15.00	\$10,905.00	56%	\$1.00	\$727.00	4%
610.1402	Top Soil-Roadside	C.Y.	30	\$134.00	\$4,020.00	\$50.00	\$1,500.00	37%	\$75.00	\$2,250.00	56%	\$50.00	\$1,500.00	37%
610.1601	Turf Establishment - Roadside	S.Y.	200	\$10.00	\$2,000.00	\$5.00	\$1,000.00	50%	\$10.00	\$2,000.00	100%	\$3.00	\$600.00	30%
619.01	Basic Work Zone Traffic Control	L.S.	1	\$55,000.00	\$55,000.00	\$100,000.00	\$100,000.00	182%	\$157,000.00	\$157,000.00	285%	\$100,000.00	\$100,000.00	182%
619.04	Type III Construction Barricades	EA.	36	\$100.00	\$3,600.00	\$50.00	\$1,800.00	50%	\$150.00	\$5,400.00	150%	\$100.00	\$3,600.00	100%
620.04	Stone Filling (Medium)	C.Y.	30	\$250.00	\$7,500.00	\$300.00	\$9,000.00	120%	\$125.00	\$3,750.00	50%	\$400.00	\$12,000.00	160%
623.03	Crushed stone by weight	ton	10	\$200.00	\$2,000.00	\$200.00	\$2,000.00	100%	\$125.00	\$1,250.00	63%	\$100.00	\$1,000.00	50%
625.01	Survey and Stakeout	LS	1	\$25,000.00	\$25,000.00	\$18,000.00	\$18,000.00	72%	\$55,000.00	\$55,000.00	220%	\$30,000.00	\$30,000.00	120%
637.11	Engineers Field Office	Mo	12	\$2,000.00	\$24,000.00	\$3,000.00	\$36,000.00	150%	\$5,000.00	\$60,000.00	250%	\$2,400.00	\$28,800.00	120%
637.34	Office Technology and Supplies	L.S.	1	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00	50%	\$2,000.00	\$2,000.00	100%	\$5,000.00	\$5,000.00	250%
640.20	White Paint Reflect Pavement Stripes - 20 Mils	L.F.	1100	\$2.50	\$2,750.00	\$2.00	\$2,200.00	80%	\$3.00	\$3,300.00	120%	\$1.00	\$1,100.00	40%
640.21	Yellow Paint Reflect Pavement Stripes - 20 mils	L.F.	850	\$2.50	\$2,125.00	\$2.00	\$1,700.00	80%	\$3.00	\$2,550.00	120%	\$1.00	\$850.00	40%
663.011	DI cem lined water pipe	L.F.	420	\$55.00	\$23,100.00	\$140.00	\$58,800.00	255%	\$125.00	\$52,500.00	227%	\$150.00	\$63,000.00	273%
663.241003	Insulation for Buried Water Main Pipe 10 inch with 3 inch think insulation	L.F.	420	\$9.00	\$3,780.00	\$80.00	\$33,600.00	889%	\$30.00	\$12,600.00	333%	\$5.00	\$2,100.00	56%
663.4110	Remove and Dispose Existing 10" Dia. Water Pipe	L.F.	420	\$35.00	\$14,700.00	\$5.00	\$2,100.00	14%	\$15.00	\$6,300.00	43%	\$5.00	\$2,100.00	14%
695.33120105	Support and maintain existing utility conduits and/or cables on structure	L.S.	1	\$25,000.00	\$25,000.00	\$1,000.00	\$1,000.00	4%	\$5,000.00	\$5,000.00	20%	\$250.00	\$250.00	1%
699.0400	Mobilization	LS	1	\$44,100.00	\$44,100.00	\$50,000.00	\$50,000.00	113%	\$90,000.00	\$90,000.00	204%	\$50,000.00	\$50,000.00	113%
					\$1,145,669.00		\$1,357,388.00	118%		\$1,974,000.00	172%		\$2,270,432.00	198%

*Doyle Contracting has declared a bid error regarding Item 553.020001 Cofferdam - Type 2. The original unit price bid (\$54,000) is included in the Tabulation of Bids, the unit price they claim to have wanted to bid (\$540,000) is 21.6 times greater than the Engineer's Estimate (2160%).

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TABULATION OF BIDS

3/26/2021

PIN:	8761.57
Project:	Bid #2.21 - Rte. 32 TAP: Lake Street Bridge Rehabilitation
Letting Date:	2/16/2021
Sponsor:	City of Newburgh

Item	Item Description	Unit	Quantity	Unit Price	Engineer's Estimate	ELQ Industries, Inc.			Argenio Brothers, Inc.			JR Cruz Corp.		
						ELQ Unit Price	ELQ Total Cost	ELQ % of Engineer's Estimate	Argenio Unit Price	Argenio Total Cost	Argenio % of Engineer's Estimate	JR Cruz Unit Price	JR Cruz Total Cost	JR Cruz % of Engineer's Estimate
202.11	Dismantling and Storing of Existing Superstructures	L.S.	1	\$50,000.00	\$50,000.00	\$24,000.00	\$24,000.00	48%	\$41,000.00	\$41,000.00	82%	\$250,000.00	\$250,000.00	500%
203.02	Unclassified Excavation and Disposal	C.Y.	520	\$85.00	\$44,200.00	\$107.00	\$55,640.00	126%	\$37.00	\$19,240.00	44%	\$60.00	\$31,200.00	71%
203.07	Select Granular Fill	C.Y.	350	\$65.00	\$22,750.00	\$48.00	\$16,800.00	74%	\$61.00	\$21,350.00	94%	\$60.00	\$21,000.00	92%
203.21	Select structural Fill	C.Y.	270	\$80.00	\$21,600.00	\$75.00	\$20,250.00	94%	\$75.00	\$20,250.00	94%	\$65.00	\$17,550.00	81%
206.01	Structure Excavation	C.Y.	30	\$150.00	\$4,500.00	\$569.00	\$17,070.00	379%	\$125.00	\$3,750.00	83%	\$700.00	\$21,000.00	467%
206.0201	Trench and Culvert Excavation	C.Y.	700	\$65.00	\$45,500.00	\$82.50	\$57,750.00	127%	\$63.50	\$44,450.00	98%	\$60.00	\$42,000.00	92%
207.20	Geotextile Bedding	S.Y.	100	\$10.00	\$1,000.00	\$1.60	\$160.00	16%	\$6.00	\$600.00	60%	\$25.00	\$2,500.00	250%
304.11	Subbase Course - Type 1	C.Y.	400	\$75.00	\$30,000.00	\$108.00	\$43,200.00	144%	\$75.00	\$30,000.00	100%	\$100.00	\$40,000.00	133%
402.128103	12.5 F1 Top Course HMA, 80 Series Compaction	TON	120	\$150.00	\$18,000.00	\$176.00	\$21,120.00	117%	\$180.00	\$21,600.00	120%	\$200.00	\$24,000.00	133%
402.198903	19 F9 Binder HMA, 80 Series Compaction	TON	160	\$150.00	\$24,000.00	\$177.30	\$28,368.00	118%	\$125.00	\$20,000.00	83%	\$175.00	\$28,000.00	117%
402.378903	37.5 F9 Base HMA, 80 Series Compaction	TON	600	\$150.00	\$90,000.00	\$178.10	\$106,860.00	119%	\$135.00	\$81,000.00	90%	\$150.00	\$90,000.00	100%
407.0102	Diluted Tack Coat	Gal.	400	\$3.25	\$1,300.00	\$9.25	\$3,700.00	285%	\$8.00	\$3,200.00	246%	\$5.00	\$2,000.00	154%
520.0900001	Saw cutting asphalt concrete	LF	1600	\$3.00	\$4,800.00	\$4.10	\$6,560.00	137%	\$3.50	\$5,600.00	117%	\$5.00	\$8,000.00	167%
552.17	Shields and shoring	SF	6000	\$2.00	\$12,000.00	\$3.50	\$21,000.00	175%	\$1.50	\$9,000.00	75%	\$5.00	\$30,000.00	250%
553.020001	Cofferdam - Type 2"	Ea.	2	\$25,000.00	\$50,000.00	\$183,492.00	\$366,984.00	734%	\$725,250.00	\$1,450,500.00	2901%	\$625,000.00	\$1,250,000.00	2500%
568.33460009	Replace Steel bridge Railing Post	Ea.	1	\$2,000.00	\$2,000.00	\$1,071.00	\$1,071.00	54%	\$1,750.00	\$1,750.00	88%	\$7,500.00	\$7,500.00	375%
568.70	Steel Bridge Railing (Two Rail) end transition to box beam railing	LF.	100	\$200.00	\$20,000.00	\$385.00	\$38,500.00	193%	\$200.00	\$20,000.00	100%	\$600.00	\$60,000.00	300%
580.01	Removal of Structural concrete	C.Y.	15	\$4,000.00	\$60,000.00	\$363.00	\$5,445.00	9%	\$3,750.00	\$56,250.00	94%	\$775.00	\$11,625.00	19%
581.01	Removal of Bituminous Concrete Overlay (Bridge)	S.F.	4400	\$2.80	\$12,320.00	\$2.20	\$9,680.00	79%	\$0.10	\$440.00	4%	\$5.00	\$22,000.00	179%
587.01	Bridge Railing Removal and Disposal	L.F.	20	\$100.00	\$2,000.00	\$34.00	\$680.00	34%	\$40.00	\$800.00	40%	\$185.00	\$3,700.00	185%
587.75000002	Remove and replace bridge rail Tube	LF	15	\$150.00	\$2,250.00	\$160.00	\$2,400.00	107%	\$285.00	\$4,275.00	190%	\$600.00	\$9,000.00	400%
602.550105	Relining with steel tunnel liner plate	sf	3000	\$80.00	\$240,000.00	\$294.75	\$884,250.00	368%	\$292.00	\$876,000.00	365%	\$350.00	\$1,050,000.00	438%
603.98101504	Polyvinyl Chloride sewer pipe and fittings 15 NPS	L.F.	305	\$85.00	\$25,925.00	\$196.25	\$59,856.25	231%	\$94.00	\$28,670.00	111%	\$125.00	\$38,125.00	147%
606.73	Rem and Disp of box Beam Guide Rail	LF	120	\$30.00	\$3,600.00	\$11.00	\$1,320.00	37%	\$13.00	\$1,560.00	43%	\$50.00	\$6,000.00	167%
608.01030008	Rem and Replace of conc sidewalk and subbase course	SY	180	\$300.00	\$54,000.00	\$188.00	\$33,840.00	63%	\$175.00	\$31,500.00	58%	\$210.00	\$37,800.00	70%
609.0402	Cast-in-Place Concrete Curb	L.F.	727	\$60.00	\$43,620.00	\$56.00	\$40,712.00	93%	\$54.00	\$39,258.00	90%	\$110.00	\$79,970.00	183%
609.06010008	Removal of Curb	L.F.	727	\$27.00	\$19,629.00	\$13.60	\$9,887.20	50%	\$15.75	\$11,450.25	58%	\$25.00	\$18,175.00	93%
610.1402	Top Soil-Roadside	C.Y.	30	\$134.00	\$4,020.00	\$112.00	\$3,360.00	84%	\$165.00	\$4,950.00	123%	\$100.00	\$3,000.00	75%
610.1601	Turf Establishment - Roadside	S.Y.	200	\$10.00	\$2,000.00	\$16.00	\$3,200.00	160%	\$6.00	\$1,200.00	60%	\$15.00	\$3,000.00	150%
619.01	Basic Work Zone Traffic Control	L.S.	1	\$55,000.00	\$55,000.00	\$77,588.00	\$77,588.00	141%	\$55,350.00	\$55,350.00	101%	\$125,000.00	\$125,000.00	227%
619.04	Type III Construction Barricades	EA.	36	\$100.00	\$3,600.00	\$248.00	\$8,928.00	248%	\$250.00	\$9,000.00	250%	\$50.00	\$1,800.00	50%
620.04	Stone Filling (Medium)	C.Y.	30	\$250.00	\$7,500.00	\$447.00	\$13,410.00	179%	\$800.00	\$24,000.00	320%	\$125.00	\$3,750.00	50%
623.03	Crushed stone by weight	ton	10	\$200.00	\$2,000.00	\$129.00	\$1,290.00	65%	\$500.00	\$5,000.00	250%	\$150.00	\$1,500.00	75%
625.01	Survey and Stakeout	LS	1	\$25,000.00	\$25,000.00	\$34,240.00	\$34,240.00	137%	\$22,500.00	\$22,500.00	90%	\$75,000.00	\$75,000.00	300%
637.11	Engineers Field Office	Mo	12	\$2,000.00	\$24,000.00	\$3,900.00	\$46,800.00	195%	\$3,500.00	\$42,000.00	175%	\$5,000.00	\$60,000.00	250%
637.34	Office Technology and Supplies	L.S.	1	\$2,000.00	\$2,000.00	\$6,000.00	\$6,000.00	300%	\$2,000.00	\$2,000.00	100%	\$5,000.00	\$5,000.00	250%
640.20	White Paint Reflect Pavement Stripes - 20 Mils	L.F.	1100	\$2.50	\$2,750.00	\$1.00	\$1,100.00	40%	\$2.30	\$2,530.00	92%	\$3.00	\$3,300.00	120%
640.21	Yellow Paint Reflect Pavement Stripes - 20 mils	L.F.	850	\$2.50	\$2,125.00	\$1.00	\$850.00	40%	\$2.30	\$1,955.00	92%	\$3.00	\$2,550.00	120%
663.011	DI cem lined water pipe	L.F.	420	\$55.00	\$23,100.00	\$99.00	\$41,580.00	180%	\$43.50	\$18,270.00	79%	\$125.00	\$52,500.00	227%
663.241003	Insulation for Buried Water Main Pipe 10 inch with 3 inch think insulation	L.F.	420	\$9.00	\$3,780.00	\$25.00	\$10,500.00	278%	\$71.00	\$29,820.00	789%	\$100.00	\$42,000.00	1111%
663.4110	Remove and Dispose Existing 10" Dia. Water Pipe	L.F.	420	\$35.00	\$14,700.00	\$3.20	\$1,344.00	9%	\$38.00	\$15,960.00	109%	\$5.00	\$2,100.00	14%
695.33120105	Support and maintain existing utility conduits and/or cables on structure	L.S.	1	\$25,000.00	\$25,000.00	\$14,000.00	\$14,000.00	56%	\$5,000.00	\$5,000.00	20%	\$10,000.00	\$10,000.00	40%
699.0400	Mobilization	LS	1	\$44,100.00	\$44,100.00	\$254,620.00	\$254,620.00	577%	\$116,170.75	\$116,170.75	263%	\$143,355.00	\$143,355.00	325%
					\$1,145,669.00		\$2,395,913.45	209%		\$3,199,199.00	279%		\$3,735,000.00	326%

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RESOLUTION NO.: 68 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL
AND EXECUTE A CONTRACT WITH
WRIGHT-PIERCE ENGINEERING ASSOCIATES P.C.
FOR A WASTEWATER HEADWORKS ANALYSIS AND STUDY
AT THE WASTEWATER TREATMENT PLANT AT A COST OF \$132,800.00**

WHEREAS, the United States Environmental Protection Agency (“EPA”) inspected the City of Newburgh Wastewater Treatment Plant and found violations of regulations issued under the Clean Water Act in connection with the City’s Industrial Pretreatment Program (“IPP”) and issued an Administrative Compliance Order requiring the City to complete certain work to bring the IPP into compliance with applicable regulations; and

WHEREAS, the EPA Administrative Compliance Order requires the City to recalculate the local limits allowed to the four permitted Industrial Users under the City’s State Pollutant Discharge Elimination System (SPDES) permit and to review and update its Sewer Use Ordinance (SUO) and Enforcement Response Plan (ERP) to meet the EPA’s regulations; and

WHEREAS, the City solicited proposals from qualified professional engineering firms to develop appropriate local limits and assist in updating the SUO and ERP in accordance with EPA requirements and the order; and

WHEREAS, Wright-Pierce Engineering Associates P.C. has submitted a proposal to conduct a wastewater headworks analysis and study to assist the City with its obligations under the EPA Administrative Compliance Order at a cost of \$132,800.00 which shall be derived from G.8130.0448.003; and

WHEREAS, this Council has determined that accepting a proposal and entering into a contract with Wright-Pierce Engineering Associates P.C. to complete work required under the EPA Administrative Compliance Order is 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 the City Manager be and he hereby is authorized to accept the proposal and execute a contract with Wright-Pierce Engineering Associates P.C. at a cost of \$132,800.00 to bring the City’s Wastewater Treatment Plan into compliance with applicable regulations as required by the terms of the EPA Administrative Compliance Order.

NOTICE
REQUEST FOR PROPOSALS

for
Professional Services
related to the

WWTP Headwork's Analysis related to Industrial Pretreatment Program Local Limits

RFP No. 1.21

City of Newburgh, Orange County, New York

Sealed Proposals will be received by the City Comptroller in his office at City Hall, 83 Broadway, 4th Floor, Newburgh, New York 12550, until **11:00 a.m., (local time), Thursday, February 25, 2021** for professional services related to the WWTP Headwork's Analysis related to Industrial Pretreatment Program Local Limits.

This Request for Proposal (RFP) and consultant selection process is being conducted to engage a professional design firm/team that will coordinate, perform and/or subcontract an array of professional services to develop appropriate local limits on discharges to the City's publically owned treatment works (POTWs), review and update the City sewer use ordinance (SUO) and enforcement response plan (ERP) as needed, including, but not limited to the streamlining changes and any other changes outlined in previous EPA inspections/audits, to ensure compliance with 40 C.F.R. Based upon the required criteria, an internal Evaluation Committee shall review and evaluate each Proposal and recommend award be made to a qualified consultant that submits a proposal that best meets the City's needs.

This Request for Proposal, becoming available to the public on Friday, January 22, 2021, may be viewed and downloaded at no charge by visiting the Empire State Purchasing Group website at: www.BidNetDirect.com/new-york/city-of-newburgh, selecting the "Open Solicitations" tab and title of solicitation. Vendors may have to register if visiting this site for the first time.

Proposals must be submitted in accordance with the requirements and provisions stated in the RFP Document and submitted on or before the specified due date and time. Proposals submitted after the deadline will not be considered. Facsimile or electronic mail submissions will not be accepted. *Vendors are responsible for timely delivery of their Proposals.* There will be no exceptions.

Proposals shall not be withdrawn for a period of forty-five (45) days subsequent to the submission deadline without the consent of the City of Newburgh Comptroller. The City of Newburgh reserves the right to reject any or all Proposals and to waive any informality or technicality in any Proposal deemed to be in the best interest of the City.

By submission of a Proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, selected Proposer, or any assignee, certifies that they will at no additional cost comply and cooperate with New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women, and contracting opportunities for New York State-Certified Minority and Women-Owned Business Enterprises. The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable Federal, State, and local laws. M/WBEs must be certified as such by the State pursuant to NY Executive Law Article 15-A and listed in the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. The Department's New York State-Certified Minority and Women-Owned Business Enterprises utilization goal is thirty (30) percent, MBE and WBE each consisting of fifteen (15) percent.

By submission of a Proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, selected Proposer, or any assignee, certifies 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 on the Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. The selected respondent further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, the selected respondent is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended. The City of Newburgh reserves the right to reject any Proposal from 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. By submission of a Proposal to the City of Newburgh, Proposer thereby certifies their firm is in compliance with all aspects of this regulation.

BY ORDER OF THE CITY OF NEWBURGH

By: _____

City Comptroller

Dated: _____ January 20, 2021

"An Equal Opportunity, Affirmative Action Employer"



NEWBURGH, NEW YORK

FEBRUARY 2021

Proposal

RFP No. 1.21

WWTP Headwork's Analysis Related to Industrial Pretreatment Program Local Limits



Designated Contact:

Kevin Hickey, PE

518.527.5428

kevin.hickey@wright-pierce.com

Wright-Pierce Engineering Consultants, PC

480 Broadway, Suite 250

Saratoga Springs, NY 12866

February 25, 2021

Todd Venning
Office of the Comptroller
83 Broadway, Fourth Floor
Newburgh, NY 12550

Contact Person for Proposal
Kevin Hickey, PE, Project Manager
kevin.hickey@wright-pierce.com
518.527.5428

**SUBJECT: Proposal for Professional Engineering Services
WWTP Headworks Analysis Related to Industrial Pretreatment Program Local Limits**

Dear Mr. Venning,

The City of Newburgh operates a 9-million gallon per day wastewater treatment plant (WWTP) that serves the City of Newburgh and portions of the Town of Newburgh. Treated effluent from the Newburgh WWTP is discharged to the Hudson River under a State Pollutant Discharge Elimination System (SPDES) permit. The City administers an EPA-approved Industrial Pretreatment Program (IPP) as a condition of the SPDES discharge permit. The City's IPP currently includes four permitted Industrial Users, three within the City and one in the Town of Newburgh. In response to a 2018 EPA audit of the City's IPP, the City is currently under an administrative compliance order and is required to recalculate technically based local limits. Additionally, the City is required to review and update its Sewer Use Ordinance (SUO) and Enforcement Response Plan (ERP) to meet the EPA's regulations. The City is seeking a qualified professional firm to develop appropriate local limits and assist in updating the SUO and ERP in accordance with EPA requirements and the order.

As a multi-disciplinary consulting firm with a focus on both municipal and industrial water and wastewater engineering services, Wright-Pierce Engineering Consultants, PC (WPEC) is uniquely qualified to assist the City to successfully address the EPA mandates and to improve the overall operation of the IPP. We have provided identical services to numerous communities throughout the northeast. In fact, in 2019 EPA Region 1 issued approval to only three communities for the IPPs and Wright-Pierce worked on two of these projects. The Federal Industrial Pretreatment requirements are the same regardless of specific EPA region and our extensive experience with EPA Region 1 is transferrable to working with EPA Region 2. By maintaining strict adherence to the EPA requirements, and rigorous quality control of data sources and calculations, our work will allow the City to more confidently administer the IPP and provide the appropriate level of protection to the City's POTW.

The requested services also include updating the ERP and incorporation of the EPA Streamlining Rule, both of which will facilitate improved administration of the IPP by City staff. The EPA streamlining rule will allow greater City flexibility and reduce the overall regulatory burden on both industrial users and control authority without adversely affecting environmental protection.

WPEC provides water, wastewater, and infrastructure services to public and private clients in the State of New York. Established in 2011, WPEC owners and engineers are also part of the ownership and management team of Wright-Pierce, an award-winning engineering firm serving clients throughout the Northeast since 1947.

2/25/2021

Todd Venning

Page 2 of 2

WPEC is affiliated with, and partners with, Wright-Pierce to provide project management and engineering for this project and future work for the City of Newburgh.

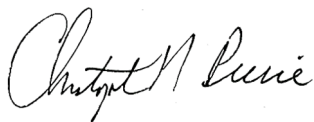
Working with WPEC offers the following benefits:

- **Relevant Experience.** We understand how to develop technically based local limits, update sewer use ordinances and enforcement response plans, and have successfully obtained approval for two of only three revised technically based local limits within EPA Region 1 in 2019. To further illustrate our capabilities, we have included two examples from previous, similar projects. These are included as an appendix to our proposal for your review.
- **Specialized MBE and WBE Partners and Subconsultants.** While we recognize Addendum No. 1 stated that there is no M/WBE requirement for this project, Wright-Pierce has included within our team a specialty firm which will contribute to the local limits development. Our team includes Envirospec Engineering PLLC who will complete the field work and review and update the ERP per the EPA's guidelines. Envirospec provides professional engineering and environmental services to a broad range of markets including Environmental Auditing and Planning and has prepared ERPs similar to what is required as part of this project.
- **Commitment to client satisfaction and team collaboration.** One of our greatest strengths is our responsive, client focused service, with a goal of exceeding our client's expectations. We have an excellent record in maintaining strong client relationships over the long-term. We believe our past work attests to the importance we place on client satisfaction.

We encourage you to contact the references provided within Section 3 of our proposal for a firsthand account of our performance and capabilities. Thank you for considering Wright-Pierce to provide engineering services for this project. We look forward to the opportunity to meet with your selection committee to further discuss our qualifications. If you have any questions, or need additional information, please don't hesitate to reach out to us.

Sincerely,

WRIGHT-PIERCE ENGINEERING CONSULTANTS



Christopher Pierce, PE

Principal-in-Charge

chris.pierce@wright-pierce.com

860.852.1950



Kevin Hickey, PE

Project Manager

kevin.hickey@wright-pierce.com

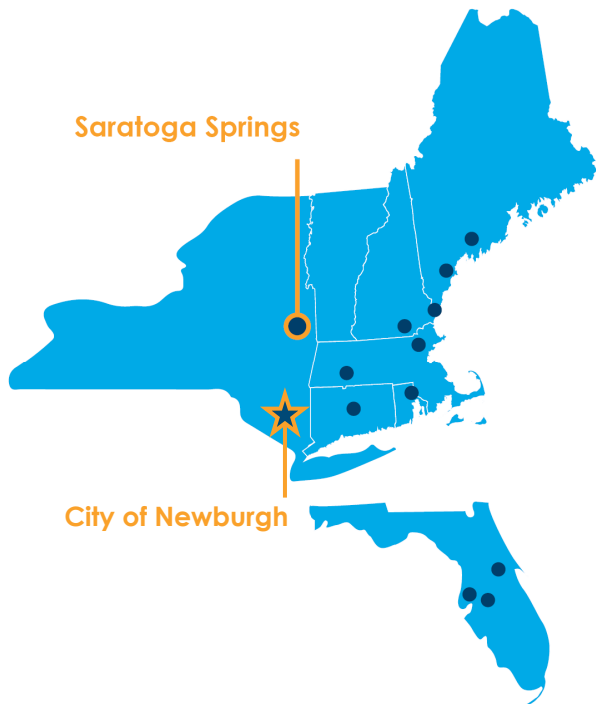
518.527.5428

Acknowledgement of Addendum

We acknowledge Addendum Number 1 dated February 10, 2021.

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About WPEC

Wright-Pierce Engineering Consultants, PC (WPEC) provides water, wastewater, and infrastructure services to public and private clients in the State of New York. Established in 2011, WPEC owners and engineers are also part of the ownership and management team of Wright-Pierce, an award-winning, multi-discipline engineering firm that has been providing water, wastewater, and civil infrastructure services since 1947. WPEC is licensed to provide engineering services in New York and Wright-Pierce provides engineering services and support to WPEC and its clients, thereby offering the benefits of Wright-Pierce's decades of engineering experience.

Employee-owned and operated, Wright-Pierce is made up of more than 275 engineers and support professionals located in offices throughout the Northeast and Florida. Wright-Pierce completes many engineering projects each year, ranging in size from less than \$100,000 to more than \$100 million. We provide full engineering services from initial planning to design, bidding, construction administration, and operational support.

ENR Top 20 Wastewater Treatment Plants
ENR Top 25 Sanitary and Storm Sewers
ENR Top 40 Sewer and Waste Engineering
ENR Top 200 Environmental Firms
ENR Top 500 Design Firms
ACEC Award-Winning Projects
PSMJ Circle of Excellence



“ Our mission – to enhance your success by delivering reliable solutions, responsive service, and superior value. ”

An Award-Winning Firm

Wright-Pierce has been recognized by several industry organizations for business performance and engineering excellence. We rank in Engineering News-Record (ENR) “Top” lists, including the Top 500 Design Firms and Top 200 Environmental Design Firms in the country. Many of our projects receive regional ACEC Engineering Excellence Awards. In addition, we have repeatedly received the PSMJ ‘Circle of Excellence’ Platinum Award – one of only 20 firms in North America to do so. PSMJ is a firm dedicated to business practices of architectural and engineering (A/E) firms worldwide and bestows its Circle of Excellence award after assessing benchmarks for operations, management, and sustainability.

Responsive Service Focused on Your Success

The cornerstone of our business is to help our clients improve their communities while protecting public health and the environment. For every project, we focus on understanding the project issues and goals; stressing practical, operator-friendly solutions; identifying fiscal constraints and emphasizing value-based solutions; and involving and collaborating with our clients throughout the project.

Wright-Pierce Engineering Services

At Wright-Pierce, we help engineer a better environment for our clients, our communities, and our planet. Providing water, wastewater, and infrastructure engineering services since 1947, our focus is working with clients to develop sustainable, efficient solutions that exceed their goals.

Drinking Water

- Water master planning
- Water source and supply
- Water treatment
- Water pumping, storage, and distribution

Wastewater

- Wastewater planning
- Wastewater collection
- Wastewater pumping
- Wastewater treatment and discharge/reuse

Water Resources

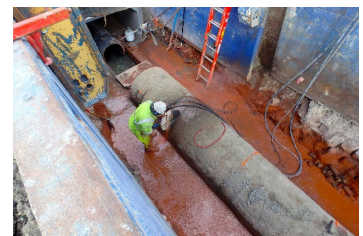
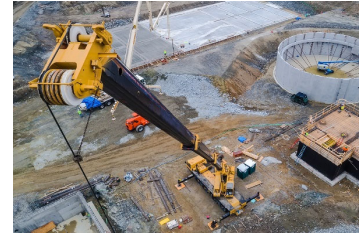
- Stormwater management
- Watershed management and planning
- Climate change/flooding
- Dams

Civil Engineering & Community Development

- Transportation infrastructure
- Community planning and revitalization
- Site planning

Building & Support Services

- Architectural/structural engineering
- Mechanical/HVAC engineering
- Electrical/instrumentation engineering
- SCADA integration
- Landscape architecture
- GIS services
- Funding/financial services
- Hydrogeology



Wastewater Engineering Services

Effective management of wastewater is critical to maintain public health and protect our natural resources. This includes collection and treatment of wastewater and its residuals, from small decentralized systems to large, complex municipal and industrial systems.

Ranked among the top 25 U.S. wastewater treatment firms in Engineering News Record's 2020 Sourcebook, we offer all aspects of comprehensive planning, design, construction administration, operational assistance, and asset management services.

Wastewater Planning

- Sewer system master planning
- Facility plans/evaluations
- Value engineering
- Asset Management/Capital Improvement Plans (CIP)
- Biosolids management
- Energy efficiency
- FOG management
- Decentralized wastewater management
- Industrial pretreatment/local limits
- Funding/user rate studies
- Regionalization studies
- Regulatory assistance/permitting
- Public outreach/education

Wastewater Collection

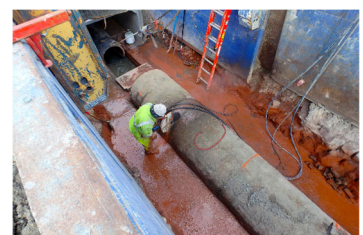
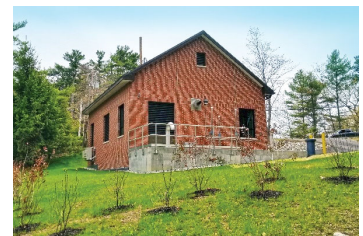
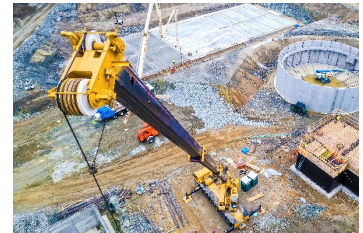
- I/I, SSES, and condition assessments
- CMOM/SSO control compliance
- Combined sewer overflows
- Inline/offline CSO storage
- Rehabilitation/combined sewer separation
- Hydraulic modeling/design
- Odor control
- Sewer replacement/extensions

Wastewater Pumping

- Wet/dry well stations
- Submersible stations
- Above-grade suction-lift stations
- Force mains
- Pressure pipe assessment
- Low pressure sewers
- Odor control
- Bypass provisions
- Influent screening
- Grinding and grit removal
- Emergency power
- Wet well mixing for FOG control

Wastewater Treatment and Discharge/Reuse

- Onsite septic systems
- Influent pumping systems
- Influent screenings/grit
- Septage receiving/treatment
- Fats, oils, and grease (FOG)
- Primary treatment
- Secondary treatment
- Nutrient removal/treatment
- Disinfection
- Biosolids
- Digestion
- Odor control
- Water reclamation/reuse
- Surface water outfalls/subsurface disposal
- Decentralized package plants
- Lagoon treatment



Industrial Water, Wastewater & Civil Engineering Services

Water supply quality and quantity needs vary depending on manufacturing process requirements. For some industries such as food and beverage; pharmaceuticals; or electronics manufacturing, reliable, high-quality, ultra-pure water may be needed to ensure product quality. For other industries or specific manufacturing processes, recycled treated wastewater may be suitable quality with reduced costs for water supply and intra-municipal wastewater treatment.

Industrial wastewater treatment is also important to ensure operators are not exposed to harmful chemicals or vapors, that biological treatment at a wastewater facility is not impacted, to meet discharge permit requirements, and to prevent surface or groundwater contamination.

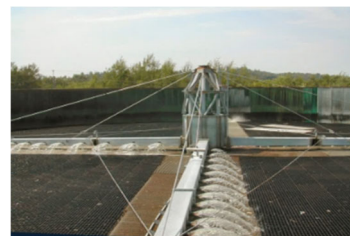
While most of Wright-Pierce's engineering services are for municipal clients, we also work with a wide range of industries to address water, wastewater, stormwater, and civil-site infrastructure issues. We have experience with many water/wastewater technologies, joint municipal/industrial wastewater treatment facilities, stormwater technologies, and site infrastructure systems.

Industrial Services

- Water supply and treatment
- Waste stream characterization
- Waste minimization strategies
- Wastewater treatment
- Alternative disposal
- Instrumentation & controls (I&C)
- SCADA and integration
- pH neutralization
- Reverse osmosis (RO)
- Chemical precipitation
- Solids removal/handling
- Odor control
- Heat transfer/heat salvage
- SPCC/SWPPP plans
- Energy efficiency assessments
- Cost-benefit analyses
- Bench testing/pilot studies
- Regulatory agency compliance
- Asset management
- Permitting
- Civil-site infrastructure

Industries Served

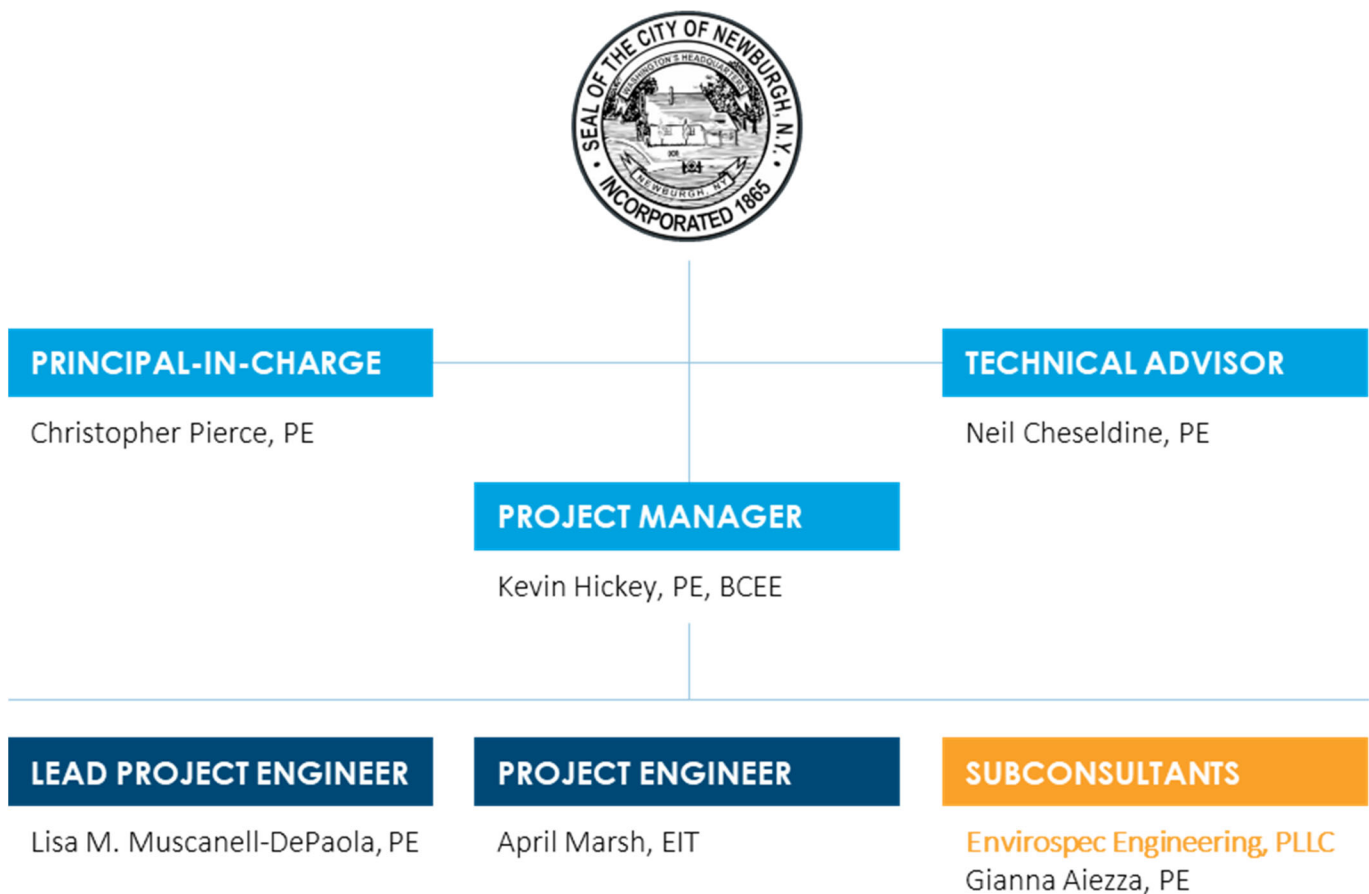
- Auto parts
- Bakeries
- Beverages/bottling
- Breweries
- Circuit boards/electronics
- Chemicals
- Composting/anaerobic digestion
- Concrete
- Corn chips
- Fiber boards
- Food additives
- Food processing
- Leather tanning
- Machinery
- Pulp and paper products
- Paper processing
- Pharmaceuticals
- Recycled paper/fibers
- Power production
- Specialty fabrics/fibers
- Textiles



Project Team Organization

From our full-service, diverse staff of experienced engineering professionals, operators, technicians, and support personnel, we have assembled a project team with many years of demonstrated practical experience completing similar projects. We understand that no one will know the requirements of this project better than you. To find the best solution, working together as a team will be essential, and our team is committed to working with you.

Kevin Hickey will be your dedicated Project Manager for the WWTP Headworks Analysis project. He has 14 years of experience working on wastewater treatment projects. Kevin will be supported by the technical team shown below, many of which have worked together before on projects similar to this one and have familiarity with you and the project.



Introducing Our Key Team Members

The following introductions describe each of our key team members and explains:

- Role and responsibilities for this project
- General qualifications as they relate to this project
- A synopsis of specific experience that helps them add value to this project

Additional information about each team member and their experience can be found in their resume in an appendix to this submittal.



Wright-Pierce team members typically participate through all phases of a project to ensure continuity, effective implementation of original concepts, and overall success.



Experience: 31 years
Joined Firm: 2001
Professional Licenses: NY, CT, DE, MA, ME, RI

Principal in Charge: Chris Pierce, PE

Chris, Vice President and Wastewater Group Leader for Wright-Pierce will serve as Principal-in-Charge for this contract. In this role, he will be responsible for acting as the firm's authorized representative in any negotiations and for ensuring all contractual obligations are met. Additionally, Chris will be available to assist with meetings and presentations as necessary. As Principal-in-Charge, Chris will commit the team resources needed for this project.

As a Wastewater Group Leader, his responsibilities include studies, evaluations, facilities planning, coordination with regulatory agencies, design, construction administration, start-up, and operational assistance of wastewater collection, pumping and treatment facility projects. Chris is highly experienced in the study, design, and construction of wastewater infrastructure projects.



Experience: 14 years
Joined Firm: 2020
Professional Licenses: NY

Project Manager: Kevin Hickey, PE, BCEE

Kevin will serve as Project Manager for the City's headworks analysis project. In this role, he will be the primary point of contact for communications with the City. Kevin will be responsible for coordinating the technical efforts of the project team and for monitoring schedule and budget compliance.

Kevin's experience ranges from evaluation to design of treatment systems for municipal wastewater plants, wastewater disinfection systems, industrial wastewater treatment facilities, landfill leachate, and combined sewer overflows. Kevin has also worked on many pilot study programs for municipal wastewater treatment facilities.



Experience: 31 years
Joined Firm: 1990
Professional Licenses: CT, MA, ME, NH

Technical Advisor: Neil Cheseldine, PE

Neil will serve as Technical Advisor, providing technical advice to the project team and reviews of interim technical documents. He will also assist with ensuring that our QA/QC program is implemented and will be a QC reviewer.

Neil has a wide range of experience in planning, design, and construction of wastewater facilities for municipal and industrial clients throughout the Northeast. In addition to engineering tasks, Neil has extensive experience negotiating with regulatory agencies, administering public funding for projects, and providing operational and permit compliance assistance to wastewater treatment facilities.



Experience: 4 years
Joined Firm: 2019
Professional Licenses: EIT

Project Engineer: April Marsh, EIT

April will serve as the Project Engineer for this project. She will assist the Project Manager and Lead Project Engineer by completing identifying POCs and preparing TBLL calculations. April has experience in construction administration, cost estimating, manhole inspection and rehabilitation, and the design of pump stations, water mains, and sewers. She has experience with MATLAB, R, ArcGIS, REVIT, Pipe-Flo, and WaterGEMS.



Experience: 14 years
Joined Firm: 2009
Professional Licenses: CT

Lead Project Engineer: Lisa Muscanell-DePaola, PE

Lisa will serve as the Lead Project Engineer for this project. She will assist the project manager with developing the headworks loadings analysis. Lisa is currently assisting several communities in CT in identifying their non-significant industrial users that need to register under a new General Permit.

Lisa is a lead project engineer in the Wastewater Practice Group. Her responsibilities include design of wastewater collection and treatment processes and facilities, as well as preparation of design plans and specifications.



Experience: 25+ years
Joined Firm: 2007
Professional Licenses: NY

Principal Engineer: Gianna Aiezza, PE

Gianna is the Principal Engineer of Envirospec Engineering, PLLC and will oversee any tasks assigned to Envirospec under this contract. Gianna has over 25 years of experience in environmental remediation and design, compliance, and permitting. Gianna complements her permitting experience with extensive treatment and remediation design experience as well as the oversight of hazmat asbestos and lead inspection, design, and monitoring projects. Her experience spans throughout New York State and the United States for both public and private clients.

Company Governance

Wright-Pierce Engineering Consultants, PC (WPEC) was established in 2011 by shareholders of Wright-Pierce and is licensed to provide engineering services in the State of New York. WPEC is a closely held private corporation organized under the laws of the State of Maine. WPEC and Wright-Pierce have an Administrative Services Agreement whereby Wright-Pierce provides engineering services and support to WPEC and its clients.

Wright-Pierce is a closely held private corporation organized under the laws of the State of Maine in 1954. The firm operated as a partnership from 1947 to 1954. Over the years the firm has grown and diversified. Wright-Pierce has been consistently profitable and manages its finances conservatively. The company is governed by a set of bylaws. It is incorporated in the state of Maine as a Subchapter S Corporation.

Wright-Pierce has offices in Topsham and Portland, Maine; Manchester and Portsmouth, New Hampshire; Middletown, Connecticut; Andover and Westfield, Massachusetts; Providence, Rhode Island; Lakeland, Maitland, and Tampa, Florida; and Saratoga Springs, New York. The company is licensed to practice in several other states, including Vermont, North Carolina, and Delaware.

Wright-Pierce is owned by a group of key employee stockholders, currently numbering 55 and representing about 22% of employees. The stockholders elect a board of directors, which in turn elects corporate officers. Wright-Pierce has had an ownership transition plan in place for over 30 years that ensures continuity of ownership and business operations beyond the death, disability, or retirement of key stockholders and officers.

We maintain that our company is managed by current employees who are invested in the success of our clients, and therefore our company. Our employee owners are also invested in the longevity of our company, not short-term profit, and they make decisions for our company that will sustain us long-term. We believe this differentiates us from our publicly owned competitors whose main corporate mission is to maximize shareholder value. We have no foreseeable plans for mergers or acquisitions.

The individuals listed below have contract signing authority. It is company policy that, whenever possible, the CFO or CEO review all contracts.

WPEC Officers

- Paul F. Birkel, Vice President
- John W. Braccio, President/CEO
- Christopher N. Pierce, Vice President
- Timothy R. Vadney, Vice President
- Ryan T. Wingard, Vice President/Clerk

Wright-Pierce Officers

- Paul F. Birkel, Vice President
- John W. Braccio, President/CEO
- Richard N. Davee, Vice President
- Michael D. Giggey, Vice President
- Steven C. Hallowell, Vice President
- Edward J. Leonard, Vice President
- John R. Nelson, Vice President
- Christopher N. Pierce, Vice President
- Richard G. Protasowicki, Vice President
- Laura J. Riley, Vice President/Treasurer/CFO
- Timothy R. Vadney, Vice President
- Ryan T. Wingard, Vice President/Clerk

Availability & Capacity to Perform

Wright-Pierce has over 275 engineering and support staff. We complete hundreds of projects per year and have appropriate staffing in place to deliver. Many of our projects are on stringent administrative order schedules, and we have a proven track record of meeting these and other accelerated project schedules.

As we begin projects, we allocate appropriate team resources to meet our clients' requirements. Typically, team members remain the same throughout the duration of the project to ensure continuity and proper execution of design through construction.

Current & Planned Workloads

We utilize state-of-the-art business management software, BST10, that includes staffing workload resource planning which is updated monthly. These data are utilized to project 12-month workloads for all staff and to identify project team members with appropriate availability for specific assignments. Based on this analysis and the projected start and duration of this project, we have identified key project team members who we will commit to complete the project within budget and on schedule.

Wright-Pierce will commit the necessary resources to complete your project within the desired timeframe.

Key Team Member Availability

Team Member	Company	Role	Percent Availability	Commitment to this Project
Chris Pierce, PE	Wright-Pierce	Principal-in-Charge	30%	10%
Kevin Hickey, PE	Wright-Pierce	Project Manager	40%	20%
Neil Cheseldine, PE	Wright-Pierce	Technical Advisor	50%	35%
Lisa Muscanell-DePaola, PE	Wright-Pierce	Lead Project Engineer	50%	50%
April Marsh, EIT	Wright-Pierce	Project Engineer	50%	50%
Gianna Aiezza, PE	Envirospec	Principal Engineer	50%	35%

Proposed Schedule

The ability to perform is judged on a firm's relevant experience on similar projects, the qualifications and availability of the staff assigned to the project, the overall expertise of the firm, and the firm's commitment to the project. All these are key criteria and factors to judge a firm's ability to complete the work in a timely fashion. We have the team depth and redundancy built into the project team to meet the required deadlines.

The work noted below is scheduled to begin as soon as an authorization to proceed is issued.

Schedule Control

One key to a successful project is commitment of necessary resources to complete work within a required timeframe. We empower our managers with the following tools and processes to identify potential schedule conflicts and prioritize resources:

- Project manager coordination meetings, held weekly, to ensure our people are leveraged and projects are appropriately staffed
- Workload calendar for Building Services support, updated weekly
- Workload forecasting, updated monthly
- Project team meetings held regularly for the duration of a project to keep the team coordinated and on track to meet project milestones
- Regional group and division leaders have authority to bring in highly skilled resources regardless of location, as needed, to meet schedule objectives
- Good working relationships with area subconsultants to augment our teams, as needed

Proposed Schedule

Task	2021												2022											
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec				
Selection & Authorization to Proceed	★																							
Kickoff Meeting	★																							
Data Collection & Review																								
IWS – Identify Potential IUs & Send out Surveys																								
IWS – Survey Follow-up, Evaluation, & Summary																								
IWS – Obtain EPA approval																								
Develop Sampling Plan & Obtain EPA Approval																								
Field Sampling Program & Data Analysis																								
Develop Recommended Local & Screening Limits																								
Prepare Draft SUO Updates																								
Prepare Draft ERP Updates																								
Submit Draft Local Limits Report, SUO, & ERP to City for Review																								
Finalize Local Limits Report, SUO, & ERP																								
Submit Local Limits Report, SUO, & ERP to EPA																								
Review Comments from EPA																								
Finalize Local Limits Report, SUO, & ERP based on EPA Comments																								
EPA 30-day Comment Period																								
Conduct Public Meeting																								
Review & Update Existing IU Permits																								
Conduct Meeting with Existing IUs																								

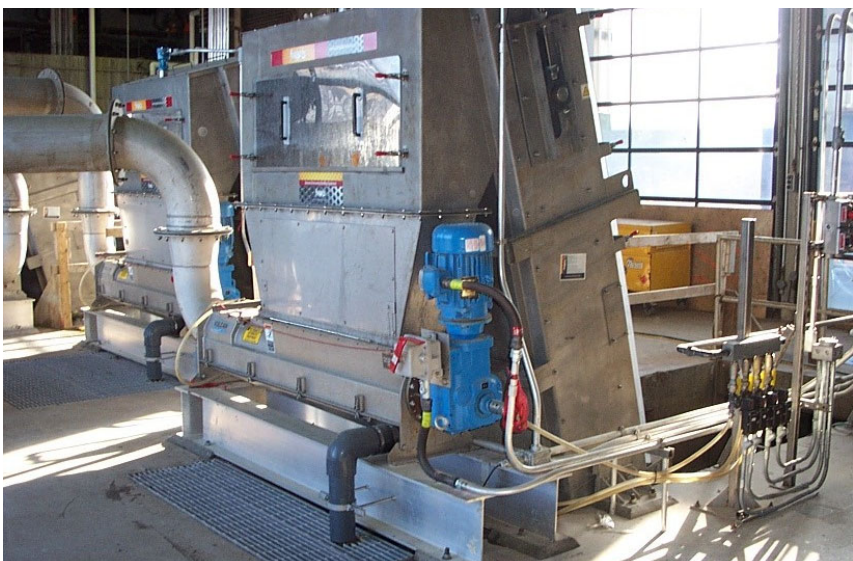
Projects Similar to Newburgh's Needs

To demonstrate our experience, we have selected the following 6 projects similar in service and technical needs to the City's WWTP Headworks Analysis project.

1. Poughkeepsie, NY
2. Fitchburg, MA
3. Wareham, MA
4. Dover, NH
5. Henkel, West Hazleton, PA
6. Skaneateles Falls, NY (Envirospec)

As requested, these case studies include:

- Determining pollutants of concern
- Designating and implementing local limits
- Developing and updating sewer use ordinances
- Evaluation and design of industrial wastewater pre-treatment systems



Proposed Fee

Wright-Pierce is a strong believer in the selection of engineers based on qualifications, with an equitable fee negotiated between the selected firm and the client, based on a mutually established detailed scope of work. **We are flexible and willing to reconsider any aspect of our proposal if we can provide a more tailored level of service.**

For the proposed scope of services, broken down by the tasks discussed in our scope of services section, **we propose a lump sum fee of \$65,000.** Please note that this includes seven (7) days of sampling as discussed in our approach. Should additional sampling be required this will be billed out at daily rate of \$1,400 per day.

Our fee reflects a good understanding of the needs of City of Newburgh. We have provided a work plan and fee that we believe reflects the level of effort required to cost effectively complete this effort. We have also based our fee on leveraging our existing knowledge of the system and the data we have collected from our ongoing support of City of Newburgh.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 19 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7018 1830 0000 9639 4760

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

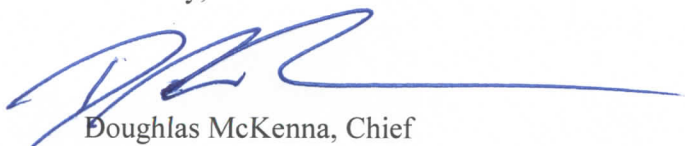
Re: Administrative Compliance Order, CWA-02-2019-3038
City of Newburgh
SPDES Permit No. NY0026310

Dear Mr. Morris:

On December 17, 2019, via electronic mail, the United States Environmental Protection Agency ("EPA") received the City of Newburgh's ("City") request for an extension of time to respond to EPA's December 4, 2019 letter.

The EPA has reviewed the City's request for an extension of time and determined the request is reasonable. Therefore, the City's response is extended to no later than January 31, 2020.

Sincerely,



Douglas McKenna, Chief
Water Compliance Branch

cc: Chad Wade, R.L.A., Assistant City Engineer, City of Newburgh (CWade@cityofnewburgh-ny.gov)
Michael Batz, Inframark Water & Infrastructure Services (michael.batz@inframark.com)

RESOLUTION NO.: 69 - 2021

OF

APRIL 12, 2021

**A RESOLUTION ADOPTING THE CITY OF NEWBURGH
INVESTMENT POLICY**

WHEREAS, the New York State General Municipal Law Section 11 provides local governments with the authority to invest and the types of investments permitted; and

WHEREAS, the New York State General Municipal Law Section 39 requires the local governments to adopt an investment policy by resolution; and

WHEREAS, the City Council determines that it is in the best interests of the City of Newburgh to adopt an investment policy consistent with the requirements of the New York State General Municipal Law;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby adopts the City of Newburgh Investment Policy, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that this Policy shall take effect immediately.

INVESTMENT POLICY

City of Newburgh,
New York

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I. SCOPE

This investment policy applies to all monies and other financial resources available for deposit and investment by the City of Newburgh (the "City") on its own behalf or on behalf of any other entity or individual.

II. OBJECTIVES

The primary objectives of the City's investment activities are, in priority order:

- To conform with all applicable federal, State and other legal requirements (legal);
- To adequately safeguard principal (safety);
- To provide sufficient liquidity to meet all operating requirements (liquidity);
- To analyze and project other anticipated liabilities (forecast);
- To obtain a reasonable rate of return consistent with operating and liability requirements (yield).

III. DELEGATION OF AUTHORITY

The responsibility of the investment program is delegated to the City Comptroller who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on database or records incorporating description and amounts of investments, transaction dates, and other relevant information and monitor the activities of subordinate employees. All employees directly associated with the investment process shall be bonded.

IV. PRUDENCE

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the City's ability to govern effectively.

Investments shall be made with judgment and care, under circumstances then prevailing, with prudence, discretion and intelligence exercised in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with the proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

V. DIVERSIFICATION

Investments and deposits shall, to the extent practical, be diversified by financial institution, maturity, and type of investment to eliminate the risk of loss resulting from over concentration of assets in a specific bank or trading partner or a specific maturity.

VI. INTERNAL CONTROLS

It is the policy of the City for all monies collected by any officer or employee of the City to deposit said funds timely within the time period specified by law.

The City Comptroller is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with this investment policy and recorded properly, and are managed in compliance with applicable laws and regulations.

VII. COLLATERALIZING OF DEPOSITS

In accordance with the provisions of General Municipal Law, Section 10, all deposits of the City, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of "eligible securities" with an aggregate "market value", as provided by General Municipal Law, Section 10, equal to the aggregate amount of deposits from the categories designated in Appendix A of this policy.

VIII. SAFEKEEPING AND COLLATERALIZATION

Eligible securities used for collateralizing deposits shall be held by the bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure the City's deposits together with agreed-upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon a default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which will enable the local government to exercise its rights against the pledged securities.

In the event that the securities are not registered or inscribed in the name of the City of Newburgh, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the City or the custodial bank.

The custodial agreement shall provide that securities held by the bank or trust company as agent of and custodian for the City will be kept separate and apart from the general assets of custodial bank or trust company, and will not in any circumstances, be comingled with or become part of the backing of any other deposit or bank liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreements shall include all provisions necessary to provide the City a perfected interest in the securities.

At the direction of the City Comptroller, an independent advisor shall evaluate collateral sufficiency. During periods of rising interest rates, the City Comptroller may direct collateral evaluations at any time.

IX. PERMITTED INVESTMENTS

As authorized by General Municipal Law Section 11, the City authorizes the City Comptroller to invest monies not required for immediate expenditure for terms not to exceed its projected cash flow liabilities in the following types of investments:

- Special time deposit accounts;
- Certificates of deposit;
- Obligations of the United States of America;
- Obligations guaranteed by agencies of the United States of America, where the payment of principal and interest are guaranteed by the United States of America.
- Obligations of the State of New York;
- Obligations of the City of Newburgh and related entities, but only with monies in a reserve fund established pursuant to General Municipal Law Section 6-c, 6-d, 6-e, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m or 6-n;
- With the approval of the Office of the New York State Comptroller, obligations issued pursuant to Local Finance Law Section 24.00 or 25.00 (i.e., Tax Anticipation Notes and Revenue Anticipation Notes) by any municipality, school district or district corporation in the State of New York other than the City; and
- Any other obligations authorized by law.

X. AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

The City shall maintain a list of financial institutions and dealers approved for investment purposes ⁽¹⁾, and except for the United States Government and City securities described herein, establish appropriate limits to the amounts of investments, which can be made with each financial institution or dealer. At a minimum, the City shall publicly request proposals from authorized financial institutions and dealers every 3 to 5 years. The following banks and/or trust companies authorized for the deposit of moneys, including certificates of deposit, up to the maximum amounts shown, are:

Depository Name	Investment Limit
TBD ⁽¹⁾	TBD ⁽¹⁾
TBD ⁽¹⁾	TBD ⁽¹⁾
TBD ⁽¹⁾	TBD ⁽¹⁾

- (1) As of the date of this policy, the City was in the process of issuing a public request for bids from authorized financial institutions and dealers. Once bids are received and reviewed by City officials, the above list of depositories will be amended to reflect those institutions which have been selected. At a minimum, the City shall publicly request proposals from authorized financial institutions and dealers every 3 to 5 years.

All financial institutions with which the City conducts business with shall be creditworthy. Banks shall provide their most recent Consolidation Report of Condition at the request of the City. Security dealers shall provide financial information acceptable to the City Comptroller. The City Comptroller is responsible for evaluating the financial position and maintaining a listing of proposed depositories,

trading partners and custodians. Such listings shall be evaluated at least annually.

XI. PURCHASE OF INVESTMENTS

The City Comptroller is authorized to contract for the purchase of investments:

- Directly, including through a repurchase agreement, from an authorized trading partner;
- By participation in a cooperative investment program with another authorized governmental entity pursuant to Article 5G of the General Municipal Law where such program meets all the requirements set forth in the Office of the New York State Comptroller; and
- By utilizing an ongoing investment program with an authorized trading partner in conformance with the investment policy.

All purchased obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold and/or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the City by the bank or trust company.

Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law Section 10(3)(a). The agreement shall provide that securities held by the bank or trust company, as agent of, and custodian for the City, will be kept separate and apart from the general assets of the custodial bank or trust company and will not be comingled with or become part of the backing of any other deposit or other bank liability. The agreement shall also describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to secure the City's perfected interest in the securities, and the agreement may also contain other provisions that the governing board deems necessary. The security and custodial agreements shall also include all other provisions necessary to provide the City with a perfected interest in the securities.

XII. REPURCHASE AGREEMENTS

Repurchase agreements are authorized subject to the following restrictions:

- All repurchase agreements entered into must be subject to a Master Repurchase Agreement;
- Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers;
- Obligations shall be limited to obligations of the United States of America and obligations of agencies of the United States of America where principal and interest are guaranteed by the United States of America;
- No substitution of securities will be allowed; and
- The custodian shall be party other than the trading partner.

XIII. ANNUAL REVIEW AND AMENDMENTS

On an annual basis, the City Council shall review the investment policy and shall approve policy revisions, if any, by formal resolution.

Appendix A– “Eligible Securities” for Collateral

Schedule of Eligible Securities for Collateralizing Deposits and Investments in Excess of FDIC Coverage (See Investment Policy, Section VIII)

“Eligible Securities” for Collateral	For purposes of determining aggregate “market value,” eligible securities shall be valued at these percentages of “market value”:
(i) Obligations issued or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government-sponsored corporation.	100%
(ii) Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the market value of the obligation that represents the amount of the insurance or guaranty.	100%
(iii) Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of New York State or obligations of any public benefit corporation which under a specific New York State statute may be accepted as security for deposit of public monies.	100%

RESOLUTION NO.: 70 - 2021

OF

APRIL 12, 2021

**A RESOLUTION DECLARING POLICE DEPARTMENT AND
DEPARTMENT OF PUBLIC WORKS VEHICLES AND
WATER DEPARTMENT EQUIPMENT AS SURPLUS**

WHEREAS, the City of Newburgh Department of Public Works possesses one 2006 Dodge Ram 2500 4 x 4 pick-up truck which is no longer of use to the City; and

WHEREAS, the City of Newburgh Police Department possesses two 2005 Ford Taurus 4-door sedans, one 2002 Chevrolet Tahoe SUV, one 2007 Chevrolet Tahoe SUV and one 2011 Chevrolet Tahoe SUV which are no longer of use to the City; and

WHEREAS, the City of Newburgh Water Department possesses three Model SF4B125T64YHT1T1 Lincoln Electric Motors 125 HP 460 Volt; three Model 05-1290055 Aurora Centrifugal Pumps 2000 G.P.M 1750 RPM; and one 1960's Black top Smooth Drum Roller, which are no longer of use to the City; and

WHEREAS, the Department of Public Works, the Police Department, and Water Department have requested that the vehicles and equipment be designated as surplus and sold; and

WHEREAS, the City Council has determined that declaring the vehicles and equipment as surplus is in the best interests of the City of Newburgh; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the vehicles and equipment identified on the schedule attached hereto and made part hereof are 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 and/or City Comptroller be and they are hereby authorized to execute any required documents and conduct all necessary transactions to dispose of said surplus vehicles in accordance with the City of Newburgh's Surplus Property Disposition Policy and Procedure adopted by Resolution No. 174-2014 of July 14, 2014.

[illegible]

[illegible]

RESOLUTION NO.: 71 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH T. D. BANK, N.A.
TO ENABLE THE CITY OF NEWBURGH TO ACCEPT CREDIT CARD PAYMENTS
THROUGH AUTHORIZE.NET**

WHEREAS, the City of Newburgh has recognized a need to increase customer payment options, including credit card based transactions; and

WHEREAS, T. D. Bank, N.A. offers a credit card payment system through Authorize.Net, which will interface with SeamlessDocs to receive payments for Civil Service and film permit transactions; and

WHEREAS, credit card transaction payment options will expand access to those who might require such City services; and

WHEREAS, this Council finds it in the best interest of the City of Newburgh to enter into an agreement with T. D. Bank, N.A., as annexed hereto, for credit card payment processing;

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 an agreement with T. D. Bank, N.A. for credit card payment processing services for City services.

TD2205(ia)

(1) TELL US ABOUT YOUR BUSINESS

TD2205(ia)

Legal Name: _____		Store #: _____		Loc. _____	of _____
DBA/Outlet Name: _____		First/Last Contact Name: _____			
Address: _____	Suite #: _____	City: _____	State: _____	Zip: _____	
Business Phone: _____		Customer Service Phone: _____			
Fax Phone: _____		Cell Phone: _____			
E-Mail Address: _____		Website URL Address: _____			

TIN Type: ☐ EIN (Fed Tax ID #) ☐ SSN **Retrieval Requests:** ☐ Dedicated 24 hour fax ☐ No fax; mail ☐ Dispute Manager

NOTE: Failure to provide accurate information may require us to withhold income tax from your funding per IRS regulations.

Name (as it appears on your income tax return) _____	☐ Federal Tax ID# (as it appears on your income tax return) _____	☐ I certify that I am a foreign entity/nonresident alien. (If checked, please attach IRS Form W-8.)
---	---	---

Product/Services you sell: _____

Time frame from transaction to delivery: % of orders delivered in: 0-7 days _____ % + 8-14 days _____ % + 15-30 days _____ % + over 30 days _____ % = **100%**

Who performs product/service fulfillment? Direct _____ Vendor _____ If Vendor, add name, address, phone. ☐ Other: (specify) _____

 Do you use any third party to store, process or transmit cardholder data? ☐ Yes ☐ No

If yes, give name/address: _____

Please identify any Software used for storing, transmitting, or processing card transactions or authorization requests. _____

(2) OWNERSHIP
State Organized: _____ **Mo/Yr Started:** _____ ☐ Sole Ownership ☐ Partnership ☐ Non Profit/Tax Exempt ☐ Public Corp. ☐ Private Corp. ☐ LLC ☐ Gov't.

Owner/Partner/Officer Name: _____ **D.O.B.:** _____ **Social Security #:** _____

Home Phone: _____ **Ownership %:** _____

Home Address: _____ **City:** _____ **State:** _____ **Zip:** _____ **Country:** _____

Form of ID Verified: _____ **OK** ☐ **Expiration Date:** _____ **State:** _____

Owner/Partner/Officer Name: _____ **D.O.B.:** _____ **Social Security #:** _____

Home Phone: _____ **Ownership %:** _____

Home Address: _____ **City:** _____ **State:** _____ **Zip:** _____ **Country:** _____

Form of ID Verified: _____ **OK** ☐ **Expiration Date:** _____ **State:** _____
(3) BUSINESS FINANCIAL DATA

Total Annual Volume	This Location	All Locations				
Cash & Credit	\$ _____	\$ _____	Average Card Sale Amount	\$ _____	Card Present	_____ %
Mastercard/Visa	\$ _____	\$ _____	Highest Sale Amount	\$ _____	Internet	_____ %
Discover	\$ _____	\$ _____			Mail Order/ Direct Marketing	_____ %
American Express OptBlue®	\$ _____	\$ _____			Phone Order	_____ %
Voyager	\$ _____	\$ _____			Total	100 %
WEX	\$ _____	\$ _____				

(4) BANKING AND FUNDING INFORMATION
ABA: _____ **DDA:** _____

☐ Attach a copy of funding check or bank letterhead/logo signed by a bank officer with typed ABA/DDA. Must include bank name and address.

Deduct Fees: ☐ Daily (excluding Flat Rate) **or** ☐ Monthly (fee will apply) **Bank Will Fund:** ☐ Outlet ☐ Head Office
(5) PAYMENTS ACCEPTED

☐ Mastercard/Visa Credit and Signature Debit	☐ American Express OptBlue	☐ MC Fleet
☐ Discover Credit and Signature Debit (Full Service Processing)	☐ Voyager Fleet	☐ EBT _____
☐ PIN Debit	☐ Voyager Tax Exempt Program	☐ American Express Pass Through SE _____
☐ PINless Debit	☐ WEX Full Acquiring	☐ Split Dial ☐ EDC
	☐ WEX (Non-Full Acquiring)	

DBA Name: _____

Loc. _____ of _____

TD2205(ia)		(6) EQUIPMENT DETAILS					TD2205(ia)	
Rental - Purchase Customer-Owned Lease*	QTY	IP	Equipment Type	Industry Type	Model Code and Name	Unit Price w/o Tax and S&H	For Customer-Owned Equipment Track/Version/Serial #	
		☐				\$		
		☐				\$		
		☐				\$		
		☐				\$		

 Shipping and Handling: ☐ Standard \$ _____ ☐ Overnight \$ _____ ☐ Enable EMV

Any equipment sold by TD Bank N.A. is subject to the manufacturer's warranty.

The following fees may apply per each applicable device: Credit Card terminal swap fee: \$150.00, PIN-pad swap fee: \$50.00, Credit card terminal restocking fee: \$10.00, Clover device restocking fee: up to \$250.00, Clover peripheral restocking fee: \$10.00

Items returned within 30 days of purchase may be subject to a restocking charge; No returns will be accepted after 30 days of purchase.

*See Equipment Lease Agreement for the Terms and Conditions governing your leased equipment.

(7) FEE SCHEDULE

Product Subscriptions (Monthly)	
Clover Services (Per Device)*	(2CS) \$ _____
Clover Insights (Insightics Solution)	(49M) \$ _____
*Charges for Clover Services may appear on your monthly statement or may be billed through the Clover App Market, depending on the device.	

Mobile Payments Solution (Clover Go)	
Mobile Payments Monthly Fee (Per Terminal ID)	(32Y) \$ _____

eCommerce/Wireless Solutions	
Payeezy Monthly Fee	(40A) \$ _____
Payeezy Authorization Fee	(0FC) \$ _____
Clover Online Store	(2D9) \$ _____
Global ePricing MC/Visa Service Fee	(897, 898) _____%
Third Party Internet Set-Up Fee	(30R) \$ _____
Third Party Internet Authorization Fee	(03R, 04R, 06I, 07I, 435) \$ _____
Third Party Internet Service Fee	(394) \$ _____
Wireless Access Fee (Per Device)	(60J) \$ _____

Petroleum Services	
Datawire Micronode ☐ Yes ☐ No	Datawire Monthly Fee (354) \$ _____
Voyager	Authorization Fee (0D0, 0D1, 0DV) \$ _____
	Sales/Credit Discount (766, 767) _____%
WEX	Full Service Authorization Fee (0D4) \$ _____
	Sales/Credit Discount (840, 841, 842, 843) _____%
	Chargeback Fee (29H) \$ _____
	Retrieval Fee (29I) \$ _____
	Non-Full Service Authorization Fee (0B0, 0B1, 0BV) \$ _____

Start-Up Fees	
Application Fee (Non-Refundable)	(32I) \$ _____
Reprogramming Fee	(31A) \$ _____
Debit Set-Up Fee	(31B) \$ _____
Miscellaneous Fee	(31J) \$ _____
*Equipment Purchase	(ACH) \$ _____
Other: _____	() \$ _____
Total Amount	\$ _____ w/o tax
*Plus applicable State/City/Local sales tax.	

Debit Fees*	
Unbundled Debit Transaction Fee	(018) \$ _____
(Applies to PIN Debit Only)	
*Plus applicable PIN Debit Network fees.	

Miscellaneous Fees* (If Applicable)	
TransArmor Data Protection Tokenization & Encryption (per authorization)	(12E, 12G, 12I) \$ _____
American Express Authorization Fee	(10P) \$ _____
Monthly Service Charge**	(329) \$ _____
Monthly Account Minimum Fee	(954) \$ _____
PCI Non-Compliance Fee (Subject to change. See Section 10.9 of the General Terms and Conditions)	(60L) \$ _____
Paper Statement Fee (Default is free electronic statement)	(240) \$ _____
Chargeback Fee	(205, 725, 20L) \$ _____
ACH Reject Fee	(401) \$ _____
Batch Settlement Fee	(227) \$ _____
AVS	(405, 406, 407, 408, 07A, 07B, 07C, 069, 079) \$ _____
Voice Authorization	(10B, 10E, 10K, 10Q) \$ _____
EBT	(18E, 18I, 02X, 18H) \$ _____
Mastercard/Visa/Discover Network Access Fee	(505, 504, 526) \$ _____
Mastercard License Volume Fee	(818) _____%
Mastercard Cross Border Fee	(605, 606) _____%
Visa Int'l Service Fee USD (22A) _____% Non-USD (22Z) _____%	
Other: _____	\$ _____
Card Brand Pass Through Fees: Refer to the Card Organization Pass-Through Fee Schedule.	

*You must reimburse us for all obligations of any kind that a Card Organization imposes on us in connection with your acceptance of its Card types, in connection with the transactions processed under your MID, or as a result of your actions or failures to act, including but not limited to the fees and costs described in the Interchange Qualification Matrix and American Express OptBlue® Guide (both available at www.buinesstrack.com).

**Monthly Service Charge includes option to participate in provided PCI Program at no additional charge.

DBA Name: _____

Loc. _____ of _____

(7) FEE SCHEDULE (cont'd)

Pricing Method ^A	Mastercard/ Visa/Discover Ntwk 2-Tier	Mastercard/ Visa/Discover Ntwk 3-Tier	Transaction Fees (Applies to Mastercard/Visa/Discover Ntwk 2-Tier and Mastercard/Visa/Discover Ntwk 3-Tier ONLY)	Mastercard/Visa/ Discover Ntwk/ American Express OptBlue® Sales Discount Rate	Interchange Plus Sales Discount
Qualified Sales Discount Rates					
Mastercard/Visa/Discover Ntwk Credit Sales Discount Rate (800, 804, 170)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk Credit Trans Fee (001, 002, 005, 006, 015, 016) \$ _____	_____ %	_____ %
Mastercard/Visa/Discover Ntwk/PINless POS Signature Debit Sales Discount Rate* (850, 854, 964, 27P)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk Signature Debit Trans Fee (130, 131, 134, 135, 787, 788, 18C) \$ _____	_____ %	_____ %
American Express OptBlue® (84A)					_____ %
Mid-Qualified Sales Discount Rates (Does not apply to Mastercard/Visa/Discover 2 Tier)					
Mastercard/Visa/Discover Ntwk Credit Sales Discount Rate (810, 814, 990)		_____ %	Mastercard/Visa/Discover Ntwk Credit Trans Fee (611, 612, 615, 616, 717, 718) \$ _____		
Mastercard/Visa/Discover Ntwk Signature Debit Sales Discount Rate* (870, 874, 968)		_____ %	Mastercard/Visa/Discover Ntwk Signature Debit Trans Fee (140, 141, 144, 145, 791, 792) \$ _____		
Non-Qualified Sales Discount Rates					
Mastercard/Visa/Discover Ntwk Credit Sales Discount Rate (820, 824, 994)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk Credit Trans Fee (621, 622, 625, 626, 721, 722) \$ _____		
Mastercard/Visa/Discover Ntwk Signature Debit Sales Discount Rate* (880, 864, 978)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk Signature Debit Trans Fee (150, 151, 154, 155, 795, 796) \$ _____		
Mastercard/Visa/Discover Ntwk/PINless POS Authorization & Return Transaction Fee (10A, 10D, 002, 006, 131, 135, 10J, 016, 788, 11P)				\$ _____	\$ _____
Non-Qual Sales Surcharge Fee (30D) (excluding Card/Payments Organization pass-through fees, and any interchange rate difference) Applies to Non-Qualified Mastercard, Visa, Discover Ntwk/, and/or Signature Debit Transactions. Rewards Cards Surcharge Rate (20N)				_____ %	

^A Interchange Rates are variable and are determined by how your transactions clear. Please see your Interchange Rate Schedule, Interchange Qualification Matrix and American Express OptBlue® Guide for Interchange Rates & Dues/Assessments and qualification criteria as of the date of this Application. The Interchange Rates and Dues/Assessments are subject to change. American Express OptBlue® has Program Pricing which is not Interchange and which is subject to change.

Swiped/Non-Swiped (if selected, the discount rates below apply to all card types and brands accepted other than petroleum)			
Swiped or Dipped Transactions	_____ % of gross transactions (23Z) + \$ _____ per transaction (24C)	Non-Swiped or Non-Dipped Transactions	_____ % of gross transactions (24D) + \$ _____ per transaction (24B)

(8) AGREEMENT APPROVAL

By signing below I certify that: **(A)** I am an owner, partner, officer or other Authorized Representative of the entity identified in this Application as the Merchant; and **(B)** that I am duly authorized to enter into agreements on behalf of the Merchant; **(C)** the federal taxpayer identification number and corresponding filing name provided are correct; **(D)** the statements made and agreed to in this Application are true, complete and accurate, and may be relied upon as current unless changed or updated in accordance with the Notice provisions of the Agreement; **(E)** I can read and understand the English language; **(F)** I have received and read a copy of the Merchant Application and Agreement consisting of **(i)** Sections 1-9 of this Application, **(ii)** the General Terms and Conditions, **(iii)** Confirmation Page and **(iv)** Interchange Rate/Fee Schedule. Further, I understand that the Interchange Qualification Matrix and American Express OptBlue® Guide and Your Payments Acceptance Guide are available at www.businesstrack.com upon Merchant Account approval and the signature below is for the entire contents of the listed documents.

In addition by signing below on behalf of myself as an individual, and the Merchant on whose behalf I am signing I: **(A)** authorize TD Bank N.A. ("Bank"), to investigate, verify and receive all credit and financial information, including consumer and business credit reports, about the Merchant and me personally from all references, including banks and credit reporting agencies, which are hereby released to provide that information from time to time; **(B)** authorize Bank and the applicable Card/Payments Organizations, and its and their Affiliates, third party subcontractors and/or agents to use, disclose, and share amongst them, the information in the Agreement, Application and all credit and financial information obtained from third parties about Merchant and me personally **(i)** in connection with Bank's determination whether to accept this Application and enter into this Agreement, **(ii)** to maintain the Agreement and Merchant Account, and **(iii)** for any other uses permitted by law.

I further acknowledge and agree that Merchant will not use the Merchant Account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG, or for processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC).

Notice Regarding the USA Patriot Act: The Bank complies with section 326 of the USA Patriot Act. The Law requires us to verify certain information, including your name, legal address, date of birth, Social Security or tax ID number, while processing your Merchant Processing Agreement.

Merchant's Authorized Representative:

Signature _____

Print Name: _____ Date: _____

 Title: ☐ President ☐ Vice President ☐ Member L.L.C. ☐ Owner ☐ Partner

☐ Other: _____

Signature _____

Print Name: _____ Date: _____

 Title: ☐ President ☐ Vice President ☐ Member L.L.C. ☐ Owner ☐ Partner

☐ Other: _____

TD Bank, N.A.

Signature _____ Date: _____

(9) PERSONAL GUARANTEE

In exchange for TD Bank N.A.'s ("Bank") acceptance of the Merchant Processing Application and Agreement ("MPA") the undersigned ("Guarantor") **(A)** unconditionally and irrevocably guarantees the full payment and performance of Merchant's obligations **(i)** as they now exist or as modified by the parties, **(ii)** with or without actual notice of changes, and **(iii)** during and after the term of the MPA; **(B)** individually and severally, hereby agree to be bound by all terms and provisions of this MPA to the same extent and in the same manner as the Merchant; **(C)** waives notice of Merchant's default; **(D)** shall indemnify the Bank for any and all amounts due from the Merchant; **(E)** warrants, with knowledge that Bank is acting in full reliance of the same and that this is a Personal Guarantee of payment and not of collection; **(F)** acknowledges that Bank, may proceed in law directly against the Guarantor and not the Merchant; and **(G)** this is a continuing personal guarantee and shall not be discharged or affected for any reason.

Guarantor agrees that: **(A)** it has received and reviewed a complete copy of the Application and Merchant Processing Agreement and agrees to be bound by its terms; **(B)** Bank may investigate, verify and receive all credit and financial information and references about me from all references, including banks and consumer reporting agencies, which are hereby released to provide that information from time to time; **(C)** that Bank may use such credit reports in connection with establishing and maintaining Merchant's account and Agreement; and **(D)** that Bank may share my credit and financial information for any use permitted by law.

Signature: _____

Signature: _____

_____, an individual

BANK Name: TD Bank, N.A.

INFORMATION: Address: 140 Mill Street, PO Box 1377, Lewiston, ME 04240

URL: http://www.tdbank.com/small_business/merchant_solutions.html Customer Service #: 855-599-4656

Please read this entire Agreement. It describes the terms on which we will provide merchant processing Services to you. This summary provides answers to commonly asked questions about your Agreement.

1. **Your Discount Rates and other fees** are calculated based on transactions qualifying for certain program pricing and interchange rates levied by the applicable Card Organization. Transactions that fail to qualify for these rates will be charged an additional fee. Interchange and program pricing levied by the Card Organization is subject to change, (see Section 10 of the General Terms & Conditions).
2. **We may debit your bank account** (also referred to as your Settlement Account) for amounts owed to us.
3. **You are liable for Chargebacks and there are many reasons why a Chargeback may occur.** When they occur we will debit your Settlement Account. See Section 12 of the General Terms & Conditions.
4. **If you wish to dispute any charge or funding,** you must notify us within 15 days after the issuance of the relevant Settlement Account statement, or within 45 days after the posting of the disputed debit or credit entry, whichever comes first.
5. **This Agreement limits our liability to you.** See Section 14 of the General Terms & Conditions for further details.
6. **Bank has assumed certain risks** by agreeing to provide you with the Services. Accordingly, we may take certain actions to mitigate our risk, including termination of this Agreement, and holding and/or offsetting monies otherwise payable to you (see Sections 19 and 20 of the General Terms & Conditions).
7. **By executing this Agreement with Bank** you authorize us and our Affiliates to obtain and share financial and credit information regarding your business and the signers and guarantors of this Agreement until all your obligations to us and our Affiliates are satisfied.

Information about Bank:

- a) Your Bank, who is a Visa and Mastercard Member Bank, is TD Bank, N.A. ("**Bank**"), 140 Mill Street, PO Box 1377, Lewiston, ME 04240
- b) Bank is the entity approved to extend acceptance of Visa, Mastercard and Discover Cards directly to you.
- c) Bank works with First Data Merchant Services LLC ("**Processor**") to provide the Card transaction, acceptance, processing and settlement services to you. Processor may also provide certain optional services, such as Clover, to you directly under a separate agreement. Bank will bill you and you agree to pay bank for all Processor Provided Services.

Your Responsibilities:

- a) You must comply in full at all times with this Agreement, all Card Organization Rules and all Cardholder and customer data security and storage requirements. If you do not comply with the PCI DSS security requirements, you will be charged a monthly PCI Non-Compliance fee (see Section 10).

- b) If You terminate this agreement you will be obligated to pay Bank any outstanding fees (see Section 19).
- c) You may view and download the current version of Your Payments Acceptance Guide at <https://www.businesstrack.com> upon Merchant Account approval.
- d) You may view and download the current version of the Interchange Qualification Matrix and American Express OptBlue® Guide at <https://www.businesstrack.com> upon Merchant Account approval.
- e) You may download the current version of the Visa, Mastercard and Discover rules at:
<https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>
www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf
<https://www.discovernetwork.com/en-us/>
- f) For your account to stay operational, you must keep fraud and Chargeback levels below Card Organization thresholds.
- g) Please retain a signed copy of your Agreement for your records. We will send a copy to the e-mail address provided on your Application.

Print Merchant's Business Legal Name: _____

By signing below, you:

- (i) confirm that you have received and read the Application, this Confirmation page and the General Terms & Conditions below;
- (ii) agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the Merchant, and;

NO SALES REPRESENTATIVE IS AUTHORIZED TO ACCEPT OR AGREE TO ANY ALTERATIONS TO THIS AGREEMENT.

Merchant's Authorized Representative:

Signature (Please sign below):

X _____

Title

Date

Please Print Name of Signer

BANK Name: TD Bank, N.A.

INFORMATION: Address: 140 Mill Street, PO Box 1377, Lewiston, ME 04240

URL: http://www.tdbank.com/small_business/merchant_solutions.html Customer Service #: 855-599-4656

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2. **We may debit your bank account** (also referred to as your Settlement Account) for amounts owed to us.
3. **You are liable for Chargebacks and there are many reasons why a Chargeback may occur.** When they occur we will debit your Settlement Account. See Section 12 of the General Terms & Conditions.
4. **If you wish to dispute any charge or funding,** you must notify us within 15 days after the issuance of the relevant Settlement Account statement, or within 45 days after the posting of the disputed debit or credit entry, whichever comes first.
5. **This Agreement limits our liability to you.** See Section 14 of the General Terms & Conditions for further details.
6. **Bank has assumed certain risks** by agreeing to provide you with the Services. Accordingly, we may take certain actions to mitigate our risk, including termination of this Agreement, and holding and/or offsetting monies otherwise payable to you (see Sections 19 and 20 of the General Terms & Conditions).
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- b) If You terminate this agreement you will be obligated to pay Bank any outstanding fees (see Section 19).
- c) You may view and download the current version of Your Payments Acceptance Guide at <https://www.businesstrack.com> upon Merchant Account approval.
- d) You may view and download the current version of the Interchange Qualification Matrix and American Express OptBlue® Guide at <https://www.businesstrack.com> upon Merchant Account approval.
- e) You may download the current version of the Visa, Mastercard and Discover rules at:
<https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>
www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf
<https://www.discovernetwork.com/en-us/>
- f) For your account to stay operational, you must keep fraud and Chargeback levels below Card Organization thresholds.
- g) Please retain a signed copy of your Agreement for your records. We will send a copy to the e-mail address provided on your Application.

Print Merchant's Business Legal Name: _____

By signing below, you:

- (i) confirm that you have received and read the Application, this Confirmation page and the General Terms & Conditions below;
- (ii) agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the Merchant, and;

NO SALES REPRESENTATIVE IS AUTHORIZED TO ACCEPT OR AGREE TO ANY ALTERATIONS TO THIS AGREEMENT.

Merchant's Authorized Representative:

Signature (Please sign below):

X _____

Title

Date

Please Print Name of Signer

PART II: GENERAL TERMS & CONDITIONS

1. YOUR PAYMENTS ACCEPTANCE GUIDE AND CARD ORGANIZATION RULES

- 1.1 The General Terms & Conditions (General Terms),** together with your Application, the Fee Schedule and the Your Payments Acceptance Guide constitute the agreement for Card transaction acceptance, processing, settlement and other related Services (this **Agreement**).
- 1.2** You agree to comply with the Your Payments Acceptance Guide and the Card Organization Rules relevant to you, as they may change over time. The Your Payments Acceptance Guide is available at www.businesstrack.com. If there are any inconsistencies between the General Terms and the Your Payments Acceptance Guide, the Your Payments Acceptance Guide will govern.
- 1.3** You agree to comply with the Card Organization Rules, as the same may be amended from time to time. The Card Organization Rules may change with little or no advance notice to you, and you agree to be bound by all such changes, regardless of whether you have received notice of any such changes. In the event of any inconsistency between this Agreement and the Card Organization Rules, the Card Organization Rules shall govern. Without limiting the foregoing, you agree to comply with all Agreement provisions relating to the applicable Card Organizations that we advise you of or provide to you in writing at any time on or after the date of this Agreement, and you acknowledge and agree that such provisions are hereby incorporated by reference with and into this Agreement.

2. BANK SERVICES AND SERVICES PROVIDED BY PROCESSOR

- 2.1** Your Application will identify the Services you will receive. Certain Services referred to in this Agreement may not be available to you.
- 2.2** Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate. References to "we" "our" and "us" shall be deemed to be references to Bank. Bank is not responsible for Services provided directly to you by Processor ("**Processor Provided Services**") or any Third Party Services, including any apps available in an application marketplace or voice or data services you purchase directly from a third party provider. If you decide to use Processor Provided Services or any Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with such Services. Any third party content downloaded or otherwise obtained through the use of the Services is downloaded at your own risk. WE WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF PROCESSOR OR ANY OTHER THIRD PARTY, AND WE EXPRESSLY DISCLAIM ANY LIABILITY RELATED TO ALL PROCESSOR PROVIDED SERVICES AND ANY THIRD PARTY SERVICES. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROCESSOR PROVIDED SERVICES AND ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF PROCESSOR PROVIDED SERVICES AND ANY THIRD PARTY SERVICES OR PRODUCTS.
- 2.3** If you otherwise been approved for accepting American Express or WEX, your American Express and WEX transactions will be processed through and funded by American Express or WEX (as applicable). American Express and WEX will provide you their own agreements governing those transactions. You agree that (a) we are not responsible and assume no liability for any such transactions; and (b) American Express and WEX may charge additional fees for the services they provide.

3. ACCESS AND USE OF SERVICES

- 3.1** Except as specified in the Your Payments Acceptance Guide, or otherwise agreed in writing, the Services shall be for your internal business use in the United States only.
- 3.2** You shall not and shall not permit any third party to: (a) access or attempt to access any Service that is not intended to be available to you; (b) access or use (in any format) the Services (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (c) without our advanced written consent, use, ship or access Services (or any part) outside of or from outside of the United States; (d) perform or attempt to perform any actions that would interfere with the proper working of any Service, prevent access to or use of any Service by other users, or in our reasonable judgment, impose a large load on our infrastructure, network capability or bandwidth; or (e) use the Services (or any part) except as permitted in this Agreement.
- 3.3** We have the right to rely on user names, password and other sign on credentials/access controls for the Services or any Software provided or approved by us to authenticate access to, and use of, the Services and any Software.

4. ACCEPTANCE OF CARDS AND ADVERTISING

- 4.1 Honoring Cards:** Subject to the Card Organization Rules, you shall promptly honor without discrimination any valid Cards properly presented for payment for goods and services provided by you. Cards shall be accepted for the sole purpose as payment for bona fide sales or leases of goods or services made in the ordinary course of your business consistent with current practices, and not for any other

purposes. However, consistent with the Card Organization Rules and Applicable Law, you may in your discretion refuse to honor any Card when there is reasonable doubt as to its validity or as to the identity or authorization of the Person presenting the Card for payment.

- 4.2 Prohibitions on Honored Cards:** Except as permitted by applicable law and the Card Organization Rules, and as approved by us in writing, you shall not charge any Cardholder a service, finance, carrying charge or other amount for any Card transactions, in addition to the price and other amounts that would have been charged for the transaction had it been for cash. You shall not require any Cardholder to provide personal information, such as a home or business telephone number, home or business address, or driver's license number, as a condition for acceptance of the Card, unless required by the Card Organization Rules or if provision of such information is required under specific circumstances, such as mail, telephone or internet orders. Subject to Card Organization Rules, (i) you must not establish a minimum transaction amount as a condition for honoring a Card Organization's Debit Card, and (ii) for transactions conducted with a Card Organization's Credit Card issued in the U.S. or a U.S. Territory, the minimum transaction amount must not be greater than \$10.00.
- 4.3 Advertising:** You shall display Card service marks and promotional materials, as provided by us, to inform the public which Cards shall be honored at your place(s) of business. Your right to use or display Card service marks is solely as authorized by us and shall continue while this Agreement remains in effect or until you are notified by us or a Card Organization to cease their use and display. Subject to our authorization, you may use Card service marks on promotional, printed or broadcast materials only to indicate that Cards are accepted for payment, and you shall not indicate, directly or indirectly, that any Card Organization endorses any of your goods or services.

5. AUTHORIZATIONS

- 5.1** You agree to follow all procedures provided to you by us regarding the procedures for authorization of Transactions. Unless otherwise instructed by us, you shall obtain a valid authorization for every Transaction, and you shall document such authorization in the appropriate place on the sales data. We shall have no liability of any kind whatsoever arising from any communication or equipment failure which interferes with your ability to obtain authorization or causes you to receive invalid or improper authorization information.
- 5.2** You acknowledge and agree that an authorized Transaction does not constitute a guarantee of payment and may be subject to dispute or Chargeback. Moreover, you shall be responsible for each Transaction, regardless of any authorization, if you complete a transaction when: (a) the Cardholder is present and does not present his or her Card at the point of sale; (b) the Cardholder is not present or does not sign the sales receipt; (c) the signature on the sales receipt does not correspond to the signature appearing on the Card; or (d) the signature panel on the Card is blank.

6. SALES RECORDS

- 6.1** All sales records and credit vouchers shall be: (a) on forms or electronic formats supplied by us; (b) accurately completed with data that include the name of the Cardholder or other authorized user of the Card (if different from the Cardholder), your name, the transaction date, a description of the merchandise sold or services rendered, and the total price of the sale or the amount of the credit adjustment; and (c) except as otherwise specifically permitted under the Card Organization Rules (including sales made on the internet, or by telephone or mail order), signed by the Cardholder or other authorized user, whose signature shall be compared by you to the signature on the Card.
- 6.2** You agree to deliver to your customers in each Transaction a true and completed copy of a sales record or credit voucher, as the case may be.

7. PRESENTMENT

- 7.1 Presentment of Card Items:** You agree to present all Card Items electronically to us, and to follow our procedures in presenting such Card Items. You shall not deliver to us any Card Item where there is, or would be upon presentment, a violation of any presentment warranty under the provisions of this Agreement and the Card Organization Rules as to that Card Item. All Card Items delivered to us by you shall represent obligations of a Cardholder or other authorized user in amounts set forth therein for goods sold or services rendered only, and shall not involve any elements of credit for any other purpose or otherwise be inconsistent with your Application. Accordingly, you represent and warrant that as of the date any Card Item is delivered to us, you have no knowledge or notice of any fact which would impair the underlying Transaction's accuracy, validity, enforceability or value and that such Transactions are consistent with the type of products and services you listed in your Merchant Processing Application.
- 7.2 Disputes and Liability:** You agree to bear the risk of loss or destruction of any Card Items until we receive such Card Item in a format acceptable to us. Your right to review, question or dispute your delivery of Card Items to us or our receipt of any Card Items delivered from you shall be limited to a period of 90 calendar days following the transaction date of the Card Item.
- 7.3 Rejection of Certain Transactions:** In the event we identify a suspected restricted, unauthorized or prohibited Transaction (including a "restricted

transaction” as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG), we may block or otherwise prevent or prohibit such Transaction. In addition, we reserve the right to refuse to accept Transactions presented by you for processing, to the extent that we reasonably believe that the processing of such Transactions may result in an increased risk to us, or if we reasonably believe that such Transactions may be subject to an increased likelihood of Chargeback or Cardholder dispute.

8. CHIP CARD REQUIREMENTS

- 8.1 You agree to implement a Processing Infrastructure that is compatible with our Card processing infrastructure, in accordance with the Card Organization Rules, and agree to be fully responsible for the cost of the implementation of the Processing Infrastructure.
- 8.2 You agree to permit us, a Card Organization, or our respective agents, to verify the compliance of your Processing Infrastructure with the Card Organization Rules and you agree to be fully responsible for all the costs of verification of your compliance.
- 8.3 Unless you (i) have implemented the Processing Infrastructure; and (ii) process a Chip Card Transaction in accordance with applicable Card Organization Rules, you will be solely liable for any Chargeback relating to a Transaction involving a Card with either or both a chip and a magnetic stripe.

9. SETTLEMENT

- 9.1 As part of the Services, we will process transaction data received from you and facilitate the transfer of funds for your Card sales to your Settlement Account.
- 9.2 We may debit your Settlement Account for any amounts owed to us, including any amounts paid to you in error. We may also offset any amounts owed to us or our Affiliates from any other accounts maintained in your name or, any of your principals, guarantors or authorized signors.
- 9.3 You are responsible for providing us with accurate information regarding your Settlement Account. If you change the Settlement Account in which you receive the proceeds of your transactions, you must notify us immediately. We shall not be liable for delays in receipt of funds or errors in debit and credit entries caused by you or any other Person, including any delays or errors resulting from errors in Settlement Account information you provide.
- 9.4 If a Default occurs you agree we may without notice change processing or payment terms and/or suspend credits or other payments of any amounts due or which become due to you.
- 9.5 Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement fund rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

10. FEES; ADJUSTMENTS; COLLECTION OF AMOUNTS DUE

- 10.1 You will be charged, and agree to pay us, all fees set out on the Fee Schedule, which may be amended from time to time in accordance with the terms of this Agreement and any other fees or charges otherwise provided in this Agreement.
- 10.2 The fees specified on your Fee Schedule are based on the assumption that your transactions will qualify at the Anticipated Interchange and Program Pricing Levels associated with your account. If a transaction fails to qualify at the Anticipated Interchange Program Pricing Levels, you will be charged a Non-Qualified Fee, plus a Non-Qualified Surcharge Fee for each such non-qualifying transaction.
- 10.3 If you accept a Card or transaction other than the type anticipated for your account, we will charge you our then-current transaction fee(s) for the Card and transaction and you will be responsible for the transaction to the same extent as you would be if it was of a Card type elected and approved.
- 10.4 The fees specified on your Fee Schedule are based on (a) estimated annual volume and average transaction size for all Services provided under this Agreement; and (b) your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust our fees without prior notice to you. It is your responsibility to notify us of any such changes to your business.
- 10.5 We may adjust our fees to reflect new or increased fees, taxes or assessments imposed by any Card Organization or other Persons related to the Services. It is your responsibility to pay all such adjusted fees effective from the date specified in our notice to you. Notwithstanding the terms of this Agreement, we are not required to provide to you the advance notice, if any, required for an amendment of this Agreement for an increase in any fees, expenses and charges in the event that any Card Organization increases its fees and the effective date for implementation of the increase in the fees, expenses and charges is less than such required advance notice. In such cases, we shall make reasonable efforts to provide reasonable notification to you of such increase. However, failure to provide advance notice of such increase in fees, expenses and charges shall not affect your obligation to pay such increased amounts.

- 10.6 An equipment rental fee will be charged each month for each piece of equipment rented from us, plus tax as applicable. You will also be charged for shipping and supplies.
- 10.7 An Authorization fee will be charged for each Authorization requested, whether the response is approved or declined. If you are being charged a combined fee for both Authorization and Capture we may charge this fee on the communication of all instructions that you transmit to us from your point of sale device or other systems to our computer systems, whether the communications are for Authorization requests any other capture of information whether or not related to any individual transaction.
- 10.8 A fee will be charged for each Address Verification Service (AVS) request submitted, whether or not we are able to provide a response to the request.
- 10.9 You will be charged a monthly PCI Non-Compliance fee unless, within 60 days from the date this Agreement is submitted with your signature and on an annual basis after that:
 - a) you obtain any quarterly or other periodic PCI-approved vulnerability scans that the Card Organization Rules require you to obtain (for example, if your transactions involve the internet in any way);
 - b) you remediate vulnerabilities identified by your scans in ways that enable you to comply with the Card Organization Rules and applicable standards (including the PCI DSS); and
 - c) you confirm that you are following certain data security protocols by providing us with your certificate of PCI DSS compliance.

If you materially change the systems you use to accept payments and you wish to avoid paying the monthly PCI Non-Compliance fee, you will need to promptly complete a new Security Assessment Questionnaire ("SAQ") or (using PCI-approved methods) promptly provide us with other written evidence of your PCI DSS compliance. We may adjust the initial and any subsequent PCI Non-Compliance Fee amount in our sole discretion. Notwithstanding the terms of this Agreement, we are not required to provide to you the advance notice, if any, required for an amendment of this Agreement for an increase in any such fees.

- 10.10 If you believe any adjustments should be made to your Settlement Account, you must notify us in writing within 45 days after any debit or credit is or should have been effected. You must notify us in writing within 15 days after the issuance of the relevant Settlement Account statement, or within 45 days after the posting of the disputed debit or credit entry, whichever comes first. We shall have no obligation to investigate the matter or effect any requested adjustment if you fail to provide such timely notice. Any voluntary efforts by us to assist you in investigating such matters do not obligate us to continue such investigation or to conduct any future investigation.
- 10.11 If you fail to pay any amounts due within 30 days of the due date set out in our merchant statement or other communication with you, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of 12% APR or the maximum rate permitted by applicable law.
- 10.12 You further agree to pay any and all fines, fees, penalties and assessments assessed by us or a Card Organization on account of your failure to comply with: (a) our payment acceptance rules, regulations or procedures, or (b) the Card Organization Rules.

11. ELECTRONIC FUNDING AUTHORIZATION

- 11.1 All payments to you shall be made through the automated clearing house system (ACH) and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of your transactions pursuant to this Agreement. You agree that any Settlement Account designated by you will be a business account. We cannot guarantee the timeframe in which payment may be credited by your financial institution and we will have no liability for failure to timely process.
- 11.2 You agree to be bound by the operating rules of the ACH and you authorize us to (a) access information from the Settlement Account; (b) initiate credit and/or debit entries by wire or ACH transfer; (c) instruct your financial institution to (i) block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account; and (ii) provide such access and to credit and/or debit or to block the Settlement Account.
- 11.3 If we cannot process an ACH payment, we may (a) charge you the applicable fee set out in the Fee Schedule; and (b) suspend all subsequent funding until a new electronic funding agreement is signed by you or you notify us that ACH payments can be processed.

12. CHARGEBACKS, FINES AND PENALTIES, RETURNS AND EXCHANGES

- 12.1 Cardholders and Issuers are authorized by Card Organization Rules and by Applicable law to reverse and Chargeback transactions that you submit to us. Further details are set out in the Your Payments Acceptance Guide and in the Card Organization Rules.
- 12.2 You shall use all reasonable methods to resolve any disputes with the Cardholder. Should a Chargeback dispute occur, you shall promptly comply with all requests for

information from us. We shall not attempt to recharge a Cardholder for an item that has been charged back to the Cardholder, even with the Cardholder's consent. You shall have full liability for the amount of any and all full or partial successful Chargebacks and may have conditional liability for such Chargebacks prior to their final adjudication pursuant to the Card Organization Rules.

- 12.3** You are obligated to reimburse us (and authorize us to debit your Settlement Account) for (a) all refunds, credits, Chargebacks and adjustments relating to transactions that you submit for processing; and (b) any fees, fines, assessments, obligations or other charges a Card Organization imposes on us in relation to your acts or omissions or the acts or omissions of your agents or those acting on your behalf.
- 12.4** Refunds, Credits, returns and Chargebacks shall be treated as independent transactions with a Transaction Rate as determined by the Card Organization.
- 12.5** You shall establish a fair policy for the exchange and returns of goods, consistent with the Card Organization Rules and Applicable Law and clearly provide them to, or otherwise make them available to the Cardholder prior to a Transaction. You shall give proper credit to Cardholders for all such returns or other adjustments, and shall issue credit vouchers therefor. Upon the receipt of any such credit voucher, we shall charge your Account for the total amount shown thereon. You shall effect all credit adjustments by credit vouchers and shall not make cash refunds for any Transactions.

13. YOUR REPRESENTATIONS AND WARRANTIES

- 13.1** By submitting a transaction to us, you represent and warrant that the transaction:
- a) is genuine and arises from a genuine sale or service that you directly sold or provided as described on your Application. (The submission of Authorization requests and/or Card transaction by you for Card sales or cash advances transacted by another business is considered laundering or factoring and is prohibited);
 - b) represents the correct amount of the goods or services purchased by the Cardholder from your business as identified on your Application;
 - c) is not subject to any dispute, set-off or counterclaim;
 - d) to your knowledge is not the result of fraud and has been authorized by the Cardholder;
 - e) does not violate the law of any applicable jurisdiction, including the jurisdiction where you are located, where the Cardholder is located, or where we are located;
 - f) except for any delayed delivery or advance deposit Card transactions expressly authorized under this Agreement, included your simultaneous delivery of the goods or services to the Cardholder; and
 - g) complies with this Agreement and Card Organization Rules.
- 13.2** You further represent and warrant, as of the date of this Agreement and at the time of submission of each transaction, that:
- a) you are validly existing, duly licensed or qualified to do business, in good standing and free to enter into this Agreement;
 - b) the execution, delivery and performance by you of this Agreement does not: (i) violate, or result in the breach of, any provision of your organizational documents; (ii) conflict with, or result in the breach of, require consent under, or constitute a default under, any contract by which you are bound, or (iii) violate any Applicable Law or Card Organization Rules applicable to you;
 - c) that the person signing this Agreement, the Application and any other document provided to us on behalf of Merchant is an Authorized Representative;
 - b) you have not changed the nature of your business or practices in a way not previously disclosed to us;
 - c) each statement made on the Application or other information provided to us in support of this Agreement is true, accurate and complete and you have maintained and updated this information to keep it true, accurate, current and complete;
 - d) you have not filed a bankruptcy petition not previously disclosed to us;
 - e) you will not process any credit transactions that do not correspond to a previous transaction on the original sales draft;
 - f) you will not at any time during the term of this Agreement or until all amounts have been paid in full under this Agreement, grant or pledge any security interest or lien of any type in any Reserve Account, Settlement Account or in any of the transaction proceeds to any Person without our consent; and
 - g) where you provide FNS, SNAP or WIC Benefits (as described in the Your Payments Acceptance Guide), you are an FNS authorized merchant and are not disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS; and
 - h) you have and will comply with this Agreement and all Applicable Laws and Card Organization Rules in connection with your performance of your obligations under this Agreement.

14. NO WARRANTIES, LIMITATIONS ON LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES

- 14.1** THIS AGREEMENT IS A SERVICE AGREEMENT. USE OF THE SERVICES, SOFTWARE OR ANY EQUIPMENT (INCLUDING ANY SERVICES, PRODUCTS

SOFTWARE OR EQUIPMENT PROVIDED BY OR THROUGH PROCESSOR OR A THIRD PARTY) IS AT YOUR OWN RISK AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE SERVICES, PRODUCTS, EQUIPMENT AND ANY SOFTWARE IS PROVIDED "AS IS" AND WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT SERVICES, EQUIPMENT OR ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICES, PRODUCTS, EQUIPMENT OR SOFTWARE ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR DO NOT INFRINGE THE RIGHTS OF ANY PERSON.

- 14.2** IN NO EVENT SHALL WE OR OUR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING OUT OF: THIS AGREEMENT, THE USE OF THE SERVICES, ANY PROCESSOR PROVIDED SERVICES, ANY THIRD PARTY SERVICES OR PRODUCTS OR SERVICES SOLD OR INTRODUCED TO YOU BY US THAT ARE ANCILLARY TO THIS AGREEMENT.
- 14.3** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING SECTION 29):
- a) WE SHALL, AT OUR OWN EXPENSE, CORRECT ANY TRANSACTION DATA TO THE EXTENT THAT SUCH ERRORS HAVE BEEN CAUSED BY US OR BY OUR SYSTEMS.
 - b) OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY INDEMNITIES), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED THE TOTAL FEES PAID TO US UNDER THIS AGREEMENT FOR THE 3 MONTHS PRIOR TO THE TIME THE LIABILITY AROSE;
 - c) ANY LIABILITY THAT WE MAY HAVE TO YOU FOR ANY DELAY IN FUNDING TRANSACTIONS WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, LESS ONE PERCENT (1%);
 - d) OUR LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY EQUIPMENT OR SOFTWARE SHALL NOT EXCEED THE PURCHASE PRICE OR PRIOR TWELVE MONTH'S RENT OR FEES, AS APPLICABLE, PAID TO US FOR THE PARTICULAR EQUIPMENT OR SOFTWARE INVOLVED; AND.
 - e) WE SHALL HAVE NO LIABILITY FOR ANY PROCESSOR PROVIDED SERVICES, ANY THIRD PARTY SERVICES OR PRODUCTS OR SERVICES SOLD OR INTRODUCED TO YOU BY US UNLESS WE SPECIFICALLY AGREE TO ANY SUCH LIABILITY IN A SEPARATE WRITTEN AGREEMENT.

15. CONFIDENTIALITY

- 15.1** You shall safeguard all confidential information we supply or otherwise make accessible to you (including the terms of this Agreement) using a reasonable degree of care. You shall only use our confidential information for the purposes of this Agreement and shall not disclose our confidential information to any Person, except as we may agree in advance and in writing. At our request you shall return to us or destroy all of our confidential information in your possession or control.
- 15.2** You shall not disclose, use or sell Cardholder Information, except as necessary to complete a Transaction or to comply with this Agreement.
- 15.3** You agree that breach of the restrictions on use or disclosure of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.
- 15.4** You may submit comments or ideas about our Services, including about how to improve our Services. By submitting any idea, you agree that:
- a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any of your ideas;
 - b) your submission will be non-confidential; and
 - c) we are free to use and disclose any of your ideas on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any idea.

16. USE OF DATA

- 16.1** You agree we may use Transaction Data for any lawful purpose including but not limited to providing additional products and services to you, other merchants, or third parties. This includes using Cardholder information, dates, transaction details,

and other Transaction Data to provide you with analytics products and services as well as collecting and using Transaction Data aggregated with other merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

- 16.2** In the course of providing Services, we may collect information relating to activities on your network, including network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use this information or aggregations of this information, in addition to the Transaction Data described above, for any reasonable purpose.
- 16.3** You agree that we may obtain relevant information from any applicable telecommunications provider you utilize, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by you in connection with the Services.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1** All right, title, and interest in and to all confidential information and intellectual property related to the Services (including the Marks, all Software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us prior to, during the term of, or after this Agreement, or employed by us in connection with the Services, shall be and remain, as among the parties, our or our affiliates', our vendors' or our licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Services, Equipment and Software not expressly granted by us in this Agreement are deemed withheld. You may not use our Marks or those related to the Services in any manner, including in any advertisements, displays, or press releases, without our prior written consent.
- 17.2** You may not, nor may you permit any third party to do any of the following: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Service, Software or Equipment (or any part), except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Service, Software or Equipment (or any part) or our Marks; (c) create derivative works of or based on the Service (or any part), Software or our Marks; (d) except for backup and archival purposes, directly or indirectly copy the Service or any Software (or any part); (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Service or Software (or any part) except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Service, Software or documentation (or any part) or our Marks.
- 17.3** If we provide you with copies of or access to any Software or documentation, unless otherwise expressly stated in writing, that Software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the applicable Service and solely for you to access and use the Software and documentation to receive the relevant Services for its intended purpose on systems owned or licensed by you. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software.
- 17.4** You shall not take any action inconsistent with the stated title and ownership in this Section 17. You will not file any action, in any forum that challenges the ownership of any part of the Service or any Software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Service in the event of a challenge by you.

18. ASSIGNMENT

- 18.1** Any attempt to transfer or assign this Agreement in whole or part, or rent, lease, sell, sublicense or otherwise transfer any licensed rights, without our prior written consent, including by operation of law, transfer of voting control of you or your parent or otherwise, is prohibited and voidable by us and, in such event we may: (a) suspend Services at any time and without notice, (b) hold you and your guarantors liable for all obligations incurred by such purchaser or transferee, and (c) offset funding and obligations incurred on your accounts without regard to whether such funding or obligations relate to activities of you or of such purchaser or transferee.
- 18.2** You shall not make an assignment (or provide a security interest) or encumber any of your rights to any payment, receivable or other amount due to you pursuant to this Agreement or otherwise covered by this agreement without our prior written consent. Failure to obtain our consent shall be deemed to be a material breach of this Agreement, not subject to cure. Any permitted assignee or successor entity to you must provide such additional information and execute such additional documentation or take any further actions as we may request in order to ensure continued performance of services by us under this Agreement. If you breach the foregoing covenant then we may, at our option, elect to: (a) refuse to acknowledge such assignment unless accompanied by an authorization to both initiate debits or credits to the bank account of the assignee; (b) terminate this Agreement immediately; or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

- 18.3** Subject to Card Organization Rules, and without providing notice to you or obtaining your consent, we may assign or transfer this Agreement and our rights, duties and obligations under this Agreement and may delegate or subcontract our rights, duties and obligations, in whole or in part, to any Person.
- 18.4** If this Agreement is assigned with our permission or by operation of law, the restriction against assignment shall continue to apply to the assignee, who will not be authorized to further assign this Agreement except as described in this Section 18.

19. TERM; EVENTS OF DEFAULT

- 19.1** This Agreement becomes effective only when your Application is approved by Bank. We reserve the right to immediately suspend or terminate your account and this Agreement if you fail to meet our policies even if your account has been activated to submit transactions prior to your approval by us. This Agreement will continue in full force and effect until it is terminated by Merchant or Bank in Accordance with the terms of this Agreement.
- 19.2** The initial term of this Agreement is three years from the date of your approval by Bank (the **Initial Term**). After the Initial Term, subject to Section 19.3, this Agreement shall automatically extend for additional period of three years each (each an **Extended Term**).
- 19.3** A party may give written notice to the other party, not later than 60 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be. Should you fail to notify us in writing that you wish to terminate this Agreement under this Section 19.3 you agree that you will continue to be charged certain fees pursuant to this Agreement even if you are not using your account. If you have an equipment lease termination of this Agreement does not terminate that equipment lease.
- 19.4** If you terminate this agreement, you will be obligated to pay Bank any outstanding fees, whether for maintenance, Products, processing, Interchange, or equipment. Any outstanding fees will be automatically deducted from your Settlement Account within 30 days after your Merchant Account is closed. You, further agree and authorize TD Bank to deduct any such amount from your Settlement Account.
- 19.5** We may terminate this Agreement or suspend any or all of the Services immediately and without notice in the following circumstances (each, a "**Default**"): a) we, in our sole discretion, are not satisfied with your financial condition or believe that you may not be able to continue to satisfy your obligations under this Agreement; b) any assignment or transfer of voting control of you or your parent or sale of all or a substantial portion of your assets; c) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Bank, or any Card Organization, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; d) you breach any of your representations, warranties or covenants in this Agreement or you default in any material respect in the performance or observance of this Agreement or in any other agreement with us or any of our respective Affiliates, including the establishment or maintenance of a Reserve or any failure to notify us of any change to the information in your merchant profile; e) your actions come under investigation by any Card Organization resulting in the Card Organization directing us to terminate or suspend our Services or Agreement with you; f) you engage in conduct that creates or may create harm or loss to the goodwill of any Card Organization, the Bank, Processor, or their respective Affiliates or agents; g) you or any of your affiliates are listed in one or more databases of terminated or high risk parties maintained by any Card Organization; h) you are subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding, and such proceeding shall continue undismissed or unstayed for a period of 60 consecutive days; or i) you violate any applicable law or Card Organization Rule or we reasonably believe that termination of this Agreement or suspension of Services is necessary to comply with any law, including the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury.
- 19.6** We may suspend or terminate this Agreement or our provision of one or more Services to you immediately without notice and without penalty if: (a) the Service is generally discontinued; (b) our arrangement with the Card Organization or third party vendor in relation to the Service expires or terminates; (c) we are directed to end the service to you by any Card Organization; (d) we are prevented from providing the Service by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority; (e) in the event that an Adverse Development arises or (f) if in our sole judgement, for any other reason our continued performance under this Agreement is impossible or impracticable under the circumstances.
- 19.7** We may also suspend Services if, in our sole judgement, it is necessary to: (a) prevent damages to, or degradation of, our or a third party vendor or network's network integrity that may be caused by a third party; (b) comply with any law, regulation,

court order or other governmental request which requires immediate action; or (c) otherwise protect us or a third party vendor from potential legal liability. To the extent practicable, we shall give notice to you before suspending any Services in these circumstances. Availability of Services may vary due to events beyond the control of us or our third party vendors. In the event of a suspension of a Service under this Section, we or the applicable third party vendor shall promptly restore the Services after the event giving rise to the suspension has been resolved.

- 19.8** You may terminate this Agreement immediately upon written notice by you to us in the event that we breach any term or condition of this Agreement, and such breach remains uncured 30 days after our receipt of written notice of such breach from you.
- 19.9** In addition to other termination rights set forth herein, this Agreement also may be terminated upon 30 days prior written notice from either party to the other party, in the terminating party's sole discretion, with or without cause.
- 19.10 Survival.** The expiration or termination of this Agreement shall not affect the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive, including Sections 7.2, 12, 10, 14, 15, 17, 18, 20, 22, 26 28, 29, 30, 31 and 33.
- 19.11** After expiration or termination of this Agreement or your subscription to a particular Service for any reason: (a) your right and license to access and use the Software and documentation associated with the Service shall immediately cease and, within five (5) days after such event, you shall either return to us or destroy all Software and documentation provided to you by us and shall so certify to us in writing; and (b) you shall continue to bear total responsibility for all transactions you have submitted to us and all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, credits and adjustments resulting from Card transactions processed pursuant to this Agreement, and all other amounts then due or which may become due under this Agreement. On termination due to a Default, all amounts owing to us shall be immediately due and payable.
- 19.12** If you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting record supporting any adjustments that you may claim.
- 19.13** The Card Organizations maintain merchant lists such as the Member Alert To Control High-risk (Merchants) (**MATCH**) who have had their merchant agreements or card acceptance rights terminated for cause. If this Agreement is terminated for cause, you (a) agree that we may report your business name and the names and other information regarding your principals to the Card Organizations for inclusion on such list(s); and (b) waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

20. RESERVE; SECURITY INTEREST

- 20.1** You agree that in addition to any other rights we have under this Agreement, we may at any time unilaterally establish a Reserve consisting of cash or other assets that we will hold to satisfy your obligations or potential obligations under this Agreement or any other agreement with us or our Affiliates.
- 20.2** The amount of the Reserve shall be set by us in our sole discretion based upon your processing history and the potential risk of loss to us, as we may determine.
- 20.3** The Reserve shall be fully funded upon three days' notice to you or immediately in instances of suspected fraud or a Default. If you fail to establish or maintain any required Reserve, we may immediately terminate this Agreement and exercise any and all of our other rights. Your obligations arising pursuant to this Section 20 shall survive any termination of this Agreement.
- 20.4** The Reserve may be funded by all or any combination of: (a) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in your name or in the name of any of your principals, or any of your Guarantors, or if any of same are authorized signers on such account; (b) any payments otherwise due to you from us or our Affiliates; or (c) any other collateral that you agree to provide and we agree to accept in our mutual discretion.
- 20.5** If this Agreement is terminated by any party, an immediate Reserve may be established without notice in the manner provided above. In these circumstances, the Reserve will be held by us for 10 months after termination of this Agreement or for such longer period of time as is consistent with resolution of all liability from your Card acceptance including Chargebacks, fines, fees or obligations of any other kind.
- 20.6** Any funds we hold in Reserve represent general payment obligations to you which do not become due until all potential contingent liabilities arising from your Card transactions have expired or lapsed. We may set-off any obligations that you owe to us before returning the balance of the Reserve. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in the Reserve, and we shall be entitled to accrued interest in such funds.
- 20.7** Notwithstanding Section 20.6 you agree that we have a security interest in all funds or other assets that we hold in Reserve and to provide us with any documentation we may request to perfect our security interest in the Reserve.

- 20.8** If any funds we hold in Reserve are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from you, or if the funds in Reserve have been released, you agree to promptly pay us such sums upon request.

21. BUSINESS INFORMATION, AUTHORIZATION TO OBTAIN INFORMATION FROM THIRD PARTIES

- 21.1** You are solely responsible for: (a) ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Services, including any menus loaded onto a Device; (b) verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device; and (c) immediately notifying us should any information you have provided to us become inaccurate or misleading. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
- 21.2** Upon request, you will provide us and our Affiliates quarterly financial statements within 30 days of the end of each fiscal quarter and annual audited financial statements within 90 days of the end of each fiscal year. Any financial statements provided must be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.
- 21.3** You agree to provide us at least 30 days prior written notice of your intent to change current product lines or services, the types of payments that you accept, or the manner by which you accept such payments. You also agree to provide us with prompt written notice upon the occurrence of any of the following: (a) you are subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding; (b) you experience any adverse change in your financial condition; (c) you expect or experience any liquidation or substantial change in the nature of your business; (d) you expect or experience at least 25% of the total value of your assets becoming encumbered or subject to a judgment, levy or attachment; (e) you agree to sell or transfer (or complete such sale or transfer) of at least 25% of the total value of your assets; (f) you expect or experience a change in the control or ownership of you that results in a change of more than 25% of the total outstanding equity in you as of the date of this Agreement; or (g) any of the information provided to us on the Application is or becomes inconsistent with your activities.
- 21.4** Upon our request you shall use commercially reasonable efforts to assist us in the resolution of any Chargeback, dispute or complaint and shall provide to us all related documentation in your or your agents' possession relating to such Chargeback, dispute or complaint.
- 21.5** Upon 3 days written notice at any time, you shall provide us with such financial and other information as we may request relating to you and/or your ability to satisfy your financial and other obligations under this Agreement.
- 21.6** You authorize us and our Affiliates to obtain from third parties financial, employment and credit information relating to you and your Authorized Representatives in connection with our determination whether to accept your Application and enter into this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to us for any other reason. You have the right to ask if a consumer credit report is requested by us, and if you ask you will be informed of the name and address of the consumer reporting agency that furnished the report. You understand and agree that we can and will furnish certain information about you, including information concerning your personal or business accounts, to consumer reporting agencies and others who may properly receive such information.
- 21.7** You hereby grant us a security interest in any transactional documentation related to the Transactions, and you grant us the right to access such transactional information and to copy such transactional information, as requested from time to time by us in our sole discretion.
- 21.8** You authorize us to share information provided by you in your Application or otherwise with other relevant organizations, including those involved in the provision of the Services.

22. AUDIT RIGHTS

- 22.1** With prior notice and during Merchant's normal business hours, Bank's duly authorized representatives may visit Merchant's premises and examine books and records that pertain to the Services, Transactions or Merchant's compliance with this Agreement. Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.
- 22.2** You shall cooperate fully with any investigation or audit we or any Card Organization may undertake in relation to Transaction, data security and the services and you authorize us to share the details of any questionnaire or compliance report with the Card Organizations and others as allowed or required by law.

23. SOFTWARE UPDATES AND MAINTENANCE

- 23.1** We may perform maintenance on Software or Services which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Software or Services and obtain information needed to identify and fix any errors.
- 23.2** We may, at our discretion, release enhancements, improvements or other updates to any Software. If we notify you of any such update, you shall integrate and install

such update into your systems within thirty (30) days of your receipt of such notice. You acknowledge that failure to install any updates in a timely fashion may impair the functionality of the Software or Services. We shall have no liability for your failure to properly install the most current version of any Software or any update, and we shall have no obligation to provide support or services for any outdated versions.

- 23.3** You acknowledge and understand that certain Software can automatically install, download, and/or deploy updated and/or new components, which may include a new version of the Software itself. You shall not, in any event or in any manner, impede the update process. You agree to assume full responsibility and indemnify us for all damages and losses, of any nature, for all adverse results or third party claims arising from your impeding the update process.
- 23.4** We and our Wireless Vendor(s) reserve the right to make changes in the configuration of Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address.
- 23.5** The default version and functionality of Clover software applications that are accessible at the time you acquire a Clover Device may vary.

24. ACCESSING SERVICES VIA WIRELESS SERVICES, THE INTERNET OR THIRD PARTIES

- 24.1** You may access certain of our Services through a Device using a wired (ethernet) or wireless (wifi or cellular) connection to the internet. You are solely responsible for the payment of any fees that may be imposed by your internet/data provider. Your use of any Services accessed wirelessly or through the internet is subject to: (a) the terms of any agreements you have with your internet/data provider; and (b) availability, transmission range and uptime of the services and any wireless equipment.
- 24.2** You agree that we shall not be liable to you for any claims, damages, losses, obligations, costs or expenses or other liability arising directly or indirectly from or otherwise concerning (a) any termination, suspension, delay or disruption of service (including billing for a service) by the internet, any common carrier or any third party service provider; (b) any failure, disruption compatibility or malfunction of any of the Services, the Internet, or any communications network, facility or equipment beyond our or a third party's reasonable control, whether or not attributable to one or more common carriers; (c) your failed attempts to access any Services or to complete transactions via any of the Services; or (d) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you.
- 24.3** We may alter which Devices and browsers are approved as compatible with particular Services in our discretion.
- 24.4** If a Service relies on online connectivity to provide up-to-date data, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Service is offline.

25. SERVICE INTEGRATION

- 25.1** Unless otherwise agreed in writing, you have the sole responsibility to select and employ any competent programming agent(s) to accomplish any programming required to make your systems function correctly with our platforms, equipment and devices ("Integration"). You shall be responsible for all technical support for your systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete any Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration.
- 25.2** You acknowledge that unless and until you complete any Integration, no Services which require such Integration shall need be provided by us to you pursuant to this Agreement.
- 25.3** Upon your request to us, and upon payment of any applicable fees, we may provide you with set-up services to assist with any Integration.

26. DATA SECURITY, DATA BREACH

- 26.1** You agree to establish and maintain security procedures to protect Cardholder Information and Transaction Data and to comply with the data security requirements of any Card Organization, including compliance with the Payment Card Industry Data Security Standards (PCI DSS). You acknowledge that PCI DSS applies to you and to any agent or third party provider that you may use to store, process or transmit Cardholder Information and that such agents or third party providers must be registered with the applicable Card Organization. Therefore, you shall:
- (a) notify us in writing of any agent or third party provider that engages in, or proposes to engage in, the provision of payment related services and/or the storing, processing or transmission of Cardholder Information on your behalf, regardless of the manner or duration of such activities; and
 - (b) ensure that all such agents and third party providers are (i) registered with the applicable Card Organization; and (ii) complies with all applicable data security requirements, including PCI DSS.

- 26.2** You are solely responsible for the compliance of any and all third parties that are given access by you to Cardholder information and of any third party software that you may use, including any point-of-sale solution, application or software for facilitating payment processing.
- 26.3** The Card Organization or us, and our respective representatives, may inspect your premises and systems for compliance with security requirements. You acknowledge that any failure to comply with applicable security requirements may result in the imposition of restrictions on you, the prohibition of your participation in acceptance programs by the Card Organization, and/or the termination of this Agreement.
- 26.4** You further acknowledge that your compliance with the data security requirements of the Card Organization and PCI DSS may not prevent a breach of or intrusion into any of your systems, and may result in possible subsequent Card Organization fines or penalties, for which you shall be solely responsible. It is your sole and exclusive obligation to be vigilant in maintaining and updating your security posture on a continuous basis to protect Cardholder Information and Transaction Data.
- 26.5** You shall provide us with evidence of compliance upon request. Failure to comply with these requirements may result in a PCI Non-Compliance Fee, Card Organization fine and/or termination of this Agreement.
- 26.6** In the event of a suspected or confirmed breach of Cardholder Information or if any other Data Security Event occurs, you shall immediately (within 24 hours) notify us. You further acknowledge and agree to comply with Card Organization requirements related to a breach of Cardholder Information, which may include engaging an authorized Card Organization third party incident response assessor. You agree to fully cooperate with any such investigation and comply with all requirements and requests by us and/or the Card Organization, including: (a) assisting with any mitigation efforts to contain any further unauthorized release of Cardholder Information, (b) providing immediate access to all facilities, systems, procedures, equipment, and documents as may be deemed appropriate by us and/or the Card Organization for inspection or audit, as deemed appropriate in our sole discretion (you shall be responsible for all costs incurred by us or the Card Organization with respect to such inspection and audit); (f) granting us and our vendors the right to access and perform a scan of the IP addresses identified within your profile (and you agree and authorize payment for the additional scan).
- 26.7** We reserve the right to deny you access to the Services, in whole or in part, if we believe that any loss, theft or unauthorized use of any data or access to information has occurred.
- 26.8** If you have not purchased data breach protection from us that covers some of the costs that may be related to a data breach, you shall be responsible for all data breach remediation costs or fines and penalties, including the costs associated with credit monitoring for affected Cardholders. If you have purchased data breach protection from us, you shall be responsible for any data breach remediation costs or fines and penalties not covered by such data breach protection product.
- 26.9** You are responsible for all electronic communications sent to us or to any third party. When we receive communications from you we will assume you sent it to us.
- 26.10** You will not obtain ownership rights in any Cardholder Information. You must not use, disclose, store, sell or disseminate any Cardholder Information except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transaction.

27. SUPPLY OF EQUIPMENT

- 27.1** We will sell to you, and you will buy from us Equipment identified in Equipment Documents as being sold to you (individually and collectively, the **Purchased Equipment**). We will rent to you and you agree to accept and rent from us Equipment identified in Equipment Documents as being rented to you (individually and collectively, the **Rental Equipment**).
- 27.2** Any Equipment sold or rented to you is being sold or rented to you solely for business use and not for household or personal use.
- 27.3** Warranties, if any, for the Equipment or any related Software will be contained within the packaging and originate from the applicable third party provider or manufacturer (**Vendor**) not us.
- 27.4** YOU ACKNOWLEDGE THAT ANY EQUIPMENT AND/OR SOFTWARE YOU PURCHASE OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IF YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER ON TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT.
- 27.5** We will provide you supplies as requested by you. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to this Agreement.
- 27.6** We will deliver the Equipment to the site you designate. You are deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation; (b) delivery to you if your site is not prepared and ready for installation; or (c) for Equipment that we have not agreed to install for you, seven (7) days after

shipment of each such piece of Equipment. The rental period for each piece of Rental Equipment starts on the date the Equipment is deemed accepted and terminates at the scheduled termination date in the Equipment Documents.

- 27.7** You will prepare the installation site(s) for the Equipment, including the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. Any alterations required for installation of Equipment will be done at your expense.
- 27.8** You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.
- 27.9** You may not relocate, remove, disconnect, modify or in any way alter any Equipment without our prior consent.
- 27.10** You are responsible for safeguarding Equipment from (and shall immediately notify us of any) loss, damage, unauthorized use, misuse or theft.
- 27.11** You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment does not relieve you of your obligation to pay the full purchase price or rent payable under this Agreement.
- 27.12** If Equipment is defective, you must immediately call the us. If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- 27.13** Rented Equipment may not be subleased at any time and you must keep all Equipment free of any claims, liens and legal processes initiated by creditors.
- 27.14** Promptly upon termination of all applicable rental periods or promptly following any action by us following a Default, you shall deliver possession of all Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, except for reasonable wear and tear. For each item of Rental Equipment not so returned 14 calendar days after (a) termination of the applicable rental period, or (b) any action by us following a Default, you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us.
- 27.15** Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- 27.16** You shall return Equipment in accordance with the procedure set out in the Your Payments Acceptance Guide. Rental fees may be continued until Equipment is returned.
- 27.17** You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price; and (b) all Rental Equipment and the related Software to secure payment of the monthly payments and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.
- 27.18** You agree that in order to access any Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by us in our sole discretion (**Wireless Equipment**).
- 27.19** You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission (FCC) or any other regulatory authority, if any, for the lawful operation of any Wireless Equipment used by you. You shall promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.

28. COMPLIANCE WITH LAWS

- 28.1** You agree to comply with all Applicable Law, including requirements regarding anti-money laundering, the completion of Transactions and the submission to us and use of Transaction Data, the performance of your obligations under this Agreement, and the conduct of your business. You shall not use the Services for illegal purposes.
- 28.2** You are solely responsible for obtaining all required permits and monitoring legal developments applicable to the Services and the operation of your business, interpreting applicable laws and regulations, determining the requirements for compliance with all applicable laws and regulations, and maintaining an on-going compliance program.

29. INDEMNIFICATION, PERSONAL GUARANTEE

- 29.1** You agree to indemnify and hold us, our Affiliates and third party service providers harmless from and against losses, liability, damages, claims, penalties, costs, or expenses incurred arising from: (a) any breach or misrepresentation by you under this Agreement; (b) your or your employees' or your agents' unlawful, willful, negligent or fraudulent action or omission that is in any way related to this Agreement or the obligations of you or us hereunder; (c) your use of the Services,

including any Software or Equipment provided under this Agreement; (d) any third party indemnifications or payments we are obligated to make as a result of as a result of any action or omission by you or your employees' or your agents' (including indemnification of any Card Organization or Issuer); (e) your use of any Cardholder Information or other customer information obtained in connection with your use of the Services; (f) the content or delivery of any marketing messages that you send or cause to be sent to any customer; or (g) any other persons authorized or unauthorized access and/or use of any Service, Software or Equipment, whether or not using your unique username, password, or other security features.

- 29.2 Personal Guarantee.** As a primary inducement for us to enter into this Agreement with you, the Guarantor(s), individually and severally, hereby agree to be bound by all terms and provisions of this Agreement to the same extent and in the same manner as you ("Guarantor") and (a) unconditionally and irrevocably guarantees the full payment and performance of Merchant's obligations (i) as they now exist or as modified by the parties, (ii) with or without actual notice of changes, and (iii) during and after the term of this Agreement; (b) individually and severally, hereby agree to be bound by all terms and provisions of this Agreement to the same extent and in the same manner as the Merchant; (c) waives notice of Merchant's default; (d) shall indemnify Bank for any and all amounts due from the Merchant; (e) warrants, with knowledge that Bank is acting in full reliance of the same, and that this is Personal Guarantee of payment and not of collection; (f) Acknowledges that Bank may proceed in law directly against the Guarantor and not the Merchant; and (g) that this is a continuing personal guarantee and shall not be discharged or affected for any reason.

Guarantor agrees that (a) Bank may investigate, verify and receive all credit and financial information and references about Guarantor from all references, including banks and consumer reporting agencies, which are hereby released to provide that information from time to time; (b) that Bank may use such credit reports in connection with establishing and maintaining Merchant's account and Agreement; and (c) that Bank may share Guarantor's credit and financial information.

30. GOVERNING LAW; ATTORNEY'S FEES; WAIVER OF JURY TRIAL

- 30.1** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to any conflict of laws provisions. Any action, proceeding, litigation, mediation or arbitration relating to or arising from this Agreement shall be brought exclusively in the federal courts in the county of New Castle in the State of Delaware.
- 30.2** You shall be liable for and indemnify us and our affiliates, officers, directors, employees and agents against any and all attorney's fees, costs and expenses incurred by us in the enforcement of your obligations under this Agreement.
- 30.3** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

31. NOTICES

- 31.1** Unless otherwise expressly stated in this Agreement, all notices hereunder shall be in writing and either hand delivered, faxed, sent by electronic mail, sent by overnight courier, or mailed first class (postage prepaid). Notices shall be deemed to be received: (a) upon physical receipt, if hand delivered; (b) on the same day as delivery, if faxed or sent by electronic mail; (c) on the immediately succeeding day after the notifying party delivers the notice to a courier, if sent by overnight courier; and (d) on the third day after the notifying party sends the notice, if mailed first class (postage prepaid). All notices and other communications required or permitted under this Agreement (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing and sent:
- a) if to you, to your email address or postal address appearing on the Application;
- b) if to Bank, to the address appearing on the confirmation page.
- 31.2** Notices sent to your last known e-mail address or postal address, as indicated in our records, shall constitute effective notice to you under this Agreement.
- 31.3** You must give us 30 days prior notice of any change to your address. Failure to provide us with a valid address may result in the termination of this Agreement.
- 31.4** All notices must include your name(s) and merchant number(s).

32. COMMUNICATIONS

- 32.1** You agree that we, our affiliates and our third party subcontractors and/or agents, may use, in addition to any live agent calls, an automatic telephone dialing system, an artificial or pre-recorded voice, or both, to contact you at the telephone number(s) you have provided, and/or may leave a detailed voice message if you are unable to be reached, even if the number provided is a cellular or wireless number or if you have previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes.
- 32.2** You consent to receiving commercial electronic messages, including email messages, SMS and text messages, and telephone calls, from us, our Affiliates, and our third party subcontractors and/or agents.

33. WHOLE AGREEMENT; WAIVER; SEVERABILITY, RELATIONSHIP, CUMULATIVE RIGHTS AND REMEDIES, HEADINGS, COUNTERPARTS AND RULES OF CONSTRUCTION

- 33.1** This Agreement represents the entire understanding between the parties with respect to the matters contained herein and supersedes any prior agreements between the parties with respect to such matters. You agree that in entering into this Agreement you have not relied on any statement of us or our representatives.
- 33.2** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- 33.3** Should any provision of this Agreement be determined to be invalid or unenforceable under Applicable Law or Card Organization Rules, such determination shall not affect the validity or enforceability of any other provision of this Agreement. You acknowledge that we can and will replace any invalid or unenforceable provision with a valid, enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 33.4** It is understood and agreed that the relationship of the parties is that of independent contractors, and nothing in this Agreement may be construed as constituting a partnership, joint venture or agency between us and you.
- 33.5** All of our rights and remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to us at law, in equity or otherwise.
- 33.6** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one original document.

34. AMENDMENT

- 34.1** We may amend this Agreement at any time, and from time to time, upon not less than 5 days prior written notice to you. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the Card Organization Rules or Applicable Law, such amendment shall be effective immediately. Your continued submission of Transactions to us following any amendment of this Agreement shall be deemed to constitute your acceptance of such amendment.
- 34.2** Notwithstanding Section 34.1, we may at any time modify this Agreement in accordance with Section 10.5 or to reflect changes in applicable law, the Card Organization Rules or security procedures and your right of termination shall not arise in such circumstances.
- 34.3** You May not amend this Agreement.

35. THIRD PARTY BENEFICIARIES

- 35.1** Our Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as if they are a party to it. The rights of the parties to rescind or agree to any variations, waiver or settlement under this Agreement are not subject to the consent of any Person.
- 35.2** Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights or remedies under this Agreement.

36. 6050W OF THE INTERNAL REVENUE CODE

- 36.1** Under Section 6050W of the Internal Revenue Code, you will receive a Form 1099-K reporting the gross dollar amount of card transactions processed through your merchant account with us in each year.
- 36.2** Amounts reportable under Section 6050W are subject to backup withholding requirements. We will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) you fail to provide your taxpayer identification number (TIN) to us, or (b) if the IRS notifies us that the TIN (when matched with the name) provided by you is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

37. FORCE MAJEURE

- 37.1** Neither party shall be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective Party has no reasonable control, provided that nothing in this sentence shall affect or excuse your liabilities and obligations for compliance with Card Organization Rules, Chargebacks, refunds, or unfulfilled products and services.

38. SPECIAL PROVISIONS REGARDING TRANSARMOR DATA PROTECTION SERVICE ("DATA PROTECTION SERVICE")

- 38.1** If Merchant elects to utilize the Data Protection Service, the terms and conditions of this Section 38 shall apply.

38.2 The Data Protection Service provided, transactions processed and other matters contemplated under this Section 38 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 38 directly conflict with another provision of this Agreement, in which case the terms of this Section 38 will control.

38.3 Definitions. For purposes of this Section 38 only, the capitalized terms used in this Section 38 shall have the meaning given as defined in this Section 38, and if not defined in this Section 38, as defined elsewhere in this Agreement.

38.4 Grant of License. Bank grants to Merchant a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 38 to use the Data Protection Service and the Data Protection Service Marks (as identified in the Data Protection Rules and Procedures) in the United States, excluding any United States territories or possessions, in accordance with this Section 38, including without limitation the Data Protection Rules and Procedures. Any rights with respect to the Data Protection Service not expressly granted by Bank in this Section 38 are withheld.

38.5 Services. The Data Protection Service applies only to Card transactions sent from Merchant to Bank or its third party providers for authorization and interchange settlement pursuant to the Agreement, and specifically excludes electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, Wright Express Transactions, Voyager Transactions, and other Card types that are not capable of being Tokenized. Bank or its third party providers will provide an encryption key to Merchant to be used to encrypt (make unreadable) Card data during transport of the authorization request from Merchant's point of sale to systems of Bank. During the period when the transaction is being transmitted to Bank or its third party providers for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Bank or its third party providers will then generate or retrieve a unique, randomly generated token assigned to the Card number that will be returned to Merchant in the authorization response ("Token").

38.6 Responsibilities of Merchant. Merchant is responsible to comply with the following regarding Merchant's use of the Data Protection Service:

- Merchant is required to comply with the Card Network Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards ("PCI DSS"). Merchant must ensure that all third parties and software use by Merchant in connection with [Merchant's] payment processing is compliant with PCI DSS. Use of the Data Protection Service will not cause Merchant to be compliant or eliminate Merchant's obligations to comply with PCI DSS or any other Card Network Rule. Merchant must demonstrate and maintain Merchant's current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor with corresponding Report on Compliance or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire or Report on Compliance, as applicable, and if applicable to Merchant's business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Association Rules and PCI DSS.
- Use of the Data Protection Service is not a guarantee against an unauthorized breach of Merchant's systems or point-of-sale devices (collectively, "Merchant's Systems").
- Merchant must deploy the Data Protection Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout Merchant's Systems, including replacing existing Card numbers on Merchant's Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- Merchant must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, any time a Tokenization service is available, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- Any point of sale device, gateway and/or value added reseller "VAR" use by Merchant in connection with the Data Protection Service must be certified for use with the Data Protection Service, where available.
- If Merchant sends or receives batch files containing completed Card transaction information to/from Bank, Merchant must use the service provided by Bank or its third party providers to enable such files to contain only Tokens or truncated information, where available.
- Merchant must use truncated report viewing and data extract creation within reporting tools provided by Bank.
- Merchant is required to follow rules or procedures Bank may provide to Merchant from time to time related to Merchant's use of the Data Protection Service ("Data Protection Rules and Procedures"). Bank will provide Merchant with advance written notice of any such rules or procedures or changes to such rules or procedures.
- Merchant has no right, title or interest in or to the Data Protection Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to Merchant. Merchant shall not take any action inconsistent with the stated title

and ownership in this Section 38. Merchant will not file any action, in any forum, that challenges the ownership of the Data Protection Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. Bank has the right to immediately terminate this Section 38 and Merchant's access to and use of the Data Protection Service in the event of a challenge by Merchant. No additional rights are granted by implication, estoppel or otherwise.

(j) Merchant will not: (i) distribute, lease, license, sublicense or otherwise disseminate the Data Protection Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the Data Protection Service or any portion of it; or (iii) sell, license or otherwise distribute the Data Protection Service or any portion of it; (iv) make any copies, or permit any copying, of the Data Protection Service or any portion of it; or (v) use any portion of the Data Protection Service as a standalone program or in any way independently from the Data Protection Service. If any portion of the Data Protection Service contains any copyright notice or any other legend denoting the proprietary interest of Bank or any third party, Merchant will not remove, alter, modify, relocate or erase such notice or legend on such item.

(k) Merchant will only use the Data Protection Service for its internal business purposes in a manner consistent with this Agreement.

(l) Merchant will use only unaltered version(s) of the Data Protection Service and will not use, operate or combine the Data Protection Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Section 38.

(m) Merchant will promptly notify Bank of a breach of any terms of this Section 38.

38.7 Amendment; Termination.

(a) Unless prohibited by applicable law, Bank may modify this Section 38 by providing written notice of such modifications to Merchant.

(b) The Data Protection Service being provided under this Section 38 may be terminated upon thirty days written notice from one party to the other party.

38.8 Data Protection Limited Warranty. Bank provides the following limited warranty to Merchant with respect to the Data Protection Service: SUBJECT TO SECTION 38.10, BANK WARRANTS TO MERCHANT THAT THE TOKEN RETURNED TO MERCHANT AS A RESULT OF USING THE DATA PROTECTION SERVICE CANNOT BE USED TO INITIATE A SALE TRANSACTION BY AN UNAUTHORIZED PERSON/ENTITY OUTSIDE OF MERCHANT'S COVERED SYSTEMS. "Covered Systems" means Merchant's systems or point-of-sale devices that are using the TransArmor Data Protection Service.

38.9 Exclusive Remedy for Breach of Limited Warranty. Subject to Section 38.10 of these Special Provisions and the terms of the Agreement (including the damages cap(s), damages exclusion(s), and other limitations on liability in Section 14 and Section 38 of the Agreement), Bank will indemnify Merchant for direct damages resulting from Bank's breach of the Data Protection Service limited warranty in Section 38.8. For clarity, "direct damages" includes third party claims asserted against Merchant arising from Bank's breach of the limited warranty in Section 38.8. THE INDEMNIFICATION IN THIS SECTION 38.9 IS THE SOLE AND EXCLUSIVE REMEDY, AND BANK'S ENTIRE LIABILITY, FOR BANK'S BREACH OF THE LIMITED WARRANTY IN SECTION 38.8.

38.10 Exceptions to Limited Warranty and Exclusive Remedy. The limited warranty in Section 38.8 and the indemnification in Section 38.9 will not apply and will be voidable at Bank's election, and Bank will have no liability of any kind arising from the limited warranty if Merchant (a) is not receiving authorization and settlement services from Bank under this Agreement, (b) is not in compliance with all terms of this Agreement and any other agreement relating to payment forms eligible for the Data Protection Service, (c) uses the Data Protection Service in a manner not contemplated by, or in violation of, this Agreement, (d) is grossly negligent, or (e) engages in intentional misconduct.

38.11 Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 38.8 AND IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, BANK AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR IMPOSED BY STATUTE OR OTHER LAW, THAT ARISE OUT OF OR RELATE TO THE SPECIAL PROVISIONS OF THIS SECTION, THE DATA PROTECTION SERVICE, OR ANY ASPECT OF THE DATA PROTECTION SERVICE, INCLUDING: (a) WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, (b) WARRANTIES OF NON-INFRINGEMENT OR NON-INTERFERENCE, AND (c) ANY WARRANTY THAT THE DATA PROTECTION SERVICE (OR ANY ASPECT OF THE DATA PROTECTION SERVICE) WILL (i) MEET MERCHANT'S REQUIREMENTS, (ii) OPERATE ACCORDING TO MERCHANT'S EXPECTATIONS, (iii) DETECT EVERY VULNERABILITY ON MERCHANT'S SYSTEMS, (iv) GUARANTEE COMPLIANCE WITH APPLICABLE LAW, ASSOCIATION RULES, OR APPLICABLE STANDARDS (INCLUDING PCI DSS), (v) PREVENT A DATA BREACH OR COMPROMISE OF DATA SECURITY, (vi) PROVIDE ACCURATE OR COMPLETE DATA, OR (vii) OPERATE UNINTERRUPTED OR ERROR FREE.

38.12 Third Party Beneficiary. Bank has been granted the right by First Data Merchant Services LLC ("FDMS") to sublicense the Data Protection Service and the Data Protection Service Marks to Merchant. As such, FDMS (including its successors or assigns) is a third-party beneficiary of this Section 38, with the right to receive all benefits that Bank receives under this Section 38 and the right to initiate enforcement of the terms of this Section 38, including applicable terms of this Agreement, against Merchant at FDMS' sole discretion.

39. AMERICAN EXPRESS OPTBLUE TERMS

39.1 If Merchant elects to utilize the American Express OptBlue Service, the terms and conditions of this Section 39 shall apply.

39.2 Arbitration Agreement for Claims Involving American Express.

(a) Definitions. For purposes of this Section 39 only, (i) "American Express" includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) "You" includes your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including you or us) that American Express has the right to join, including any allegation involving a transaction using an American Express product or network or regarding an American Express policy or procedure.

(b) Arbitration Agreement for Claims Involving American Express. In the event that you or we are not able to resolve a Claim, this Section 39 explains how Claims may be resolved through arbitration. You or we or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any Party to resolve a Claim, the Parties understand and agree that neither you nor we nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, you, we, and American Express understand and agree that the Parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this OptBlue Schedule. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights you, we, or American Express would have in court may also not be available in arbitration.

(c) Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the Party electing arbitration. Claims will be resolved pursuant to this Section 39 and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with this OptBlue Schedule. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all Parties agree in writing, if American Express or we, on one hand, selects the organization and you, on the other hand, select the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in New York, NY.

(d) Limitations on Arbitration. If any Party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between you, us, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by you, us or American Express and cannot be used in any other case except to enforce the award as between you, us and American Express. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Section 39, if any portion of these Limitations on Arbitration set forth in this Section 39 (ii) is found invalid or unenforceable, then the entire Section 39 (other than this sentence) will not apply, except that you, we, and American Express do not waive the right to appeal that decision.

(e) Previously Filed Claims/No Waiver. You, we, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. You, we, or American Express may choose to delay enforcing or to not exercise rights under this Section 39, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this Section 39 applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the effective date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

(f) Arbitrator's Authority. The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized

under this OptBlue Schedule. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 39.

(g) Split Proceedings for Equitable Relief. You, we, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This Section 39 shall be enforced by any court of competent jurisdiction.

(h) Small Claims. American Express will not elect arbitration for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

(i) Governing Law/Arbitration Procedures/Entry of Judgment. This Section 39 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

(j) Confidentiality. The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

(k) Costs of Arbitration Proceedings. You will be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a claim in court. American Express will be responsible for any additional arbitration fees. At your written request, American Express will consider in good faith making a temporary advance of your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

(l) Additional Arbitration Awards. If the arbitrator rules in your favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrator's award will include: (1) any money to which you are entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by you.

Additional Provisions for AMEX Transactions - For merchants participating in the American Express OptBlue® Program, you should review the operating guide made available to you at www.americanexpress.com/merchantopguide.

40. SPECIAL PROVISIONS REGARDING FIRST DATA PAYEEZY GATEWAYSM SERVICES

If you elect to utilize the Payeezy Gateway Services ("Gateway Services"), the following additional terms and conditions of this Section 40 shall apply.

The Gateway Services provided and other matters contemplated under this Section 40 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 40 directly conflict with another provision of this Agreement, in which case the terms of this Section 40 will control.

40.1 Definitions. For purposes of this Section 40 only, the Capitalized terms used in this Section 40 shall have the meaning given as defined in this Section, and if not defined in this Section, as defined elsewhere in this Agreement.

(a) Claim means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any Intellectual Property Right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmaturing.

(b) Confidential Information means the Gateway Services, Documentation, operational procedures, the terms and conditions of this Section 40 (including any schedule, exhibit or addendum), pricing or other proprietary business information, and any other information provided to you by us, whether or not

such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of yours; (b) was lawfully obtained by you from a third party free of any obligation of confidentiality; (c) was already in your lawful possession prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by you without the use of the Confidential Information; (e) is disclosed with our express written permission; or (f) is disclosed pursuant to a lawful court or governmental order, provided you provide us with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

(c) Customer means your customer who would like to provide payment for your goods or services.

(d) Documentation means any and all manuals and other written materials in any form provided for use with the Software, as amended by us from time to time, the terms of which are incorporated in this Section 40 as if fully set forth herein.

(e) Intellectual Property Rights means any and all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights, and any applications for any of the foregoing, in all countries in the world.

(f) Merchant Account shall mean an account set up for a merchant that requires a card processor, bank, merchant ID., terminal ID., merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account.

(g) Operational Procedures means our published policies and procedures contained in the various documents provided to you, as amended from time to time, concerning the Gateway Services provided pursuant to this Section, the terms of which are incorporated in this Section as if fully set forth herein.

(f) Payeezy Gateway Services or Gateway Services means the payment processing services offered through the Platform (including, but, not limited to authorization of transactions, routing transactions to the appropriate payment processing network or third party service provider, transaction responses (approved, declined), and the detailed reporting of those transactions) and related Software, as applicable. The Gateway Services do not include alternative payment products or services that are supported by or may be accessed through the Platform and with respect to which you enter into an agreement: (i) with us (which agreement may consist of an amendment to this Agreement or specific terms in this Agreement expressly covering such alternative payment products or services) (such alternative payment products or services, "Separate Products"), or (ii) a third party service provider regarding your participation in such alternative payment products or services (together with Separate Products, the "Excluded Products").

(h) Platform means our operated, or approved, electronic payment platform(s) and/or gateway(s) (also referred to as the "Payeezy Gateway") through which the payment services contemplated under this Section 40 are provided.

(i) Software means all applications, protocols, software components and other interfaces and software provided by us to you pursuant to this Section 40, and any and all Updates.

(j) Updates means an embodiment of the Software that provides enhancements and/or improvements.

(k) Your Systems means any web site(s) or interface(s) to the Gateway Services that are operated or maintained by you or on your behalf through which transactions are submitted for processing, and all of your other associated systems.

40.2 Fees. You shall pay us the fees for the Gateway Services as set forth on the Application. A separate account with us for the Gateway Services shall be required for each separate Merchant Account held by you.

40.3 Term; Termination. The Gateway Services shall commence as of the effective date of this Agreement and shall remain in effect until terminated by either party as provided herein. Either party may terminate the Gateway Services upon giving the other party at least thirty (30) days prior written notice. We may suspend or terminate your access to Gateway Services without prior notice, with or without cause. Regardless of the reason for termination, you shall be responsible for the payment of all fees due up to and including the effective date of termination.

40.4 License Grant.

40.4.1 License. Subject to the terms and conditions of this Agreement (including additional rights and licenses granted in the Documentation), we grant to you a non-sublicensable, royalty free, non-exclusive, nontransferable, revocable limited license to use the Gateway Services during the term of this Agreement for the sole and limited purpose of submitting payment transactions to us for processing and otherwise using Gateway Services as set forth herein. For clarity, all references to Gateway Services in this Agreement shall include the applicable Software.

40.4.2 Documentation License. Subject to the terms and conditions of this Agreement, we grant to you, and you hereby accept, a royalty free, non-exclusive, non-transferable, revocable limited license, without right of sublicense, to use the Documentation during the term of this Agreement for the sole and limited purpose of supporting your use of the Gateway Services. You shall strictly follow all Documentation provided to you, as it may be amended from time to time by us, in our discretion. To the extent that there is any conflict between the Documentation

and the terms of this Agreement, the terms of this Section 40 shall govern and control.

40.4.3 Use Restrictions. You acknowledge that the Gateway Services and Documentation constitute our intellectual property, therefore, you shall not, and shall not cause or permit any third party to: (i) use the Gateway Services in any way, other than in accordance with this Agreement, the Documentation or as otherwise instructed by us in writing; (ii) use the Gateway Services or Documentation, either directly or indirectly, for benchmarking purposes or to develop any product or service that competes with the products and services provided under this Section 40; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Gateway Services, or otherwise apply any procedure or process to the Gateway Services in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Gateway Services or any algorithm, process, procedure or other information contained in the Gateway Services, except as otherwise specifically authorized in accordance with this Section 40; (iv) provide the Gateway Services or Documentation to any third party, other than to your authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of this Section 40; (v) use, modify, adapt, reformat, copy or reproduce the Gateway Services or Documentation or any portion thereof, except as is incidental to the purposes of this Section 40, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, upload, assign, sublicense, transfer, distribute, allow access to, or timeshare the Gateway Services or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Gateway Services; (viii) attempt to access or actually access portions of the Platform or Gateway Services not authorized for your use; and/or (ix) use the Gateway Services in any unlawful manner or for any unlawful purpose.

40.4.4 Updates. From time to time we may, at our discretion, release Updates or modify the Software. In the event we notify you of any such Update, you shall integrate and install such Update into Your Systems within thirty (30) days of your receipt of such notice. You acknowledge that failure to install Updates in a timely fashion may impair the functionality of the Platform or any of our Gateway Services provided hereunder. We will have no liability for your failure to properly install the most current version of the Software or any Update, and we will have no obligation to provide support or Gateway Services for any outdated versions.

40.4.5 Licensors. The licenses granted hereunder may be subject to other licenses currently held by us or our subcontractors. Should any license held by us to certain technology or software be terminated or suspended, the corresponding license(s) granted to you hereunder may also be terminated or suspended in our sole and absolute discretion. You acknowledge and agree to such potential termination or suspension and hereby waive any and all damages, whether actual, incidental or consequential resulting therefrom.

40.4.6 Export Compliance. You agree not to export or re-export the Software or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) to any country to which the United States has embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (iii) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. If you have rightfully obtained the Software outside of the United States, you agree not to re-export the Software except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained the Software. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

40.4.7 Federal Acquisition Regulations. If you are acquiring the Software on behalf of any part of the United States Government (the "Government"), the following provisions apply: Any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. We are the contractor/manufacturer, with the address set forth below. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Section and shall be prohibited except to the extent expressly permitted by the terms of this Section 40.

40.4.8 Return/Destruction. Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, you shall either return to us or destroy the Software and the Documentation, and shall so certify to us in writing.

40.4.9 No other Licenses. Except as expressly provided above, no license for any patents, copyrights, trademarks, trade secrets or any other Intellectual Property Rights, express or implied, are granted hereunder.

40.4.10 Use of Transaction Data. As permitted by applicable law and regulations, we reserve the right to copy and distribute to third parties, any information associated with your use of the Gateway Services or your activities on the Platform.

40.5 Platform Matters.

40.5.1 Integration with Your Systems. While we provide Software to you, you acknowledge that the Software itself is insufficient to allow Your Systems to function with the Platform. Programming, development and maintenance of Your Systems and their functionality are your sole responsibility. You have the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make Your Systems function correctly with the Platform and the payment services contemplated hereunder ("Integration"). You shall be responsible for all technical support for Your Systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete the Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Section 40, you acknowledge that unless and until you complete the Integration, no Gateway Services need be provided by us to you pursuant to Section, except as otherwise specifically provided in Section 40.5.2 below. In addition, you acknowledge and agree that, even if you have completed Integration, if you have not entered into a valid merchant processing agreement with an authorized bank card processor, you cannot receive the Gateway Services through the Platform.

40.5.2 Set-Up Assistance Services. Subject to Section 40.5.1 above, upon your request to us, and upon payment of any applicable fees, we will provide you with set-up services to assist with the Integration.

40.5.3 Shut Downs. We reserve the right, from time to time, without prior notice, to shut down and restart the Platform for maintenance and/or software upgrades for reasonable time periods of one minute or more.

40.5.4 Orders by Customers. You are solely responsible for accepting, processing, and filling any orders for purchases by your Customers, and for handling any inquiries arising therefrom. You shall use the highest standards in the industry in responding to complaints by Customers. We are not responsible or liable for any unauthorized access to your data or Your Systems by any means or device.

40.6 Security of Information. We will use commercially reasonable efforts to maintain the security of the Gateway Services and the Platform. You will use commercially reasonable efforts to maintain the security of Your Systems. Such steps by you will be taken at your sole cost and expense, and shall include, without limitation: (i) creating firewalls to protect against unauthorized access to Your Systems by your employees, contractors, Customers, or by any other person; and (ii) implementing reasonable protective techniques suggested by us. You further agree that you will be bound by and comply with all of our and all Card Organization security rules and regulations as they now exist or as each may be amended or supplemented from time to time. Notwithstanding the foregoing, the parties recognize that there is no guarantee or absolute security of information that is communicated over the internet.

40.7 Privacy. We have adopted online Privacy Statement(s) for the Gateway Services to inform individuals as to online collection and use of personal information. You agree that, during the term of this Agreement, you will adequately communicate and comply with an appropriate privacy policy explaining your online collection and use of the personal information of your Customers. Unless required by law, Card Organization Rules, or done pursuant to this Agreement, you shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any customer's account information, transaction information, or other personal information to any third party. You shall store all data securely. We may advise potential users of the services that we have a relationship with you.

40.8 Audit Rights. Upon notice to you, we may audit your usage, records and security of the Gateway Services, your Customer's payment processing information, and the services provided hereunder to ensure (i) that you are using the Gateway Services in full compliance with the provisions of this Section 40; (ii) that all applicable fees have been paid; (iii) that you are adhering to your privacy policy; and; (iv) that you are in full compliance with all applicable laws, regulations and rules (including but not limited to Card Organization Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

40.9 Indemnification. You shall indemnify, defend, and hold us, our subsidiaries and affiliates and our and their officers, directors, employees, shareholders, agents and attorneys from any Claim(s) arising from the conduct of your business, any Transactions submitted through the Platform hereunder for payment processing, any false or inaccurate representation made by you or the negligence, fraud, dishonesty or willful behavior of any of your employees or agents, or from your failure to strictly comply, in whole or in part, with any: (i) terms and conditions pursuant to this Agreement and any addenda hereto or Documentation; or (ii) applicable law, regulations or rules. Upon written notice from us to you, you shall immediately undertake the defense of such Claim by representatives of your own choosing, subject to our reasonable approval.

40.10 Limitation of Liability.

40.10.1 We are not liable for your use or misuse of the Gateway Services, including the merit and legitimacy of the orders forwarded by you. All liability for validity of orders remains with you. We are not responsible for any data entry errors, Customer misrepresentations, or reporting errors resulting from your actions. We shall not be liable to you or your Customer for the accuracy of the information provided by the Gateway Services.

40.10.2 In no event shall we be liable to you, or to any other person or entity, under this Section 40, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill.

40.10.3 Notwithstanding any provision in this Agreement to the contrary, in no event shall our liability under this Section 40 for all Claims arising under, or related to, this Section 40 exceed, in the aggregate (inclusive of any and all Claims made by you against us, whether related or unrelated), the lesser of: (i) the total amount of fees paid by you for the Gateway Services during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$50,000.00.

40.10.4 Notwithstanding provisions set forth herein, we will not be liable for any Claims under this Agreement arising directly or indirectly from or otherwise concerning: (a) any termination, suspension, delay or disruption of service (including billing for a service) by the internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Service provided hereunder or the internet, or any communications network, facility or equipment beyond our reasonable control, whether or not attributable to one or more common carriers or third party service providers; (c) any failed attempts by you or your Customers to access any Systems or to complete processing transactions; (d) any failure to transmit, obtain or collect data from Customers; or (e) human, machine or software errors or faulty input or your or your Customer's erroneous input.

40.10.5 Except as expressly agreed to by us in writing with respect to any Separate Product, we are not liable for any Excluded Products.

40.11 Disclaimer of Warranties. You acknowledge and agree that the use of the Gateway Services and Documentation are at your sole risk and we make no representation or warranty, express or implied, and no implied at law warranty shall arise from this Section, the Gateway Services, the Documentation, our procedures, or other services provided by or performed by us hereunder, including, without limitation: (a) any implied warranties of merchantability or fitness for a particular purpose; (b) any warranties of noninterference or non-infringement; or (c) any warranties that any product or Service provided hereunder (including but not limited to the Software) will (i) meet your requirements; (ii) operate according to your expectations; (iii) provide accurate data; or (4) operate uninterrupted or error free. Any and all such warranties are expressly disclaimed by us and waived by you. We do not warrant that any errors will be corrected. Except as otherwise specifically set forth herein, the Platform, Gateway Services and Software provided hereunder are provided on an "As-Is, with all faults" basis. This disclaimer of warranties constitutes an essential part of this Agreement. All decisions to reject any processing transaction or payment for your products or services are solely your responsibility.

40.12 Subcontractors. We may subcontract all or part of the Gateway Services using a variety of providers globally, but, notwithstanding any such subcontract, we shall remain fully responsible for performance of Gateway Services, including ensuring the compliance of subcontractors with the terms of this Agreement applicable to such subcontractors. Each of our subcontractors for the Gateway Services is a third party beneficiaries of Sections 40.4, 40.5, 40.7, 40.8, 40.9, 40.10, 40.11, 40.13 and 40.14 of this Section with rights to enforce the applicable terms of this Section against you.

40.13 Survival. Upon termination or expiration of this Section 40 or the Agreement, a party's obligations shall cease except for those remaining or required to be performed following such termination. For the avoidance of doubt, the parties agree that those provisions of this Section that logically should survive its termination or expiration in order to accomplish its fundamental purposes will do so. All representations, warranties, indemnities and covenants made herein shall survive the termination of this Section and shall remain enforceable after such termination.

41. INTERPRETATION; DEFINITIONS

41.1 The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement. References in this Agreement to include, including, or in particular shall not be given a restrictive meaning and shall be interpreted without limitation. Reference to any legislation is to such legislation as amended or supplemented in the future.

The words "herein" and "hereunder" and other words of similar import refer to this Agreement in its entirety and not to any part of this Agreement unless the context requires otherwise.

41.2 Certain terms used in this Agreement are defined below:

Address Verification Service (AVS): A tool provided by credit card processors and issuing banks to merchants in order to detect suspicious credit card transactions. The Address Verification Service (AVS) checks the billing address submitted by the card user with the cardholder's billing address on record at the issuing bank. This is done as part of

the merchant's request for authorization of the credit card transaction. The credit card processor sends a response code back to the merchant indicating the degree of address matching, depending on which the credit card transaction may be accepted or rejected.

Adverse Development: means any event, development, circumstance, state of facts or effect (including a change in Applicable Law or a change in the Card Organization Rules) that, individually or in the aggregate, (a) has had or would reasonably be expected to have an adverse effect, other than a de minimis adverse effect, on the business, operations or financial condition of us, or (b) has impaired or would reasonably be expected to impair, other than a de minimis impairment, our ability to perform our obligations under this Agreement (and, for the avoidance of doubt, any adverse or negative publicity mentioning us, or damage to our reputation).

Affiliate: a Person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this Agreement.

Agreement: has the meaning set forth in Section 1.1 of this document.

Anticipated Interchange and Program Pricing Level: your initial anticipated Card Organization interchange and program pricing rates as indicated in your initial Fee Schedule.

Application: the application for Services executed by you.

Applicable Law: means, with respect to any party, any law (including common law), ordinance, statute, treaty, order, rule, regulation, directive, regulatory guidance, opinion, interpretation, consent, approval, authorization or other determination or finding of any governmental body with jurisdiction over such party that is applicable to or binding upon such party or to which such party or its assets is subject, whether federal, state, county, local, foreign or otherwise.

Authorization: approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only that the Issuer has confirmed there is sufficient availability of funds on the Cardholder's account at the time the Authorization is requested.

Authorization and Capture: the communication of instructions from your POS or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information.

Authorized Representative: means an owner, partner, officer, or other Agent of the Merchant that is duly authorized to enter into agreements on behalf of the Merchant and legally bind Merchant to such agreements.

Bank: means TD Bank, N.A.

Card: See either Credit Card or Debit Card.

Cardholder: the Person whose name is embossed on a Card and any authorized user of such Card, also referred to as a **Card Member** by American Express.

Cardholder Information: the data contained on a Card, or otherwise provided to you, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction, including the names, addresses and Card account numbers of Cardholders.

Card Organization: any entity formed to administer and promote Cards, including Mastercard Worldwide (**Mastercard**), Visa U.S.A., Inc. (**Visa**), DFS Services LLC (**Discover Network**), American Express Travel Related Services Company, Inc. (**American Express**) and any applicable debit networks.

Card Organization Rules: the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

Chargeback: a Card transaction (or disputed portion) that is returned to us by the Issuer. You are responsible for payment to us for all Chargebacks.

Card Item: means sales records, credit vouchers, and similar documents and items used in connection with the processing of a Transaction, including Transaction Data.

Chip Card: A Card that includes an embedded secure integrated circuit that can be either a secure microcontroller or equivalent intelligence with internal memory or a secure memory chip alone. The card connects to a reader with direct physical contact or with a remote contactless radio frequency interface. With an embedded microcontroller, chip cards have the unique ability to securely store large amounts of data, carry out their own on-card functions (e.g., encryption and mutual authentication) and interact intelligently with a card reader.

Clover: Clover Network, Inc.

Clover Service: the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the management of your business and enable payment processing at the point of sale, and any materials, documentation and derivative works released by us.

Credit Card: a card bearing a valid Mark of Visa, Mastercard, Discover Network, or American Express (or any other Card Organization specified by us in writing) and authorizing the Cardholder to buy goods or services.

Credit Limit: the credit line set by the Issuer for the Cardholder's Credit Card account.

Data Security Event: any actual or suspected unauthorized or fraudulent access to (or use, disclosure, or alteration of) Transaction Data (including but not limited to Cardholder

Information) whether consisting of a single event, a continuous course of events, or a series of related events.

Debit Card: a card bearing a valid Mark of Visa, Mastercard, Discover Network or American Express or any debit network that is used to access funds in a Cardholder's bank account or a prepaid account.

Default: See Section 19.5.

Device: a tablet, smartphone, or other mobile or fixed form factor identified by us as compatible with and capable of accessing and/or supporting a particular Service.

Discount Rate: a percentage rate or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit transactions, as set forth in the Application.

Dispute: any dispute, claim, or controversy related to or arising under any aspect of your relationship with us, whether directly with Processor and/or Bank, or indirectly with any other Person or entity related to the relationship, and arising at any time during, before, or after that relationship.

EMV Upgrade Costs: the costs you agree to incur to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Cards in a manner compliant with the PCI DSS.

Equipment: equipment purchased by you under this Agreement and any Equipment Documents.

Equipment Documents: documents setting out additional terms on which Equipment is rented to or purchased by you under this Agreement.

Extended Term: see section 19.2.

Fee Schedule: Includes the pricing and other information provided in Section 7 of your Application and the Interchange Rate/Fee Schedule.

Foreign Currency: a currency other than the Local Currency and supported by us for a particular service.

General Terms: these general terms and conditions on which the Services are provided, including any amendments or modifications.

Guarantor: means any party who signs on the Personal Guarantee signature line(s) of the Application. See section 29.2.

Issuer: the financial institution or Card Organization that has issued a Card to a Person. Local Currency: the currency associated with your place of domicile and approved by us.

Integration: see section 22.1.

Marks: names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations belonging to a party to this Agreement or their respective Affiliates or agents.

Merchant: the legal entity or business identified in the Application and whose name and signature appears on this Agreement and the Application and who may be referred to in this Agreement, you or your.

Merchant Account: shall mean an account set up for a merchant that requires a card processor, bank, merchant i.d., terminal i.d., merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account. Merchant Account Number: a number that numerically identifies each merchant location, outlet, or line of business to us for accounting and billing purposes.

MID: merchant identification number.

Mitigation Service: a service provided to a Cardholder whose information is the subject of a Data Security Event, where the primary purpose of the service is to mitigate the effects of the Data Security Event, including identity theft education and assistance and credit monitoring.

Non-PIN Debit: a transaction using a Debit Card that is processed without the use of a PIN.

Non-Qualified Fee: the difference between the interchange or program pricing associated with the Anticipated Interchange and Program Pricing Level and the interchange or program pricing associated with the more costly interchange or program pricing level at which the transaction actually processed.

Non-Qualified Surcharge Fee: a surcharge applied to any transaction that fails to qualify for the Anticipated Interchange and Program Pricing Level and is therefore downgraded to a more costly interchange or program pricing level. The Non-Qualified Surcharge Fee (the amount of which is set out on the Fee Schedule) is in addition to the Non-Qualified Fee, which is also your responsibility.

PCI: Payment Card Industry.

PCI DSS: Payment Card Industry Data Security Standard, as amended from time to time. See section 26.1.

PCI Non-Compliance Fee: See section 10.10.

Person: an individual, corporation, partnership, sole proprietorship, trust, association or any other legally recognized entity or organization, other than you or us.

Personal Guarantee: See section 29.2. This term may also be referred to as Personal Guaranty.

PIN: a Personal Identification Number entered by the Cardholder to submit a PIN Debit transaction.

PIN Debit: a transaction using a Debit Card where a Cardholder-enters a PIN via a PIN Pad.

Processing Infrastructure: means a Card processing infrastructure capable of processing a Chip Card.

Processor: TD Bank, N.A.

Processor Provided Service: has the meaning set forth in Section 2.2 of this document and includes Services provided directly to merchant by Processor or their affiliates as part of the suite of Services offered by Bank. These Services include but are not limited to Clover, Clover Go and Insights Solution.

Reserve: funds that are otherwise payable to you which we hold to secure your obligations under this Agreement, pursuant to Section 17 of this Agreement. The Reserve may also refer to other collateral that you may provide to us to secure such obligations. References to "Reserve Account" shall refer to our records and accounting of such funds or other collateral.

Security Event Expenses: means: (a) any obligation that you have to us arising from a Data Security Event, including EMV Upgrade Costs; (b) the cost of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI to determine the cause and extent of a Data Security Event; and (c) any reasonable fees or expenses incurred by us, or by you with our prior written consent, for any Mitigation Service specifically approved by us in writing but only if the Mitigation Service is provided within one (1) year after discovery of the relevant Data Security Event.

Services: the activities undertaken by us to authorize, process and settle Card transactions undertaken by Cardholders at your location(s), and all other services provided by us under this Agreement.

Settlement Account: an account or account(s) at a financial institution designated by you as the account to be debited and credited by us for Card transactions, fees, Chargebacks and other amounts due under this Agreement or in connection with this Agreement. Initial Settlement account information is provided in Section 4 of the Merchant Processing application.

Software: all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment i.e. firmware or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any software available as part of a Processor Provided Service or Third Party Service or which may be obtained by you as part of the Services or separately from the Services (e.g. any applications downloaded by you through an application marketplace).

Third Party Services: services, products, promotions or applications provided by someone other than us. Bank, Processor or the respective Affiliates or agents.

Transaction: means a transaction conducted between a Cardholder and you utilizing a Card in which consideration is exchanged between the Cardholder and you.

Transaction Data: data collected as part of performing Services for you.

Transaction Rate: the then-current Foreign Currency exchange rate used by the Card Organizations or their designee to convert the net funding amount into the Local Currency.

TransArmor Data Protection Service: the service provided by FDMS that encrypts cardholder date at the point of transaction and replaces it with a token that is returned with the authorization response.

Wireless Networks: certain cellular telephone and data networks to which we have access through Wireless Vendors.

Wireless Services: wireless data communication services that use radio base stations and switching offered by Wireless Networks in order to allow you to capture and transmit to us certain wireless Card Authorization transactions or to transmit other communications to our system.

Wireless Software: wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from our systems onto the Wireless Equipment.

Wireless Vendors: one or more third party vendors selected by us in our sole discretion through whom we have acquired the right to resell Wireless Services.

You, Your: the Merchant signing this Agreement and Application.

Your Payments Acceptance Guide: the information prepared by us, containing operational procedures, instructions and other rules and requirements relating to Card transactions.

RESOLUTION NO.: _____72_____ - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A PROPOSAL AND EXECUTE AN AGREEMENT WITH
SOLITUDE LAKE MANAGEMENT FOR PROFESSIONAL SERVICES FOR
WATER QUALITY SAMPLING AND ANALYSIS OF BROWNS POND
AT A COST OF \$8,975.00**

WHEREAS, the City of Newburgh needs to monitor water quality at Browns Pond for potential harmful algal blooms as the City's back up water supply; and

WHEREAS, a water quality monitoring program will focus on proactive management of monitoring for potential harmful algal blooms; and

WHEREAS, Solitude Lake Management has submitted a proposal for professional services related to water quality sampling and analysis of Browns Pond; and

WHEREAS, the cost for such professional services will be \$8,975.00 and funding shall be derived from F.8389.0448.5022.0000; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh and its residents;

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 accept a proposal and execute an agreement with Solitude Lake Management for professional services related to a Water Quality Sampling and Analysis Program for Browns Pond at a cost of \$8,975.00.

SERVICES CONTRACT

CUSTOMER NAME: Wayne Vradenburgh
PROPERTY NAME: Brown's Pond – City of Newburgh
CONTRACT EFFECTIVE DATE: March 1, 2021 through February 28, 2022
SUBMITTED BY: J. Wesley Allen
SPECIFICATIONS: 2021 Water Quality Sampling and Analysis

This agreement (the "Agreement") is made as of the date indicated above, and is by and between SOLitude Lake Management, LLC ("Solitude" or the "Company") and the customer identified above (the "Customer") on the terms and conditions set forth in this Agreement.

1. **The Services.** SOLitude will provide services at the Customer's property as described in Schedule A attached hereto:
2. **PAYMENT TERMS.** The fee for the Services is **\$8,975.00**. The Customer shall pay 50% of this service fee following the initial field data collection event in **May**. 25% of the fee shall be invoiced following completion of the final sampling event in **October**. The final 25% of the contract price will be invoiced following submittal of the report in **December/January**. For any work completed or materials in storage on the customer's behalf at the end of each month, the company will invoice and the customer will be responsible for paying the percent of the total work completed as of that date, less any previous deposit paid. Should the work performed be subject to any local, state, or federal jurisdiction, agency, or other organization of authority for sales or other taxes or fees in addition to those expressly covered by this contract, customer will be invoiced and responsible for paying said additional taxes in addition to the fee above. Customer agrees to pay all invoices within thirty (30) days of invoice date. The Customer will be liable for any returned check fees and any collection costs, including reasonable attorney fees and court costs, for any invoices not otherwise timely paid, and interest at the rate of 1% per month may be added to all unpaid invoices. Company shall be reimbursed by the Customer for any non-routine expenses, administrative fees, compliance fees, or any other similar expense that are incurred as a result of requirements placed on the Company by the Customer that are not covered specifically by the written specifications of this contract.
3. **TERM AND EXPIRATION.** This Agreement is for a one-time service as described in the attached Schedule A. Any additional services will be provided only upon additional terms as agreed to by the parties in writing.
4. **DISCLAIMER.** SOLitude is not responsible for the failure of any treatment, equipment installation, or other work that result from dam or other structural failures, severe weather and storms, flooding, or other acts of God that are outside of the control of SOLitude. Customer understands and acknowledges that there are irrigation restrictions associated with many of the products used to treat lakes and ponds. The customer is responsible for notifying SOLitude in advance of

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the contract signing and the start of the contract if they utilize any of the water in their lakes or ponds for irrigation purposes. The customer accepts full responsibility for any issues that may arise from the irrigation of turf, ornamentals, trees, crops, or any other plants as a result of treated water being used by the customer for irrigation without the consent or knowledge of SOLitude.

Although there is rarely direct fish toxicity with the products used for treatment when applied at the labeled rate, or the installation and normal operation of the equipment we install, there is a risk under certain circumstances of significant dissolved oxygen drops. This risk is most severe in times of extremely hot weather and warm water temperatures, as these are the conditions during which dissolved oxygen levels are naturally at their lowest levels. Often times lakes and ponds will experience natural fish kills under these conditions even if no work is performed. Every effort, to include the method and timing of application, the choice of products and equipment used, and the skill and training of the staff, is made to avoid such problems. However, the customer understands and accepts that there is always a slight risk of the occurrence of adverse conditions outside the control of SOLitude that will result in the death of some fish and other aquatic life. The customer also understands and accepts that similar risks would remain even if no work was performed. The customer agrees to hold SOLitude harmless for any issues with fish or other aquatic life which occur as described above, or are otherwise outside the direct control of the SOLitude, unless there is willful negligence on the part of SOLitude.

While SOLitude Lake Management LLC makes every effort to thoroughly inspect the site before providing this contract proposal or beginning any work, it is possible, without fault or negligence, that unforeseen circumstances may arise, or that hidden conditions on the site might be found in the course of the performance of the contract work, which would result in additional time or material costs that exceed this contract pricing. Should this occur, the customer will be notified of these unforeseen circumstances or conditions and be responsible for the costs associated with remedying. By signing this agreement, the customer acknowledges that they have informed SOLitude Lake Management® of all known and relevant current site conditions that would be reasonable to expect could affect our ability to successfully complete the contract work.

5. INSURANCE AND LIMITATION OF LIABILITY. Solitude will maintain general liability and property damage insurance as necessary given the scope and nature of the Services. The Company will be responsible for those damages, claims, causes of action, injuries or legal costs to the extent of its own direct negligence or misconduct, and then only to an amount not to exceed the annual value of this Agreement. In no event will any party to this Agreement be liable to the other for incidental, consequential or purely economic damages.

6. FORCE MAJEURE. The Company shall not be liable for any delay in performing the Services, nor liable for any failure to provide the Services, due to any cause beyond its reasonable control.

7. ANTI-CORRUPTION AND BRIBERY. Each party represents that neither it nor anyone acting on its behalf has offered, given, requested or accepted any undue financial or other advantage of any kind in entering into this Agreement, and that it will comply with all applicable laws and regulations pertaining to corruption, competition and bribery in carrying out the terms and conditions of this Agreement.

8. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state in which the Services are performed.

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9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and replaces any prior agreements or understandings, whether in writing or otherwise. This Agreement may not be modified or amended except by written agreement executed by both parties. In the event that any provision of this Agreement is determined to be void, invalid, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

10. NOTICE. Any written notice provided under this Agreement may be sent via overnight mail, certified mail, hand delivery or electronic mail with delivery confirmation, to the individuals and addresses listed below.

11. BINDING. This Agreement shall inure to the benefit of and be binding upon the legal representatives and successors of the parties.

ACCEPTED AND APPROVED:

SOLITUDE LAKE MANAGEMENT, LLC.

CITY OF NEWBURGH – BROWN'S POND

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please Remit All Payments to:

**1320 Brookwood Drive Suite H
Little Rock AR 72202**

Customer's Address for Notice Purposes:

Please Mail All Contracts to:

**2844 Crusader Circle, Suite 450
Virginia Beach, VA 23453**

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SCHEDULE A – WATER QUALITY SAMPLING AND ANALYSIS

Water Quality Sampling and Analysis

1. Water quality assessments are to be conducted at Brown's Pond throughout the season. Two (2) sampling stations will be established, a north station and a south station. All stations will be GPS-referenced.
2. Six (6) sampling events will be conducted in 2021: **May, June, July, August, September, and October**. All sampling will be conducted with a gas-powered motor boat.
3. At each station the following parameters will be measured on each date in situ:

Water Temperature	Dissolved Oxygen
pH	Water Clarity
Alkalinity	Total Hardness
4. In 2021, phycocyanin (a pigment produced by cyanobacteria) data will also be collected at both sites using a calibrated meter. At the deep-water station, a temperature/dissolved oxygen profile (2-foot intervals) will be performed. The following samples would be collected for analysis at a verified analytical laboratory:

Total Phosphorus	Total Nitrogen
Nitrate	Total Suspended Solids
Chlorophyll A	Conductivity
5. Results of the tests will be emailed two to three (2-3) weeks after field collection.

Phytoplankton Analysis:

1. Phytoplankton samples will be collected at each station on all sampling dates. Samples will be sand filtered and microscopically identified to genus level (natural units/ml), and enumeration will be performed at a SOLitude lab in Washington, NJ. Phytoplankton results will be provided with forty-eight (48) hours of collection.
2. Samples will be collected by the client (a week after the sampling event) and mailed overnight to SOLitude's lab for analysis during the following months: **May, June, July, August, September, October, November, and December**. Samples should be collected in 1-liter plastic jars, labeled with proper identification, and refrigerated during shipment. A visibility measurement taken with a secchi disk should accompany each sample.
3. If the client is concerned of a potential algal bloom occurring based on visual conditions or clarity readings, they can send an additional samples for phytoplankton analysis via overnight courier. **Client-supplied water samples are \$155.00 per sample**. Prices do not include the overnight courier expense which is the responsibility of the Client. Invoices will be submitted monthly following completion of the microscopic examination. Empty plastic bottles and shipping supplies will be boxed and returned to the Client, at their cost, if requested.

Microcystin Testing:

1. A water sample will be collected during each sampling event to measure for the algal toxin Microcystin, utilizing the Abraxis Algal Toxin Test Strip Kit. Results will be reported with twenty-four (24) hours of collection.

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Year-End Report:

1. A brief summary of the water quality results, treatments that were performed and recommendations for the following year will be provided in a year-end summary report. The report will also support the development of a CMP (Cyanotoxin Management Plan) for 2021.

General Qualifications:

1. Company is a licensed pesticide applicator in the state in which service is to be provided.
2. Individual Applicators are Certified Pesticide Applicators in Aquatics, Public Health, Forestry, Right of Way, and Turf/Ornamental as required in the state in which service is to be provided.
3. Company is a SePRO Preferred Applicator and dedicated Steward of Water. Each individual applicator has been trained and educated in the water quality testing and analysis required for site specific water quality management prescriptions and utilizes an integrated approach that encompasses all aspects of ecologically balanced management. Each applicator has received extensive training in the proper selection, use, and application of all aquatic herbicides, algaecides, adjuvants, and water quality enhancement products necessary to properly treat our Customers' lakes and ponds as part of an overall integrated pest management program.
4. Company guarantees that all products used for treatment are EPA registered and labeled as appropriate and safe for use in lakes, ponds, and other aquatic sites, and are being applied in a manner consistent with their labeling.
5. All pesticide applications made directly to the water or along the shoreline for the control of algae, aquatic weeds, or other aquatic pests as specified in this contract will meet or exceed all of the Company's legal regulatory requirements as set forth by the EPA and related state agencies for NPDES and FIFRA. Company will perform treatments that are consistent with NPDES compliance standards as applicable in and determined by the specific state in which treatments are made. All staff will be fully trained to perform all applications in compliance with all federal, state, and local law.
6. Company will continue to maintain all appropriate training and licensing necessary to perform all specified work in a safe and legal manner throughout the entire contract period.
7. Company will furnish personnel, equipment, boats, materials, and other items required to provide the foregoing at his expense.

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RESOLUTION NO.: _____73_____ - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A PROPOSAL AND EXECUTE AN AGREEMENT WITH
SOLITUDE LAKE MANAGEMENT FOR PROFESSIONAL SERVICES FOR
ALGAE TREATMENT AT WASHINGTON LAKE AND BROWNS POND**

WHEREAS, the City of Newburgh needs to monitor water quality at Washington Lake and Browns Pond for potential harmful algal blooms; and

WHEREAS, Solitude Lake Management has submitted a proposal for professional services related to water quality monitoring and treatment for harmful algal blooms that may impact the water quality; and

WHEREAS, the funding for such services shall be derived from F.8389.0448.5022.0000; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such services are in the best interests of the City of Newburgh and its residents;

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 accept a proposal and execute an agreement with Solitude Lake Management for professional services related to water quality monitoring and treatment for harmful algal blooms at Washington Lake and Browns Pond.

SERVICES CONTRACT

CUSTOMER NAME: City of Newburgh - Attn. Wayne Vradenburgh
PROPERTY NAME: Washington Lake and Brown's Pond
CONTRACT DATE: February 4, 2021
SUBMITTED BY: Bob Schindler
SPECIFICATIONS: City of Newburgh Reservoirs- Washington Lake and Brown's Pond

This agreement (the "Agreement") is made as of the date indicated above, and is by and between SOLitude Lake Management, LLC ("Solitude" or the "Company") and the customer identified above (the "Customer") on the terms and conditions set forth in this Agreement.

1. **The Services.** SOLitude will provide services at the Customer's property as described in Schedule A attached hereto:

2. **PAYMENT TERMS.** The fee for the Services is **below**. The Customer shall pay upon completion of each task. SOLitude shall invoice the Customer following completion of each Task Service.

Task 1: Phytoplankton Analysis and Enumeration	\$195.00 per sample
Task 2: Copper Sulfate Treatment (91.5 acres, 0.3 ppm-upper 6')	\$2,920.00 per treatment
Task 3: Cutrine Plus Treatment (91.5 acres, 0.3 ppm-upper 4')	\$11,235.00 per treatment
Task 4: Notice of Intent (NOI) Client Responsibility (paid directly to NYSDEC by client during November of each year)	\$110.00

For any work completed or materials in storage on the customer's behalf at the end of each month, the company will invoice and the customer will be responsible for paying the percent of the total work completed as of that date, less any previous deposit paid. Should the work performed be subject to any local, state, or federal jurisdiction, agency, or other organization of authority for sales or other taxes or fees in addition to those expressly covered by this contract, customer will be invoiced and responsible for paying said additional taxes in addition to the fee above. Customer agrees to pay all invoices within thirty (30) days of invoice date. The Customer will be liable for any returned check fees and any collection costs, including reasonable attorney fees and court costs, for any invoices not otherwise timely paid, and interest at the rate of 1% per month may be added to all unpaid invoices. Company shall be reimbursed by the Customer for any non-routine expenses, administrative fees, compliance fees, or any other similar expense that are incurred as a result of requirements placed on the Company by the Customer that are not covered specifically by the written specifications of this contract.

3. **TERM AND EXPIRATION.** This Agreement is for a one-time service as described in the attached Schedule A. Any additional services will be provided only upon additional terms as agreed to by the parties in writing.

Competitively Sensitive & Proprietary Materials – The information contained herein is the intellectual property of SOLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SOLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.



4. DISCLAIMER. SOLitude is not responsible for the failure of any treatment, equipment installation, or other work that result from dam or other structural failures, severe weather and storms, flooding, or other acts of God that are outside of the control of SOLitude. Customer understands and acknowledges that there are irrigation restrictions associated with many of the products used to treat lakes and ponds. The customer is responsible for notifying SOLitude in advance of the contract signing and the start of the contract if they utilize any of the water in their lakes or ponds for irrigation purposes. The customer accepts full responsibility for any issues that may arise from the irrigation of turf, ornamentals, trees, crops, or any other plants as a result of treated water being used by the customer for irrigation without the consent or knowledge of SOLitude. Although there is rarely direct fish toxicity with the products used for treatment when applied at the labeled rate, or the installation and normal operation of the equipment we install, there is a risk under certain circumstances of significant dissolved oxygen drops. This risk is most severe in times of extremely hot weather and warm water temperatures, as these are the conditions during which dissolved oxygen levels are naturally at their lowest levels. Often times lakes and ponds will experience natural fish kills under these conditions even if no work is performed. Every effort, to include the method and timing of application, the choice of products and equipment used, and the skill and training of the staff, is made to avoid such problems. However, the customer understands and accepts that there is always a slight risk of the occurrence of adverse conditions outside the control of SOLitude that will result in the death of some fish and other aquatic life. The customer also understands and accepts that similar risks would remain even if no work was performed. The customer agrees to hold SOLitude harmless for any issues with fish or other aquatic life which occur as described above, or are otherwise outside the direct control of the SOLitude, unless there is willful negligence on the part of SOLitude. While SOLitude Lake Management LLC makes every effort to thoroughly inspect the site before providing this contract proposal or beginning any work, it is possible, without fault or negligence, that unforeseen circumstances may arise, or that hidden conditions on the site might be found in the course of the performance of the contract work, which would result in additional time or material costs that exceed this contract pricing. Should this occur, the customer will be notified of these unforeseen circumstances or conditions and be responsible for the costs associated with remedying. By signing this agreement, the customer acknowledges that they have informed SOLitude Lake Management® of all known and relevant current site conditions that would be reasonable to expect could affect our ability to successfully complete the contract work.
5. INSURANCE AND LIMITATION OF LIABILITY. Solitude will maintain general liability and property damage insurance as necessary given the scope and nature of the Services. The Company will be responsible for those damages, claims, causes of action, injuries or legal costs to the extent of its own direct negligence or misconduct, and then only to an amount not to exceed the annual value of this Agreement. In no event will any party to this Agreement be liable to the other for incidental, consequential or purely economic damages.
6. FORCE MAJEURE. The Company shall not be liable for any delay in performing the Services, nor liable for any failure to provide the Services, due to any cause beyond its reasonable control.
7. ANTI-CORRUPTION AND BRIBERY. Each party represents that neither it nor anyone acting on its behalf has offered, given, requested or accepted any undue financial or other advantage of any kind in entering into this Agreement, and that it will comply with all applicable laws and regulations pertaining to corruption, competition and bribery in carrying out the terms and conditions of this Agreement.

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8. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state in which the Services are performed.

9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and replaces any prior agreements or understandings, whether in writing or otherwise. This Agreement may not be modified or amended except by written agreement executed by both parties. In the event that any provision of this Agreement is determined to be void, invalid, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

10. NOTICE. Any written notice provided under this Agreement may be sent via overnight mail, certified mail, hand delivery or electronic mail with delivery confirmation, to the individuals and addresses listed below.

11. BINDING. This Agreement shall inure to the benefit of and be binding upon the legal representatives and successors of the parties.

ACCEPTED AND APPROVED:

SOLITUDE LAKE MANAGEMENT, LLC.

CITY OF NEWBURGH

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please Remit All Payments to:

**1320 Brookwood Drive Suite H
Little Rock AR 72202**

Customer's Address for Notice Purposes:

Please Mail All Contracts to:

**2844 Crusader Circle, Suite 450
Virginia Beach, VA 23453**

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SCHEDULE A – LAKE TREATMENT SERVICES

PROJECT OVERVIEW:

SOLitude Lake Management (SLM) is pleased to propose a Treatment Program for the City of Newburgh, NY at Washington Lake and Brown's Pond in 2021. **Algaecide treatments are typically conducted as needed 4-5 times per season May through September. Treatments in 2021 will only be conducted upon the request and authorization of client.**

SPECIFICATIONS:

In accordance with NYS DEC regulation, SOLitude Lake Management staff will act as the responsible applicator, and directly apply the algaecide as part of the application. The treatment vessel is equipped with onboard tank mixing of water and algaecide, and is labeled to conform to all NYSDEC requirements. In 2021, an algaecide will be supplied by SOLitude Lake Management, with product being transferred to the reservoir on the day of treatment. Frequency of treatments will be based upon prevailing lake conditions, but will only be conducted upon request of the client. The reservoir will be treated with copper sulfate labeled for aquatic use. Prior to application, pH, water clarity, dissolved oxygen and alkalinity will be recorded to assure suitable conditions exist for the application.

According to NYSDEC regulations, an Aquatic Use Permit is not required “for the use of copper sulfate for the purpose of algae control by a duly constituted water supply agency in its water supply waters.” Region 3 policy states that a registered business can act on behalf of a duly constituted water supply agency without the Aquatic Pesticide Permit requirement. However, where Regulated Freshwater Wetlands encroach into the lake, a Freshwater Wetland Permit is required. This proposal includes SOLitude Lake Management filing for the Freshwater Wetlands Permit on behalf of the City of Newburgh If such a permit is required.

Federal regulations require that all aquatic pesticide applications in New York comply with a State Pollution Discharge Elimination System General Permit (SPDES) whether or not an Aquatic Pesticide Use Permit is required or not.

PHYTOPLANKTON IDENTIFICATION AND ENUMERATION

Solitude Lake Management can conduct Phytoplankton ID and Enumeration on water samples supplied from Washington Lake. Samples will be collected by Reservoir personnel and forwarded to Solitude Lake Management via overnight courier. Samples should be collected in 1-liter plastic jars, labeled with proper identification and refrigerated during shipment. A visibility measurement taken with a secchi disk should accompany each sample. Samples will be sand filtered, and microscopic identification to genus level (natural units/ml) and enumeration will be conducted at Solitude Lake Management's Washington, NJ location. Results will be summarized in chart and graph formats, including notes on population structure.

Task 1: Phytoplankton Analysis:

1. Samples will be collected by Reservoir personnel and forwarded to Solitude Lake Management via overnight courier. Samples should be collected in 1-liter plastic jars,

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- labeled with proper identification and refrigerated during shipment. A visibility measurement taken with a secchi disk should accompany each sample.
2. Samples will be sand filtered, and microscopic identification to genus level (natural units/ml) and enumeration will be conducted at Solitude Lake Management's Washington, NJ location.
 3. Examination results will be reported to the City within 48 hours of receiving the sample(s).

Reservoir Algae Control:

1. Reservoir will be inspected on an on-call basis.
2. Algae found in the lakes during each inspection shall be treated and controlled through the application of algaecides and aquatic surfactants as needed for control of the algae present at the time of service.
3. Water use restrictions will be posted in the vicinity at the time of treatment. The client is responsible for removal of any treatment postings upon expiration.

Task 2: Algaecide Treatment:

1. Copper Sulfate Treatment (91.5 acres, 0.3 ppm – upper 6')

Task 3: Algaecide Treatment:

1. Cutrine Plus Treatment (91.5 acres, 0.3 ppm – upper 4')

Service Reporting:

1. Client will be provided with a service report detailing all of the work performed as part of this contract.

General Qualifications:

1. Company is a licensed pesticide applicator in the state in which service is to be provided.
2. Individual Applicators are Certified Pesticide Applicators in Aquatics, Public Health, Forestry, Right of Way, and Turf/Ornamental as required in the state in which service is to be provided.
3. Company is a SePRO Preferred Applicator and dedicated Steward of Water. Each individual applicator has been trained and educated in the water quality testing and analysis required for prescriptive site-specific water quality management and utilizes an integrated approach that encompasses all aspects of ecologically balanced management. Each applicator has received extensive training in the proper selection, use, and application of all aquatic herbicides, algaecides, adjuvants, and water quality enhancement products necessary to properly treat our Customers' lakes and ponds as part of an overall integrated pest management program.
4. Company guarantees that all products used for treatment are EPA registered and labeled as appropriate and safe for use in lakes, ponds, and other aquatic sites, and are being applied in a manner consistent with their labeling.
5. All pesticide applications made directly to the water or along the shoreline for the control of algae, aquatic weeds, or other aquatic pests as specified in this contract will meet or exceed all of the Company's legal regulatory requirements as set forth by the

Competitively Sensitive & Proprietary Materials – The information contained herein is the intellectual property of SÖLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SÖLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.



- EPA and related state agencies for NPDES and FIFRA. Company will perform treatments that are consistent with NPDES compliance standards as applicable in and determined by the specific state in which treatments are made. All staff will be fully trained to perform all applications in compliance with all federal, state, and local law.
6. Company will furnish the personnel, vehicles, boats, equipment, materials, and other items required to provide the forgoing at his expense.

Competitively Sensitive & Proprietary Materials – The information contained herein is the intellectual property of SŌLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SŌLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.

RESOLUTION NO.: 74-2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO MALINA NEALIS TO THE PREMISES KNOWN AS
77 CHAMBERS STREET (SECTION 23, BLOCK 3, LOT 14)**

WHEREAS, on December 5, 2002, the City of Newburgh conveyed property located at 77 Chambers Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 23, Block 3, Lot 14, to Malina Nealis; and

WHEREAS, the attorney for the current owner has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

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 execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, and 5 of the aforementioned deed.

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 77 Chambers Street, Section 23, Block 3, Lot 14 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated December 5, 2002, from THE CITY OF NEWBURGH to MALINA NEALIS, recorded in the Orange County Clerk's Office on March 28, 2003, in Liber 11005 of Deeds at Page 518 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2021

THE CITY OF NEWBURGH

By: _____
Joseph P. Donat, City Manager
Pursuant to Res. No.: ____-2021

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

On the ____ day of _____ in the year 2021, before me, the undersigned, a Notary Public in and for said State, 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 the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: ____75____-2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO ONE FORTY FIVE CHAMBERS ST., LLC TO THE PREMISES
KNOWN AS 145 CHAMBERS STREET (SECTION 18, BLOCK 4, LOT 17)**

WHEREAS, on April 17, 2019, the City of Newburgh conveyed property located at 145 Chambers Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 18, Block 4, Lot 14, to One Forty Five Chambers St., LLC; and

WHEREAS, the managing member of the company, Dimas Mero, has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

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 execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, and 5 of the aforementioned deed.

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 145 Chambers Street, Section 18, Block 4, Lot 17 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated April 17, 2019, from THE CITY OF NEWBURGH to ONE FORTY FIVE CHAMBERS ST., LLC, recorded in the Orange County Clerk's Office on May 8, 2019, in Liber 14564 of Deeds at Page 1989 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2021

THE CITY OF NEWBURGH

By: _____
Joseph P. Donat, City Manager
Pursuant to Res. No.: ____-2021

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

On the ____ day of _____ in the year 2021, before me, the undersigned, a Notary Public in and for said State, 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 the person upon behalf of which the individual acted; executed the instrument.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Joseph P. Donat, City Manager

CC: Alexandra Church, Director of Planning and Development
Michelle Kelson, Corporation Counsel

FROM: Jason W. Beeman, Code Compliance Supervisor

DATE: March 18, 2021

SUBJECT: 145 Chambers Street, Release of Restrictive Covenants Inspection

I conducted an inspection of 145 Chambers Street on March 18, 2021. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

There are no open code violations on file in the building record.

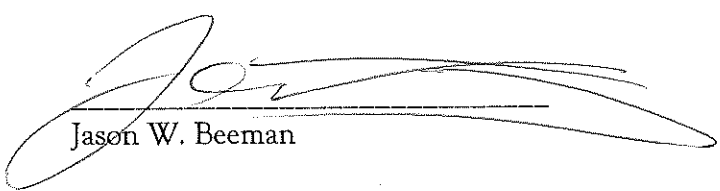
I observed no violations both on the property and in the building during my most current inspection of the property.

There are no open permits or open permit applications.

The property is vacant and currently registered as such.

The property owner has an Exclusive Agency Agreement and is listed on the MLS.

Thank you,



Jason W. Beeman





RESOLUTION NO.: ____76__-2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO KURT SCHREIBER TO THE PREMISES KNOWN AS
92 OVERLOOK PLACE (SECTION 45, BLOCK 8, LOT 24)**

WHEREAS, on February 1, 2017, the City of Newburgh conveyed property located at 92 Overlook Place, being more accurately described on the official Tax Map of the City of Newburgh as Section 45, Block 8, Lot 24, to Kurt Schreiber; and

WHEREAS, Mr. Schreiber has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

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 execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, and 5 of the aforementioned deed.

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 92 Overlook Place, Section 45, Block 8, Lot 24 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated February 1, 2017, from THE CITY OF NEWBURGH to KURT SCHREIBER, recorded in the Orange County Clerk's Office on April 4, 2017, in Liber 14210 of Deeds at Page 50 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2021

THE CITY OF NEWBURGH

By: _____
Joseph P. Donat, City Manager
Pursuant to Res. No.: ____-2021

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

On the ____ day of _____ in the year 2021, before me, the undersigned, a Notary Public in and for said State, 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 the person upon behalf of which the individual acted; executed the instrument.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Joseph P. Donat, City Manager

CC: Jason Beeman, Code Compliance Supervisor
Alexandra Church, Director of Planning and Development
Michelle Kelson, Corporation Counsel

FROM: Jason Beeman, Code Compliance Supervisor

DATE: March 15th, 2021

SUBJECT: 92 Overlook Place, Release of Restrictive Covenants Inspection

I conducted an inspection of 92 Overlook Place, on March 15th, 2021. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

There are no open code violations on file in the building record.

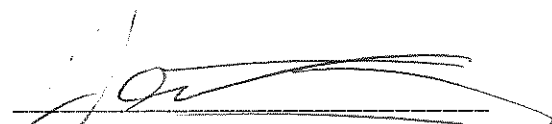
I observed no violations both on the property and in the building during my most current inspection of the property.

There are no open permits or open permit applications.

The property is a rental, with a current rental license in the property file.

There is a valid Certificate of Occupancy in the property file dated December, 12th, 1986, for a three family Multi-Family Dwelling.

Thank you,



Jason Beeman
Code Compliance Supervisor



NO
PARKING
STREET
CLEANING
8AM-3PM
MONDAYS
NOV
24 HOUR
EMERGENCY
PAVING
1-800-451-1234

92

10

RESOLUTION NO.: ____77__-2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO WALDINA ALMAZAN TO THE PREMISES KNOWN AS
379 FIRST STREET (SECTION 28, BLOCK 1, LOT 16)**

WHEREAS, on December 27, 2018, the City of Newburgh conveyed property located at 379 First Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 28, Block 1, Lot 16, to Waldina Almazan; and

WHEREAS, Ms. Almazan has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

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 execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, and 5 of the aforementioned deed.

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 379 First Street, Section 28, Block 1, Lot 16 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated December 27, 2018, from THE CITY OF NEWBURGH to WALDINA ALMAZAN, recorded in the Orange County Clerk's Office on March 26, 2019, in Liber 14544 of Deeds at Page 492 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2021

THE CITY OF NEWBURGH

By: _____
Joseph P. Donat, City Manager
Pursuant to Res. No.: ____-2021

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

On the ____ day of _____ in the year 2021, before me, the undersigned, a Notary Public in and for said State, 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 the person upon behalf of which the individual acted; executed the instrument.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Joseph P. Donat, City Manager

CC: Alexandra Church, Director of Planning and Development
Michelle Kelson, Corporation Counsel

FROM: Jason W. Beeman, Code Compliance Supervisor

DATE: March, 24, 2021

SUBJECT: 379 First Street, Release of Restrictive Covenants Inspection

I conducted an inspection of 379 First Street, on March, 24, 2021. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

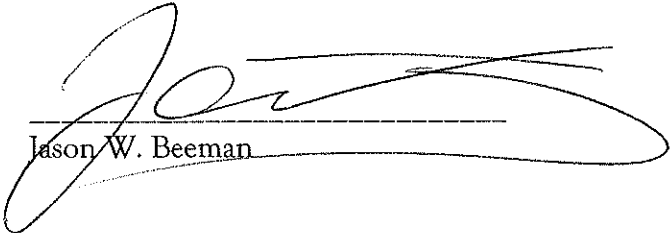
There are no open code violations on file in the building record.

I observed no violations both on the property and in the building during my most current inspection of the property.

There are no open permits nor open permit applications.

The property is for sale and listed on Zillow with a pending offer.

Thank you,



Jason W. Beeman



RESOLUTION NO.: 78 - 2021

OF

APRIL 12, 2021

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF VACANT REAL PROPERTY
KNOWN AS 140 THIRD STREET (SECTION 18, BLOCK 9, LOT 17)
AT PRIVATE SALE TO BUNNY ESCAVA, MICHAEL MAMIYE AND HYMAN MAMIYE
D/B/A NUTOPIA DEVELOPMENT LLC FOR THE AMOUNT OF \$13,500.00

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell a vacant parcel of real property identified as 140 Third Street, being more accurately described as Section 18, Block 9, Lot 17 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyers have offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyers for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchasers upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before July 16, 2021, being approximately ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
140 Third Street	18 - 9 - 17	Bunny Escava Michael Mamiye Hyman Mamiye	\$13,500.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions Sale

140 Third Street, City of Newburgh (SBL: 18-9-17)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2020-2021, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2020-2021, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. The City makes no representation as to whether the property is vacant and/or unoccupied. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed. The parcel is being sold subject to the City's Vacant Property Ordinance (Chapter 121) and all provisions of law applicable thereto. Within 30 days of closing, the purchaser must register the property and pay any applicable fees or submit an acceptable rehabilitation plan to the Building Department.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office by the date listed in the approved City Council Resolution, notwithstanding any extensions of time granted pursuant to terms contained herein ("Closing Deadline"). Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. If purchaser takes title as an entity, purchaser must provide an affidavit listing all of the members or shareholders of said entity, their addresses, their phone numbers, and their percentage ownership stake in the entity. Purchaser must have at least a fifty-one (51%) ownership stake in said entity in order for said entity to take title.
11. Provided that the sale is not subject to an owner-occupancy restriction as set forth in paragraph 20, the purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. If purchaser takes title as an entity, purchaser must provide an affidavit listing all of the members or shareholders of said entity, their addresses, their phone numbers, and their percentage ownership stake in the entity. Purchaser must have at least a fifty-one (51%) ownership stake in said entity in order for said entity to take title.
12. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days from the Closing Deadline. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for its consideration.
13. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the purchaser shall be entitled only to a refund of the purchase money paid. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
14. Sale shall be final, absolute and without recourse once title is conveyed on the actual day of closing. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
15. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, tax reimbursements, buyer's premium (if applicable), and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon conveyance of deed.**

16. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
17. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh. Any survey description shall be provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the Closing Deadline date. If such conveyance occurs, purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.
19. Notice is given that the property lies within either the East End Historic District or the Colonial Terraces Architectural Design District as designated in the City of Newburgh's current zoning map. This parcel is sold subject to all provision of law applicable thereto. It is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance any additional laws, rules or regulations applicable to those districts.
20. In the event that Seller engaged the services of a New York State Licensed Real Estate Broker in connection with this sale, Seller shall pay said Broker any commission earned pursuant to a separate agreement between Seller and Broker.

ACKNOWLEDGED AND AGREED

Date: _____

Date: _____

Bunny Escava

Michael Mamiye

Date: _____

Hyman Mamiye

Property Proposal Summary

Location: 140 Third Street (north side—between Chambers and Lander Streets)

Tax Map Number: 18-9-17

Property Class: 351—Residential Shell Building

Zoning: RM—Medium Density Residential; EEHD—East End Historic District

Description: 3-story building in poor condition; lot size: 20 x 103

Condition: Poor

Assessed Value: \$11,600

Annual Taxes: \$ 485+/-

The city acquired this property: August 2010

Offer Information:

Name: Bunny Escava, Michael Mamiye and Hymie Mamiye
(Nutopia Development LLC)

Offer Price: **\$ 13,500**

Construction Estimate: \$680,000+/-

Funding Source: J.P. Morgan Chase account

Comments: The City has taken possession of this property several times during the past 20 years. The last time the City acquired the property was in 2010. It suffered fire damage many years ago. Its roof has collapsed, bringing down most of the interior floors. It is essentially a shell of a building. With each passing year, the building deteriorates more and more. The building is in poor condition and is an eyesore in this reviving neighborhood. This stretch of Third Street is remarkably intact; the City would like to avoid another demolition in this historic neighborhood.



The three purchasers are pooling their resources and talents to restore this 19th century structure. They are enlisting a local contractor—experienced in restoring severely compromised buildings in the City of Newburgh - as part of their renovation team. When finished, the building will house four apartments.

The City has owned this property for more than ten years. This is first complete offer that the City has received to renovate and restore this building.



Views of 140 Third Street's interior.



Proposal Form

Contact Information:

Name: Nutopia Development LLC (BONNY ESCANA, MICHAEL MANIYE & HYMIE MANIYE)
Business Name (If Applicable): Nutopia Development LLC
Address: 2014 east 4th street
City, State & Zip: brooklyn new york 11223
Home phone: _____
Business Phone: _____
Mobile Phone: 917-538-0011 917-414-7154
E-mail: Nutopiadevelopment@gmail.com
Federal I.D. No. (If Applicable): _____

Property Ownership Information:

Do you own – as an individual, member of an LLC, partner in a partnership, or officer in a corporation - any properties in the City of Newburgh? Yes ☒ No ☐

If you own property in the City of Newburgh, are any of these properties vacant and/or currently listed on the City of Newburgh's Vacant Building Registry? Yes _____ (attach explanation) No ☒ N/A _____ (No property owned in the City of Newburgh)

If you own property in the City of Newburgh, are any of these properties rented? Yes _____ No ☒ N/A _____ (No property owned in the City of Newburgh) If yes, do you have a current Rental License for each of the rental properties? Yes _____ No ☐
☐ Verified (Internal Office Use Only); Date Verified: _____

Please list **all** of the addresses of properties you own – as an individual, member of an LLC, partner in a partnership, or officer in a corporation - in the City of Newburgh. Also indicate if any of these properties are vacant or rented. (You may attach a list of the properties if the space below is inadequate.): 121 & 125 Robinson Avenue Newburgh, NY 12550

Are you current on all municipal obligations (taxes, water charges, etc.)? Yes ☒ No _____ (attach explanation) N/A _____ (No property owned in City of Newburgh)
☒ Verified (Internal Office Use Only); Date Verified 3/22/2021

Do you have any outstanding code violations for properties owned in the City of Newburgh? Yes _____ (attach explanation) No ☒ N/A _____ (No property owned in City of Newburgh)
☒ Verified (Internal Office Use Only); Date Verified 3/22/2021

Have you had a previous tax foreclosure on a property owned by you in the City of Newburgh? Yes _____ (attach explanation) No ☒

Individual Property Bid Sheet

Information on Bid Property:

(If you are bidding on more than one property, please submit a completed copy of this page for **each** bid property. Please limit the total number of properties to a maximum of **three (3)**. Only one copy of the other pages in this application is required even if you are bidding on multiple properties.)

Property Address: 140 3RD Street Newburgh,NY 12550

S-B-L#: 18-9-17

Type of Project:

_____ Single Family (includes a condominium unit)

☒ Multi-Family (# of Units ⁴)

____ Mixed Use (Commercial & Residential - # of Residential Units ____)

For the property types listed above, will it be occupied by the purchaser: Yes _____ No ☒

Commercial Industrial

_____ Vacant Land (Proposed Use: _____)

Offer Purchase Price: \$ 13,500

(An offer of **at least** the minimum purchase price is recommended. The "Offer Purchase Price" cannot be left blank.)

Does or will your proposal conform to existing zoning? Yes ☒ No ☐

Renovation Estimate (Pre-Qualifying) - How much do you anticipate investing in this project for renovations? Please consider in your estimate that most vacant properties need *significant* repairs before they can be occupied again. This estimate can be revised once you have obtained entry to the property. *A more detailed repair cost estimate will be required after interior access.* Do not include renovation cost estimate in the "Offer Purchase Price" listed above: \$ ^{\$200/psf}

Who will be doing the work? Self ☒ Other (complete below)

Please keep in mind that the City of Newburgh requires electrical and plumbing work to be performed by City of Newburgh licensed electricians and plumbers.

General Contractor: Josh Moussau

Architect: A.J. Coppola

Engineer: Ethian Timm

Examples of Purchaser's Previous Renovation or Development Experience:

(Alternatively, applicants can attach a list of renovated properties or development experience that contains the information listed below.)

Property/Project No. 1

Property/Project No. 2

Property Address: Please list all addresses (not merely project name). Include street number, street, city and zip code.	478 Halsey street Brooklyn, Ny 11233	539 Franklin Avenue Brooklyn Ny
Role (i.e. owner, partner, general contractor, architect, investor.)	Construction manager	Developer
Type of Project: (i.e. new construction, existing building requiring substantial rehabilitation or moderate rehabilitation.)	Rehabilitation	Rehabilitation
Property Type: (i.e. single-family, multi-family rental or commercial.)	Multi family	Multi Family
Number of Buildings in Project	1	1
Total Number of Residential Units in Project/Building	6	8
If commercial, total square footage of project		
Total Estimated Development/Rehabilitation Costs	\$800,000	\$1,000,000
Current Status of Building (Pre-development, under construction/renovation or completed - include date completed.)	Occupied	Occupied
Government Program, if any (Provide name of program and agency, name and current phone of reference.)		

Finances:

(Applicant should provide not only sources of funding for the purchase of the property but also sufficient funding for the rehabilitation and/or development of the property.)

I am providing: ___ Personal Financial Statement
 ___ Letter from Lender/Investor
 ___ ☒ Personal or Business Bank Statement
 ___ ☒ Evidence of project funding
 ___ Developers should provide three years financial statements

What You Should Attach:

- Description of renovation plan with preliminary budget
- Verification of financial capacity
- Explanation of any tax delinquency/code violations/vacant building (if applicable)

Business Relationship:

Have you had a "business relationship" as defined in Chapter 34, Article 2 (B) (2) of the municipal code, with any City elected official in the 12 months prior to the due date of this proposal? Yes ___ No ☒

INFORMATION RELEASE:

It is our intent that all personal financial information submitted with this proposal to the Department of Planning and Development shall be considered confidential. I hereby authorize the City of Newburgh Department of Planning and Development to obtain credit reports (by completing a PathStone Credit Report Authorization Form) and verify information supplied as part of this proposal. All information provided is true and accurate to the best of my knowledge. By signing, you also acknowledge reading and reviewing the "Standard Terms and Conditions of Sale".

Hymie Mamiye

Michael Mamiye

Bunny Escava

Bunny Escava

Bunny Escava

02/22/2021

Signature

Date

Hymie Mamiye Michael Mamiye Bunny Escava

Print Name

Submit Application to:

Department of Planning & Development
City Hall, 83 Broadway
Newburgh NY 12550

REPAIR COST ESTIMATE AND SCHEDULE				
EXTERIOR	ESTIMATED START DATE (I.E., APRIL 2021)	TOTAL COST (MATERIALS + LABOR)	Price Per SF	Notes:
ROOF	TBD	\$20,000.00	\$6.25	
GUTTERS/DOWNSPOUTS		\$3,500.00	\$1.09	
WINDOWS		\$30,000.00	\$9.38	
EXTERIOR DOORS		\$10,000.00	\$3.13	
SIDING/TRIM/EXTERIOR PAINTING		\$6,500.00	\$2.03	
FOUNDATION WORK		\$20,000.00	\$6.25	
STEPS, PORCHES, DECKS, SIDEWALKS		\$8,000.00	\$2.50	
LANDSCAPING		\$1,000.00	\$0.31	
OTHER:				
EXTERIOR REPAIR SUBTOTAL		\$98,000.00	\$30.94	
INTERIOR	ESTIMATED START DATE (I.E., APRIL 2021)	TOTAL COST (MATERIALS + LABOR)		
CLEAN-OUT, INTERIOR DEMOLITION		\$20,000.00	\$6.25	
REMEDIATION - LEAD AND/OR ASBESTOS		N/A		
HEATING SYSTEM (FURNACES OR OTHER UNITS)		\$60,000.00	\$18.75	
HOT WATER HEATERS		Included in Plumbing line		
PLUMBING - Include installation of a sprinkler system for major renovations of 3 or more story buildings		\$85,000.00	\$26.56	
ELECTRIC		\$48,000.00	\$15.00	
BATH(S) - Fixtures, cabinets, etc.		\$35,000.00	\$10.94	
KITCHEN(S) - Fixtures, cabinets, etc.		\$44,000.00	\$13.75	
INSULATION/DRYWALL		\$28,000.00	\$8.75	
INTERIOR DOORS		\$6,000.00	\$2.50	
TRIM/INTERIOR PAINTING		\$35,000.00	\$10.94	
FLOORING		\$35,000.00	\$10.94	
OTHER: Framing		\$65,000.00	\$20.31	
INTERIOR REPAIR SUBTOTAL		\$465,000.00	\$144.69	
SOFT COSTS: ASBESTOS/LEAD TESTING, SURVEY, ARCHITECT, ETC.				
CONTINGENCY AMOUNT (PERCENTAGE OF TOTAL - 10%, 15%, 20%)		Typically 10% but depends on the bank		
TOTAL (WITH APPLICABLE SOFT COSTS & CONTINGENCY)		\$562,000.00	\$175.69	
Builder Overhead 10%		\$56,200.00	\$17.56	
Builder Profit 10%		\$51,820.00	\$16.32	
Total w/ O&P		\$680,020.00	\$212.51	

Square Footage Total 3200

J. I. Morgan

Primary Account: [REDACTED]
For the Period 1/1/21 to 1/29/21

J.P. Morgan Team

Brian Paul
Valerie Showell
For assistance after business hours, 7 days a week,
Deaf and Hard of Hearing
Online access: www.jpmorganonline.com
(877) 576-2739
(800) 243-6727
(800) 242-7383

000037777 DPl 802 161 03121 NNNNNNNNNN P 1 000000000 60 0000
MCM EQUITIES LLC
ATTN DEBBIE DIANTONIO
MAMIYE BROTHERS INC
180 RARITAN CENTER PKWY STE 201
EDISON NJ 08837

JPMorgan Classic Business Checking

Checking Account Summary		
	Instances	Amount
Beginning Balance		1,263,490.04
Deposits & Credits	7	232,182.71
Payments & Transfers	8	(110,062.17)
Fees, Charges & Other Withdrawals	1	(80.00)
Ending Balance	16	\$1,385,530.58

Dr. Moran



Bunny Escava began at the age of 12 working in the hospitality industry. He worked at many well established restaurants. At the age of 17, while attending BMCC (a city college) Bunny was working as a commercial real estate broker at Kassin Sabbagh Realty where he closed over a dozen deals. Bunny has a real passion for improving neighborhoods through bringing in shops that add value to communities. He has been successful at bringing several sustainable and health orientated retailers onto main corridors.

After several years in the Real Estate Industry, Bunny joined a sports ticket brokerage company, Frontgate Seats. Frontgate Seats goal was to enable many fans to go see their favorite teams at an affordable price.

When Covid-19 impacted the event space, Bunny decided to invest his time investing in and improving neighborhoods that he believed had great potential. In 2020, Bunny came to Newburgh for a weekend and instantly knew Newburgh was a place he wanted to spend his time and energy. His knowledge and experience in both retail brokerage and the event business will surely be a valuable asset to Newburgh.



Michael Mamiye

After completing his undergraduate degree at Babson College where he studied Entrepreneurship and Sustainability, Michael travelled to Israel where he began his career in construction. In Israel, Michael worked on building sustainable minded hotels in remote regions of the Arava desert. Michael worked on the ground, building mud cabins and overseeing construction.

When Michael returned to New York in 2018, he took a job at Massaro Construction, a New Jersey Contractor who builds highly customized homes on the Jersey Shore. At Massaro Construction Michael was a workman, installing insulation, tiles and cabinets in homes.

Simultaneously, Michael founded a custom furniture company, building furniture for high end homes out of both reclaimed and exotic wood.

For the past two years, Michael has worked on analyzing real estate development opportunities in the Hudson Valley. Michael has worked with architects and engineers on plans for an innovative ground up development project that did not come to fruition yet served as a great learning experience. Michael has also analyzed many different turn key acquisition opportunities in markets ranging from Beacon to Gardiner.

Overall, Michael believes in building value for local communities and ensuring that all his partners and residential tenants are well taken care of and always feel like they are safe and at home.



Hyman Mamiye

Hyman Mamiye started his business career in the apparel industry working at Mamiye Brothers after graduating NYU Stern School of Business. Hyman started out in both production and sales where he proved to be an astute businessman. He spent months on end in China, working with factories to create quality apparel at an affordable price. In the sales department, Hyman excelled, successfully attracting Walmart and K-mart as core customers. Over the years, Hyman took over as CFO and then CEO of Mamiye where he transformed the company into a brand creator rather than just a licensee of other brands. He has built Mamiye Brothers to be a major player in children's sleepwear.

Throughout the years Hyman has invested a large proportion of his capital into real estate within the New York Metro area. He has proven successful at purchasing properties in up and coming markets and adding value to the neighborhood through bringing in new commercial tenants and renovating properties in a spectacular, fashionable way. Hyman currently owns 30+ properties throughout Brooklyn, Manhattan and Queens. He manages his properties so that the tenant, both commercial and residential remain long term and so that his building and neighborhood he has invested in remain stable and appreciated through time.

Hyman is passionate about adding value to neighborhoods and buying real estate at low basis costs. He is currently an advisor to both Michael and Bunny in both life and business. He has advised over 100 young entrepreneurs in attaining financial freedom and their life goals. Hyman has been married for 35 years and has 5 grandchildren. He is a philanthropist towards education and food pantries.

RESOLUTION NO.: 79 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED A NEW YORK STATE OFFICE OF CHILDREN AND
FAMILY SERVICES YOUTH DEVELOPMENT PROGRAM GRANT
IN THE AMOUNT OF \$5,000.00 REQUIRING NO CITY MATCH
FOR THE 2021 YOUTH SOCCER PROGRAM**

WHEREAS, the City of Newburgh Recreation Department has advised that the Orange County Youth Bureau is accepting a Request for Proposals for grant funding available from New York State Office of Children and Family Services Youth Development Program (YDP); and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a YDP Grant in an amount not to exceed \$5,000.00 for a Youth Soccer Program which includes soccer training and recreational leagues conducted in the summer and fall of 2021; and

WHEREAS, funds will be utilized for the costs of referees, uniforms, and trophies; and

WHEREAS, no City matching funds are required; and

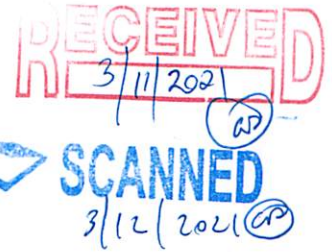
WHEREAS, this Council has determined that applying for and accepting said grant if awarded is in the best interests of the City of Newburgh and its youth;

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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in the amount of \$5,000.00 requiring no City match for the 2021 Youth Soccer Program; and to execute all necessary documents to receive and comply with the terms of such grant and to carry out the program funded thereby.



City of Newburgh

GRANT APPLICATION FORM



Grant Requestor:

Please complete the following form and submit the form along with either a hard copy of the grant announcement or the grant announcement website address to the City of Newburgh Grants Administrator for processing. You will be notified when your grant request has been approved to be sent for City Council Resolution.

NOTE: All fields are required unless marked "OPTIONAL."

SECTION A. COMPLETED BY GRANT REQUESTOR

NAME OF PROJECT FOR GRANT: Youth Soccer Program	NAME OF DEPARTMENT REQUESTING GRANT: Recreation	NAME OF DEPARTMENT HEAD/SPONSOR AUTHORIZING GRANT: Maritza Wilson
NAME OF GRANT/NAME OF AWARING AGENCY: NYS Office of Children and Family Services Youth Development Program Grant	GRANT SUBMITTAL DATE: April 14, 2021	AMOUNT OF AWARD: \$5,000.00
MATCH REQUIRED? IF YES, AMOUNT AND TYPE: (EX. CASH, IN-KIND) NO	AMOUNT REQUIRED BY THE CITY OF NEWBURGH: NONE	(OPTIONAL) ANY ADDITIONAL GRANT CONDITIONS:

PROJECT PLAN: **Youth Soccer Program for Summer and Fall 2021**

Project Timeline: (ex. Dates): 1/1/2021- 10/31/2021



City of Newburgh

GRANT APPLICATION FORM

SECTION B. FOR REVIEW BY CITY COMPTROLLER

GRANT MATCH REQUIREMENT REVIEWED? YES/NO:

COMMENTS:

N/A

IN-KIND SERVICES REQUIREMENT REVIEWED? YES/NO

COMMENTS:

N/A

STAFFING ISSUES REVIEWED? YES/NO:

COMMENTS:

N/A

ANY ADDITIONAL COMMENTS:

→ APPROVED BY CITY COMPTROLLER? YES/NO

CITY COMPTROLLER
SIGNATURE: _____

[Handwritten Signature]

DATE: _____

3/10/21

NOTE: IF GRANT APPROVED, CITY COMPTROLLER WILL FORWARD TO CITY MANAGER FOR REVIEW. IF GRANT NOT APPROVED, CITY COMPTROLLER TO RETURN TO GRANTS COORDINATOR FOR FURTHER REVIEW BY PROJECT SPONSOR.

SECTION C: FOR REVIEW BY CITY MANAGER

→ APPROVED BY CITY MANAGER? YES/NO

CITY MANAGER
SIGNATURE: _____

[Handwritten Signature]

DATE: _____

MAR 12 2021

SECTION D: FOR REVIEW BY CORPORATION COUNSEL

→ APPROVED BY CORPORATION COUNSEL FOR RESOLUTION? YES/NO

[Handwritten YES]



City of Newburgh

GRANT APPLICATION FORM

CORPORATION COUNSEL
SIGNATURE: _____

DATE: _____

3/10/21

DATE RESOLUTION TO BE SENT TO CITY COUNCIL MEETING:

next available council work session
+ meeting cycle



Orange County Youth Bureau Request for Proposals FOR MUNICIPALITIES for 2021 Funding



For funding available from:

- New York State Office of Children and Family Services
Youth Development Program Grant (YDP)
- Orange County Solutions Grant (S)

Proposals DUE APRIL 14, 2021

PART II PROPOSAL Forms

See Part I for Background, Requirements and Proposal Instructions, including a projected timetable of Key Events and Scoring Rubric.

Each form in this packet is expected to be completed in full. Incomplete sections may deem the application incomplete which may impact the proposal's eligibility to not be accepted and considered to receive funding. Handwritten proposals will NOT be accepted.

In addition to the forms in this Part II, Proposals must include the following to be considered:

- Fiscal Documents Attachments: Program Budget, Program Total M&O Budget Attachment, Personnel – Time/Payment Page, and Other Revenue Sources Page [Part V of RFP]
- Proposers must attach applicable certificates of authority/incorporation/partnership/dba, etc.
- Proposer Municipalities must provide their most recent Certified Financial Statements. It is PREFERRED TO HAVE INCLUDED WITH THIS PROPOSAL and is required if awarded before entering into contract.

PROPOSALS RECEIVED WITHOUT ALL OF THE APPLICABLE DOCUMENTATION REQUIRED ABOVE WILL BE DEEMED INCOMPLETE AND MAY NOT BE ACCEPTED. LATE SUBMISSIONS WILL NOT BE ACCEPTED.

*The County reserves the right to waive any informality, reject any and all Proposals, or, if noted in the Basis of Award section of this RFP, accept any Proposal in whole or in part, if deemed to be in the best interest of the County.

Orange County Youth Bureau
UNIVERSAL PROGRAM PROPOSAL FOR MUNICIPALITIES
Cover Page

Program Title: City of Newburgh Youth Soccer Program		QYDS/Program ID# (County Use Only):		County/Program Year: Orange/2021	
FUNDING INFORMATION					
(County Use Only): ☐ NO Revisions Required ☐ Revisions Required					
FUND AMOUNTS			AUTHORIZED VOUCHER SIGNEE (MUST LIST TWO)		
Total Program Amount: MUST Match Budget Pages. **Be sure to submit Part V 20,970.88			Last Name, First Name: Donat , Joseph		
Funds Requested: MUST Match Budget Pages. Max. of \$55,000 5,000			Title: 1. City Manager		
[County Use Only]: Funds Awarded and Category: \$ Total Program Amount based on Funds Awarded: \$			Email: jdonat@cityofnewburgh-ny.gov		
			Last Name, First Name: Venning, Todd		
			Title: 2. Comptroller		
			Email: venning@cityofnewburgh-ny.gov		
MUNICIPALITY INFORMATION:					
Federal ID #: 14-6002329		Charities Reg.#:		Last Name: Wilson	
Municipal Website: cityofnewburgh.recdesk.com				First Name: Maritza	
Implementing Municipality: City of Newburgh		Phone Number(s): 845-569-7373		Fax Number: 562-6306	
Mailing Address: 83 Broadway		E-Mail: mwilson@cityofnewburgh-ny.gov		Extension:	
Address Line 2:		FISCAL Contact, Phone, & Email (May or may not be individual who signs claims): Maritza Wilson			
City: Newburgh		State: NY		Zip Code: 12550	
		845-569-7373			
CHIEF ELECTED OFFICIAL			PERIOD OF ACTUAL OPERATION:		
Last Name: Harvey		First Name: Torrance		FROM: 1/1/21 TO: 10/31/21	
Title: Mayor			HOURS OF ACTUAL PROGRAM OPERATION:		
Phone Number(s): 845-569-7305		Extension:		FROM: 5pm TO: 8pm	
Fax Number: 845-569-7370		☐ Daily ☐ Other (Explain)			
E-Mail: tharvey@cityofnewburgh-ny.gov		DISCLAIMER: Please note that the submission of these forms does NOT guarantee funding will be allocated to your program.			

Check if: ☐ Joint Program 1. Name of participating municipalities:

2. Name of primary disbursing municipality:

Does this business have a minority, women's, disadvantaged, or small business status? Yes ☐ No ☒

If yes, please list the designation(s) and the certifying entity(ies):

The undersigned proposes to furnish and deliver services described in Orange County Youth Bureau RFP-YB01-21 and the responding proposal to the County of Orange, at the budget stated within. The individual submitting this proposal on behalf of his or her firm, certifies by signature below that:

- he or she understands and has complied with the requirements of State Finance Law Sections 139-j and 139-k and will continue to do so throughout the restricted period;
- he or she has read and understood the full Request for Proposal cited above; and
- he or she is duly authorized to submit the proposal on behalf of the business entity noted above.
- Additionally, by submission of this proposal, the person signing on behalf of the Municipality noted above certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the Municipality submitting this proposal has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the New York State Labor Law. A model policy and training has been created by the New York State Department of Labor and can be found on its website at: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

Signature: _____

Print Name: **Joseph Donat**

Title: **City Manager**

Date: _____

Orange County Youth Bureau Universal Program Proposal FOR MUNICIPALITIES

Life Area CHOOSE ONE	Goal ONE GOAL PER LIFE AREA	Objective ONE OBJECTIVE PER GOAL	OCFS 5003 – see Part IV of V for coding. Services, Opportunities, and Supports (SOS) ONE SOS THAT BEST DESCRIBES YOUR PROGRAM.
☐ 1 ES Economic Security	☐ 11 Youth will be prepared for their eventual economic self-sufficiency.	1. Click Here 2. Click Here	1a. Click Here 1b. Click Here 2a. Click Here 2b. Click Here
☒ 2 PEH Physical & Emotional Health	☒ 21 Children and youth will have optimal physical and emotional health.	1. 211 Children and youth will be physic 2. Click Here	1a. 0232 Year Round/Seasonal Activities 1b. Click Here 2a. Click Here 2b. Click Here
☐ 3 ED Education	☐ 31 Children will leave school prepared to live, learn and work in a community as contributing members of society.	1. Click Here 2. Click Here	1a. Click Here 1b. Click Here 2a. Click Here 2b. Click Here
☐ 4 CVC Citizenship	☐ 41 Children and youth will demonstrate good citizenship as law-abiding, contributing members of their families, schools and communities.	1. Click Here 2. Click Here	1a. Click Here 1b. Click Here 2a. Click Here 2b. Click Here
☐ 5 FAM Family	☐ 51 Families will provide children with safe, stable and nurturing environments.	1. Click Here 2. Click Here	1a. Click Here 1b. Click Here 2a. Click Here 2b. Click Here
☐ 6 COM Community	☐ 61 Communities will provide healthy, safe & thriving environments. ☐ 62 Communities will provide children, youth & families opportunities to meet physical, social, moral, emotional growth.	1. Click Here 2. Click Here	1a. Click Here 1b. Click Here 2a. Click Here 2b. Click Here

Orange County Children & Family Services Plan (CFSP) Narrative

Demonstrate the local need in the Life Area(s) you identified on the previous page. Include local data, including statistics, and cite data sources. 100 word maximum.

According to NeighborhoodScout.com, the City of Newburgh is above the national average in all violent crimes (murder, rape, assaults, and robbery). Newburgh is also a hotbed for illegal drug activity and gang violence. Children age 3-13 are prime targets for this type of destructive behavior. The City of Newburgh Recreation department has not run any youth sports programs in over 10 years. Additionally the department has virtually no equipment to run an effective program. Only those residents who have enough money to afford transportation to other towns have been able to have their children participate in youth sports. With a large number of City of Newburgh residents living in poverty, this leaves a large segment of the population not provided for recreationally. This soccer program will encompass the life areas of Physical and Emotional Health and Citizenship and focus on keeping kids off the streets, providing an environment that fosters positive interactions, and keeping them away from negative influences.

Describe your target population including but not limited to age range, gender, school district(s), community(s), risk and protective factors, and other important characteristics (i.e. high risk populations for juvenile justice, substance abuse, runaway/homeless and/or teen pregnancy related systems; and/or individuals with developmental, physical, mental, emotional and/or behavioral disabilities; and/or or identify as LGBTQ). 100 word maximum.

Our target population is boys and girls ages 3 -7 years who reside in the City of Newburgh and the Newburgh Enlarged School District. The large majority of this population is from low income, single-parent households, who are prime targets for gangs and other negative organizations. This area has a population that is 50% Hispanic. The game of soccer is very popular with this demographic and to have no programs available to them is a shame. Additionally, sports in the Hispanic community is a family activity. Parents actively seek volunteer opportunities to coach their children and support the sports programs that they participate in

Demonstrate how your program will address Major Theme(s) and/or Strategies outlined in the CFSP (Part III). Link specific program activities to specific themes and/or strategies. 500 word maximum.

Our soccer program focuses on keeping our players in a safe and nurturing setting that offers physical and emotional health, and an environment that enhances their citizen skills by providing opportunities to foster positive interactions with peers and adults alike. Our coaches will be positive role models for the players on their teams. The players will have practices once a week and one to two games a week both indoors and outdoors depending on the season. At the practices our coaches work on soccer skills, as well as teamwork which will help our players not only get better in the sport, but they also learn the teamwork skills that will help them in their daily lives. Players will be responsible for showing up to practices and games on time or risk losing playing time or the opportunity to play at all. Players will also be issued a league uniform that they must maintain throughout the season and will only be allowed to play in a game with that uniform

Orange County Youth Bureau Universal Program Proposal FOR MUNICIPALITIES

Program Offering Summary

Agency:	City of Newburgh Recreation	Contact Name & Phone:	Maritza Wilson 845-569-7373
Program Name:	City of Newburgh Youth Soccer Program	Program Address:	401 Washington Street, Newburgh, NY 12550
How well: (complete at least one, if not both examples) Target NYS PQA Average Score: _____ (Please refer to Part I of V for explanation of this section.)			
Other Quality Measures, i.e. retention rate, Hrs. of training: _____			
How much? (use whole numbers)			
Total # of Participants: <u>60</u>	Gender: Male: <u>50</u> Female: <u>10</u>	Age: 0-4: <u>25</u> 5-9: <u>35</u> 10-14: _____ 15-17: _____ 18-20: _____ 21+: _____	
Ethnicity: White: <u>10</u> Black or African American: <u>10</u> Hispanic or Latino: <u>30</u> American Indian or Alaskan Native: _____			
Asian: _____ Native Hawaiian or Other Pacific Islander: _____ Two or More Races: <u>10</u>			
Target Population (using whole numbers): *You must be able to show documentation that shows you are serving these particular populations*			
General: <u>55</u> Aging out of Foster Care: _____ Children of Incarcerated Parents: <u>5</u> Juvenile Justice Re-entry Youth: _____			
Runaway/Homeless: _____			

Is anybody better off?

PARTICIPANT OUTCOMES (Max 3) Change in knowledge, skills or behavior due to participating in program.	STRATEGIES/ACTIVITIES List program activities that contribute to participant outcomes.	PERFORMANCE TARGETS FOR EACH OUTCOME # <u>and</u> % of youth who will reach each listed outcome.	MEASUREMENT TOOLS Pre/post tests, surveys, behavior, etc. What is being measured? **Unless a drop-in program, attendance is not an outcome measurement
1. Participants will benefit from playing in our soccer program primarily by learning how to play soccer correctly participating in an alternative to the negative activities of the streets of Newburgh. 2. Players will also learn that they will be able to perform better by working hard in practice, taking care of their bodies, eating right, and getting proper sleep. 3. Players will see how teamwork leads to achievement on the field.	1. Players will be required to attend weekly practices and games. 2. Players will be required to work hard and follow team and league rules in order to continue participation in our program.	1. As a program catered to youth 7 years and below our performance targets are that 90% of participants learn the two most basic rules of soccer; No Hands and Out of Bounds. 2. 70% of all participants will be able to successfully perform a skill learned during practice on in a game. 3. 50% of all players grasp an understanding of the roles and responsibilities of the different positions on the soccer field.	1. Skill based pre-test at the beginning of the program and a post-test at the end. 2. In-season skills assessment during games

MUNICIPAL PROGRAM PROFILE**PROGRAM SUMMARY:** (100 word maximum)

The City of Newburgh Youth Soccer Program currently consists of a fall/spring outdoor season and a winter indoor season. The program is comprised of 2 divisions of boys and girls age 3-7 years. Games are held at the Delano-Hitch Park during the fall season and Heritage Middle school; both located in the City of Newburgh. Seasons vary from 7 to 10 weeks in length. Uniforms will be provided to all players. Awards will be provided at the end of the season. All games will be officiated by certified officials, except for Kinder games. Coaches are volunteers from the community. The Recreation Department ensures that all coaches have a background check and receive certification from the National Association of Youth Sports

8 Features of Positive Youth Development

Features of Youth Development Settings (School, Home, Community)	How does program address each Feature of Positive Youth Development Settings? (Include policies, procedures, activities)
Physical & Psychological Safety (Do not exceed the space allotted) Safe and health-promoting facilities; practices that increase safe peer group interaction and decrease unsafe or confrontational peer interactions.	Our soccer program offers a safe, nurturing, environment where parents can feel comfortable dropping off their children to participate in the program. We do not tolerate any unsafe behavior, fighting, bullying etc. Our coaches and staff monitor our players and spectators closely to make sure everyone is safe.
Appropriate Structure (Do not exceed the space allotted) Limit Setting; clear and consistent rules and expectations; firm enough control; continuity and predictability; clear boundaries, and age appropriate monitoring.	Our soccer program are broken down by age so there is less of a chance of injury due to older players playing with younger players, as well as reduced chance for bullying from older players to the younger players. We have a clear set of rules and behaviors that are entrenched in our coaches in their training, who in turn will go over the rules at their first practice. These rules are then enforced by Recreation Staff and Referees throughout the season
Supportive Relationship (Do not exceed the space allotted) Warmth; closeness; connectedness; good communication; caring; support; guidance; secure attachment, and responsiveness.	All of our Recreation Staff and coaches are trained to interact with all of the players. This allows staff and coaches to gain the trust of players, who in turn feel secure and cared for. However, we still enforce published rules and regulations for the good order of the program that all players must follow. All information about the soccer program will be communicated by coaches to the players and/or parents and also posted on the program's website for wider distribution.
Opportunities to Belong (Do not exceed the space allotted) Opportunities for meaningful inclusion, regardless of one's gender, ethnicity, sexual orientation, or disability; social inclusion, social engagement, and integration; opportunities for socio-cultural identity formation; and support for cultural and bicultural competence.	The City of Newburgh is fortunate to have people from a multitude of races and cultures live within its borders. All of our programs at City of Newburgh Recreation are open to all races, religions, genders, ethnicities, and sexual orientations; without question.

Positive Social Norms (Do not exceed the space allotted) Rules of behavior, expectations, injunctions, ways of doing things, values and morals, and obligations for service.	Our soccer program offers rules for the good order and discipline of the league, as well as the individual expectations of players. These rules and expectations are entrenched in our coaching and recreation staffs who in turn pass them on to the players during practices and live game play.
Support for Efficacy and Mattering (Do not exceed the space allotted) Youth-based; empowerment practices that support autonomy; making a real difference in one's community and being taken seriously. Practices that include enabling, responsibility granting, and meaningful challenge. Practices that focus on improvement rather than on relative current performance levels.	Our coaches and staff are trained how their impact on these players is great and that they can make a real difference in their lives, and it is imperative that the impact is a positive one. Coaches will not only conduct team practices, but also give players individual drills that they can practice outside of practice to improve their performance. Players that take the time to work outside of practice should see marked improvement over the course of the program.
Opportunities for Skill Building (Do not exceed the space allotted) Opportunities to learn physical, intellectual, psychological, emotional, and social skills; exposure to intentional learning experiences, opportunities to learn cultural literacy, media literacy, communication skills and good habits of mind; preparation for adult employment, and opportunities to develop social and cultural capital.	Our soccer program provides many opportunities for skill building. Besides learning the fundamentals of soccer, the coaches also teach teamwork, hard work, and a never quit attitude.
Integration of Family, School and Community Efforts. (Do not exceed the space allotted) Concordance; coordination and synergy among family, school and community.	We strive to integrate family, school, and community efforts by working with the parents to guide the players to do well in school, and stay out of trouble in the community, so they can continue to play in our program. We also seek parent-coaches as much as possible and have a strong working relationship with the school district athletic director.
Monitoring (do not exceed the space allotted) A systematic review of program based upon requirements of a contract, rules, regulations, policies and/or State and Local laws. Identifies the degree to which activities specified in a contract/application/proposal complies with requirements. Describe your process to be used to monitor on a regular basis. Include who will be responsible, frequency, and documentation of monitoring activities.	The Recreation Director is overall in charge of the soccer program, to include all of the staff and coaches. However, there will be a recreation coordinator responsible for the conduct of the soccer program. The recreation coordinator will attend all program sessions (practice/games) and give the recreation director a weekly update; at a minimum. The recreation director will periodically stop by the programs to spot-check things as well.
Evaluation Methods (Do not exceed the space allotted) Process to determine the value or amount of success in achieving a pre-determined program or operational goal. Evaluations can identify program strengths and weaknesses to improve the program and verify if program is running as planned. Describe the process to be used to evaluate the attainment of the objectives/outcomes. Include what will be measured, who will conduct the evaluation, when it will be conducted, and how results will be used.	At the end of the program coaches, parents and players are given evaluations in order to provide feedback on their experience. We read all of the evaluations and take very seriously all comments and make appropriate changes if they are warranted.

PROGRAM LOGISTICS SUMMARY**Municipality Name:** City of Newburgh**Program Name:** Youth Soccer Program**Site 1: Facility Name:** Delano-Hitch Recreation ParkAddress: 401 Washington Street, Newburgh, NY 12550Program Offering/Component Name: Youth SoccerOperation Period: 01/01/2021 to 10/31/2021 Comments: _____HOLIDAYS AND DATES COMPONENT WILL NOT OPERATE: _____

School Year/ Year-Round Days of Operation:

☐M ☒T ☐W ☒Th ☒F ☐Sa ☐SuTimes: 5:00pm to 8:00pm

Summer Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Total Number of Youth: 60 AGE RANGE: 3 to 9Average Attendance: 60Total Number of Adult Participants (21+) 0Re**Site 2: Facility Name:** _____

Address: _____

Program Offering/Component Name: _____

Operation Period: _____ / _____ / _____ to _____ / _____ / _____ Comments: _____

HOLIDAYS AND DATES COMPONENT WILL NOT OPERATE: _____

School Year/ Year-Round Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Summer Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Total Number of Youth: _____ AGE RANGE: _____ to _____

Average Attendance: _____

Total Number of Adult Participants (21+) _____

Site 3: Facility Name: _____

Address: _____

Program Offering/Component Name: _____

Operation Period: _____ / _____ / _____ to _____ / _____ / _____ Comments: _____

HOLIDAYS AND DATES COMPONENT WILL NOT OPERATE: _____

School Year/ Year-Round Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Summer Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Total Number of Youth: _____ AGE RANGE: _____ to _____

Average Attendance: _____

Total Number of Adult Participants (21+) _____

Site 4: Facility Name: _____

Address: _____

Program Offering/Component Name: _____

Operation Period: _____ / _____ / _____ to _____ / _____ / _____ Comments: _____

HOLIDAYS AND DATES COMPONENT WILL NOT OPERATE: _____

School Year/ Year-Round Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Summer Days of Operation:

☐M ☐T ☐W ☐Th ☐F ☐Sa ☐Su

Times: _____ to _____

Total Number of Youth: _____ AGE RANGE: _____ to _____

Average Attendance: _____

Total Number of Adult Participants (21+) _____

Orange County Youth Bureau Universal Program Proposal FOR MUNICIPALITIES

PERSONNEL: Paid Staff and Consultants and Volunteers – QUALIFICATIONS AND DUTIES			
Program Name: Youth Soccer Program			
<i>POSITION/TITLE*</i> <i>(Specify paid personnel vs. paid consultants vs. volunteer)</i>	SUPERVISED BY (Position Title)	POSITION QUALIFICATIONS and SCREENING PROCEDURES	JOB DUTIES
Recreation Coordinator: Paid	Recreation Director	Sixty college credits from a NYS registered college or university in recreation, sports management or related field or graduation from a high school or possession of a high school equivalency diploma and two seasons of paid or volunteer experience conducting recreational activities, or two semesters of experience as a teaching assistant, teacher aide or coach working in a classroom or gymnasium setting. f age or older. Wilderness CPR and First Aid Certified.	Coordinates and administers the soccer program. Schedules and directs games. Assigns work activities for seasonal recreation staff; Requisitions, distributes and keeps records of equipment, materials and supplies; Inspects equipment for safety and proper maintenance; Keeps records and prepares reports.
Recreation Laborer: Paid	Recreation Coordinator	Valid driver's license. Able to lift 50lbs. Have ability to carry out duties with minimal supervision.	Assists in the set-up for soccer games/practices. Assists in clean-up during and after games/practices.
Referee: Paid	Recreation Coordinator	Referee Certification	Maintains good order and discipline by enforcing game and league rules.

*For Each Paid Position: Titles Must Be Exactly the Same as on the *Total Budget & Personnel-Time/Payment* pages



ORANGE COUNTY, NEW YORK
Department of General Services
PO Box 218, 255-275 Main Street
Goshen, New York 10924

Orange County Youth Bureau RFP-YB01-21 FOR MUNICIPALITIES

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

(See instructions on next page before completing this form.)

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

City of Newburgh

Address: 83 Broadway, Newburgh, NY 12550

Name and Title of Person Submitting this Form:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?: No ☒ Yes ☐

If Yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j:

No ☐ Yes ☐

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?: No ☐ Yes ☐

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below and attach additional pages as necessary.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?:

No ☒ Yes ☐

6. If yes, please provide details below and attach additional pages as necessary.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

Applicant certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

Signature: _____

Print Name: Joseph Donat

Title: City Manager

Date: _____



ORANGE COUNTY, NEW YORK
Department of General Services
PO Box 218, 255-275 Main Street
Goshen, New York 10924

Orange County Youth Bureau RFP-YB01-21 FOR MUNICIPALITIES

Instructions for Completing the Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Applicant must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Applicant" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Applicant fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Applicant that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Applicant is necessary to protect public property or public health safety, and that the Applicant is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

The County of Orange includes this disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for Procurement Contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract, Supplement or Change Order. It shall be submitted to with your bid or proposal to the County agency conducting the Governmental Procurement.

This document must accompany each Bid Form, Letter of Interest, or Proposal submitted by all Applicants.



ORANGE COUNTY, NEW YORK
Department of General Services
PO Box 218, 255-275 Main Street
Goshen, New York 10924

Orange County Youth Bureau RFP-YB01-21 FOR MUNICIPALITIES

IRAN DIVESTMENT ACT CERTIFICATION

The Iran Divestment Act of 2012 ("Act"), Chapter 1 of the 2012 Laws of New York, added State Finance Law (SFL), §165-a and General Municipal Law §103-g, effective April 12, 2012. Under the Act, the Commissioner of the New York State Office of General Services ("OGS") developed a list ("Prohibited Entities List") of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). In accordance with SFL § 165-a(3), the Prohibited Entities List may be found on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

Pursuant to General Municipal Law §103-g, by signing below, Applicant certifies as true under the penalties of perjury that:

By submission of this proposal each Applicant and each person signing on behalf of any Applicant certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Applicant is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

A proposal shall not be considered for award nor shall any award be made where the certification has not been made, provided, however, that if in any case the Applicant cannot make the certification, the Applicant shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefor. The County may award a contract to an Applicant who cannot make the required certification on a case-by-case basis if:

- 1) The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
- 2) The County makes a determination that the goods and services are necessary for the County to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

During the term of the Contract, should the County receive information that a person is in violation of the above-referenced certifications, the County will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the contractor in default.

The County reserves the right to reject any bid, proposal, contract or request for assignment for an entity that appears on the Prohibited Entities List prior to the award or execution of a contract or any renewal thereof, as applicable, 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.

DATE:

SIGNATURE: _____

NAME: Joseph Donat

TITLE: City Manager

BUSINESS NAME: City of Newburgh

COVID-19 RELATED & ALTERNATE PLAN SECTION

Due to the ongoing impact that the COVID-19 health crisis is having at the time of developing this Request for Proposals, this section has been added to assess the impact this crisis has had on your organization as a whole, as well as the program and component(s) proposed in this application.

Please complete the following questions with clear details that will provide an overview of program modifications that might be needed to meet social distancing and/or other requirements that may be required. (Use what was required by the State in 2020 as a guideline for projecting for 2021.) This information will also help with assessing the sustainability of the program and the financial health and wellness of your organization.

PROGRAMMATIC RELATED:

1. Did your organization deliver this program in 2020 during the COVID-19 health crisis (from March through the time of submitting this application)?

☐ Yes, as proposed with no modifications ☐ Yes, with modifications ☒ No, was canceled
☐ N/A, new program (skip to Question number 4)

Comments:

2. If your organization delivered/is still delivering this program in 2020, how was the number of participants to be served different from what was originally proposed? What was the percentage of the decrease/increase of participants to be served? If no change in numbers to be served, put "N/A".

Include whole numbers & percentage:

Comments:

3. If no modifications were made, put "N/A" and continue on to Question number 4)

a. How did you modify your 2020 program due to COVID? (If modifications were not made, put "no modifications needed". If program canceled, put "canceled".) N/A

b. What worked well?

c. What did not work well – how would that be addressed for 2021?

4. If obstacles like those presented by COVID-19 health crisis continue into 2021, what modifications, if any, would you expect to make for this program proposed for 2021?

*Please include how the number of participants may be impacted as well.

The city wanted to ensure that we could continue providing all levels of our participants with the engagement that they look forward to. virtually for coaches, teams, players and communities to proactively affirm their commitment to health and safety during this challenging time. Participants can expect interactive forums. Soccer components are designed for diverse aspects of players, their families and coaches.

FINANCIALLY RELATED:

5. Please describe the financial impact, if any, the COVID-19 health crisis has had on the fiscal health and wellness of your organization (for 2020 and 2021).

a. Impact to organization as a whole: The COVID-19 pandemic has created a financial strain on local government budgets. The current emergency has led to the shuttering of businesses, courts, and schools. As a result, local governments have experienced a record decline in revenue. And at the same time, face income losses due to declining returns on investments. Unlike previous emergencies, COVID-19 is a major revenue loss event. In many cases this loss will not be recaptured for several years, if ever.

b. Impact specific to this program (if new program, put "N/A"): With the fluidness of the COVID-19 pandemic and uncertainty to hosting an in-person program

6. If there are any delays, withholdings, and/or cuts with funding in 2021 (i.e. as a result of financial impact of COVID response), would your organization still be able to run this program?

☐ Yes, as proposed with no modifications ☐ Yes, but with modifications

☒ No, would need to cancel

Comments:

7. If you would be able to continue running, what source(s) of funding would you use?
(If not applicable, put "N/A")

N/A

8. Did your organization apply for any COVID-related federal stimulus funding (i.e. Payroll Protection Program) and/or other funds (i.e. COVID grants from Community Foundation of Orange and Sullivan) to help during 2020 and/or 2021?

a. ☒ No If No, continue on to Question number 8)

b. ☐ Yes

If Yes, please indicate the following: (specify if for 2020 and/or 2021)

- Type(s) of funding applied for and the amount(s):

- Whether or not you were approved and actually received/will receive funding and if so, the amount(s):

- If you received/will receive funds, how was it helpful to your organization?

OVERALL WELL-BEING RELATED:

9. How did your organization address the physical, mental, social, and emotional well-being of your staff, program participants, and participants' families during the COVID health crisis? Please include any local COVID-related resources you shared, if any.

City-Sponsored Summer Recreation in Newburgh

POSTED ON: MAY 28, 2020 - 4:53PM

The City of Newburgh is planning recreation activities for the summer season that will comply with social distancing recommendations. Certain traditional City-sponsored community programs are cancelled and City staff are working on alternatives to accommodate the need for socially distant activities.

The City is exploring a Slow Streets/Play Streets model to help people safely engage in recreational activities outdoors. In addition, the City is also engaging with local restaurants in an effort to accommodate increased outdoor seating, should specific roads end up being closed to vehicular traffic.

The City is expediting the closing of all streets through Downing Park to vehicles including Carpenter Avenue, Haible Way, and Mayor Joan Shapiro Drive. These efforts are being done in order to provide safe space for walking, running, biking and rollerblading. Additional City-wide activities being explored include outdoor exercise classes, socially distanced entertainment, and family-friendly events, including drive-in movies for everyone including people who do not have cars. These projects are planned to launch incrementally and will align with Governor Cuomo's phased re-opening of the Mid-Hudson region.

Businesses, including restaurants, interested in using non-traditional outdoor spaces this summer as part



ORANGE COUNTY YOUTH BUREAU PROGRAM BUDGET



FUNDING YEAR: 2021

Submitted as part of Original RFP

MUNICIPALITY: City of Newburgh

PROGRAM TITLE: Youth Soccer Program

PERSONAL SERVICES: Meaning these people are employees of your municipality/agency and you are withholding tax.

POSITION TITLE	RATE OF PAY	BASIS (H,W, BW,SM)	TOTAL PROGRAM AMOUNT(1)	TOTAL YB FUNDS REQUESTED FOR THIS PROGRAM
Recreation Coordinator (1)	\$28.00	H	\$8,064.00	\$0.00
Recreation Laborer (1)	\$19.26	H	\$5,546.88	\$0.00
TOTAL SALARIES AND WAGES			\$13,610.88	\$0.00
TOTAL FRINGE BENEFITS				
TOTAL PERSONAL SERVICES (1)			\$13,610.88	\$0.00

CONTRACTED SERVICES AND STIPENDS:

TYPE OF SERVICE OR CONSULTANT TITLE	RATE OF PAY	BASIS (S,M,HR)	TOTAL PROGRAM AMOUNT(1)	TOTAL YB FUNDS REQUESTED FOR THIS PROGRAM
Referees Summer Session	\$30.00	HR	\$1,080.00	\$720.00
Referees Fall Session	\$30.00	HR	\$1,080.00	\$720.00
				\$0.00
TOTAL CONTRACTED SERVICES (2)			\$2,160.00	\$1,440.00
TOTAL MAINTENANCE & OPERATION (3)			\$5,200.00	\$3,560.00

(COMPLETE BUDGET ATTACHMENT)

LIST EQUIPMENT TO BE PURCHASED OR RENTED: (UNIT COST OVER \$500 AND LIFE EXPECTANCY OF OVER TWO YEARS)

FACILITY REPAIRS

PROGRAM SITE ADDRESS		
TOTAL FACILITY REPAIRS (4)		\$0.00

NEEDS TO MATCH PROPOSAL COVER PAGE TOTAL PROGRAM AMOUNT **\$20,970.88**

NEEDS TO MATCH PROPOSAL COVER PAGE + TOTAL YOUTH BUREAU FUNDS REQUESTED **\$5,000.00**

minimum of \$5,000 and a maximum of \$60,000 for YB Funds Requested

Cost per Participant *Enter the Total Number of Participants to be served			
# of youth participants (up to 21)	<u>60</u>	# of adult participants (21+)	<u>0</u>
Total Budgeted Cost per Participant	349.51467	Total Budgeted Cost per Participant	0
Total YB Cost per Participant	83.333333	Total YB Cost per Participant	0

To be completed by Youth Bureau only:

☐ Allocation is the same as the Request, NO fiscal revisions needed

☐ Allocation is different from the Request, Total Program Amount the same

☐ Allocation is different from the Request, Total Program Amount is different

☐ Budgetary Revisions Required



ORANGE COUNTY YOUTH BUREAU
PROGRAM TOTAL M&O BUDGET ATTACHMENT



Funding Year 2020,
Submitted as part of original RFP

YB to complete
Program ID:

NAME OF MUNICIPALITY: City of Newburgh

NAME OF PROGRAM: Youth Soccer Program

MAINTENANCE AND OPERATION (All Other Expenses Except Facility Repairs).

	Total Amount	YB Funds Requested	ITEM DESCRIPTION Please complete for each line (Attach additional sheets if necessary)
Consumable Supplies (List in space at right).....			
Maintenance/Equipment Repairs (List in space at right)....			
*Equipment Rentals (List in space at right).....			
*Equipment Purchases (List in space at right).....	\$1,200.00	\$0.00	Balls, Cones, Nets, Ball Bags
Space Rentals (Indicate Rate/Basis/Type at right)			
Travel (Includes Mileage Rate @ \$0.____ per mile)			
Insurance (List type in space at right).....			
Utilities and Telephones			
Other Costs (List in space at right).....	\$4,000.00	\$3,560.00	Uniforms and trophies
3. TOTAL Maintenance and Operation:	\$5,200.00	\$3,560.00	

*Please note: if purchasing or renting equipment (unit cost over \$500 and life expectancy of over two years), then it needs to be listed on the Program Budget Page.



ORANGE COUNTY YOUTH BUREAU
FISCAL DOCUMENTS

Funding Year 2021, Submitted as part of Original RFP



PERSONNEL – TIME/PAYMENT PAGE

Program Name:

Position Title Each Title Must Be Exactly the Same as on the <i>Total Budget</i> and <i>Personnel: Qualifications and Duties</i> pages	Total Number paid with Youth Bureau funds	Total Number of Weeks paid with Youth Bureau funds*	Total Number of Weekly Hours paid with Youth Bureau funds*	Hourly Rate of Pay (If more than one position, use highest salaried employee)	Total Weekly Salary paid with Youth Bureau funds*
Recreation Coordinator (2) Laborer	0.00	0.00	0.00	\$28.00 \$19.26	\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00

* Employees with varied or seasonal schedules must be identified as such and a clear explanation provided for the total number of hours paid with Youth Bureau funds, the hourly rate of pay, and the total salary.



OTHER REVENUE SOURCES

RESOLUTION NO.: 80 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED A NEW YORK STATE OFFICE OF CHILDREN AND
FAMILY SERVICES YOUTH DEVELOPMENT PROGRAM GRANT
IN AN AMOUNT NOT TO EXCEED \$6,500.00 REQUIRING NO CITY MATCH
FOR THE 2021 SUMMER PLAYGROUND PROGRAM**

WHEREAS, the City of Newburgh Recreation Department has advised that the Orange County Youth Bureau is accepting a Request for Proposals for grant funding available from the New York State Office of Children and Family Services Youth Development Program (YDP); and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a YDP Grant in an amount not to exceed \$6,500.00 for the 2021 Summer Playground Program which is a 6-week day camp for boys and girls in grades 1st through 6th; and

WHEREAS, funds will be used to purchase supplies, such as food, water, snacks, and books, and to pay vendors; and

WHEREAS, no City matching funds are required; and

WHEREAS, this Council has determined that applying for and accepting said grant if awarded is in the best interests of the City of Newburgh and its youth;

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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in the amount of \$6,500.00 requiring no City match for the 2021 Summer Playground Program; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: 81 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
MUNICIPAL WASTE REDUCTION AND RECYCLING
STATE ASSISTANCE PROGRAM GRANT
IN THE AMOUNT OF \$41,139.00 WITH A HUNDRED PERCENT CITY MATCH**

WHEREAS, the New York State Department of Environmental Conservation is offering funding to assist New York State municipalities meet environmental goals and mandates through the Environmental Protection Fund and the Municipal Waste Reduction and Recycling State Assistance Grant program to expand local waste reduction and recycling programs and increase participation in those programs; and

WHEREAS, by Resolution No. 263-2020 of October 26, 2020, the City of Newburgh applied for funding in the amount of \$100,000.00 to fund a part-time employee, recycling education materials and to purchase 95 gallon or larger recycling containers during 2021; and

WHEREAS, the City of Newburgh was awarded a grant in the amount of \$41,139.00, with a \$41,139.00 match to be derived from S.1918.0400, which will fund a full time Recycling Coordinator for 1 year and the purchase of recycling education materials; and

WHEREAS, this Council has determined that accepting such grant is 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 the City Manager be and he is hereby authorized to accept a New York State Department of Environmental Conservation Municipal Waste Reduction and Recycling State Assistance Program grant in the amount of \$41,139.00 with a hundred percent City match; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and participate in and administer the programs funded thereby.

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RESOLUTION NO.: 263 - 2020

OF

OCTOBER 26, 2020

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
A NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
MUNICIPAL WASTE REDUCTION AND RECYCLING
STATE ASSISTANCE PROGRAM GRANT
IN THE AMOUNT OF \$100,000.00 WITH A FIFTY PERCENT CITY MATCH

WHEREAS, the New York State Department of Environmental Conservation is offering funding to assist New York State municipalities meet environmental goals and mandates through the Environmental Protection Fund and the Municipal Waste Reduction and Recycling State Assistance Grant program to expand local waste reduction and recycling programs and increase participation in those programs; and

WHEREAS, the City of Newburgh proposes to apply for funding in the amount of \$100,000.00 to fund a part-time employee, recycling education materials and to purchase 95 gallon or larger recycling containers during 2021; and

WHEREAS, this Council has determined that applying for and accepting such grant if awarded is 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 the City Manager be and he is hereby authorized to apply for a New York State Department of Environmental Conservation Municipal Waste Reduction and Recycling State Assistance Program grant in the amount of \$100,000.00 with a fifty percent City match.

I, Lerene Vitak, 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 10/26/20
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 27 day of Oct. 20 20

[Signature]
City Clerk

Reilly, Helen

From: Ribeiro, Gus (DEC) <gus.ribeiro@dec.ny.gov>
Sent: Monday, March 15, 2021 3:40 PM
To: Reilly, Helen; victorcornelius@aol.com
Subject: Request for updated insurance form
Attachments: Newbugth ins WC GSI105.2 exp123120.pdf

Hello Helen and Victor,

This email is to let you know that my office recently received clearance to award grant contracts under the MWRC-2020 grant opportunity. This is the Recycling Coordination/Education grant project for operating year 2021. A grant contract for your project has been initiated in Grants Gateway. You can find the contract by searching for contract number DEC01-T01104GG with a \$41,139.00 grant amount.

Unfortunately, the previously sent insurance form (attached) is no longer valid, as these forms have a one year term. Please email an updated form to me at your earliest convenience.

Thank you for your help on this, and for your patience with the time it has taken to move this grant forward.

Regards,
Gus Ribeiro
NYSDEC

RESOLUTION NO.: _____82_____ - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL
AND EXECUTE A CONTRACT WITH GREENMAN-PEDERSEN, INC.
IN THE AMOUNT OF \$25,250.00 FOR PROFESSIONAL ENGINEERING DESIGN AND
CONSTRUCTION MANAGEMENT SERVICES IN
THE DELANO-HITCH RECREATION PARK “TOT-LOT” IMPROVEMENTS PROJECT**

WHEREAS, the City of Newburgh solicited proposals for professional engineering services for design and construction management of the Delano-Hitch Recreation Park “Tot-Lot” Improvements Project (the “Project”); and

WHEREAS, the City has received a proposal from Greenman-Pedersen, Inc. which has been identified as the most qualified firm to provide said services; and

WHEREAS, such engineering services shall include preparation of detailed site plans, construction drawings and Project manual, and bid documents, as well as construction administration; and

WHEREAS, funding for the design phase of the Project in the amount of \$25,250.00 shall be derived from Community Development Block Grant (CDBG) Park Improvements Projects, 2017 and 2018, CD1.8125.0400.0577.2017 and CD1.8686.0400.8125.2018; and

WHEREAS, this Council has reviewed the proposal and determined that entering into a contract with Greenman-Pedersen, Inc. is in the best interests of the City of Newburgh and its further development;

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 accept a proposal and to execute a contract with Greenman-Pedersen, Inc., in the amount of \$25,250.00 for professional design and construction management services in the Delano-Hitch Recreation Park “Tot-Lot” Improvements Project.



Pinus mugo 'pumilio'



Cornus alba 'Elegantissima'



Rudbeckia fulgida



Chrysanthemum x superbum 'Becky'



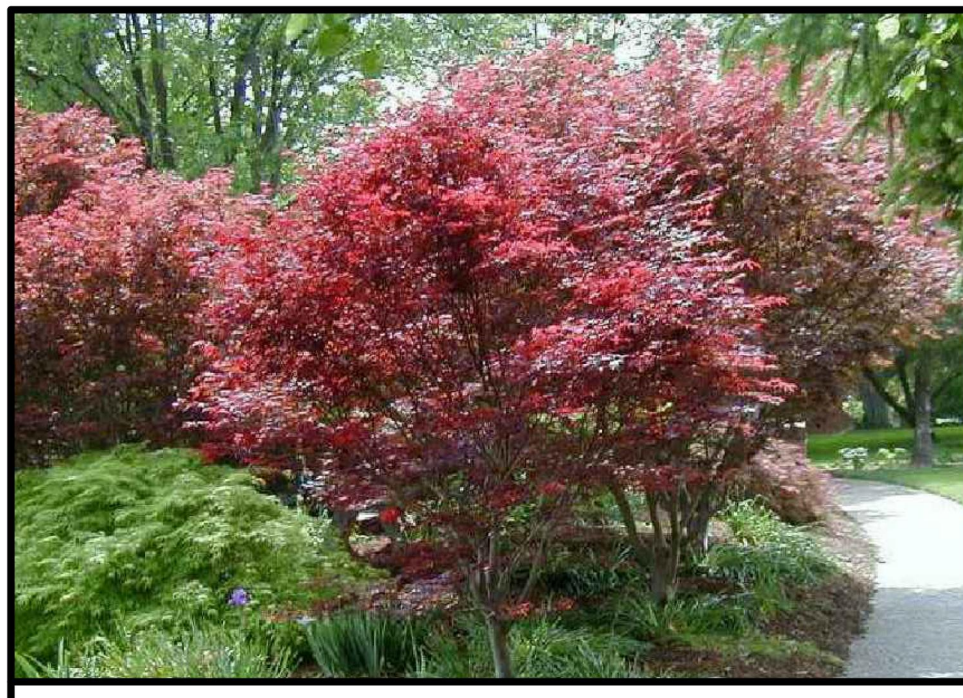
Carex pennsylvanica variegata



Gleditsia triacanthos 'inermis'



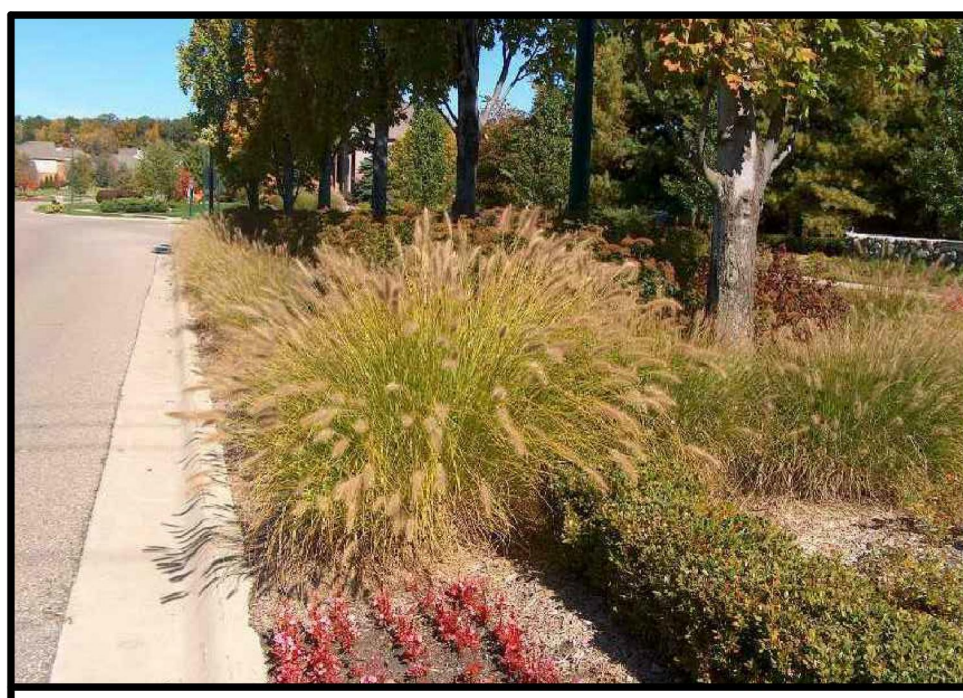
Hemerocallis 'Stella de Oro'



Acer palmatum



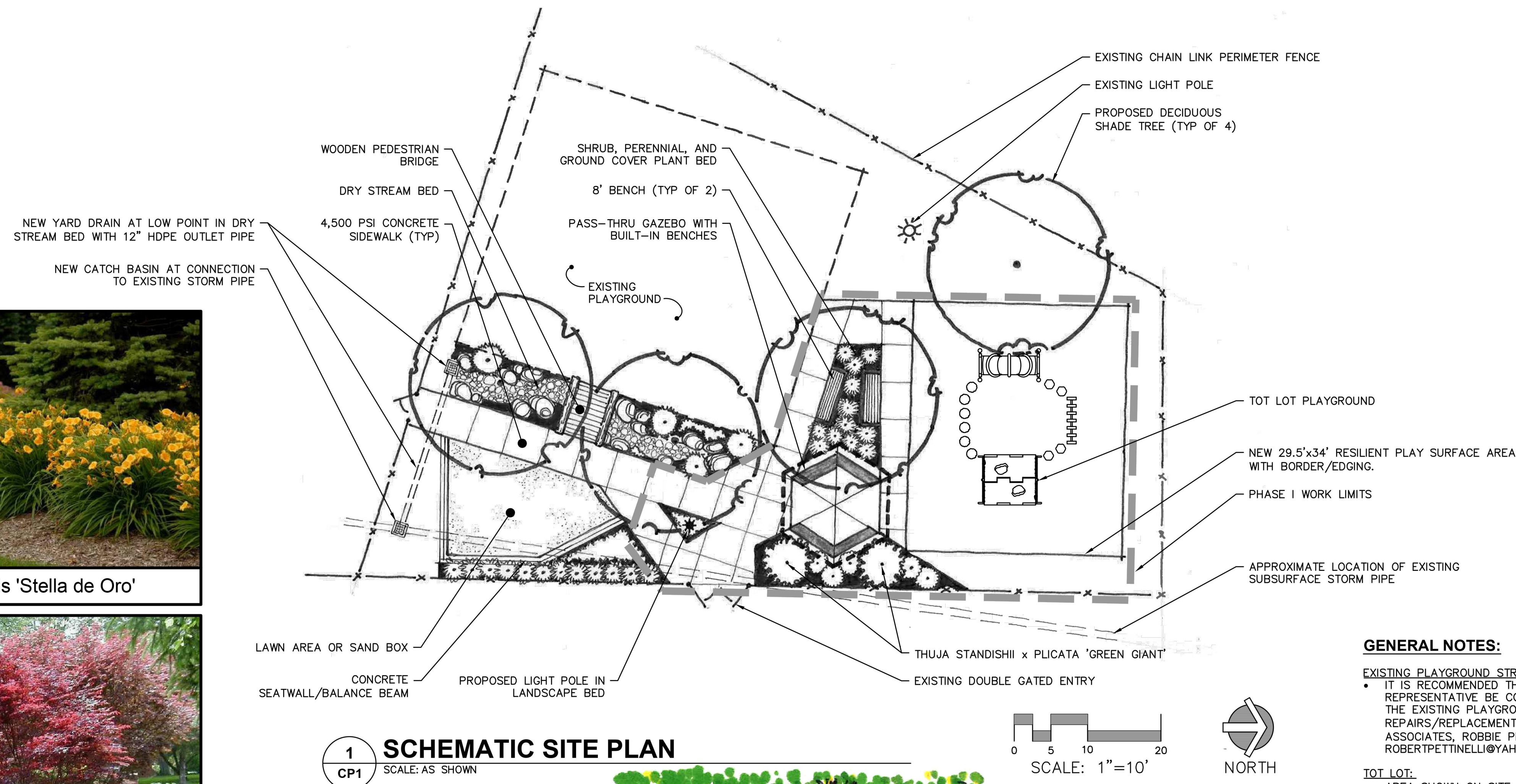
Thuja standishii x plicata 'Green Giant'



Pennisetum alopecuroides hameln



Betula nigra

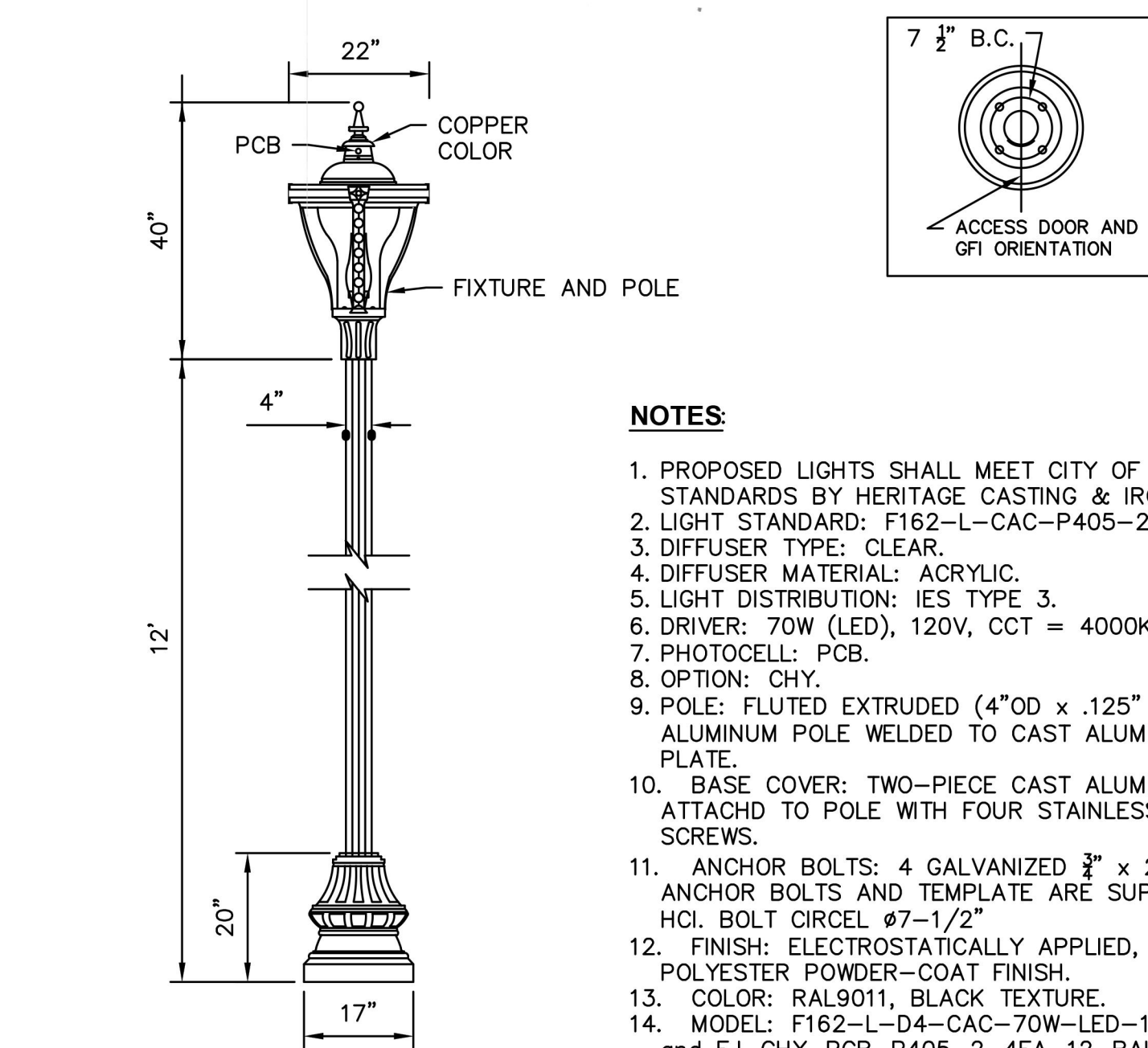


1 SCHEMATIC SITE PLAN

SCALE: AS SHOWN

2 PERSPECTIVE SKETCH

SCALE: N/A



3 ORNAMENTAL LIGHT POLE

SCALE: NOT TO SCALE

NOTES

1. PROPOSED LIGHTS SHALL MEET CITY OF NEWBURGH STANDARDS BY HERITAGE CASTING & IRONWORKS.
2. LIGHT STANDARD: F162-L-CAC-P405-2-4FA-12
3. DIFFUSER TYPE: CLEAR.
4. DIFFUSER MATERIAL: ACRYLIC.
5. LIGHT DISTRIBUTION: IES TYPE 3.
6. DRIVER: 70W (LED), 120V, CCT = 4000K.
7. PHOTOCELL: PCB.
8. OPTION: CHY.
9. POLE: FLUTED EXTRUDED (4"OD x .125" TH) ALUMINUM POLE WELDED TO CAST ALUMINUM BASE PLATE.
10. BASE COVER: TWO-PIECE CAST ALUMINUM ATTACHED TO POLE WITH FOUR STAINLESS STEEL SCREWS.
11. ANCHOR BOLTS: 4 GALVANIZED 3/4" x 24" LONG. ANCHOR BOLTS AND TEMPLATE ARE SUPPLIED BY HCL. BOLT CIRCL Ø7-1/2".
12. FINISH: ELECTROSTATICALLY APPLIED, THERMOSET POLYESTER POWDER-COAT FINISH.
13. COLOR: RAL9011, BLACK TEXTURE.
14. MODEL: F162-L-D4-CAC-70W-LED-120V-IES3 and FU-CHY-PCB-P405-2-4FA-12-RAL9011TXT

GENERAL NOTES:

EXISTING PLAYGROUND STRUCTURE:

- IT IS RECOMMENDED THAT THE LOCAL MIRACLE PLAY EQUIPMENT REPRESENTATIVE BE CONTACTED TO CONDUCT A SITE VISIT AND EVALUATE THE EXISTING PLAYGROUND AS RELATED TO ANY NECESSARY REPAIRS/REPLACEMENTS OF BROKEN OR WORN COMPONENTS; PETTINELLI & ASSOCIATES, ROBBIE PETTINELLI (518) 461-5917; ROBERTPETTINELLI@YAHOO.COM.

TOT LOT:

- AREA SHOWN ON SITE PLAN FOR THE NEW TOT LOT IS BASED ON KID'S CHOICE STRUCTURE (MODEL 714-S201W) AS MANUFACTURED BY MIRACLE PLAY EQUIPMENT.
- AREA SHALL RECEIVE NEW CODE COMPLIANT RESILIENT PLAY SURFACE WITH EDGING AND SHALL BE COORDINATED WITH PLAY EQUIPMENT MANUFACTURER. COLOR AND MATERIAL TO BE COORDINATED WITH CITY.

LANDSCAPE MATERIALS:

- PLANTING AREAS AND SPECIES EXAMPLES SHOWN HEREIN ARE SCHEMATIC. FINAL LOCATIONS AND SPECIES SELECTIONS/PLACEMENT SHALL BE COORDINATED WITH CITY.

BENCHES:

- STANDARD OF QUALITY FOR THE TWO BENCHES ARE SHOWN ON THE SITE PLAN SHALL BE THE 8' SYDNEY BENCH AS MANUFACTURED BY CANTURBURY DESIGNS; 6195 MAYWOOD AVE., HUNTINGTON PARK, CA 90255 (800) 935-7111. TWO ADDITIONAL BENCHES SHALL BE ORDERED (4 IN TOTAL) AND DELIVERED TO THE CITY FOR INSTALLATION WITHIN THE ADJACENT SKATE PARK. INSTALLATION FOR ALL BENCHES SHALL BE PER MANUFACTURER'S RECOMMENDATIONS. COLORS TO BE COORDINATED WITH THE CITY PRIOR TO ORDERING MATERIALS.

DRY STREAM BED:

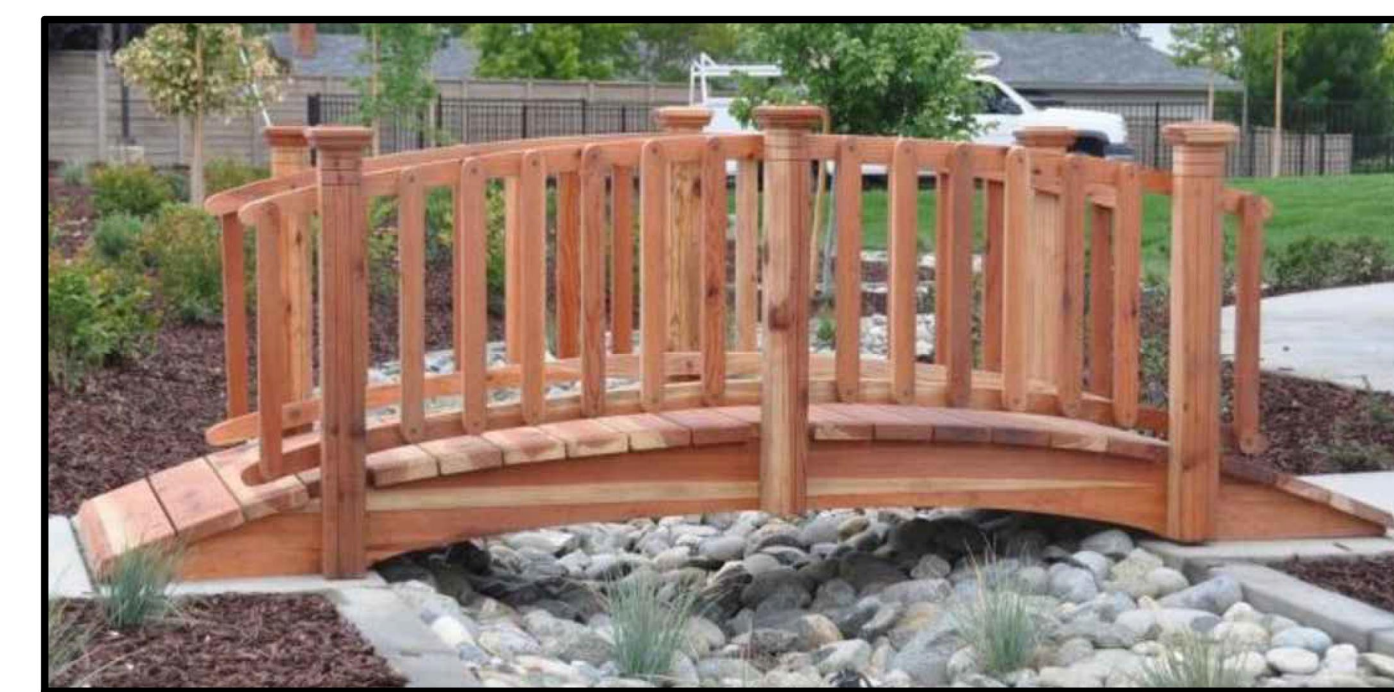
- DRY STREAM BED SHALL BE CONSTRUCTED IN A MEANDERING ALIGNMENT AS SHOWN ON SITE PLAN AND SHALL CONSIST OF A MIX OF LARGE, MEDIUM, AND SMALL BOULDERS PLACED IN A NATURAL PATTERN AND INTERSPERSED WITH LANDSCAPE MATERIALS ALONG THE "BANK" EDGE. THE BOTTOM OF THE CHANNEL SHALL CONSIST OF ROUND WASHED RIVER STONE EMBEDDED IN A GROUTED CONCRETE BED TO ENSURE THAT THE FINAL PRODUCT HAS NO LOOSE STONE MATERIALS.

PEDESTRIAN BRIDGE:

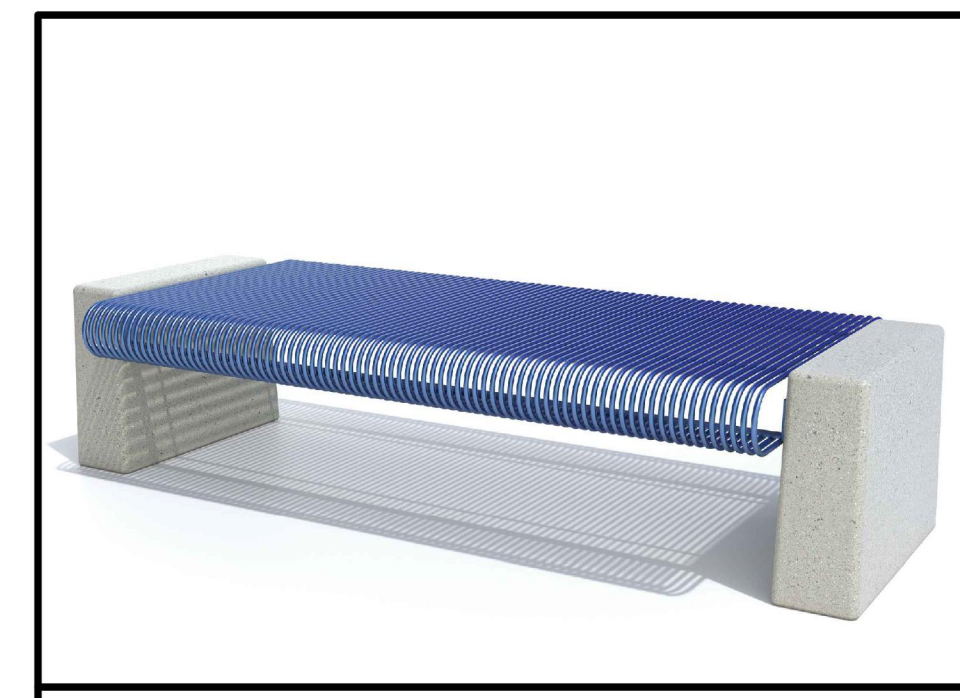
- STANDARD OF QUALITY FOR PEDESTRIAN BRIDGE SHALL BE 6' SPINDLE BRIDGE (BY REDWOOD). ITEM #R8B033 AT WWW.HAYNEEDLE.COM.



TOT LOT EQUIPMENT - MIRACLE Kid's Choice Structure (Model: 714-S201W)



PEDESTRIAN BRIDGE EXAMPLE



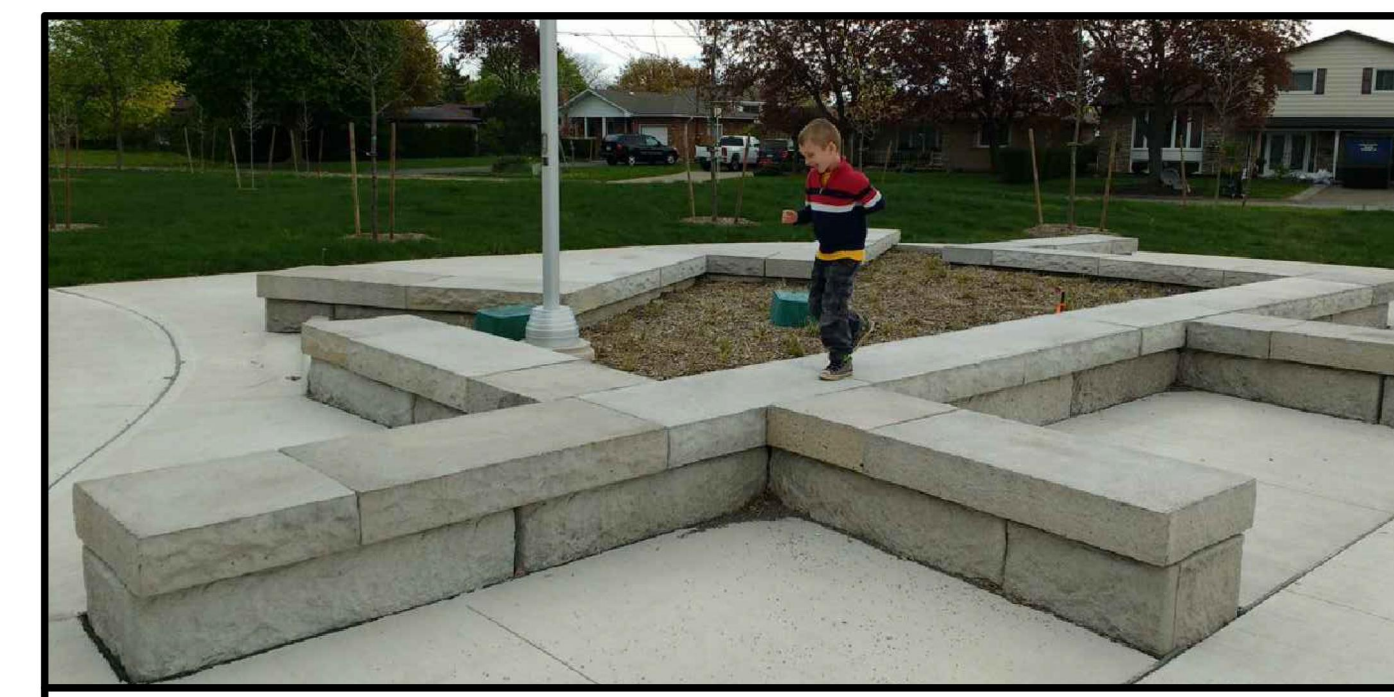
BENCH EXAMPLE



CONCRETE SEATWALL/BALANCE BEAM - EXAMPLE 1



GAZEBO EXAMPLE



CONCRETE SEATWALL/BALANCE BEAM - EXAMPLE 2



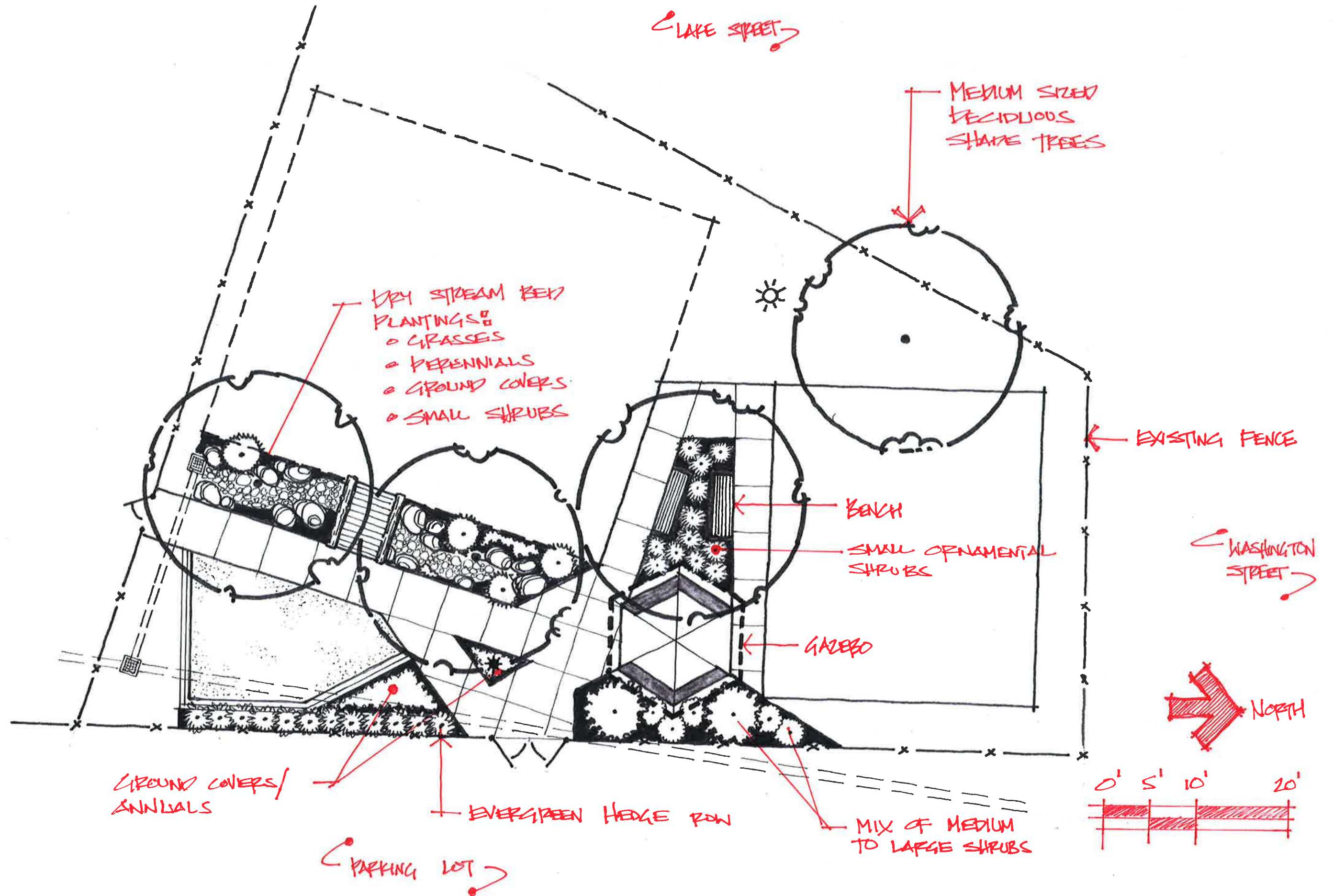
NEW TOT LOT AND PLAYGROUND IMPROVEMENTS PROJECT

DELANO-HITCH PARK

CITY OF NEWBURGH, NEW YORK



Engineering | Design | Planning | Construction Management



GREENMAN-PEDERSEN, INC. TERMS AND CONDITIONS

Greenman-Pedersen, Inc. (GPI) will provide Professional site/civil engineering services for the **Delano-Hitch Park Tot Lot** project in accordance with the following Terms and Conditions.

1. PURPOSE

Client hereby retains Greenman-Pedersen, Inc. (GPI) and GPI's sub consultant's if any, herein collectively known as GPI to perform the services described in the Proposal for Professional Services dated **March 19, 2021** which is hereby made a part of this Agreement. The proposal provided shall be valid for a period of thirty (30) days.

2. DURATION OF SERVICE

The terms, conditions, rate structures and duration of continuing services provided under any Agreement shall continue for the duration of the contract unless requested otherwise in writing.

3. CHANGES

Any additional terms, items, services or personnel requested by the Client that fall outside the scope of the Agreement shall be negotiated as addenda to the Agreement at the time of such request. Such Agreement can only be modified in writing, signed by both parties.

4. TERMINATION

Either party shall have the right, at any time, to terminate the project which is the subject of this Agreement, in whole or in part, with or without cause, by giving the other party thirty (30) days written notice in advance of the intended termination date. In the event the project is so terminated, Client shall reimburse GPI for all costs incurred by GPI to the date of termination, or associated with such termination, plus any applicable fee or surcharge. Should Client reinstate said project, the provisions of the Agreement shall remain applicable, subject to good faith renegotiation of the contract price and/or fee schedule to account for any escalation.

5. INVOICING

- a. Invoices will be issued on a monthly basis and will indicate the percentage of completion of each portion of the required services.
- b. Normal accounting/invoicing procedures of GPI shall be used. Specific requirements of the Client as to invoicing, support information, and approval of such must be requested by the Client prior to invoicing. Costs for providing any required special invoicing procedures shall be reimbursable from the Client.
- c. Unless otherwise agreed to in writing, terms of sale are on receipt in U.S. funds on date of invoice. Responsibility for payment of all invoices is binding upon the Client and is not to be delayed beyond GPI terms while waiting for payment from a third party to the Client. Accounts thirty days over are subject to a service charge of 1½ percent per month.
- d. Any disputed invoice must be lodged with GPI within 30 days of receipt, in writing. Payment shall be made within GPI terms pending resolution of the dispute at which time appropriate credit or reimbursement shall be made by/to GPI.

6. INDEMNITY

GPI shall protect, indemnify and save harmless Client from any and all cost, damage or expense directly arising from any claim of death or injury to persons and/or damage to property directly arising out of the performance of Work under this Agreement to the extent that GPI is legally liable for such claims. In the event that both Client and GPI appear to be liable for such claims, both parties agree to cooperate in defending such claim and shall share expenses in such proportion as their liability is found to be present by mutual agreement, final decisions of arbitration, or final judgment of a court.

7. INSURANCE

- a. Unless otherwise directed by Client to secure additional insurance at the Client's expense, GPI shall carry the following insurance. The limits, where indicated, are provided under blanket policies issued and regularly carried to cover all operations:
 - i. Workers' Compensation insurance to statutory limits and Employer's Liability insurance to a limit of \$1,000,000, both being applicable to all employees engaged in the Work.

- ii. Primary Comprehensive General Liability insurance, including Contractor's Protective (Contingent), Contractual, and Completed Operations, to a combined single limit of \$1,000,000 for bodily injury and property damage claims arising out of any one accident and \$2,000,000 General Aggregate.
 - iii. Primary Comprehensive Automobile Liability insurance, to a combined total single limit of \$1,000,000.
 - iv. Umbrella Form Excess Liability of \$4,000,000.
 - v. When required by the Client, GPI will secure additional Professional Liability and/or Contractual Liability insurance as an additional cost to be paid by the Client.
- b. GPI shall furnish, upon request, certificates showing that the above insurance coverages will be in effect during the term of the project arising out of this Agreement.

8. WARRANTY

- a. GPI shall warrant for a period of one (1) year from the date of Completion of the Work (as is defined in the Scope of Work) that the services to be furnished shall conform to standards of professional practice customary for services of a similar nature. Should any failure to so conform be proven during the term of the warranty, GPI shall, upon notification, revise or replace, at the option of GPI, the specifications, reports, software or other work product(s) of GPI.
- b. The provisions, and in particular the technical and numerical provision which appear in the contract documents, the specification, and any other engineering documents are descriptive only and are not guarantees or warranties, nor are they guaranteed or warranted unless expressly stated so in writing.
- c. The foregoing warranty and remedy for breach thereof are exclusive and conditioned upon timely notification by Client. **THEY ARE GIVEN BY GPI IN LIEU OF ANY AND ALL OTHER REMEDIES, GUARANTEES, AND WARRANTIES, EXPRESS OR IMPLIED, AND IN LIEU OF ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

9. LIMITATION OF LIABILITY

Whether arising in Contract, equity, tort (including strict liability) or otherwise, GPI, its affiliates, and its subcontractors and the employees of each shall not be responsible or liable for loss of profit, loss of operating time, or loss of, or reduction in use of, any facilities (including existing facilities) or any portion thereof, increased expense of construction, operation, or maintenance, expense of replacement products, or for any special, indirect, or consequential damages. GPI total liability to Client for any claims resulting from an Agreement, whether arising in contract, equity, tort (including strict liability), shall not exceed \$1,000,000 or the total agreed-upon price for the work scope specified, whichever is less.

10. ASSIGNMENT

This Agreement, and any assignment arising out of this Agreement shall not be assigned or transferred by either party without the prior written consent of the other party. GPI shall be permitted to delegate performance of all or a portion of the Work to any of its affiliates.

11. WAIVER

Waiver by either GPI or Client of any breach by the other of any of the terms or provisions of any Agreement shall be deemed not to be a waiver of breach on any other occasion of the same terms or provisions, or a waiver of breach of any other term or provision thereof.

12. RECORDS

- a. Unless otherwise expressly stated, all Work (such as documents, drawings, specifications or computer software) shall be prepared by GPI using its current standards and practices and remain the property of GPI. Client use of computer software is governed by a licensing agreement and fee.
- b. The Client has the unrestricted right to use the Work for the project or facility that is the subject of the assignment. The work is not intended or represented to be suitable for reuse by the Client or third parties as extensions of the project or facility or on any other project or facility. Any reuse without written permission, verification, or adaptation by GPI will be at Client's sole risk and GPI shall have no liability or responsibility for such reuse. The Client shall indemnify and hold harmless GPI from all claims, and damages, including attorney's fees arising from such reuse. Any verification or adaptation is not included with the Scope of Work and GPI shall be entitled to further compensation for such services.
- c. GPI shall retain project files which it has in its possession at the time of project completion including final project deliverables (reports, drawings, specifications, magnetic tapes, laboratory results, etc.) for five (5) years from completion of a project. The Client has the right to obtain copies upon payment of a copying fee. GPI may agree to provide retention beyond five (5) years if requested by the Client and Client agrees to pay all costs of such further retention if any.

13. PROPRIETARY INFORMATION

GPI and Client anticipate that they may reveal certain proprietary and confidential information to each other during the performance of the Work. Both GPI and Client agree to maintain the confidentiality of all such information and to take all appropriate measures to do so, such as, but not limited to, informing all persons having access to information of its confidential nature. Client shall not have any right to divulge the general scope and approximate scope of Work on this project for any other projects.

14. GOVERNING LAW

Any Agreement resulting from a Proposal, its administration and performance, and all rights, obligations, liabilities and responsibilities of the parties hereto, shall be governed by and interpreted in accordance with the laws of the State of New York.

15. ENTIRE AGREEMENT

This is the entire Agreement of the parties. This Agreement supersedes all other prior negotiations, representations or agreements, written or oral. This Agreement may be supplemented, amended or revised only in writing by agreement of the parties hereto.

AGREEMENT

This Agreement is made by and between The City of Newburgh, NY (client), whose principal place of business is located at City Hall – 83 Broadway, Newburgh, NY 12550.

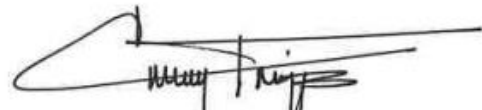
AND

Greenman-Pedersen, Inc., hereinafter known as the consultant, whose principal place of business is located at 80 Wolf Road, Albany, NY, 12205;

The parties hereto, on this ____ day of _____, 2021 agree to be bound by the within Terms and Conditions.

Mr. Joseph Donat, City Manager

Date



Craig Tripp, RLA, LEED[®] AP
Greenman-Pedersen, Inc.

March 19, 2021

Date

March 19, 2021

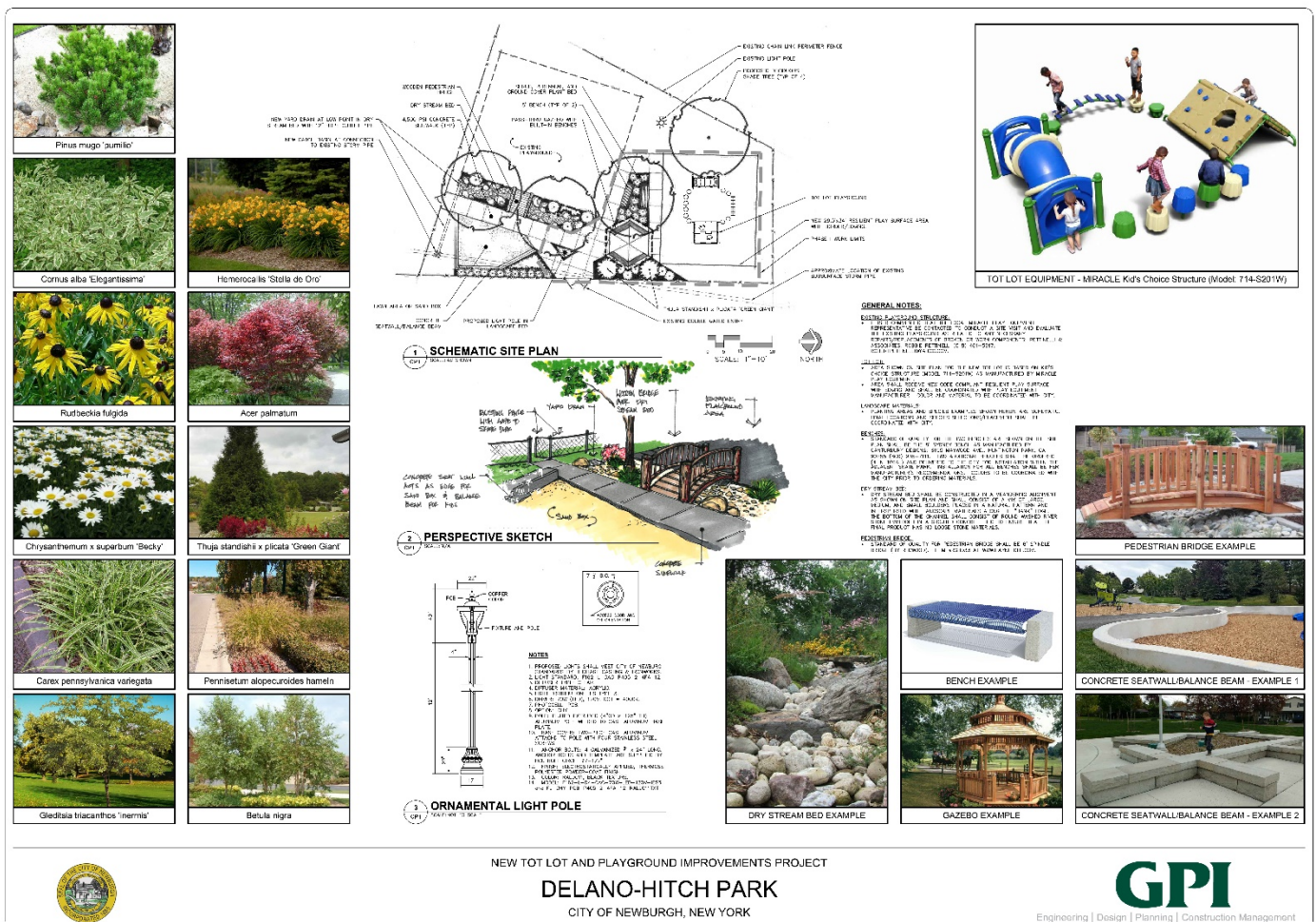
Ms. Ellen J. Fillo
Director of Community Development
City of Newburgh
City Hall – 83 Broadway
Newburgh, NY 12550

efillo@cityofnewburgh-ny.gov

Re: **Delano-Hitch Park**
Site-Civil Engineering Proposal for
New Tot Lot/Playground Improvements

Dear Ms. Fillo:

GPI thanks you for the opportunity to present our proposal for professional site-civil engineering services. Having completed the partial boundary, topographic, and utility survey for the park and adjacent areas, this proposal is for design, bidding, and construction phase services associated with the referenced project. The following proposal has been developed based upon our discussions and correspondence with you as well as the schematic design plan previously prepared by GPI (see Figure 1).



Project Understandings

This proposal has been developed based upon the following:

- Survey:
The design development work for this project will utilize the recently completed partial boundary, topographic and utility survey for the site as a base map.
- Phasing:
The site plans will be prepared as a single set of bid documents; however, they will be developed to show the construction program and corresponding bid breakdown as two distinct phases of work. This two-phased approach will generally follow the delineation shown on the previously prepared concept plan (see Figure 1) with minor modifications as necessary to facilitate constructability of each phase of the work.
- Plan/Specification Formatting:
It is anticipated that if there are any specific formatting requirements for the preparation of plans for this project (whether based on funding sources or municipal regulations), the City will advise GPI of these prior to the commencement of work.
Specifications and the project manual will be prepared by GPI in accordance with the City's formatting requirements.
- Force Account/Volunteer Efforts:
It is anticipated that all work associated with both phases of this project will be completed by the chosen contractor and that no work will be performed by City personnel or community/volunteer efforts.
- Pre-Purchased Elements:
It is understood that the City's objective is to purchase the specified playground equipment prior to the start of construction for this project, store it, and then provide the equipment to the selected contractor for installation. Accordingly, the material call outs and product specifications within the bid documents will be coordinated with this approach.
- Site Disturbance:
The site disturbance associated with this project will be under 1 acre of land. Accordingly, the preparation of a Stormwater Pollution Prevention Plan (SWPPP) is not required for this project and, therefore, is not included within this scope of services.
- Gazebo:
The site concept plan includes provision for a gazebo. Per discussions with the City, the construction documents will include a concrete pad at the location for the gazebo, but the gazebo itself will be added at a future date by the City.

Scope of Services

PHASE I: DESIGN DEVELOPMENT

Task 1 - Project Meetings/Coordination and Correspondence

As needed during the design development process, GPI will attend meetings and participate in phone calls/video conferences relevant to the project for purposes of coordinating the design with the City. As the exact number of meetings and extent of coordination required cannot be quantified at this time, these services will be charged on an hourly basis for the staff utilized in accordance with GPI's Schedule of Fees included with this proposal. For purposes of this proposal, a budget of \$1,500 has been established.

Task 2 – Detailed Site Plans

Through continued coordination with the City, Detailed Site Plans will be developed based on an advancement of the previously prepared Schematic Design Plan. The plans will utilize the recent site survey and will identify the proposed improvements for the site. The anticipated sheet breakdown is as follows:

Cover Page:

The Cover Page will provide the Project Name, Project Address, Site Location Map and an Index of Drawings.

a. Existing Conditions Plan:

The Existing Conditions Plan will utilize the recently completed partial boundary, topographic and utility survey.

b. Site Demolition Plan:

Based upon the existing conditions identified on the survey, the Site Demolition Plan will identify any site elements that are required to be removed, or otherwise modified to facilitate the construction of the proposed improvements.

c. Site Layout and Materials Plan:

The Site Layout and Materials Plan will show the proposed site improvements including pedestrian walks and seating areas, play surfacing and equipment, landscaping, lighting, gated access points, edging, seat walls, and drainage features. Layout dimensions will be provided to convey locations and physical space requirements and call-outs (as necessary) will be provided to construction detailing for key elements.

d. Grading, Drainage and Erosion Control Plan:

The Grading, Drainage and Erosion Control Plan will show proposed contours along with rim elevations of any new utility structures and spot elevations at critical control locations. The plan will identify on-site improvements for storm water conveyance systems and the locations of site light fixtures. To prevent soil erosion and sedimentation during construction, relevant measures will be identified on the plans. Measures will consider the NYS Standards and Specifications for Erosion and Sediment Control.

e. Landscape Plan:

The Landscape Plan will include stabilization of areas disturbed by grading as well as landscaping enhancements within new plant beds.

f. Relevant Detail Sheets:

Details will be developed for related site elements including trenching and pipe bedding, sidewalk and landscaping details, seat walls, pad/foundation for gazebo area, and other detailing required to identify site construction requirements.

Task 3 - Construction Drawings and Project Manual

After reviewing with the Client and obtaining sign-off and authorization to proceed, the Detailed Site Plans (Task 2) will be expanded upon to incorporate the information required for assembling bidding and construction document packages. This includes the preparation of a front-end manual for items such as the Notice to Bidders, Bonding Requirements, and General Conditions. GPI will work with the Client to ensure that any City requirements, forms, and references to City provided procurement items are incorporated into the documents. Technical specifications sections for site related work will also be included.

PHASE II: CONSTRUCTION PHASE SUPPORT**Task 4 - Bid Assistance and Shop Drawing Review**

Under this task, GPI will assist the City with preparation of a written description for the bid advertisement and establishment of time-frames for contractor review and receipt of bids. Note that the City will be responsible for solicitation of the bids for the project including posting of advertisements. GPI will attend the bid opening and assist the City with the review/vetting of bids received including providing the City with a letter of recommendation for awarding the project.

After the construction contract has been awarded, GPI will review the contractor's submitted shop drawings for site related materials to ensure conformance with the contract drawings. Electronic versions of each submittal and shop drawing reviewed will be returned to the Client via email for distribution to the project team.

Task 5 - Construction Administration

The following scope of services are for the provision of periodic construction phase reviews and administration as necessary to confirm that the project is built in general accordance with the site plans and specifications:

a. Pre-Construction Meeting:

GPI will prepare for and participate in a “pre-construction” meeting with the successful bidder to discuss project contract administration, schedule, and reporting.

b. Periodic Construction Observation:

GPI will periodically review construction progress to assess general conformity with the project plans and specifications. Full time inspection and certification is not included in this task. For the purposes of this proposal, construction for site related work is anticipated take place over an 8-week period. One site assessment per week (for the anticipated 8 weeks) is included within this task for periodic construction review. If the time frame extends beyond the 8-week estimate or if more frequent progress reviews are required, a proposal for additional periodic construction observations will be provided for your consideration.

c. Construction Site Meetings: When necessary, GPI will attend construction meetings with the contractor and the Client to coordinate the progress of the work. Note that these meetings will be coordinated with GPI presence on-site for the Periodic Construction Observation services outlined above.

d. Request for Information/Clarification: GPI will review requests submitted by the Contractor in the form of RFI's and prepare coordinated responses.

Task 6 – General Consulting Services

This task will be utilized to support the City upon request in the event that additional efforts arise which are not included within the scope of this proposal such as additional bid phase support, more extensive construction phase support, etc.. Services under this task will be charged on an hourly basis for the staff utilized in accordance with GPI's Schedule of Fees included with this proposal. For purposes of this proposal, an initial budget of \$2,500 has been established.

Task RE00 – Reimbursable Expenses

This scope of services includes only the cost for the preparation of the work as outlined above and does not include our direct expenses, such as mileage, overnight mailings, and photocopying/map reproductions. These direct costs will be billed under this task as incurred.

Professional Services Fee Schedule

Invoices will be issued monthly for all services performed during that month and are payable upon receipt. Professional Services Budgets are estimates only. We will make our best effort to complete each of these tasks within the estimated amounts; however, it is possible that it will be necessary to exceed these amounts in order to complete the scope of services for each task. We will not exceed any estimated fee amounts without formal discussion with you about scope modification needs and written authorization from you to proceed.

Fee Summary

Task No.	Task Description	Fee Estimate
PHASE I – DESIGN DEVELOPMENT		
1	Project Meetings / Coordination and Correspondence	\$1,500
2	Detailed Site Plans	\$8,500
3	Construction Drawings and Project Manual	\$6,250
Total Phase I Fee		\$16,250
PHASE II – CONSTRUCTION PHASE SUPPORT		
4	Bid Phase Assistance and Shop Drawing Review	\$2,000
5	Construction Administration	\$4,500
6	General Consulting Services	\$2,500
Total Phase II Fee		\$9,000
RE00	Reimbursable Expenses	<i>To be billed as incurred</i>
Total Estimated Cost		\$25,250

Schedule

GPI is prepared to start on this work within one week of receipt of authorization to proceed.

Agreement

As initial authorization to proceed, please sign and return a copy of this letter agreement. As formal authorization to proceed, please sign and return a copy of our attached standard agreement.

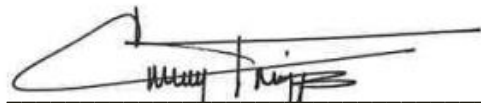
Please feel free to contact me at (518) 694-2844 if you have any questions. GPI looks forward to working with you on this project.

Authorization:

Mr. Joseph Donat, City Manager

Date:

Sincerely,
GREENMAN - PEDERSEN, INC.



Craig Tripp, RLA, LEED® AP
Senior Landscape Architect | Senior Project Manager

2021 HOURLY RATES & EXPENSES**TECHNICAL STAFF**

Principal Engineer	\$190.00
Project Director/Senior Engineer	\$170.00
Project Manager.....	\$160.00
Associate Engineer	\$154.00
Senior Landscape Architect.....	\$150.00
Project Engineer.....	\$138.00
Geotechnical Engineer	\$136.00
Environmental Engineer/Scientist.....	\$128.00
Pilot	\$120.00
Engineer.....	\$115.00
Design Engineer.....	\$115.00
Senior Engineering Tech	\$93.00
Landscape Architect.....	\$90.00
Senior Planner	\$90.00
Junior Engineer.....	\$80.00
Engineering Tech / CADD	\$77.00
Technician.....	\$70.00
Planner.....	\$70.00
Engineering Intern.....	\$45.00
Right-of-Way Specialist	\$100.00
Survey Party Chief	\$115.00
Survey Instrument Person.....	\$100.00
Survey Rod Person	\$80.00

CONSTRUCTION INSPECTION STAFF

Resident Engineer (NICET Level IV)	\$133.00
Office Engineer (NICET Level IV).....	\$108.00
Construction Inspector (NICET Level III)	\$98.00
Construction Inspector (NICET Level II)	\$87.00
Construction Inspector (NICET Level I)	\$72.00

GPI reserve the right to increase these billings rates by 3% annually.

Prevailing wages will apply to survey staff.

*Rates include non-salary expenses such as small format copies, mailings and shipping.
Mileage to/from project sites shall be invoiced via the approved federal rate or per GPI policy,
whichever is the lesser amount. Current GPI mileage reimbursement rate is \$0.560/mile.*

*Client approved third party services such as subconsultants or subcontractors if/when
necessary shall be invoiced as a direct expense with no mark up.*

RESOLUTION NO.: _____83_____ - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED
A DEPARTMENT OF HOMELAND SECURITY 2021 PORT SECURITY GRANT
IN AN AMOUNT NOT TO EXCEED \$25,000.00
WITH NO CITY MATCH REQUIRED**

WHEREAS, the City of Newburgh Fire Department wishes to apply for a Department of Homeland Security 2021 Port Security Grant in an amount not to exceed Twenty-Five Thousand (\$25,000.00) Dollars; and

WHEREAS, such grant funds, if awarded, shall be used for electronic equipment for the Fire Boat to maintain compliance with United States Coast Guard requirements; and

WHEREAS, no City matching funds or in-kind services are required; and

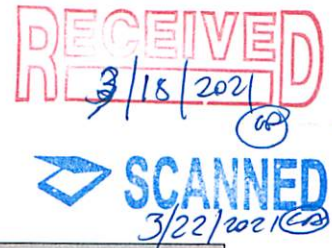
WHEREAS, this Council has determined that applying for such grant funds would be in the best interests of the City of Newburgh, and the safety of its firefighters and residents alike;

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 apply for and accept if awarded a Department of Homeland Security 2021 Port Security Grant in an amount not to exceed \$25,000.00 for the City of Newburgh Fire Department with no City match required; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the purchases funded thereby.



City of Newburgh

GRANT APPLICATION FORM



Grant Requestor:

Please complete the following form and submit the form along with either a hard copy of the grant announcement or the grant announcement website address to the City of Newburgh Grants Administrator for processing. You will be notified when your grant request has been approved to be sent for City Council Resolution.

NOTE: All fields are required unless marked "OPTIONAL."

SECTION A. COMPLETED BY GRANT REQUESTOR

NAME OF PROJECT FOR GRANT: DHS 2021 Port Security Grant	NAME OF DEPARTMENT REQUESTING GRANT: Fire Dept.	NAME OF DEPARTMENT HEAD/SPONSOR AUTHORIZING GRANT: Paul Pullar/Helen Reilly
NAME OF GRANT/NAME OF AWARING AGENCY: Dept. of Homeland Security	GRANT SUBMITTAL DATE: May 14, 2021	AMOUNT OF AWARD: \$25,000.00
MATCH REQUIRED? IF YES, AMOUNT AND TYPE: (EX. CASH, IN-KIND) NO	AMOUNT REQUIRED BY THE CITY OF NEWBURGH: NONE	(OPTIONAL) ANY ADDITIONAL GRANT CONDITIONS:
PROJECT PLAN: To provide funding for electronic equipment for the Fire Boat in compliance with Coast Guard requirements		
Project Timeline: (ex. Dates): 10/1/2021- 9/30/2024		



City of Newburgh

GRANT APPLICATION FORM

SECTION B. FOR REVIEW BY CITY COMPTROLLER

GRANT MATCH REQUIREMENT REVIEWED? YES/NO: YES

COMMENTS: N/A

IN-KIND SERVICES REQUIREMENT REVIEWED? YES/NO: YES

COMMENTS: N/A

STAFFING ISSUES REVIEWED? YES/NO: YES

COMMENTS: N/A

ANY ADDITIONAL COMMENTS:

→ APPROVED BY CITY COMPTROLLER? YES/NO

CITY COMPTROLLER
SIGNATURE: [Signature]

DATE: 3/17/21

NOTE: IF GRANT APPROVED, CITY COMPTROLLER WILL FORWARD TO CITY MANAGER FOR REVIEW. IF GRANT NOT APPROVED, CITY COMPTROLLER TO RETURN TO GRANTS COORDINATOR FOR FURTHER REVIEW BY PROJECT SPONSOR.

SECTION C: FOR REVIEW BY CITY MANAGER

→ APPROVED BY CITY MANAGER? YES/NO: YES

CITY MANAGER
SIGNATURE: [Signature]

DATE: 3/18/21



City of Newburgh

GRANT APPLICATION FORM

SECTION D: FOR REVIEW BY CORPORATION COUNSEL

→ APPROVED BY CORPORATION COUNSEL FOR RESOLUTION? YES/NO

CORPORATION COUNSEL

SIGNATURE: _____

DATE: _____

DATE RESOLUTION TO BE SENT TO CITY COUNCIL MEETING:

*Not available work session
+ council meeting.*

**The Department of Homeland Security (DHS)
Notice of Funding Opportunity (NOFO)**

Fiscal Year 2021 Port Security Grant Program (PSGP)

NOTE: If you are going to apply for this funding opportunity and have not obtained an Employer Identification Number (EIN), a Data Universal Numbering System (DUNS) number, are not currently registered in the System for Award Management (SAM), or your SAM registration is not active, please take immediate action to obtain an EIN and DUNS Number, if applicable, and then register immediately in SAM or, if applicable, renew your SAM registration. It may take four weeks or more after you submit your SAM registration before your registration is active in SAM then an additional 24 hours for Grants.gov to recognize your information. Information on obtaining a DUNS number and registering in SAM is available from Grants.gov at:

<http://www.grants.gov/web/grants/register.html>. Detailed information regarding DUNS, EIN, and SAM is also provided in Section D of this NOFO under the subsection titled “How to Register to Apply.” Detailed information regarding the time required for each registration is also provided in Section D of this NOFO under the subsection titled “Other Key Dates.”

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A. Program Description

1. Issued By

U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA)/Grant Programs Directorate (GPD)

2. Assistance Listings Number

97.056

3. Assistance Listings Title

Port Security Grant Program

4. Funding Opportunity Title

Fiscal Year 2021 Port Security Grant Program (PSGP)

5. Funding Opportunity Number

DHS-21-[19]-[G056]-[00]-[01]

6. Authorizing Authority for Program

Section 102 of the Maritime Transportation Security Act of 2002 (Pub. L. No. 107-295, as amended) (46 U.S.C. § 70107)

7. Appropriation Authority for Program

Department of Homeland Security Appropriations Act, 2021, (Pub. L. No. 116-260)

8. Announcement Type

Initial

9. Program Category

Infrastructure Security

10. Program Overview, Objectives, and Priorities

a. *Overview*

The Fiscal Year (FY) 2021 Port Security Grant Program (PSGP) is one of four grant programs that constitute DHS/FEMA's focus on transportation infrastructure security activities. These grant programs are part of a comprehensive set of measures authorized by Congress and implemented by the Administration to help strengthen the Nation's critical infrastructure against risks associated with potential terrorist attacks. The PSGP provides funds to state, local, and private sector maritime partners to support increased port-wide risk management and protect critical surface transportation infrastructure from acts of terrorism, major disasters, and other emergencies. Among the five basic homeland security missions noted in the DHS Strategic Plan, PSGP supports the goal to Strengthen National Preparedness and Resilience.

The 2018-2022 FEMA Strategic Plan creates a shared vision for the field of emergency management and sets an ambitious, yet achievable, path forward to unify and further professionalize emergency management across the country. PSGP supports the goal of

Readying the Nation for Catastrophic Disasters. We invite all of our stakeholders and partners to also adopt these priorities and join us in building a more prepared and resilient Nation.

Finally, for FY 2021, DHS is focused on the criticality of information sharing and collaboration to building a national culture of preparedness and protecting against terrorism and other emerging threats to our national security. DHS and its homeland security mission were born from the “failures among federal agencies and between the federal agencies and state and local authorities to share critical information related to the threat of terrorism” prior to the September 11, 2001, attacks. The threat profile has changed in the last two decades – we now face continuous cyber threats by sophisticated actors, threats to soft targets and crowded places, threats to our democratic election process and threats from new and emerging technologies. But information sharing and cooperation among state, local, and tribal authorities and federal agencies, including all DHS officials, is just as vital, and perhaps even more vital, today. Therefore, for FY 2021, we have identified priority areas, tied to some of the most serious threats that recipients should address with their PSGP funds for enhancing maritime security. Perhaps most importantly, DHS will be focused on forging partnerships to strengthen information sharing and collaboration in each of these priority areas and looking for recipients to remove barriers to communication and cooperation with DHS.

b. *Objectives*

Provide funding to port authorities, facility operators, and state, local, and territory agencies for activities associated with implementing Area Maritime Security Plans (AMSP), facility security plans, and other port-wide risk management efforts.

c. *Priorities*

Given the evolving threat landscape, it is incumbent upon DHS/FEMA to continuously evaluate the national risk profile and set priorities that help ensure appropriate allocation of scarce security dollars. In assessing the national risk profile for FY 2021, one area attracts the most concern:

1) Enhancing cybersecurity

Likewise, there are several enduring security needs that crosscut the homeland security enterprise. The following are second-tier priorities that help recipients implement a comprehensive approach to securing critical maritime transportation infrastructure:

- 1) Enhancing the protection of soft targets/crowded places;
- 2) Addressing emerging threats (e.g., transnational criminal organizations, weapons of mass destruction [WMD], unmanned aerial systems [UASs], etc.);
- 3) Effective planning;
- 4) Training and awareness campaigns;
- 5) Equipment and capital projects; and
- 6) Exercises.

The table below provides a breakdown of these priority areas for the FY 2021 PSGP, showing both the core capabilities impacted, as well as examples of eligible maritime security project types for each area. A detailed description of allowable investments for each project type is included in the [Preparedness Grants Manual](#). As discussed in Section E, projects that sufficiently address the Cybersecurity National Priority will have their final review scores increased by a multiplier of twenty (20) percent.

FY 2021 PSGP Funding Priorities

Priority Areas	Core Capabilities	Lifelines	Example Project Types
National Priorities			
Enhancing Cybersecurity	• Cybersecurity • Intelligence and information sharing • Planning • Public information and warning • Operational coordination • Screening, search, and detection • Access control and identity verification • Supply chain integrity and security • Risk management for protection programs and activities • Long-term vulnerability reduction • Situational assessment • Infrastructure systems • Operational communications	• Safety and Security • Transportation	• Cybersecurity risk assessments • Projects that address vulnerabilities identified in cybersecurity risk assessments ○ Improving cybersecurity of critical infrastructure to meet minimum levels identified by CISA ○ Cybersecurity training and planning
Enduring Needs			
Enhancing the Protection of Soft Targets and Crowded Places	• Operational coordination • Public information and warning • Intelligence and Information Sharing • Interdiction and disruption • Screening, search, and detection • Access control and identity verification • Physical protective measures • Risk management for protection programs and activities	• Safety and Security • Transportation	• Physical security enhancements at cruise and ferry terminals ○ Explosive detection canine teams ○ Security cameras (CCTV) ○ Security screening equipment for people and baggage ○ Access controls ▪ Landside fencing, gates, barriers, etc. ▪ Marine (floating) barriers to prevent access to sensitive berthing areas • Enhanced security aboard ferries ○ Explosive detection canine teams ○ Security cameras (CCTV) • Rapid response boats for preventing or responding to security incidents on waterways, especially in and around airports, cruise terminals, ferry terminals, etc.

Priority Areas	Core Capabilities	Lifelines	Example Project Types
Addressing Emerging Threats, such as Transnational Criminal Organizations, WMD and UAS	• Interdiction and disruption • Screening, search and detection • Physical protective measures • Intelligence and information sharing	• Safety and Security • Transportation	• Sharing and leveraging intelligence and information • Chemical Biological Radiological Nuclear and Explosive (CBRNE) prevention, detection, response, and recovery equipment • UAS detection technologies
Planning	• Planning • Risk management for protection programs and activities • Risk and disaster resilience assessment • Threats and hazards identification • Operational coordination • Community resilience	• Safety and Security • Transportation	• Development of: • Port-wide Security Risk Management Plans • Continuity of Operations Plans • Response Plans • Efforts to strengthen governance integration between/among regional partners
Training and Awareness	• Long-term vulnerability reduction • Public information and warning • Operational coordination • Situational assessment • Community resilience	• Safety and Security • Transportation	• Active shooter training • Shipboard firefighting training • Public awareness/preparedness campaigns • Maritime domain awareness projects
Equipment and Capital Projects	• Long-term vulnerability reduction • Infrastructure systems • Operational communications • Interdiction and disruption • Screening, search and detection • Access control and identity verification • Physical protective measures	• Safety and Security • Transportation	• Implementing risk management projects that support port resilience and recovery • Implementing physical security enhancement projects • Transportation Worker Identification Credential (TWIC) projects
Exercises	• Long-term vulnerability reduction • Operational coordination • Operational Communications • Community resilience	• Safety and Security • Transportation	• Response exercises

11. Performance Metrics

Performance metrics for this program are as follows:

- Percentage of funding allocated by the recipient to core capabilities to build or sustain the national priorities identified in the section above

B. Federal Award Information

1. Available Funding for the NOFO: \$100,000,000

2. **Projected Number of Awards:** 240
3. **Period of Performance:** 36 months

Extensions to the period of performance are allowed. For additional information on period of performance extensions, please refer to Section H of this NOFO or the Preparedness Grants Manual.

FEMA awards under this program only include one budget period, so it will be same as the period of performance. See 2 C.F.R. § 200.1 for definitions of “budget period” and “period of performance.”

4. **Projected Period of Performance Start Date(s):** 10/01/2021

5. **Projected Period of Performance End Date(s):** 09/30/2024

6. **Funding Instrument Type:** Grant

C. Eligibility Information

1. **Eligible Applicants**

All entities subject to an AMSP, as defined by 46 U.S.C. § 70103(b), may apply for PSGP funding. Eligible applicants include but are not limited to port authorities, facility operators, and state and local government agencies. A facility operator owns, leases, or operates any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States. Examples of facility operators include, but are not limited to terminal operators, ferry systems, bar/harbor pilots, and merchant’s exchanges. See the “Applications Submitted by Eligible Entities” section below for further detail.

2. **Applicant Eligibility Criteria**

Pursuant to the Maritime Transportation Security Act of 2002 (MTSA), Pub. L. No. 107-295, as amended, DHS established a risk-based grant program to support maritime security risk management. Funding is directed towards the implementation of AMSPs, Facility Security Plans (FSP), and Vessel Security Plans (VSP) among port authorities, facility operators, and state and local government agencies that are required to provide port security services. In administering the grant program, national, economic, energy, and strategic defense concerns based upon the most current risk assessments available will be considered.

Port Area Definition

A Port Area is a location on a coast, shore, or inland waterway containing one or more harbors where vessels can dock and transfer people or cargo to or from land. For the purpose of PSGP, the presence of MTSA-regulated facilities is the primary consideration of harbors that define a Port Area.

Applications Submitted by Eligible Entities

Subject to the information and exceptions in this section, *an eligible entity may submit only one application within each Port Area. An application may contain up to five investment*

justifications. (See Section D, below, for further instructions regarding investment justifications.)

- A single eligible entity may have multiple facilities, departments, subcomponents, or agencies operating within a Port Area. ***FEMA will generally view multiple agencies within a local government (e.g., police department, fire department, emergency management office) operating within one Port Area as a single eligible entity*** unless a “Plus 4” DUNS number exists for subcomponents of the parent entity. An applicant’s DUNS number and EIN will help inform FEMA’s determination of which applicants may constitute a single eligible entity.
 - An eligible entity operating multiple facilities, departments, subcomponents, or agencies within a single Port Area may choose to submit separate applications for facilities, departments, subcomponents, or agencies within it, but any such separate applications will be considered part of the same eligible entity for purposes of the cost share requirements, as discussed further below.
 - If a single eligible entity chooses to have its components submit separate applications, each individual facility, department, subcomponent, or agency of that single eligible entity should submit no more than one application. For example, a police department should submit no more than one collective application. If an individual facility, department, subcomponent, or agency of an eligible entity submits more than one application for a single Port Area, FEMA reserves the discretion to consolidate the projects or determine which application(s) to approve or deny.
- Funding allocation decisions are based partially on Port Area risk. Therefore, ***no single application should include investment justifications for projects intended to be implemented in multiple Port Areas.*** For example, a State agency or facility operator that operates in multiple Port Areas must submit separate applications to fund projects in each Port Area.
 - Exception: “Hub and spoke” cybersecurity projects may affect a parent organization’s multiple eligible entities in multiple port areas. Such projects may be submitted within a primary Port Area for the project implementation. Proportionally, costs associated with *entities or subcomponents that are not covered under an AMSP and are not instrumental to enhancing maritime security* must not be included in the detailed budget worksheet or investment justification and thereby prorating the cost of the project only to those facilities that are covered by the AMSP.

An application submitted by an otherwise eligible non-federal entity (i.e., the applicant) may be deemed ineligible when the person that submitted the application is not: 1) a ***current employee, personnel, official, staff or leadership*** of the non-federal entity; and 2) ***duly authorized to apply*** for an award on behalf of the non-federal entity at the time of application.

Further, the Authorized Organization Representative (AOR) must be a duly authorized current employee, personnel, official, staff or leadership of the recipient and ***provide an email address unique to the recipient at the time of application and upon any change in***

assignment during the period of performance. Consultants or contractors of the recipient are not permitted to be the AOR of the recipient.

Compliance with Maritime Security Regulations

As a condition of eligibility, all PSGP applicants must be fully compliant with relevant Maritime Security Regulations (33 C.F.R. Parts 101-106). Any applicant who, as of the grant application deadline, has an open or outstanding Notice of Violation (NOV) will not be considered for PSGP funding if:

1. The applicant has failed to pay the NOV within 45 days of receipt of the NOV and the applicant has failed to decline the NOV within 45 days of receipt of the NOV, resulting in the U.S. Coast Guard (USCG) entering a finding of default in accordance with 33 C.F.R. § 1.07- 11(f)(2); or
2. The applicant appealed the NOV pursuant to 33 C.F.R § 1.07-70 and received a final appeal decision from the Commandant, U.S. Coast Guard, as described in 33 C.F.R. § 1.07-75, and failed to come into compliance with the terms of the final appeal decision within the timelines noted herein.

The local USCG Captain of the Port (COTP) will verify security compliance eligibility during the field review process. Eligibility does not guarantee grant funding.

Ferry Systems

Ferry systems are eligible to apply for FY 2021 PSGP funds. However, any ferry system electing to participate (e.g., submit an application) under the FY 2021 PSGP will not be eligible to participate (e.g., submit an application) under the FY 2021 Transit Security Grant Program (TSGP) and will not be considered for funding under the FY 2021 TSGP. Likewise, any ferry system that participates in the FY 2021 TSGP will not be eligible for funding under the FY 2021 PSGP.

Subawards

Subawards are prohibited under PSGP. Applicants are also prohibited from applying on behalf of other, separate entities. Notwithstanding this prohibition, however, community-based projects, to include planning, training, and exercises that may include multiple beneficiaries (e.g., a port authority hosts a large training session or exercise) in which the applicant applies for and administers the grant award are allowable.

3. Other Eligibility Criteria

a. *National Incident Management System (NIMS) Implementation*

Prior to allocation of any federal preparedness awards, recipients must ensure and maintain adoption and implementation of NIMS. The list of objectives used for progress and achievement reporting is on FEMA's website at <https://www.fema.gov/emergency-managers/nims/implementation-training>.

Please see the [Preparedness Grants Manual](#) for more information on NIMS.

4. Cost Share or Match

The FY 2021 PSGP has a cost share requirement. The non-federal entity contribution can be cash (hard match) or third-party in-kind (soft match), with the exception of construction activities, which must be a cash (hard) match. In-kind contributions are defined as third-party contributions per 2 C.F.R. § 200.306.

All applicants will be required to commit to the cost share requirement at the time of application. **The required cost share is based on and calculated against the total of all PSGP funds awarded to an eligible entity as described in the “Applications Submitted by Eligible Entities” section above during this fiscal year within a single Port Area.** For example, if an entity operates multiple facilities within the same Port Area, FEMA will view these projects collectively for purposes of determining the appropriate cost share. As a result, multiple components within a single eligible entity (i.e., port authority, facility operator, local government, or state government) are strongly encouraged to coordinate their applications if they apply separately (even if addressing multiple, disparate projects within the Port Area) for these cost share purposes.

Public-Sector Cost Share

All public sector and non-governmental, nonprofit PSGP award recipients—meaning recipients other than private, for-profit entities—must provide a non-federal entity contribution supporting 25 percent of the total of all project costs as submitted in the application and approved in the award. The non-federal contribution should be specifically identified for each proposed project. The non-federal contribution, whether cash or third-party in-kind match, has the same eligibility requirements as the federal share (e.g., operational costs for routine patrols are ineligible, and operational costs for overtime to conduct an approved exercise may be eligible as part of the investment justification) and must be justified as part of the project within the investment justification. For example, if the federal award for a public sector recipient requires a 25 percent cost share and the total project cost is \$100,000, then:

- Federal share is 75 percent of \$100,000 = \$75,000
- Recipient cost share is 25 percent of \$100,000 = \$25,000

Because the statute at 46 U.S.C. § 70107(c)(1) states that the federal share shall not exceed 75 percent of the total cost, any application of the percentages that would result in a decimal will be rounded down in favor of the federal share not exceeding 75 percent, even if normal rounding standards would indicate rounding up in certain instances.

Private-Sector Cost Share

Private, for-profit PSGP award recipients must provide a non-federal entity contribution supporting 50 percent of the total of all project costs as submitted in the application and approved in the award. The non-federal entity contribution should be specifically identified for each proposed project. The non-federal contribution, whether cash (hard) or third-party in-kind (soft), has the same eligibility requirements as the federal share (e.g., operational costs for routine patrols are ineligible, and operational costs for overtime to conduct an approved exercise may be eligible as part of the investment justification) and must be

justified as part of the project within the investment justification. For example, if the federal award for a private sector recipient requires a 50 percent cost share and the total project cost is \$100,000, then:

- Federal share is 50 percent of \$100,000 = \$50,000
- Recipient cost share is 50 percent of \$100,000 = \$50,000

Ultimately, the recipient is responsible for ensuring that it contributes the proper cost share to its actual project costs. **If actual total project costs exceed the projected total project costs stated in the Federal Award, the recipient will not receive any additional federal funding and will be responsible for contributing additional funds above the required cost match.** If actual total project costs are less than the projected total project costs stated in the federal award, the recipient will be responsible for contributing a cost match calculated as a percentage of those actual project costs.

Cash and third-party in-kind matches must consist of eligible costs (i.e., same allowability as the federal share) and must be identified as part of the submitted detailed budget worksheet. A cash-match includes cash spent for project-related costs, while a third-party in-kind match includes the valuation of in-kind services. The cost match requirement for the PSGP award may not be met by funds from another federal grant or assistance program, or by funds used to meet matching requirements for another federal grant program, unless otherwise permitted by federal statute. Likewise, third-party in-kind matches used to meet the matching requirement for the PSGP award may not be used to meet matching requirements for any other federal grant program. Additionally, normal routine operational costs cannot be used as a cost match unless a completely new capability is being awarded and must be justified as “reasonable and necessary” to complete the project. Please see 2 C.F.R. § 200.306, as applicable, for further guidance regarding cost matching.

Exceptions to the Cost Match Requirements

The following exceptions to the cost match requirement may apply:

- The cost match requirements for projects that have a port-wide benefit need only to be funded at the public-sector matching fund level of 25 percent (with a federal share not to exceed 75 percent per 46 U.S.C. § 70107(c)(1)). These projects must be certified by the COTP as having a port-wide benefit. Examples of projects with a port-wide benefit include, but are not limited to:
 - Port-wide planning, training, and exercises;
 - Security camera systems with shared access;
 - Response vessels; and,
 - Other maritime domain awareness systems.
- There is no matching requirement for grant awards where the total project cost for all projects under the award is \$25,000 or less in accordance with 46 U.S.C. § 70107(c)(2)(A). If multiple small projects are submitted totaling more than \$25,000 under this exemption, a cost match is required to be demonstrated at the time of application.

- There is no matching requirement for grants to train law enforcement agency personnel in the enforcement of security zones as defined by 46 U.S.C. § 70132 or in assisting in the enforcement of such security zones.
- Requests for cost match waivers as outlined in 46 U.S.C. § 70107(c) may be considered for successful applicants only after awards have been made. Applicants must have demonstrated the ability to comply with the cost match requirement at the time of application and since being awarded the grant, have experienced significant financial constraints as outlined in DHS/FEMA Information Bulletin (IB) 376, (i.e., specific economic issues preclude provision of the cost share identified in the original grant application). Cost share waiver requests that do not demonstrate new, post-award difficulties and cost share waivers submitted at the time of application will not be considered. Cost share waiver requests must comply with the process identified in IB 376.

D. Application and Submission Information

1. Key Dates and Times

a. *Application Start Date:* 02/25/2021

b. *Application Submission Deadline:* 05/14/2021 at 5:00 PM ET

All applications **must** be received by the established deadline.

The Non-Disaster (ND) Grants System has a date stamp that indicates when an application is submitted. Applicants will receive an electronic message confirming receipt of their submission. For additional information on how an applicant will be notified of application receipt, see the subsection titled “Timely Receipt Requirements and Proof of Timely Submission” in Section D of this NOFO.

FEMA will not review applications that are received after the deadline or consider these late applications for funding. FEMA may, however, extend the application deadline on request for any applicant who can demonstrate that good cause exists to justify extending the deadline. Good cause for an extension may include technical problems outside of the applicant’s control that prevent submission of the application by the deadline, other exigent or emergency circumstances, or statutory requirements for FEMA to make an award.

Applicants experiencing technical problems outside of their control must notify FEMA as soon as possible and before the application deadline. Failure to timely notify FEMA of the issue that prevented the timely filing of the application may preclude consideration of the award. “Timely notification” of FEMA means: prior to the application deadline and within 48 hours after the applicant became aware of the issue.

A list of FEMA contacts can be found in Section G of this NOFO, “DHS Awarding Agency Contact Information.” For additional assistance using the ND Grants System, please contact the ND Grants Service Desk at (800) 865-4076 or NDGrants@fema.dhs.gov. The ND Grants Service Desk is available Monday through Friday, 9:00 AM – 6:00 PM Eastern Time (ET).

For programmatic or grants management questions, please contact your Program Analyst or Grant Management Specialist. If applicants do not know who to contact or if there are programmatic questions or concerns, please contact the Centralized Scheduling and Information Desk (CSID) by phone at (800) 368-6498 or by e-mail at askcsid@fema.dhs.gov, Monday through Friday, 9:00 AM – 5:00 PM ET.

- c. **Anticipated Funding Selection Date:** No later than 07/16/2021
- d. **Anticipated Award Date:** No later than 09/30/2021
- e. Other Key Dates

Event	Suggested Deadline for Completion
Obtaining DUNS Number	Four weeks before actual submission deadline
Obtaining a valid EIN	Four weeks before actual submission deadline
Creating an account with login.gov	Four weeks before actual submission deadline
Registering in SAM or Updating SAM registration	Four weeks before actual submission deadline
Registering in Grants.gov	Four weeks before actual submission deadline
Starting application in Grants.gov	Two weeks before actual submission deadline
Submitting initial application in Grants.gov	One week before actual submission deadline
Submitting the final application in ND Grants	By the submission deadline

2. Agreeing to Terms and Conditions of the Award

By submitting an application, applicants agree to comply with the requirements of this NOFO and the terms and conditions of the award, should they receive an award.

3. Address to Request Application Package

See the [Preparedness Grants Manual](#) for requesting and submitting an application.

Initial applications are processed through the [Grants.gov](#) portal. Final applications are completed and submitted through FEMA's Non-Disaster Grants (ND Grants) System. Application forms and instructions are available at Grants.gov. To access these materials, go to <http://www.grants.gov>.

4. Steps Required to Obtain a Unique Entity Identifier, Register in the System for Award Management (SAM), and Submit an Application

Applying for an award under this program is a multi-step process and requires time to complete. Applicants are encouraged to register early as the registration process can take four weeks or more to complete. Therefore, registration should be done in sufficient time to ensure it does not impact your ability to meet required submission deadlines.

Please review the table above for estimated deadlines to complete each of the steps listed. Failure of an applicant to comply with any of the required steps before the deadline for submitting an application may disqualify that application from funding.

To apply for an award under this program, all applicants must:

- a. Apply for, update, or verify their Data Universal Numbering System (DUNS) number from Dun & Bradstreet and Employer Identification Number (EIN) from the Internal Revenue Service;
- b. In the application, provide a valid DUNS number, which is currently the unique entity identifier;
- c. Have an account with login.gov;
- d. Register for, update, or verify their SAM account and ensure the account is active before submitting the application;
- e. Create a Grants.gov account;
- f. Add a profile to a Grants.gov account;
- g. Establish an Authorized Organizational Representative (AOR) in Grants.gov;
- h. Register in ND Grants
- i. Submit an initial application in Grants.gov;
- j. Submit the final application in ND Grants, including electronically signing applicable forms; and**
- k. Continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. As part of this, applicants must also provide information on an applicant's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded federal contracts or federal financial assistance within the last three years, if applicable.

Specific instructions on how to apply for, update, or verify a DUNS number or SAM registration or establish an AOR are included below in the steps for applying through Grants.gov.

Applicants are advised that FEMA may not make a federal award until the applicant has complied with all applicable DUNS and SAM requirements. Therefore, an applicant's SAM registration must be active not only at the time of application, but also during the application review period and when FEMA is ready to make a federal award. Further, as noted above, an applicant's or recipient's SAM registration must remain active for the duration of an active federal award. If an applicant's SAM registration is expired at the time of application, expires during application review, or expires any other time before award, FEMA may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

Per 2 C.F.R. § 25.110(c)(2)(ii), if an applicant is experiencing exigent circumstances that prevents it from receiving a DUNS number and completing SAM registration prior to receiving a federal award, the applicant must notify FEMA as soon as possible by contacting askcsid@fema.dhs.gov and providing the details of the circumstances that prevent

completion of these requirements. If FEMA determines that there are exigent circumstances and FEMA has decided to make an award, the applicant will be required to obtain a DUNS number and complete SAM registration within 30 days of the federal award date.

5. Electronic Delivery

DHS is participating in the Grants.gov initiative to provide the grant community with a single site to find and apply for grant funding opportunities. DHS encourages or requires applicants to submit their applications online through Grants.gov, depending on the funding opportunity. For this funding opportunity, FEMA requires applicants to submit initial applications through Grants.gov and a final application through ND Grants.

6. How to Register to Apply through Grants.gov

For information on how to register to apply through Grants.gov, please see the [Preparedness Grants Manual](#).

7. How to Submit an Initial Application to FEMA via Grants.gov

Standard Form 424 (SF-424) is the initial application for this NOFO.

Grants.gov applicants can apply online using a workspace. A workspace is a shared, online environment where members of a grant team may simultaneously access and edit different web forms within an application. For each Notice of Funding Opportunity, you can create individual instances of a workspace. Applicants are encouraged to submit their initial applications in Grants.gov at least seven days before the application deadline.

In Grants.gov, applicants need to submit the following forms:

- SF-424, Application for Federal Assistance
- Grants.gov Lobbying Form, Certification Regarding Lobbying

For further information on how to submit an initial application via Grants.gov, please see the [Preparedness Grants Manual](#).

8. Submitting the Final Application in ND Grants

After submitting the initial application in Grants.gov, eligible applicants will be notified by FEMA and asked to proceed with submitting their complete application package in ND Grants. Applicants can register early with ND Grants and are encouraged to begin their ND Grants registration at the time of this announcement or, at the latest, seven days before the application deadline. Early registration will allow applicants to have adequate time to start and complete their applications.

Applicants needing assistance registering for the ND Grants system should contact ndgrants@fema.dhs.gov or (800) 865-4076. For step-by-step directions on using the ND Grants system and other guides, please see <https://www.fema.gov/grants/guidance-tools/non-disaster-grants-management-system>.

In ND Grants, applicants will be prompted to submit the standard application information and any program-specific information required as described in Section D.10 of this NOFO,

“Content and Form of Application Submission.”. The Standard Forms (SF) are auto generated in ND Grants, but applicants may access these forms in advance through the Forms tab under the [SF-424 family on Grants.gov](#). Applicants should review these forms before applying to ensure they have all the information required.

For additional application submission requirements, including program-specific requirements, please refer to the subsection titled “Content and Form of Application Submission” under Section D of this NOFO.

9. Timely Receipt Requirements and Proof of Timely Submission

As application submission is a two-step process, the applicant with the AOR role who submitted the application in Grants.gov will receive an acknowledgement of receipt and a tracking number (GRANTXXXXXXXX) from Grants.gov with the successful transmission of its initial application. **This notification does not serve as proof of timely submission, as the application is not complete until it is submitted in ND Grants.** Applicants can also view the ND Grants Agency Tracking Number by accessing the Details tab in the submitted workspace section in Grants.gov, under the Agency Tracking Number column. Should the Agency Tracking Number not appear, the application has not yet migrated from Grants.gov into the ND Grants System. Please allow 24 hours for your ND Grants application tracking number to migrate.

All applications must be received in ND Grants by **5:00 PM ET** on the application deadline. Proof of timely submission is automatically recorded by ND Grants. An electronic date/time stamp is generated within the system when the application is successfully received by ND Grants. Additionally, the applicant(s) listed as contacts on the application will receive a system-generated email to confirm receipt.

10. Content and Form of Application Submission

a. *Standard Required Application Forms and Information*

The following forms or information are required to be submitted in either Grants.gov or ND Grants. The Standard Forms (SF) are submitted either through Grants.gov, through forms generated in ND Grants, or as an attachment in ND Grants. Applicants may also access the SFs at <https://www.grants.gov/web/grants/forms/sf-424-family.html>.

I. GRANTS.GOV

- **SF-424, Application for Federal Assistance**, initial application submitted through Grants.gov
- **Grants.gov Lobbying Form, Certification Regarding Lobbying**, submitted through Grants.gov

II. ND GRANTS

- **SF-424A, Budget Information (Non-Construction)**, submitted via the forms generated by ND Grants
 - **For construction under an award, submit SF-424C, Budget Information (Construction)**, submitted via the forms generated by ND Grants, in addition to or instead of SF-424A

- **SF-424B, Standard Assurances (Non-Construction)**, submitted via the forms generated by ND Grants
 - **For construction under an award, submit SF-424D, Standard Assurances (Construction)**, submitted via the forms generated by ND Grants, in addition to or instead of SF-424B
- **SF-LLL, Disclosure of Lobbying Activities**, submitted via the forms generated by ND Grants
- **Indirect Cost Agreement or Proposal**, submitted as an attachment in ND Grants if the budget includes indirect costs and the applicant is required to have an indirect cost rate agreement or proposal. If the applicant does not have or is not required to have an indirect cost rate agreement or proposal, please see Section D.13 of this NOFO, “Funding Restrictions and Allowable Costs,” for further information regarding allowability of indirect costs and whether alternatives to an indirect cost rate agreement or proposal might be available, or contact the relevant FEMA staff identified in Section G of this NOFO, “DHS Awarding Agency Contact Information” for further instructions.

Generally, applicants have to submit either the non-construction forms (i.e., SF-424A and SF-424B) or construction forms (i.e., SF-424C and SF-424D), meaning that applicants that only have construction work and do not have any non-construction work need only submit the construction forms (i.e., SF-424C and SF-424D) and not the non-construction forms (i.e., SF-424A and SF-424B), and vice versa. However, applicants who have both construction and non-construction work under this program need to submit both the construction and non-construction forms.

b. Program-Specific Required Forms and Information

The following program-specific forms or information are required to be submitted in ND Grants as file attachments:

- Associated Investment Justifications (IJs)
- Detailed budgets
- Associated Memoranda of Understanding (MOU)/Memoranda of Agreement (MOA)

I. PRIORITY INVESTMENTS (PSGP)

- **Cybersecurity**

Cybersecurity investments must support the security and functioning of critical infrastructure and core capabilities as they relate to achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism. ***Due to the urgent nature of this issue, FEMA anticipates awarding at least 20% of FY 2021 PSGP funding to projects that support this priority. This goal will likely increase in future award rounds.***

II. INVESTMENT JUSTIFICATION

As part of the FY 2021 PSGP application process, applicants must use the formal IJ template to address each initiative being proposed for funding. A separate IJ should be submitted for each proposed project. ***Please refer to the “Applications Submitted by Eligible Entities” language in Section C above regarding the limitations on the number of applications per eligible entity or facilities, departments, subcomponents, or agencies within a single***

eligible entity. No single application or IJ may include projects intended to be implemented in different Port Areas, subject to the provisions of this section, below. Applicants may submit up to five IJs within a single application.

IJs must demonstrate how proposed projects address gaps and deficiencies in one or more of the core capabilities outlined in the National Preparedness Goal (the Goal). In the IJ, the applicant must demonstrate the ability to provide enhancements consistent with the purpose of the program and guidance provided by DHS/FEMA. PSGP projects must be both 1) feasible and effective at reducing the risks for which the project was designed; and 2) able to be fully completed within the thirty-six (36) month period of performance. For information on the feasibility and effectiveness determination, please see the Review and Selection Process as outlined in this NOFO.

For the purposes of a PSGP application, a Port Area is selected for funding based on the project location. Eligible entities that have facilities in multiple Port Areas should apply for projects based on the Port Area where the project/asset will be implemented, housed, or maintained, not the entity's headquarters location. For entities submitting applications for a single project that spans multiple Port Areas, such as one patrol vessel that may be deployed outside of the primary Port Area, the project location is considered to be the predominant Port Area in which the project will be utilized. Large projects that implement multiple components in multiple Port Areas, such as State agency purchases of multiple patrol vessels for multiple Port Areas, should be submitted as separate applications (e.g., State Police vessel project in Port Area #1 is one application; State Police vessel project in Port Area #2 is a separate application). All eligible and complete applications will be provided to the applicable COTP for further review.

Applicants seeking to participate in large-scale regional projects requiring the purchase of services or equipment should directly reference this need in their applications. Applicants should specify their portion of the requested project funding and role in the project. Applicants should also note if their portion of a project can be completed independently of the large-scale regional project.

Applicants will find the IJ template on Grants.gov in the “Related Documents” tab of the PSGP posting. This IJ template must be used for each project submitted. Applicants must provide information in the following categories for each proposed investment:

1. Background
2. Strategic and Program Priorities
3. Impact
4. Funding/Implementation Plan

Applicants must use the following file naming convention when submitting an IJ as part of the FY 2021 PSGP:

Name of Applicant_Name of Project_ IJ Number (Example: XYZ Oil_Fencing_IJ#1)

III. DETAILED BUDGET

All applicants must provide budget detail worksheets that include project milestones for the funds requested at the time of application. The detailed budget must be complete, reasonable, and cost-effective in relation to the proposed project and should provide the basis of computation of all project-related costs (including management and administrative costs) and any appropriate narrative. Review panels must be able to thoroughly evaluate the projects being submitted based on the information provided. Consequently, applicants must provide an appropriate level of detail within the budget detail worksheets to clarify what will be purchased and spent. These worksheets may be used as a guide to assist applicants in the preparation of budgets and budget narratives.

Applications that do not include a detailed budget narrative will not be considered for funding. Detailed budgets often assist reviewers in determining what type of equipment or service is being purchased, which may assist in determining the effectiveness of a project. Additionally, a detailed budget must demonstrate the required cost share, either cash (hard) or third-party in-kind (soft), of the recipient based on the projected project cost. Applications failing to demonstrate the required cost share will not be considered for funding.

Cash and third-party in-kind matches must consist of eligible costs (i.e., same allowability as the federal share) and must be identified as part of the submitted budget detail worksheet. A cash (hard) match includes cash spent for project-related costs while a third-party in-kind (soft) match includes the valuation of in-kind services. The cost match requirement for a PSGP award may not be met by funds from another federal grant or assistance program or funds used to meet matching requirements for another federal grant program. Likewise, third-party in-kind matches used to meet the matching requirement for the PSGP award may not be used to meet matching requirements for any other federal grant program. Please see “Cost Share” in section C of this NOFO, also reference 2 C.F.R. § 200.306, as applicable, for further guidance regarding cost matching.

Applicants must use the following file naming convention when submitting their budget detail worksheets as part of the FY 2021 PSGP:

Name of Applicant_Name of Project_Budget Number (Example: XYZ Oil_Fencing_Budget #1)

IV. MOU/MOA REQUIREMENT FOR SECURITY SERVICES PROVIDERS

State and local agencies that are required to provide security services to one or more MTSA regulated facilities within a Port Area may apply for PSGP funding. However, ***a signed MOU/MOA between the security service agency and the MTSA regulated facilities receiving these services within the applicant Port Area will be required prior to receipt of PSGP funding*** and must include an acknowledgement of the security services, roles, and responsibilities of all entities involved. This information must be maintained by the grant recipient and provided to DHS/FEMA upon request; or verification through the field review process that the agency is identified within the AMSP as an entity that provides maritime security services. The MOU/MOA must address the following points:

- The nature of the security service that the applicant agrees to supply to the MTSA regulated facility (waterside surveillance, increased screening, etc.);
- The roles and responsibilities of the MTSA regulated facility and the applicant during different Maritime Security (MARSEC) levels;
- An acknowledgement by the MTSA regulated facility that the applicant is part of the facility's security plan; and,
- An acknowledgment that the applicant will provide semi-annual progress reports on project status to the local applicable Area Maritime Security Committee (AMSC) and/or COTP.

The signed MOU/MOA for State or local agencies providing security services to regulated entities should be submitted with the grant application as a file attachment within ND Grants (<https://portal.fema.gov/famsVuWeb/home>). A sample MOU/MOA can be found in the Preparedness Grants Manual. Applicants must use the following file naming convention for FY 2021 MOUs and MOAs:

Name of Applicant_MOU (Example: Harris County_MOU)

V. SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS

A portion of the information that is routinely submitted in the course of applying for funding or reporting under certain programs or that is provided in the course of an entity's grant management activities under those programs that are under federal control is subjected to protection under SSI requirements and must be properly identified and marked. SSI is a control designation used by DHS/FEMA to protect transportation security related information. It is applied to information about security programs, vulnerability and threat assessments, screening processes, technical specifications of certain screening equipment and objects used to test screening equipment, and equipment used for communicating security information relating to air, land, or maritime transportation. Further information can be found in 49 C.F.R. §§ 1520.1-15.20.19.

For the purposes of the PSGP, and due to the high frequency of SSI found in IJs, all IJs shall be considered SSI and treated as such until they have been subject to review for SSI by DHS/FEMA. This means that applicants shall label these documents as SSI in accordance with 49 C.F.R. § 1520.13.

11. Intergovernmental Review

An intergovernmental review may be required. Applicants must contact their state's Single Point of Contact (SPOC) to comply with the state's process under Executive Order 12372 (See <https://www.archives.gov/federal-register/codification/executive-order/12372.html>; <https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf>).

12. Funding Restrictions and Allowable Costs

All costs charged to awards covered by this NOFO must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 2 C.F.R. Part 200, unless otherwise indicated in the NOFO, the terms and conditions of the award, or the Preparedness Grants Manual. This includes, among other requirements, that costs must be

incurred, and products and services must be delivered, within the period of performance of the award. See 2 C.F.R. § 200.403(h) (referring to budget periods, which for FEMA awards under this program is the same as the period of performance).

Federal funds made available through this award may be used for the purpose set forth in this NOFO, the Preparedness Grants Manual, and the terms and conditions of the award and must be consistent with the statutory authority for the award. Award funds may not be used for matching funds for any other federal awards, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, federal funds may not be used to sue the Federal Government or any other government entity. See the Preparedness Grants Manual for more information on funding restrictions and allowable costs.

a. *Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services*

Recipients and subrecipients of FEMA federal financial assistance are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.326, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to FEMA recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

For additional guidance, please refer to Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).

Effective August 13, 2020, FEMA recipients and subrecipients **may not** use any FEMA funds under open or new awards to:

- (1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (2) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
- (3) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

I. REPLACEMENT EQUIPMENT AND SERVICES

FEMA grant funding may be permitted to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of the NOFO and the Preparedness Grants Manual.

II. DEFINITIONS

Per section 889(f)(2)-(3) of the FY 2019 NDAA and 2 C.F.R. § 200.216, covered telecommunications equipment or services means:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.

Examples of the types of products covered by this prohibition include phones, internet, video surveillance, and cloud servers when produced, provided, or used by the entities listed in the definition of "covered telecommunications equipment or services." *See* 2 C.F.R. § 200.471.

b. *Pre-Award Costs*

Pre-award costs are not allowable and will not be approved, with the exception of costs resulting from pre-award grant writing services provided by an independent contractor that shall not exceed \$1,500 per applicant per year.

c. *Management and Administration (M&A) Costs*

Management and administration (M&A) costs are allowed. Recipients may use up to 5 percent of the amount of the award's federal share for their M&A costs. M&A activities are those defined as directly relating to the management and administration of PSGP funds, such as financial management and monitoring. M&A expenses must be based on actual expenses or known contractual costs. Requests that are simple percentages of the award, without supporting justification, will not be allowed or considered for reimbursement.

M&A costs are not operational costs. They are the necessary costs incurred in direct support of the grant or as a consequence of the grant and should be allocated across the entire lifecycle of the grant. Examples include preparing and submitting required programmatic and financial reports, establishing and/or maintaining equipment inventory, documenting operational and equipment expenditures for financial accounting purposes; and responding to official informational requests from state and federal oversight authorities.

If an applicant uses an outside consultant or contractor to provide pre-award grant writing services or post-award grant management services, the following considerations and restrictions shall apply.

I. AUTHORIZED USE OF CONTRACTUAL GRANT WRITERS AND/OR GRANT MANAGERS

A grant applicant may procure the services of a contractor to provide support and assistance for pre-award grant development services (grant writing) or post-award grant management and administrative services (grant management). As with all federal grant-funded procurements, grant writer or grant management services must be procured in accordance with the federal procurement standards at 2 C.F.R. §§ 200.317 – 200.327. See the Preparedness Grants Manual regarding Procurement Integrity, particularly the sections applicable to non-state entities that discuss organizational conflicts of interest under 2 C.F.R. § 200.319(b) and traditional conflicts of interest under 2 C.F.R. § 200.318(c)(1). States must follow the same policies and procedures it uses for procurements of its non-federal funds, pursuant to 2 C.F.R. § 200.317, which also applies 2 C.F.R. §§ 200.321, 200.322, 200.323, and 200.327.

As applicable to non-state entities, DHS/FEMA considers a contracted grant writer to be an agent of the recipient for any subsequent contracts the recipient procures under the same federal award in which the grant-writer provided grant writing services. Federal funds and funds applied to a federal award's cost share generally cannot be used to pay a contractor to carry out the work if that contractor also worked on the development of such specifications.

As applicable to all non-federal entities, regardless of whether an applicant or recipient uses grant writing and/or grant management services, the recipient is solely responsible for the fiscal and programmatic integrity of the grant and its authorized activities and expenditures. The recipient must ensure adequate internal controls, including separation of duties, to safeguard grant assets, processes, and documentation, in keeping with the terms and conditions of its award, including this NOFO, and 2 C.F.R. Part 200.

Consultants or contractors are not permitted to be the AOR of the recipient. Further, an application must be officially submitted by 1) a ***current employee, personnel, official, staff or leadership*** of the non-federal entity; and 2) ***duly authorized to apply*** for an award on behalf of the non-federal entity at the time of application.

a. Grant Writers

Grant writing contractors may assist the applicant in preparing, writing, and finalizing grant application materials and assisting the applicant with handling online application and submission requirements in Grants.gov and ND Grants. Grant writers may assist in a variety of ways. Ultimately, however, the applicant that receives an award is solely responsible for all grant award and administrative responsibilities.

By submitting the application, applicants certify that all of the information contained therein is true and an accurate reflection of the organization and that regardless of the applicant's intent, the submission of information that is false or misleading may result in actions by DHS/FEMA. These actions include but are not limited to the submitted application not being considered for an award, temporary withholding of funding under the existing award pending investigation, or referral to the DHS Office of the Inspector General.

To assist applicants with the cost of grant writing services, DHS/FEMA is permitting a one-

time pre-award cost of no more than \$1,500 per applicant per year for contractual grant writing services as part of the recipient's M&A costs. This is only intended to cover costs associated with a grant writer and may not be used to reimburse the applicant for their own time and effort in the development of a grant application. Additionally, the applicant may be required to pay this fee with its own funds during the application preparation and submission period; if the applicant subsequently receives an award, the applicant may then request to be reimbursed once grant funds become available for that cost, not to exceed \$1,500. If the applicant does not receive an award, this cost will not be reimbursed by the Federal Government. The applicant must understand this risk and be able to cover this cost if an award is not made.

If an applicant intends to request reimbursement for this one-time pre-award cost, it must include this request in its application materials, including in the budget detail worksheet for each IJ. Failure to clearly identify this as a separate cost in the application may result in its disallowance. This is the only pre-award cost eligible for reimbursement. Recipients must maintain grant writer fee documentation including, but not limited to, a copy of the solicitation, such as a quote request, rate request, invitation to bid, or request for proposals, if applicable; a copy of the grant writer's contract agreement; a copy of the invoice or purchase order; and a copy of the cancelled check or proof of payment. These records must be made available to DHS/FEMA upon request.

Consultants or contractors are not permitted to be the AOR of the recipient. Further, an application must be officially submitted by 1) a ***current employee, personnel, official, staff, or leadership*** of the non-federal entity; and 2) ***duly authorized to apply*** for an award on behalf of the non-federal entity at the time of application.

b. Grant Managers

Grant management contractors provide support in the day-to-day management of an active grant and their services may be incurred as M&A costs of the award. Additionally, recipients may retain grant management contractors at their own expense.

Consultants or contractors are not permitted to be the AOR of the recipient. The AOR, or Authorized Official, is responsible for submitting programmatic and financial performance reports, accepting award packages, signing assurances and certifications, and submitting award amendments.

c. Restrictions Regarding Grant Writers and Grant Managers

Pursuant to 2 C.F.R. Part 180, recipients may not use federal grant funds to reimburse any entity, including a grant writer or preparer, if that entity is presently suspended or debarred by the Federal Government from receiving funding under federally funded grants or contracts. Recipients must verify that a contractor is not suspended or debarred from participating in specified federal procurement or non-procurement transactions pursuant to 2 C.F.R. § 180.300. FEMA recommends recipients use SAM.gov to conduct this verification. Further, regardless of whether any grant writer fees were requested, as applicable to non-state entities, unless a single contract covering both pre- and post-award services was awarded to

the grant writer and procured in compliance with 2 C.F.R. §§ 200.317 – 200.327, federal funds cannot be used to pay the grant writer to provide post-award services.

d. *Indirect Facilities & Administrative (F&A) Costs*

Indirect costs are allowable under this program as described in 2 C.F.R. Part 200, including 2 C.F.R. § 200.414. Applicants with a current negotiated indirect cost rate agreement that desire to charge indirect costs to an award must provide a copy of their negotiated indirect cost rate agreement at the time of application. Not all applicants are required to have a current negotiated indirect cost rate agreement. Applicants that are not required by 2 C.F.R. Part 200 to have a negotiated indirect cost rate agreement but are required by 2 C.F.R. Part 200 to develop an indirect cost rate proposal must provide a copy of their proposal at the time of application. Applicants who do not have a current negotiated indirect cost rate agreement (including a provisional rate) and wish to charge the de minimis rate must reach out to the FEMA Grants Management Specialist for further instructions. Applicants who wish to use a cost allocation plan in lieu of an indirect cost rate must also reach out to the FEMA Grants Management Specialist for further instructions. Post-award requests to charge indirect costs will be considered on a case-by-case basis and based upon the submission of an agreement or proposal as discussed above or based upon on the de minimis rate or cost allocation plan, as applicable.

e. *Other Direct Costs*

For detailed information about allowable direct costs under this program, please see the [Preparedness Grants Manual](#).

I. **CONTROLLED EQUIPMENT**

For decades, the federal government has provided equipment to state, local, and tribal law enforcement agencies (LEAs) through federal grants. Some federal grant programs have assisted LEAs as they carry out their critical missions to keep the American people safe. The equipment acquired by LEAs through these programs includes administrative equipment, such as office furniture and computers. Some federal grant programs also may include military and military-styled equipment, firearms, and tactical vehicles provided by the federal government, including property covered under 22 C.F.R. Part 121 and 15 C.F.R. Part 774 (collectively, "controlled equipment").

However, not all equipment that is considered controlled equipment is allowable under the PSGP. As discussed further below, there are certain "prohibited equipment" that are not allowable under the PSGP. And for the procurement of certain controlled equipment that is allowable under the PSGP, there are additional submission requirements and reviews that must be met before DHS/FEMA will permit funding to be used for this purpose.

DHS/FEMA will continue to collaborate with federal agency partners to ensure that there is a consistent and reasonable approach to the restrictions placed on controlled equipment expenditures while continuing to support these investments when there is a justifiable need. Further, DHS/FEMA will continue to maintain an awareness of the evolving policy

developments related to controlled equipment expenditures and keep grant recipients up to date on future developments.

Grant funds under this program may not be used for the purchase of equipment not approved by DHS/FEMA. The purchase of weapons and weapons accessories, including ammunition, is not allowed with PSGP funds. Grant funds under this program must also comply with IB 426 and may not be used for the purchase of the following equipment: 1) firearms; 2) ammunition; 3) grenade launchers; 4) bayonets; or 5) weaponized aircraft, vessels, or vehicles of any kind with weapons installed.

f. Reprogramming Award Funds

The purpose of the grant award is to implement projects pursuant to the authorities at 46 U.S.C. § 70107. Under extreme circumstances, a recipient may reprogram award funds from one project to another with prior written approval from FEMA, and in a manner consistent with 2 C.F.R. § 200.308. Circumstances include, but are not limited to, an inability to complete the original project, disaster events perpetuating an immediate need to reprioritize funds, and changes in regulatory requirements. A recipient must explain the deviation from the original project, including why it is deviating from or scaling down the original project, and what specific circumstances that occurred after the time of its award that necessitate the reprogramming request, in its reprogramming request. The recipient must also identify how the reprogramming request aligns with PSGP priorities and the recipient's original application. Due to legal limitations, reprogramming requests that would change the scope of the overall project(s) are not permitted. FEMA will also coordinate such reprogramming requests with the USCG COTP, and these requests must be verified and supported by the COTP as essential in addressing Port Area priorities. Please also see Section C.4 of this NOFO regarding cost share requirements, including the implications if the project costs are less than what was applied for.

E. Application Review Information

1. Application Evaluation Criteria

a. Programmatic Criteria

The PSGP uses a risk-based methodology for making funding decisions whereby each Port Area's relative threat, vulnerability, and consequences from acts of terrorism are considered. This approach helps ensure that program funding is directed toward those Port Areas that present the highest risks in support of the Goal of a secure and resilient Nation. Please refer to the Preparedness Grants Manual for further information on the Goal. The PSGP will only fund those eligible projects that close or mitigate maritime security risk vulnerabilities gaps as identified in the applicable AMSP, FSP, VSP, and/or Port-wide Risk Management Plan (PRMP). Projects that enhance business continuity and resumption of trade within a Port Area will also be considered for funding.

FY 2021 PSGP applications will be evaluated through a three-part review and selection process that encompasses: 1) an Initial Screening; 2) a Field Review; and 3) a National Review. There are five core PSGP scoring criteria applied in each step of this process:

- 1) Projects that support development and sustainment of the core capabilities in the Goal.

- Projects are ranked and weighted based on alignment with core capabilities across the five mission areas of the Goal: Prevention, Protection, Mitigation, Response, and Recovery. A composite score is given to each project to determine a Port Area prioritized ranking of all reviewed projects. The following scale shall be used:
0=None; 1=Minimal; 3=Moderate; 9=Significant/Gap Filled
- 2) Projects that address priorities outlined in the applicable AMTSP, FSP, and/or VSP, as mandated under the MTSA and/or in an applicable PRMP.
 - AMSP priorities are the top three Transportation Security Incidents (TSIs) (as defined in 46 U.S.C. § 70101(6)) ranked and correspondingly weighted. Each IJ will be given a score (using the same scale as the National Priorities module) based on how well it addresses one or more TSIs within the context of the five mission areas of the Goal. The following scale shall be used:
0=None; 1=Minimal; 3=Moderate; 9=Significant/Gap Filled
 - 3) Projects that address additional maritime security priorities based on the USCG COTP's expertise and experience within the specific Port Area.
 - 4) Projects that are eligible and feasible, based on the available period of performance. In addition, a recipient's past performance demonstrating competent stewardship of Federal funds may influence funding decisions.
 - IJs should justify the scope, breadth, and cost of a project, as well as a timeline for completing the project as required within this NOFO. Projects failing to demonstrate these minimum funding considerations may be denied funding. The following scale shall be used:
0=No Funding Recommended; 1=Funding Recommended
 - 5) Projects submitted by a public sector applicant or projects otherwise certified by the USCG COTP as having a port-wide benefit (please see the Preparedness Grants Manual as well as the cost match section of this NOFO for further information regarding what constitutes a port-wide benefit) will have their final scores increased by a multiplier of 10 percent.

b. *Financial Integrity Criteria*

Prior to making a federal award, FEMA is required by 31 U.S.C. § 3354, as amended by the Payment Integrity Information Act of 2019, Pub. L. No. 116-117 (2020); 41 U.S.C. § 2313; and 2 C.F.R. § 200.206 to review information available through any Office of Management and Budget (OMB)-designated repositories of governmentwide eligibility qualification or financial integrity information, including whether the applicant is suspended or debarred. FEMA may also pose additional questions to the applicant to aid in conducting the pre-award risk review. Therefore, application evaluation criteria may include the following risk-based considerations of the applicant:

- i. Financial stability.
- ii. Quality of management systems and ability to meet management standards.
- iii. History of performance in managing federal award.

- iv. Reports and findings from audits.
- v. Ability to effectively implement statutory, regulatory, or other requirements.

c. *Supplemental Financial Integrity Criteria and Review*

Prior to making a federal award where the anticipated total federal share will be greater than the simplified acquisition threshold, currently \$250,000:

- i. FEMA is required to review and consider any information about the applicant, including information on the applicant's immediate and highest-level owner, subsidiaries, and predecessors, if applicable, that is in the designated integrity and performance system accessible through the System for Award Management (SAM), which is currently the Federal Awardee Performance and Integrity Information System (FAPIIS).
- ii. An applicant, at its option, may review information in FAPIIS and comment on any information about itself that a federal awarding agency previously entered.
- iii. FEMA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 2 C.F.R. § 200.206.

2. Review and Selection Process

Following the USCG COTP-led Field Review, a National Review, led by DHS/FEMA, will convene. The National Review encompasses 1) a review by a panel of subject-matter experts (SME) from DHS/FEMA and other federal partners that validates the USCG COTP-led Field Review results; and 2) a detailed administrative/financial review of applications recommended for funding. *As part of the National Review, the SME panel will increase the score of any proposed project that sufficiently addresses the Cybersecurity National Priority identified in Section A.10.c by 20 percent.* As part of the National Review, the SME panel will also have the ability to recommend partial funding for individual projects and eliminate others that are determined to be duplicative or require a sustained federal commitment to fully realize the intended risk mitigation. *In addition, the SME panel will validate proposed project costs. Decisions to reduce requested funding amounts or eliminate requested items deemed inappropriate under the scope of the FY 2021 PSGP will take into consideration the ability of the revised project to address the National Priority and whether it will achieve the intended risk mitigation goal.* Historically, the PSGP has placed a high priority on providing full project funding rather than partial funding.

Elements of the application considered during the National Review include the following as specified within this NOFO:

- Eligibility of an applicant;
- Allowable costs;

- Required cost share; and
- Alignment with program priorities.

Independent of the Field and National Reviews, a risk score will also be calculated for each Port Area in which an eligible entity applies for funding under PSGP. A Port Area risk score will be calculated based on the relative threat, vulnerability, and consequences from acts of terrorism. The risk methodology used to calculate this score is focused on three elements:

- *Threat* – likelihood of an attack being attempted by an adversary;
- *Vulnerability* – likelihood that an attack is successful, given that it is attempted; and
- *Consequence* – effect of an event, incident, or occurrence.

The risk methodology determines the relative risk of terrorism faced by a given Port Area, considering the potential risk of terrorism to people, critical infrastructure, economic security, and national security missions. The analysis includes threats from domestic violent extremists, international terrorist groups, and individuals inspired by terrorists abroad. A risk and effectiveness prioritization will then be applied to the SME panel's recommended list of projects for each Port Area. This analysis considers the following factors to produce a comprehensive national priority ranking of port security proposals:

- Relationship of the project to one or more of the National Priorities;
- Relationship of the project to the local port security priorities;
- Risk level of the Port Area in which the project would be located;
 - Those Port Areas that have a measurable risk of at least one (1) percent of the overall maritime security risk based on the comprehensive DHS/FEMA risk methodology would be prioritized above those with less than one (1) percent of the overall risk;
 - To ensure that the most effective projects are funded, the risk and effectiveness prioritization could be limited by Port Area, based on the Port Area's relative risk score; and
- Effectiveness and feasibility of the project to be completed in support of the priorities highlighted above during the period of performance. For projects where an applicant's collaboration with others is relevant to the project's ability to reduce risks, projects will be evaluated based on the degree to which the proposal adequately details how the applicant will use investments to overcome existing logistical, technological, legal, policy, and other impediments to collaborating, networking, sharing information, cooperating, and fostering a culture of national preparedness with federal, state, regional, and nonprofit partners. In evaluating an applicant's ability to collaborate, FEMA will consider any information provided by the applicant and may also consider relevant information from other sources.

Projects recommended for funding will also receive a detailed administrative/financial review to ensure compliance with all program requirements. As a part of this, applications will be reviewed to ensure there are no ineligible costs, there is an appropriate nexus to maritime security, etc.

FEMA may place a risk-based funding cap on Port Areas to ensure a wide distribution of program funds among multiple Port Areas. This will ensure that minimally effective projects in the highest risk Port Areas are not funded ahead of highly effective projects in lower risk Port Areas; however, this does not guarantee that Port Areas with minimal risk scores will receive funding. All funding recommendations will be provided to the inter-agency partners for concurrence. All final funding determinations will then be made by the Secretary of Homeland Security, who retains the discretion to consider other factors and information in addition to DHS/FEMA's funding recommendations.

F. Federal Award Administration Information

1. Notice of Award

Before accepting the award, the AOR and recipient should carefully read the award package. The award package includes instructions on administering the grant award and the terms and conditions associated with responsibilities under federal awards. **Recipients must accept all conditions in this NOFO and the Preparedness Grants Manual as well as any specific terms and conditions in the Notice of Award to receive an award under this program.**

See the Preparedness Grants Manual for information on Notice of Award.

2. Administrative and National Policy Requirements

In addition to the requirements of in this section and in this NOFO, FEMA may place specific terms and conditions on individual awards in accordance with 2 C.F.R. Part 200.

In addition to the information regarding DHS Standard Terms and Conditions and Ensuring the Protection of Civil Rights, see the Preparedness Grants Manual for additional information on administrative and national policy requirements, including the following:

- Environmental Planning and Historic Preservation (EHP) Compliance
- FirstNet
- National Incident Management System (NIMS) Implementation
- SAFECOM

a. *DHS Standard Terms and Conditions*

All successful applicants for DHS grant and cooperative agreements are required to comply with DHS Standard Terms and Conditions, which are available online at: DHS Standard Terms and Conditions.

The applicable DHS Standard Terms and Conditions will be those in effect at the time the award was made. What terms and conditions will apply for the award will be clearly stated in the award package at the time of award.

b. *Ensuring the Protection of Civil Rights*

As the Nation works towards achieving the National Preparedness Goal, it is important to continue to protect the civil rights of individuals. Recipients and subrecipients must carry out their programs and activities, including those related to the building, sustainment, and delivery of core capabilities, in a manner that respects and ensures the protection of civil rights for protected populations.

Federal civil rights statutes, such as Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964, along with DHS and FEMA regulations, prohibit discrimination on the basis of race, color, national origin, sex, religion, age, disability, limited English proficiency, or economic status in connection with programs and activities receiving federal financial assistance from FEMA.

The DHS Standard Terms and Conditions include a fuller list of the civil rights provisions that apply to recipients. These terms and conditions can be found in the DHS Standard Terms and Conditions. Additional information on civil rights provisions is available at <https://www.fema.gov/about/offices/equal-rights>.

Monitoring and oversight requirements in connection with recipient compliance with federal civil rights laws are also authorized pursuant to 44 C.F.R. Part 7.

c. *Environmental Planning and Historic Preservation (EHP) Compliance*

As a federal agency, FEMA is required to consider the effects of its actions on the environment and historic properties to ensure that all activities and programs funded by FEMA, including grant-funded projects, comply with federal EHP laws, Executive Orders, regulations, and policies, as applicable.

Recipients and subrecipients proposing projects that have the potential to impact the environment, including, but not limited to, the construction of communication towers, modification or renovation of existing buildings, structures, and facilities, or new construction including replacement of facilities, must participate in the FEMA EHP review process. The EHP review process involves the submission of a detailed project description along with any supporting documentation requested by FEMA in order to determine whether the proposed project has the potential to impact environmental resources or historic properties.

In some cases, FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. Federal law requires EHP review to be completed before federal funds are released to carry out proposed projects. FEMA may not be able to fund projects that are not in compliance with applicable EHP laws, Executive Orders, regulations, and policies.

DHS and FEMA EHP policy is found in directives and instructions available on the FEMA.gov EHP page, the FEMA website page that includes documents regarding EHP responsibilities and program requirements, including implementation of the National Environmental Policy Act and other EHP regulations and Executive Orders.

The GPD EHP screening form is located at <https://www.fema.gov/media-library/assets/documents/90195>. Additionally, all recipients under this funding opportunity are required to comply with the FEMA GPD EHP Policy Guidance, FEMA Policy #108-023-1, available at <https://www.fema.gov/media-library/assets/documents/85376>.

d. *National Incident Management System (NIMS) Implementation*

In expending funds under this program, recipients that are state, local, tribal, or territorial governments must ensure and maintain adoption and implementation of NIMS. The state, local, tribal, or territorial government must show adoption of NIMS during any point of the period of performance. The list of objectives used for progress and achievement reporting is at <https://www.fema.gov/emergency-managers/nims/implementation-training>.

Emergency management and incident response activities require carefully managed resources (personnel, teams, facilities, equipment, and/or supplies) to meet incident needs. Using standardized resource management concepts such as typing, credentialing, and inventorying, promote a strong national mutual aid capability needed to support delivery of core capabilities. Additional information on resource management, NIMS resource typing definitions, job titles, and position qualifications is on FEMA's website at <https://www.fema.gov/emergency-managers/nims/components>.

FEMA developed the National Incident Management System Guideline for the National Qualification System to describe national credentialing standards and to provide written guidance regarding the use of those standards. This guideline describes credentialing and typing processes and identifies tools which Federal Emergency Response Officials and emergency managers at all levels of government may use both routinely and to facilitate multijurisdictional coordinated responses.

Although state, local, tribal, and private sector partners (including nongovernmental organizations) are not required to credential their personnel in accordance with these guidelines, FEMA strongly encourages them to do so to leverage the federal investment in the Federal Information Processing Standards 201 infrastructure and to facilitate interoperability for personnel deployed outside their home jurisdiction.

Additional information about NIMS in general is available at <https://www.fema.gov/emergency-managers/nims>.

3. Reporting

Recipients are required to submit various financial and programmatic reports as a condition of award acceptance. Future awards and funds drawdown may be withheld if these reports are delinquent.

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See the Preparedness Grants Manual for information on reporting requirements.

4. Monitoring and Oversight

Per 2 C.F.R. § 200.337, FEMA, through its authorized representatives, has the right, at all reasonable times, to make site visits or conduct desk reviews to review project accomplishments and management control systems to review award progress and to provide any required technical assistance. During site visits or desk reviews, FEMA will review recipients' files related to the award. As part of any monitoring and program evaluation activities, recipients must permit FEMA, upon reasonable notice, to review grant-related records and to interview the organization's staff and contractors regarding the program.

Recipients must respond in a timely and accurate manner to FEMA requests for information relating to the award.

See the Preparedness Grants Manual for information on monitoring and oversight.

G. DHS Awarding Agency Contact Information

1. Contact and Resource Information

a. *Program Office Contact*

FEMA has assigned region-specific Preparedness Officers for the PSGP. If you do not know your Preparedness Officer, please contact CSID by phone at (800) 368-6498 or by email at askcsid@fema.dhs.gov, Monday through Friday, 9:00 AM – 5:00 PM ET.

b. *Centralized Scheduling and Information Desk (CSID)*

CSID is a non-emergency comprehensive management and information resource developed by FEMA for grants stakeholders. CSID provides general information on all FEMA grant programs and maintains a comprehensive database containing key personnel contact information at the federal, state, and local levels. When necessary, recipients will be directed to a federal point of contact who can answer specific programmatic questions or concerns. CSID can be reached by phone at (800) 368-6498 or by e-mail at askcsid@fema.dhs.gov, Monday through Friday, 9:00 AM – 5:00 PM ET.

c. *GPD Award Administration Division*

GPD's Award Administration Division (AAD) provides support regarding financial matters and budgetary technical assistance. Additional guidance and information can be obtained by contacting the AAD's Help Desk via e-mail at ASK-GMD@fema.dhs.gov.

d. *Equal Rights*

The FEMA Office of Equal Rights (OER) is responsible for compliance with and enforcement of federal civil rights obligations in connection with programs and services conducted by FEMA and recipients of FEMA financial assistance. All inquiries and communications about federal civil rights compliance for FEMA grants under this NOFO should be sent to FEMA-CivilRightsOffice@fema.dhs.gov.

e. *Environmental Planning and Historic Preservation*

GPD's EHP Team provides guidance and information about the EHP review process to recipients and subrecipients. All inquiries and communications about GPD projects under this NOFO or the EHP review process, including the submittal of EHP review materials, should be sent to gpdehpinfo@fema.dhs.gov.

2. Systems Information

a. *Grants.gov*

For technical assistance with [Grants.gov](https://www.grants.gov), call the customer support hotline 24 hours per day, 7 days per week (except federal holidays) at (800) 518-4726 or e-mail at support@grants.gov.

b. *Non-Disaster (ND) Grants*

For technical assistance with the ND Grants system, please contact the ND Grants Helpdesk at ndgrants@fema.gov or (800) 865-4076, Monday through Friday, 9:00 AM – 6:00 PM ET. User resources are available at <https://www.fema.gov/grants/guidance-tools/non-disaster-grants-management-system>

c. *Payment and Reporting System (PARS)*

FEMA uses the Payment and Reporting System (PARS) for financial reporting, invoicing, and tracking payments. FEMA uses the Direct Deposit/Electronic Funds Transfer (DD/EFT) method of payment to recipients. To enroll in the DD/EFT, recipients must complete a Standard Form 1199A, Direct Deposit Form. If you have questions about the online system, please call the Customer Service Center at (866) 927-5646 or email ask-GMD@fema.dhs.gov.

H. Additional Information

GPD has developed the Preparedness Grants Manual to guide applicants and recipients of grant funding on how to manage their grants and other resources. Recipients seeking guidance on policies and procedures for managing preparedness grants should reference the Preparedness Grants Manual for further information. Examples of information contained in the Preparedness Grants Manual include:

- Actions to Address Noncompliance
- Audits
- Case Studies and Use of Grant-Funded Resources During Real-World Incident Operations
- Community Lifelines
- Conflicts of Interest in the Administration of Federal Awards and Subawards
- Disability Integration
- National Incident Management System
- Payment Information
- Period of Performance Extensions
- Procurement Integrity
- Record Retention
- Whole Community Preparedness
- Other Post-Award Requirements

1. Termination Provisions

FEMA may terminate a federal award in whole or in part for one of the following reasons. FEMA and the recipient must still comply with closeout requirements at 2 C.F.R. §§ 200.344-200.345 even if an award is terminated in whole or in part. To the extent that subawards are permitted under this NOFO, pass-through entities should refer to 2 C.F.R. § 200.340 for additional information on termination regarding subawards.

a. *Noncompliance*

If a recipient fails to comply with the terms and conditions of a federal award, FEMA may terminate the award in whole or in part. If the noncompliance can be corrected, FEMA may first attempt to direct the recipient to correct the noncompliance. This may take the form of a

Compliance Notification. If the noncompliance cannot be corrected or the recipient is non-responsive, FEMA may proceed with a Remedy Notification, which could impose a remedy for noncompliance per 2 C.F.R. § 200.339, including termination. Any action to terminate based on noncompliance will follow the requirements of 2 C.F.R. §§ 200.341-200.342 as well as the requirement of 2 C.F.R. § 200.340(c) to report in FAPIIS the recipient's material failure to comply with the award terms and conditions. See also the section on Actions to Address Noncompliance in this NOFO or in the Preparedness Grants Manual.

b. *With the Consent of the Recipient*

FEMA may also terminate an award in whole or in part with the consent of the recipient, in which case the parties must agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated.

c. *Notification by the Recipient*

The recipient may terminate the award, in whole or in part, by sending written notification to FEMA setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. In the case of partial termination, FEMA may determine that a partially terminated award will not accomplish the purpose of the federal award, so FEMA may terminate the award in its entirety. If that occurs, FEMA will follow the requirements of 2 C.F.R. §§ 200.341-200.342 in deciding to fully terminate the award.

2. *Period of Performance Extensions*

Extensions to the period of performance (POP) for this program are allowed. Extensions to the POP identified in the award will only be considered through formal, written requests to the recipient's Preparedness Officer and must contain specific and compelling justifications as to why an extension is required. Recipients are advised to coordinate with the Preparedness Officer as needed when preparing an extension request. Please refer to the Preparedness Grants Manual for more detail on the requirements for submitting a POP extension request.

RESOLUTION NO.: 84 - 2021

OF

APRIL 12, 2021

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
CHANGE ORDER NO. 1 WITH GENERAL CODE, CMS, LLC
FOR ADDITIONAL TRAINING SERVICES AND DATA MIGRATION COSTS
IN THE AMOUNT OF \$26,100.00**

WHEREAS, by Resolution No. 90-2020 of April 13, 2020, the City Council authorized the City Manager to enter a three-year contract with General Code, CMS, LLC (“General Code”) to provide municipal software services to the City; and

WHEREAS, additional costs for training services and data migration are necessary to assure a smoother transition onto the new municipal software services platform; and

WHEREAS, payment for the additional training services and data migration services will be funded from the New York State Cities RISE Phase III grant, budget line CG.3620.0455.3621.2021; and

WHEREAS, this Council finds it to be in the best interests of the City of Newburgh to execute Change Order No. 1 with General Code;

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 execute Change Order No. 1 with General Code in the amount of \$26,100.00, with all such terms and conditions as may be required by the Corporation Counsel, for additional training services and data migration costs.



781 Elmgrove Road, Rochester, New York 14624
(800) 836-8834 • (585) 328-1810
FAX (585) 328-8189

MUNICIPITY™ CHANGE ORDER #NE1082_031721 – ADDITIONAL SERVICES

This Change Order is subject to General Code's Content Management Solutions Terms and Conditions, which are available at <http://cms.generalcode.com/terms-conditions> and are incorporated herein by reference, and the client authorizes General Code to proceed with the project.

Client Name: City of Newburgh
Address: 83 Broadway
Newburgh, NY 12550

Contact Person: Jeremy Kaufman
Account Executive: Bruce Cadman
Date: 3/17/2021

Additional Training and Data Migration

What	Who	Trainer	Units	Unit Cost	Total Cost
Week 1 -4 days – Remote Orientation/Classroom Training	All users and Implementation participants	Tim Miele	4	-	<i>included in the budget</i>
Week 2 – Trainees from Week 1 freelance/watch videos	All users and implementation participants		-	-	-
Week Go Live with Week 1 onsite Support	All users and implementation participants	Tim Miele	4	-	<i>included in the budget</i>
Week 2 & 3	All users and implementation participants	Scott Carling - SCA	8	\$1,650	\$13,200
Week 4 Optional Go-Live onsite support with possible scheduling within 45 days of last onsite support week	All users and implementation participants or alternatively more time with problem users if needed	Scott Carling - SCA	4	\$1,650	\$6,600
Total Onsite Training Time			16	-	\$19,800
Data Conversion additional costs			-	-	\$6,300
Total change order					\$26,100

Timeline: This service will be provided within 60 days from receipt of the signed Change Order.

Payment Terms: 100% upon deployment of services.

Price Validity: Price is valid for 90 days from 3/17/2021.

CHANGE ORDER FORM

(Client please fill out) Invoice for this Change Order to be sent to:

Department: _____ **Contact Name:** _____

The prices and specifications in this Change Order are satisfactory and are hereby accepted. All work is to be performed under the same terms and conditions as specified in the original contract unless otherwise specified.

CITY OF NEWBURGH, ORANGE COUNTY, NEW YORK

Signature _____ **Date** _____

Name _____ **Title** _____

RESOLUTION NO.: 85 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED A GRANT FROM
THE NEW YORK STATE DEPARTMENT OF CRIMINAL JUSTICE SERVICES
UNDER THE GUN INVOLVED VIOLENCE ELIMINATION (“GIVE”) PARTNERSHIP
TO ENHANCE LAW ENFORCEMENT IN THE CITY OF NEWBURGH
TO ACHIEVE SUSTAINED, LONG-TERM CRIME REDUCTION
IN THE AMOUNT OF \$364,284.00
WITH NO CITY MATCH FOR THE PERIOD JULY 1, 2021 TO JUNE 30, 2022**

WHEREAS, the City of Newburgh wishes to apply for and accept a Grant Award in the amount of \$364,284.00 under the Division of Criminal Justice Services Gun Involved Violence Elimination (“GIVE”) Partnership; and

WHEREAS, the GIVE Grant Program provides funding to the the City of Newburgh for the Group Violence Intervention and Hotspot Policing Strategies and will continue to support emerging hotspot patrols, long term hotspot foot patrols, investigations of shootings/homicides involving identified group members, the Youth and Police Initiative, the Crime Analyst position and a field intelligence officer position and partially fund an investigator position; and

WHEREAS, the Program funding shall be for New York State fiscal year beginning July 1, 2021 and ending June 30, 2022; and

WHEREAS, the Program will enhance enforcement and prosecution efforts against crime in the City of Newburgh and no City matching funds are required, except the City of Newburgh will be responsible for certain fringe benefit costs which are not covered by the grant; and

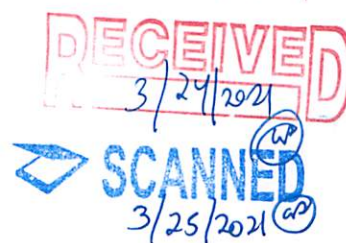
WHEREAS, this Council has determined that accepting such funding is in the best interests of the City of Newburgh and the safety of its residents and visitors alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to apply for and accept if awarded a grant award from the New York State Department of Criminal Justice Services under the Gun Involved Violence Elimination (“GIVE”) Partnership, in the amount of \$364,284.00 with no City match required for New York State Fiscal Year beginning July 1, 2021 and ending June 30, 2022, to be used to carry out the program; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.



City of Newburgh

GRANT APPLICATION FORM



Grant Requestor:

Please complete the following form and submit the form along with either a hard copy of the grant announcement or the grant announcement website address to the City of Newburgh Grants Administrator for processing. You will be notified when your grant request has been approved to be sent for City Council Resolution.

NOTE: All fields are required unless marked "OPTIONAL."

SECTION A. COMPLETED BY GRANT REQUESTOR

NAME OF PROJECT FOR GRANT: 2021-2022 Gun Involved Violence Elimination (GIVE) Initiative	NAME OF DEPARTMENT REQUESTING GRANT: Police Department	NAME OF DEPARTMENT HEAD/SPONSOR AUTHORIZING GRANT: Chief Amthor Police
NAME OF GRANT/NAME OF AWARING AGENCY: NYS Division of Criminal Justice	GRANT SUBMITTAL DATE: April 15, 2021	AMOUNT OF AWARD: \$364,284
MATCH REQUIRED? IF YES, AMOUNT AND TYPE: (EX. CASH, IN-KIND) NO	AMOUNT REQUIRED BY THE CITY OF NEWBURGH: NONE	(OPTIONAL) ANY ADDITIONAL GRANT CONDITIONS:
PROJECT PLAN: Scope of Project: The GIVE Grant Program provides funding to the City of Newburgh for the Group Violence Intervention and Hotspot Policing Strategies and will continue to support emerging hotspot patrols, long term hotspot foot patrols, investigations of shootings/homicides involving identified group members, the Youth and Police Initiative, the Crime Analyst position, a field intelligence officer position and partially fund an investigator position Project Timeline: (ex. Dates) Funding will cover the period of July 1, 2021 until June 30, 2022.		



City of Newburgh

GRANT APPLICATION FORM

SECTION B. FOR REVIEW BY CITY COMPTROLLER

GRANT MATCH REQUIREMENT REVIEWED? YES/NO:

COMMENTS: Some of the Crime Analyst's benefits may not be covered by the Grant.

IN-KIND SERVICES REQUIREMENT REVIEWED? YES/NO

COMMENTS:

N/A

STAFFING ISSUES REVIEWED? YES/NO:

COMMENTS:

N/A

ANY ADDITIONAL COMMENTS:

→ APPROVED BY CITY COMPTROLLER? YES/NO

CITY COMPTROLLER
SIGNATURE: _____

[Signature]

DATE: _____

3/24/21

NOTE: IF GRANT APPROVED, CITY COMPTROLLER WILL FORWARD TO CITY MANAGER FOR REVIEW. IF GRANT NOT APPROVED, CITY COMPTROLLER TO RETURN TO GRANTS COORDINATOR FOR FURTHER REVIEW BY PROJECT SPONSOR.

SECTION C: FOR REVIEW BY CITY MANAGER

→ APPROVED BY CITY MANAGER? YES/NO

CITY MANAGER
SIGNATURE: _____

[Signature]

DATE: _____

MAR 25 2021



City of Newburgh

GRANT APPLICATION FORM

SECTION D: FOR REVIEW BY CORPORATION COUNSEL

→ APPROVED BY CORPORATION COUNSEL FOR RESOLUTION? YES/NO

CORPORATION COUNSEL
SIGNATURE: _____

DATE: _____

DATE RESOLUTION TO BE SENT TO CITY COUNCIL MEETING:

next work session + Council meeting



Division of Criminal Justice Services

ANDREW M. CUOMO
Governor

MICHAEL C. GREEN
Executive Deputy Commissioner

March 22, 2021

The Honorable David Hoovler
Orange County District Attorney
255-275 Main Street
Goshen, NY 10924

Chief Arnold Amthor
Newburgh City Police Department
55 Broadway
Newburgh, NY 12550

Re: Gun Involved Violence Elimination (GIVE) SFY 2021-22

Dear District Attorney Hoovler and Chief Amthor,

Thank you for your continued partnership with the NYS Division of Criminal Justice Services (DCJS) in administering the Gun Involved Violence Elimination (GIVE) Initiative. GIVE continues to be a critical component of New York's shooting and homicide reduction strategy, and DCJS continuously strives to strengthen our programs and partnerships with GIVE jurisdictions.

Subject to available appropriation from the enacted state budget for Fiscal Year 2021-22, approximately \$13.3 million dollars is expected to be made available to support the statewide GIVE Initiative in the coming year. As such, participating GIVE agencies in Orange County are eligible to receive a total of up to \$848,513 in awards for the contract period July 1, 2021 to June 30, 2022.

We recognize that the tumultuous events of this past year have been extraordinarily challenging for local public safety agencies. In order to provide funding for the grant contract term beginning July 1, 2021 as efficiently and effectively as possible, we have streamlined the administrative requirements of the annual GIVE Comprehensive Plan. Funding will be provided to jurisdictions for GIVE programs and services and will be distributed to all partner agencies within the county in the same manner and amounts as in the current contract. Please see *Gun Involved Violence Elimination (GIVE) Award Amounts 2020-21 and 2021-22* below for award amounts being made available to each participating partner in your jurisdiction.

As you know, DCJS utilizes a deliberate process to make GIVE funding allocations, with a focus on awarding funds to support the successful implementation of evidence-based crime reduction strategies. Prior to the execution of grant contracts, DCJS is requiring existing GIVE jurisdictions to submit answers to the questions found below in *GIVE 2021-22 Funding Requirements* and to complete and submit one updated budget (see Attachment: 2021-2022 GIVE Initiative Budget Worksheet) and complete a narrative justification response that includes all funded partnership agencies receiving an award in your jurisdiction.

Responses to questions and the budget worksheet and narrative justification must be submitted to DCJS via email at GIVE@dcjs.ny.gov by 4/15/2021. It is important to include the name



Division of Criminal Justice Services

of your jurisdiction and indicate the partner agency in the subject line of the email. Submissions from jurisdictions should be the result of a collaboration among community stakeholders. Responses will be reviewed and if necessary, DCJS will contact you with questions or return the documents to grantees for any recommended revisions.

Individual award notices will be sent to your partner agencies following enactment of the SFY 2021-22 budget. All grantees are expected to adhere to existing GIVE strategies as detailed in the attached reference document *SFY 2020-21 GIVE Guidance and Funding*, and to comply with GIVE contract requirements for the contract term July 1, 2021 through June 30, 2022. If you would like a copy of your GIVE Strategy submitted last year to DCJS for reference, please email the DCJS Office of Public Safety (OPS) at GIVE@dcjs.ny.gov.

As always, DCJS staff are available to answer any questions you may have regarding the GIVE initiative and funding. Please contact the DCJS Office of Public Safety (OPS) at GIVE@dcjs.ny.gov for information and assistance regarding the GIVE program. If you have any contract or funding related questions, please contact David Martin in the DCJS Office of Program Development and Funding (OPDF) at (518) 485-9607, or by e-mail at David.Martin@dcjs.ny.gov.

Thank you for all you do to enhance public safety. DCJS remains committed to working with you in our continued efforts to safeguard the health and safety of all New York residents and visitors.

Very truly yours,

A handwritten signature in blue ink that reads "Michael C. Green". The signature is fluid and cursive.

Michael C. Green
Executive Deputy Commissioner

Enclosures (2):

- *GIVE Award Amounts 2020-21 and 2021-22*
- *GIVE 2021-22 Funding Requirements*

Attachments (2):

- #1 - *GIVE Budget Worksheet*
- #2 - *SFY 2020-21 GIVE Guidance and Funding Document* – Provided for reference and information

cc: Dave Martin, DCJS
Raymond Neves, DCJS
Carl DuBois, Orange County Sheriff's Office
Derek Miller, Orange County Probation



Gun Involved Violence Elimination (GIVE) Award Amounts 2020-21 and 2021-22

Implementing Agency		Award Amount
Albany		\$759,829
	Albany PD	\$386,084
	District Attorney	\$236,740
	Probation	\$137,005
Broome		\$391,243
	Binghamton PD	\$231,285
	District Attorney	\$83,881
	Sheriff's Office	\$76,077
Chautauqua		\$193,463
	Jamestown PD	\$72,221
	District Attorney	\$83,306
	Probation	\$10,500
	Sheriff's Office	\$27,436
Dutchess		\$343,669
	City of Poughkeepsie PD	\$168,367
	District Attorney	\$150,302
	Sheriff's Office	\$15,000
	Probation	\$10,000
Erie		\$1,958,847
	Buffalo PD	\$623,844
	District Attorney	\$927,556
	Sheriff's Office	\$176,245
	Probation	\$231,202
Monroe		\$1,789,755
	Rochester PD	\$676,146
	District Attorney	\$570,997
	Sheriff's Office	\$257,000
	Probation	\$285,612



Nassau		\$861,743
	Nassau County PD	\$306,533
	District Attorney	\$109,326
	Sheriff's Office	\$22,000
	Probation	\$192,084
	Hempstead PD	\$231,800
Niagara		\$647,376
	Niagara Falls PD	\$326,202
	District Attorney	\$167,405
	Sheriff's Office	\$87,049
	Probation	\$66,720
Oneida		\$645,955
	Utica PD	\$282,585
	District Attorney	\$338,350
	Sheriff's Office	\$500
	Probation	\$24,520
Onondaga		\$1,240,831
	Syracuse PD	\$500,000
	District Attorney	\$323,782
	Sheriff's Office	\$277,241
	Probation	\$139,808
Orange		\$848,513
	City of Newburgh PD	\$364,284
	District Attorney	\$300,318
	Sheriff's Office	\$62,975
	Middletown PD	\$15,250
	Probation	\$105,686
Rensselaer		\$422,587
	Troy PD	\$197,027
	District Attorney	\$139,453
	Probation	\$86,107
Rockland		\$107,146
	Spring Valley PD	\$71,146
	District Attorney	\$25,500
	Probation	\$10,500



Schenectady		\$785,275
	Schenectady PD	\$354,142
	District Attorney	\$257,348
	Sheriff's Office	\$83,120
	Probation	\$90,665
Suffolk		\$993,861
	Suffolk County PD	\$361,964
	District Attorney	\$511,787
	Sheriff's Office	\$65,959
	Probation	\$54,151
Ulster		\$240,320
	Kingston PD	\$82,500
	District Attorney	\$80,525
	Sheriff's Office	\$25,295
	Probation	\$52,000
Westchester		\$1,080,968
	Yonkers PD	\$307,721
	Mount Vernon PD	\$192,260
	District Attorney	\$425,255
	Dept of Public Safety	\$69,972
	Probation	\$85,760
TOTAL		\$13,311,381



2021-22 Gun Involved Violence Elimination (GIVE) Requirements for Funding

To provide funding for the grant contract term beginning July 1, 2021 as efficiently and effectively as possible, we have streamlined the administrative requirements of the annual GIVE Comprehensive Plan for 2021-22. To receive funding, GIVE grantees will be required to: 1) submit answers to questions pertaining to the implementation of GIVE during 2020-21 and plans for 2021-22; and 2) Complete and submit one Budget Worksheet and narrative justification that includes each partnership agency. Instructions are provided below:

INSTRUCTIONS:

Responses to questions below for your jurisdiction and a budget worksheet (see Attachment: GIVE Budget Worksheet) including each partnership agency must be submitted to DCJS via email at GIVE@dcjs.ny.gov by 4/15/2021. Please prepare answers to questions in a Word Document and include the name of the County and Contact Information at the top of the page.

It is important that the email submission(s) include the name of your jurisdiction and indicate the partner agency in the subject line of the email. Responses will be reviewed and if necessary, DCJS will contact you with questions and return documents to grantees for any recommended revisions.

Narrative Questions:

1. Describe the underlying issues that contributed to your jurisdiction's shooting or aggravated assault problem in GIVE VII (July 1, 2020 through July 1, 2021) and provide data to support your claims.
2. Provide an analysis of the challenges faced in implementing your jurisdiction's GIVE VII (July 1, 2020 through June 30, 2021) Comprehensive plan. Specifically describe how COVID and other factors affected implementation and provide relevant data to support your assessment.
3. Describe how you will update your comprehensive GIVE VIII plan to address both the underlying issues identified in Question #1 and the factors that affected implementation of your GIVE VII plan identified in Question #2.
4. Describe how you will include all appropriate community stakeholders into your comprehensive GIVE plan for GIVE VIII (July 1, 2021 through June 30, 2022).

Jurisdictions where Probation Departments are an existing partner, Probation Directors must also respond to Question #5:



Division of Criminal Justice Services

5. Describe the strategies and techniques which your probation department will utilize in the investigation and supervision of GIVE probationers. These strategies may include, but not be limited to:

- Cognitive Behavioral Intervention
- Employment Readiness Programs
- Client Dosage/Engagement
- GPS or other Electronic Monitoring
- Collaboration with GIVE partner agencies
- Community Engagement/Procedural Justice
- Other

Probation Director's should refer to State Director's Memorandum #2020-1 "Supervision Strategies to Manage the High-Risk Probationer" for further information.

Budget Worksheet and Narrative Justification Preparation:

Use the attached GIVE Budget Worksheet to complete the budgets for each participating agency within the jurisdiction. In addition to completing the Budget Worksheet, please submit a narrative justification in a Word Document, in the name of County at the top of the page.

Note: One GIVE Initiative Budget worksheet (See Attachment 1: *GIVE Budget Worksheet*) and a narrative justification response, must be submitted for each jurisdiction requesting funding. Each agency is required to complete the appropriate section of the budget spreadsheet that references their agency, and must outline the specific budget requested to support each one of the evidence-based strategy categories listed in the budget spreadsheet with appropriate justification for each in a required budget narrative. Any requests for funded personnel must also be detailed in the "personnel" section of the budget spreadsheet, including salary and fringe costs.

When developing their budget narratives, jurisdictions are encouraged to use the below budget checklist to ensure that all information has been submitted to support the budget request. See attached SFY 2020-21 *GIVE Guidance and Funding* Document for allowable expenses and information.

- Does the budget request(s) comply with the funding restrictions set forth in the GIVE Plan Proposal Guidance document?
- Did each agency within the eligible jurisdiction complete the individual agency budget section on the combined county budget worksheet for the 12-month budget cycle?
- Are budget lines directly related to program institutionalization and sufficiently justified?
- Is there a clear relationship between the budgeted items and resource requirements identified in the submitted responses for your GIVE 2021-22 plan?
- Are the roles of budgeted personnel well defined and essential to the strategy to reduce shootings and homicides, or aggravated assaults where applicable?



Division of Criminal Justice Services

- Is the time allotment specified for proposed personnel commensurate with the amount of funding requested for that position?
- Are non-personnel service items essential and directly related to the GIVE Strategy?
- Are budgeted amounts reasonable and calculated based on adequate supporting detail (e.g., number of hours worked, hourly rates, percent-of-effort (FTEs), fringe rates, unit costs, etc.)?
- Is there sufficient detail about requests for overtime to conduct operations?

As stated above, one GIVE Initiative Budget worksheet (see Attachment) along with a complete narrative justification budget response, must be submitted for each jurisdiction requesting funding. Each agency is required to complete the appropriate section of the budget spreadsheet that references their agency, and must outline the specific budget requested to support each one of the evidence-based strategy categories listed in the budget spreadsheet with appropriate justification for each in a required budget narrative.

Attachment #1: SFY 2020-21 *GIVE Guidance and Funding* Document for reference and information

Attachment #2: *GIVE Budget Worksheet* (Note: Also, submit a separative narrative justification document to accompany this Worksheet)

RESOLUTION NO.: 86 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THREE RENEWAL AGREEMENTS WITH
ENDEAVOR MUNICIPAL DEVELOPMENT, INC.
FOR GRANT CONSULTING SERVICES IN AN AMOUNT
NOT TO EXCEED \$18,000.00 PER AGREEMENT FOR A 9 MONTH PERIOD**

WHEREAS, by Resolution No. 72-2019 of March 25, 2019 and Resolution No. 61-2020 of March 9, 2020, the City of Newburgh authorized 3 agreements with Endeavor Municipal Development, Inc. for professional grant consulting services in a total amount not to exceed \$24,000.00 per agreement for a 12 month period; and

WHEREAS, Endeavor Municipal Development, Inc. has submitted 3 renewal agreements, one each for general grant services, water service grant services, and wastewater/sewer grant services with similar scopes of work to include, but not be limited to, develop funding sources for current projects; explore funding options and eligibility for future projects; research, preparation, submission and appropriate follow up for all targeted governmental and non- governmental funding applications and the development and implementation of a project management system; and to work with appropriate City staff; and

WHEREAS, the term of each agreement shall be 9 months at a cost of \$18,000.00 per agreement and funding for said professional grant consulting services is appropriated in the City's 2021 budget; and

WHEREAS, this Council finds that entering into the renewal agreements with Endeavor Municipal Development, Inc. for professional grant consulting services is in the best interests of the City of Newburgh and its further development;

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 3 renewal agreements with Endeavor Municipal Development, Inc. for professional grant consulting services in a total amount not to exceed \$18,000.00 per agreement for a 9 month period.

ENDEAVOR MUNICIPAL DEVELOPMENT, INC.
TEVIOTDALE
P.O. Box 187
GERMANTOWN, NY 12526
518-334-2710/518-537-4353FAX
VICTORCORNELIUS@AOL.COM

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

March 30, 2021

Dear Manager Donat,

The following shall constitute the agreement between us pursuant to which you, **the City of Newburgh, NY (Client)** has retained our company **Endeavor Municipal Development, Inc.** to furnish certain financial development services upon the following terms and conditions:

- 1) Client hereby engages Endeavor Municipal Development, Inc. to develop funding resources for initiatives currently undertaken by the City of Newburgh. These initiatives include, but are not limited to:
 - a. Main Street revitalization efforts,
 - b. Waste Management program projects,
 - c. Enhancement of the City's recreational facilities,
 - d. Improvement of the City's roads, bridges and street lighting,
 - e. Newburgh's Downtown Revitalization Initiative requests.
- 2) For Phase One of these efforts Endeavor Municipal Development, Inc.'s responsibilities will include:
 - a. Working with the Client's staff and consultants to determine eligibility for various funding possibilities, concentrating on federal, state, regional, county, corporate and private foundation sources. This will culminate in the creation of a development plan for the projected initiatives,

b. Structuring a schedule for the implementation of the development plan,

3) The period of the contract is to last for nine months from April 1, 2021, ending on December 31, 2021. The areas of responsibility associated with this contract are limited to performing advocacy and grant/loan filing services for the City to:

- a. The New York Power Authority's grant and loan process,
- b. The Federal Appropriations Process, if applicable,
- c. The USDA grant process,
- d. NYS DEC funding programs,
- e. The New York State Member Initiative Process, if applicable,
- f. NY State Department of Transportation's Local Projects programs,
- g. NY State Consolidated Application Process,
- h. Etc.

Services provided by Endeavor Municipal Development Inc. include, but are not limited to:

- a. Meeting with representatives of both the City and the funding sources to present the various aspects of the projects, including engineering, legal and financial eligibility requirements,
 - b. Writing applications, developing reports and 'sign-off' documentation for the appropriate phases of the project.
- 3) In consideration hereof, Client shall pay Endeavor Municipal Development, Inc. \$6,000.00 upon signing of the contract and \$6,000.00 at the beginning of each additional fiscal quarter for a total contract period of three quarters.

- 4) In addition, the Client will also provide to Endeavor Municipal Development, Inc. reimbursement for all expenses of production of the written applications or reports, i.e. duplication of photographs, photocopier expenses, folders, mailing costs, and personnel costs incurred by Endeavor after the City receives notification of its awards. Client will retain ownership of all materials developed in the context of this project and must pre-approve all expenditures of \$100 or more. When possible, in-house resources will be utilized.
- 5) Endeavor Municipal Development's fees (as defined in 3 and 4) shall be included as administration expenses and will be included in the budget to be funded through the funding sources, where permitted.
- 6) This contract can be terminated upon thirty days' notice by either party to the other party in writing and shall be delivered personally, sent by nationally recognized reputable overnight delivery service or sent by certified mail, postage prepaid, return receipt requested.
- 7) This agreement shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.
- 8) This agreement constitutes the entire agreement between the parties, shall not be modified or amended except in writing, delivered by certified mail, postage prepaid, return receipt requested, and shall be interpreted in accordance with the laws of New York State applicable to agreements executed and to be performed within.
- 9) Any work performed or services rendered by either party hereunder shall be in that party's capacity as an independent contractor and not as agent or representative of the other party. It is understood that this agreement does not constitute a joint venture by the parties hereto.
- 10) Any dispute, controversy, or difference of opinion related to this agreement or to its validity which cannot be mutually resolved between the parties shall be determined in any court of competent jurisdiction.

Please confirm your consent to the foregoing by signing the enclosed copy of this letter in the appended space provided and returning same to us.

Very truly yours,

Endeavor Municipal Development, Inc.

By,

Victor Cornelius, Principal

AGREED AND ACCEPTED:

The City of Newburgh

By,

Joseph Donat, City Manager

Date

ENDEAVOR MUNICIPAL DEVELOPMENT, INC.
TEVIOTDALE
P.O. Box 187
GERMANTOWN, NY 12526
518-697-0437/518-537-4353FAX
VICTORCORNELIUS@AOL.COM

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

March 30, 2021

Dear Manager Donat,

The following shall constitute the agreement between us pursuant to which you, the City of Newburgh, NY (Client) has retained our company Endeavor Municipal Development, Inc. to furnish certain financial development services upon the following terms and conditions:

- 1) Client hereby engages Endeavor Municipal Development, Inc. to develop funding resources for initiatives currently undertaken by the City of Newburgh's Wastewater System regarding various improvements involving its collections and processing systems. The projects are to be defined in the context of this contract period which is to last from April 1, 2021 to December 31, 2021. The areas of responsibility associated with this contract are limited to application writing, performing advocacy and grant/loan filing services for the City to:
 - a. the Environmental Facilities Corporation in the context of its formal application process for both the Drinking Water State Revolving Fund and the State's Water Grant Program,
 - b. federal stimulus funding currently being developed by Congress,
 - c. NYS DEC's Water Quality Improvement Program's application process,
 - d. the Federal Appropriations Process, if applicable,

- e. the New York State Member Initiative Process, if applicable.
- f. the New York State Consolidated Funding Application Process.
- g. Etc.

Services provided by Endeavor Municipal Development Inc. include, but are not limited to:

- a. Meeting with representatives of both the City and the funding sources to present the various aspects of the projects, including engineering, legal and financial eligibility requirements,
- b. Developing reports and 'sign-off' documentation for the appropriate phases of the project.

2) In consideration hereof, Client shall pay Endeavor Municipal Development, Inc. \$6,000.00 upon signing of the contract and \$6,000.00 at the beginning of each additional fiscal quarter for a total contract period of three quarters.

3) In addition, the Client will also provide to Endeavor Municipal Development, Inc. reimbursement for all expenses of production of the written applications or reports, i.e. duplication of photographs, photocopier expenses, folders, mailing costs, and personnel costs incurred by Endeavor after the City receives notification of its awards. Client will retain ownership of all materials developed in the context of this project and must pre-approve all expenditures of \$100 or more. When possible, in-house resources will be utilized.

4) Endeavor Municipal Development's fees (as defined in 2 and 3) shall be included as administration expenses and will be included in the budget to be funded through the EFC as such.

5) This contract can be terminated upon thirty days' notice by either party to the other party in writing and shall be delivered personally, sent by nationally recognized reputable overnight delivery service or sent by certified mail, postage prepaid, return receipt requested.

6) This agreement shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

7) This agreement constitutes the entire agreement between the parties, shall not be modified or amended except in writing, delivered by certified mail, postage prepaid, return receipt requested, and shall be interpreted in accordance with the laws of New York State applicable to agreements executed and to be performed within.

8) Any work performed or services rendered by either party hereunder shall be in that party's capacity as an independent contractor and not as agent or representative of the other party. It is understood that this agreement does not constitute a joint venture by the parties hereto.

9) Any dispute, controversy, or difference of opinion related to this agreement or to its validity which cannot be mutually resolved between the parties shall be determined in any court of competent jurisdiction.

Please confirm your consent to the foregoing by signing the enclosed copy of this letter in the appended space provided and returning same to us.

Very truly yours,

Endeavor Municipal Development, Inc.
By,

Victor Cornelius, Principal

AGREED AND ACCEPTED:

The City of Newburgh
By,

Joseph Donat, City Manager

Date

ENDEAVOR MUNICIPAL DEVELOPMENT, INC.
TEVIOTDALE
P.O. Box 187
GERMANTOWN, NY 12526
518-697-0437/518-537-4353FAX
VICTORCORNELIUS@AOL.COM

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

March 30, 2021

Dear Manager Donat,

The following shall constitute the agreement between us pursuant to which you, the City of Newburgh, NY (Client) has retained our company Endeavor Municipal Development, Inc. to furnish certain financial development services upon the following terms and conditions:

- 1) Client hereby engages Endeavor Municipal Development, Inc. to develop funding resources for initiatives currently undertaken by the City of Newburgh's Water System regarding improvements involving the water system's source, treatment and distribution systems. The projects are to be defined in the context of this contract period which is to last for nine twelve months from April 1, 2021 through December 31, 2021. The areas of responsibility associated with this contract are limited to application writing, performing advocacy and grant/loan filing services for the City to:
 - a. the Environmental Facilities Corporation in the context of its formal application process for both the Drinking Water State Revolving Fund and the State's Water Grant Program,
 - b. federal stimulus funding currently being developed by Congress,
 - c. NYS DEC's Water Quality Improvement Program's application process,
 - d. the Federal Appropriations Process, if applicable,
 - e. the New York State Member Initiative Process, if applicable.

f. the New York State Consolidated Funding Application Process.

g. Etc.

Services provided by Endeavor Municipal Development, Inc. include but are not limited to:

- a. Meeting with representatives of both the City and the funding sources to present the various aspects of the projects, including engineering, legal and financial eligibility requirements,
- b. Developing reports and 'sign-off' documentation for the appropriate phases of the project.

2) In consideration hereof, Client shall pay Endeavor Municipal Development, Inc. \$6,000.00 upon the signing of the contract and \$6,000.00 at the beginning of each additional fiscal quarter for a total contract period of three quarters.

3) In addition, the Client will also provide to Endeavor Municipal Development, Inc. reimbursement for all expenses of production of the written applications or reports, i.e. duplication of photographs, photocopier expenses, folders, mailing costs, and personnel costs incurred by Endeavor after the City receives notification of its awards. Client will retain ownership of all materials developed in the context of this project and must pre-approve all expenditures of \$100 or more. When possible, in-house resources will be utilized.

4) Endeavor Municipal Development's fees (as defined in 2 and 3) shall be included as administration expenses and will be included in the budget to be funded through the EFC as such.

5) This contract can be terminated upon thirty days' notice by either party to the other party in writing and shall be delivered personally, sent by nationally recognized reputable overnight delivery service or sent by certified mail, postage prepaid, return receipt requested.

6) This agreement shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

7) This agreement constitutes the entire agreement between the parties, shall not

be modified or amended except in writing, delivered by certified mail, , postage prepaid, return receipt requested, and shall be interpreted in accordance with the laws of New York State applicable to agreements executed and to be performed within.

8) Any work performed or services rendered by either party hereunder shall be in that party's capacity as an independent contractor and not as agent or representative of the other party. It is understood that this agreement does not constitute a joint venture by the parties hereto.

9) Any dispute, controversy, or difference of opinion related to this agreement or to its validity which cannot be mutually resolved between the parties shall be determined in any court of competent jurisdiction.

Please confirm your consent to the foregoing by signing the enclosed copy of this letter in the appended space provided and returning same to us.

Very truly yours,

Endeavor Municipal Development, Inc.

By,

Victor Cornelius, President

AGREED AND ACCEPTED:

The City of Newburgh

By,

Joseph Donat, City Manager

Date

RESOLUTION NO.: 87 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT WITH TARGETSOLUTIONS LEARNING, LLC,
D/B/A VECTOR SOLUTIONS FOR SCHEDULING SOFTWARE AND SERVICES
FOR THE CITY OF NEWBURGH FIRE DEPARTMENT**

WHEREAS, TargetSolutions Learning, LLC d/b/a Vector Solutions offers subscription-based software and services to assist fire agencies in scheduling personnel to manage staff and personnel resources more efficiently and effectively; and

WHEREAS, the cost for the software, services, equipment and training in the initial year is \$4,949.00 and such funding shall be derived from A.3412.0448 Other Services; and

WHEREAS, the City Council finds that entering into such a contract with TargetSolutions Learning, LLC d/b/a Vector Solutions for the subscription-based scheduling software and related services is 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 the City Manager of the City of Newburgh be and he is hereby authorized to enter into an agreement with TargetSolutions Learning, LLC d/b/a Vector Solutions, as annexed hereto with such other terms and conditions as may be required by Corporation Counsel, to provide subscription-based scheduling software and related services and equipment to the City of Newburgh Fire Department.

Schedule A

By signing the Client Agreement, you are 1) agreeing to the pricing and terms presented in the Agreement; 2) agreeing you have read and accept the Client Agreement and License Terms and; 3) agreeing you have read the TargetSolutions Platform System Requirements and Platform Solution Description documents listed in detail at the following URL:

<https://www.targetsolutions.com/clients/client-resources/>

Date: 3/8/21

Pricing Valid for 30 days.

Client Information

Client Name: City of Newburgh Fire Department	
Address: 22 Grand Street Newburgh, NY 12550	
Primary Contact Name: Timothy Dexter	Primary Contact Phone: 845-569-7414

Terms

Effective Date: Date of Signature	Initial Term (months): 12 months
---	---

Invoicing Contact Information (Please fill in missing information)

Billing Contact: Chief F.J. Spinelli			
Billing Address: 22 Grand Street Newburgh, NY 12550		Billing Phone: 845-549-0052	
Billing Email: fspinelli@cityofnewburgh-ny.gov	PO#:	Billing Frequency: Annual	Payment Terms: Net 30

Annual Subscription Services

Product	Description	Quantity	Unit Price	Total
TargetSolutions Scheduling Platform	List Price \$89.	60	\$80.00	\$4,800.00
TargetSolutions Scheduling Maintenance Fee	Annual Maintenance Fee	1	\$149.00	\$149.00
Total:				\$4,949.00

Client Agreement

This Target Solutions Client Agreement (the "Agreement"), effective as of the date noted in the attached Schedule A (the "Effective Date"), is by and between TargetSolutions Learning, LLC, d/b/a Vector Solutions ("TargetSolutions"), a Delaware limited liability company, powered by CrewSense, LLC ("CrewSense") and Halligan, Inc. ("Halligan") (collectively referred to herein as "TSL") and the undersigned client ("Client"), and governs the purchase and ongoing use of the services described in this Agreement (the "Services").

1. Services. TSL shall provide the following services:

1.1. **Access and Use.** TSL will provide Client a non-exclusive, non-transferable, revocable, limited license to remotely access and use the software as a service ("Services") hereunder and, unless prohibited by law, will provide access to any person designated by Client ("Users").

1.2. **Availability.** TSL shall use commercially reasonable efforts to provide access to and use of the Services by Client's Users twenty-four (24) hours a day, seven (7) days a week, subject to scheduled downtime for routine maintenance, emergency maintenance, system outages and other outages beyond TSL's control.

1.3. **Help Desk.** TSL will assist Users as needed on issues relating to usage via Help Desk five (5) days per week at scheduled hours.

1.4. **Upgrades and Updates.** TSL may update or upgrade the Services at any time at its discretion. Without paying additional compensation, Client will receive access to any general upgrades and updates to the Services licensed from TSL, which upgrades and/or updates TSL makes generally available to its other clients. All updates and upgrades to the Services are subject to the terms and conditions of this Agreement.

2. Client's Obligations.

2.1. **Compliance.** Client shall be responsible for Users' compliance with this Agreement and use commercially reasonable efforts to prevent unauthorized access to or use of the Services.

2.2. **Identify Users.** Client shall (i) provide a listing of its designated/enrolled Users; (ii) cause each of its Users to complete a profile; (iii) maintain user database by adding and removing Users as appropriate; and (iv) when purchasing asset inventory management Services, identify stations, vehicles, drug safes, and other service specific details, as may be applicable.

2.3. **Future Functionality.** Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any public comments regarding future functionality or features.

2.4. **Additional Service Specific Client Obligations.** The following subsections 2.4 (a) and 2.4 (b) apply only if Client is purchasing "Vector Solutions Incident Tracking Service":

(a) Client acknowledges that all notifications it receives from Vector Solutions Incident Tracking Service may contain sensitive personal information and client shall ensure that such information is secured from transmissions and/or disclosure to unauthorized recipients. Client understands that TSL does not control or own the data contained in the notifications. Client agrees that it will be solely responsible for establishing a security system to prevent the transmission and/or disclosure of such information to unauthorized recipient(s). In the event such information is disclosed to an unauthorized recipient(s), Client bears the burden and expense of notifying any individual whose sensitive personal information may have been disclosed to the extent required by law. Client further agrees to handle the data in compliance with any applicable federal, state, or local laws or regulations, and that it will monitor employees using the Incident Tracking Service.

(b) Client represents and warrants that it is not a health care provider, health plan, or health care clearinghouse (collectively, a "covered entity") as those terms are defined under the federal Health Information Portability and Accountability Act ("HIPAA"). Client further represents and warrants that it is not a business associate as that term is defined under HIPAA. Client further agrees to indemnify and hold TSL and its officers, members, agents and employees harmless from any and all claims and demands (including reasonable attorneys' fees associated with the same) made by Client and/or any third party due to or arising out of any claim that TSL is a covered entity or business associate, due to Client's use of the Incident Tracking Service.

3. Fees and Payments.

3.1. **Fees.** Client will pay for the Services in accordance with the fee schedule in Schedule A attached to this Agreement. Fees listed in Schedule A shall be increased by 3% per year both during the term of this Agreement, as well as for any renewal terms. License fees do not include any shipping, duties, bank fees, sales, use, excise or similar taxes due. If TSL is required to pay any such amounts, Client shall reimburse TSL in full.

3.2. **Payments.** All fees due under this Agreement must be paid in United States dollars or Canadian Dollars, as applicable to Client's location. Such charges will be made in advance, according to the frequency stated in Schedule A. TSL will invoice in advance, and such invoices are due net thirty (30) days from the invoice date. All fees collected under this Agreement are fully earned when due and nonrefundable when paid.

3.3. **Suspension of Service for Overdue Payments.** Any fees unpaid for more than ten (10) days past the due date shall bear interest at 1.5% per month. With fifteen (15) days prior written notice, TSL shall have the right, in addition to all other rights and remedies to which TSL may be entitled, to suspend Client's Users' access to the Services until all overdue payments are paid in full.

4. Intellectual Property Rights.

4.1. Client acknowledges that TSL alone (and its licensors, where applicable) shall own all rights, title and interest in and to TSL's software, website or technology, the course content, translations, compilations, partial copies, modifications, and updates, and the Services provided by TSL, as well as any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client, and this Agreement does not convey to Client any rights of ownership to the same. The TSL name and logo are trademarks of TSL, and no right or license is granted to Client to use them.

4.2. Client recognizes that TSL regards the software it has developed to deliver the Services as its proprietary information and as confidential trade secrets of great value. Client agrees not to provide or to otherwise make available in any form the software or Services, or any portion thereof, to any person other than Authorized Users of Client without the prior written consent of TSL. Client further agrees to treat the Services with at least the same degree of care with which Client treats its own confidential information and in no event with less care than is reasonably required to protect the confidentiality of the Services.

4.3. Except as otherwise agreed in writing or to the extent necessary for Client to use the Services in accordance with this Agreement, Client shall not: (i) copy the course content in whole or in part; (ii) display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, transfer or in any way exploit the course content or Services in whole or in part; (iii) embed the course content into other products; (iv) use any trademarks, service marks, domain names, logos, or other identifiers of TSL or any of its third party suppliers; or (v) reverse engineer, decompile, disassemble, or access the source code of any TSL software.

4.4. If Client chooses to participate by uploading its information to its shared resource sections of TSL's website, Client hereby authorizes TSL to share any intellectual property owned by Client ("User Generated Content") that its Users upload to the shared resources section of TSL's website with TSL's third-party customers and users that are unrelated to Client ("Other TSL Customers"); provided that TSL must provide notice to Client's users during the upload process that such User Generated Content will be shared with such Other TSL Customers.

5. Term and Notice.

5.1. Term. The term of this Agreement shall commence on the Effective Date and will remain in full force and effect for the term indicated in Schedule A ("Term"). Upon expiration of the Initial Term, this agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"), unless notice is given by either party of its intent to terminate the Agreement, at least sixty (60) days prior to the scheduled termination date. Upon expiration of the Initial or any Renewal Term, access to the Services may remain active for thirty (30) days solely for purpose of Company's record keeping (the "Expiration Period"). Any access to or usage of the Services following the Expiration Period shall be deemed Client's renewal of the Agreement under the same terms and conditions.

5.2. Notice. All required notices hereunder by either party shall be given by personal delivery (including reputable courier service), fees prepaid, or by sending such notice by registered or certified mail return receipt requested, postage prepaid, and addressed as set forth on the last page of this Agreement. Such notices shall be deemed to have been given and delivered upon receipt or attempted delivery (if receipt is refused), as the case may be, and the date of receipt identified by the applicable postal service on any return receipt card shall be conclusive evidence of receipt. Either party, by written notice to the other as above described, may alter the address for receipt by it of written notices hereunder.

6. Mutual Warranties and Disclaimer.

6.1. Mutual Representations & Warranties. Each party represents and warrants that it has full authority to enter into this Agreement and to fully perform its obligations hereunder.

6.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES IS WITH CLIENT. TSL DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

6.3. WORKPLACE SAFETY IS YOUR RESPONSIBILITY. THAT DUTY CANNOT BE DELEGATED AND TSL ACCEPTS NO DELEGATION OF THAT DUTY. TSL WILL ASSIST YOU BY PROVIDING SPECIFIC SERVICES FOR WHICH YOU HAVE CONTRACTED.

7. Miscellaneous.

7.1. Limitation on Liability. Except as it relates to claims related to Section 4 or Section 7.2 of this Agreement, (a) in no event shall either party be liable to the other, whether in contract, warranty, tort (including negligence) or otherwise, for special, incidental, indirect or consequential damages (including lost profits) arising out of or in connection with this Agreement; and (b) the total liability of either party for any and all damages, including, without limitation, direct damages, shall not exceed the amount of the total fees due to, or already paid to, TSL for the preceding twelve (12) months.

7.1.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, UNDER NO CIRCUMSTANCES SHALL TSL BE LIABLE TO CLIENT OR TO ANY OF CLIENT'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, OR REPRESENTATIVES; OR TO ANY THIRD PARTY FOR ANY CLAIM, CAUSE OF ACTION, DEMAND, LIABILITY, DAMAGES, AWARDS, FINES, OR OTHERWISE, ARISING OUT OF OR RELATING TO PERSONAL INJURY, DEATH, OR OTHER HARM CAUSED FROM USE OF OR RELIANCE ON THE CONTENT OF THE COURSES. CLIENT, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, AND REPRESENTATIVES RELY ON THE CONTENT OF THE COURSES AT THEIR OWN RISK.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES SO, SOLELY TO THE EXTENT SUCH LAW APPLIES TO CLIENT, THE ABOVE LIMITATIONS AND EXCLUSIONS MIGHT NOT APPLY TO CLIENT.

7.2. Indemnification.

7.2.1 Indemnification by TSL. TSL shall indemnify and hold Client harmless from any and all claims, damages, losses and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from any third-party claim that the Services or any component thereof infringes or violates any intellectual property right of any person.

7.2.2 Indemnification by Client. To the extent permitted by applicable law, Client shall indemnify and hold TSL harmless from any and all claims, damages, losses and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from any third party claim that any document, course, or intellectual property owned by Client or uploaded to the LMS by Client infringes or violates any intellectual property right of any person.

7.3. Assignment. Neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other, provided that such consent shall not be unreasonably withheld. Notwithstanding the foregoing, TSL may freely assign or transfer any or all of its rights without Client consent to an affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

7.4 Force Majeure. TSL shall have no liability for any failure or delay in performing any of its obligations pursuant to this Agreement due to, or arising out of, any act not within its control, including, without limitation, acts of God, strikes, lockouts, war, riots, lightning, fire, storm, flood, explosion, interruption or delay in power supply, computer virus, governmental laws or regulations.

7.5. No Waiver. No waiver, amendment or modification of this Agreement shall be effective unless in writing and signed by the parties.

7.6. Severability. If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect.

7.7. Export Regulations. All Content and Services and technical data delivered under this agreement are subject to applicable US and Canadian laws and may be subject to export and import regulations in other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain such licenses to export, re-export, or import as may be required after delivery to you.

7.8. Purchase Orders. Client may issue a purchase order for its convenience only, it being agreed by the Parties that the terms and conditions of this Agreement shall control. Any terms or conditions included in a purchase order or similar document issued by Client that conflict with the terms and conditions of this Agreement will not apply to or govern the transaction resulting from the purchase order, unless both Parties expressly agree in writing to the particular conflicting term or condition, in which event the agreed term or condition will apply only with respect to that particular purchase order.

7.9. Entire Agreement. This Agreement and its exhibits represent the entire understanding and agreement between TSL and Client, and supersedes all other negotiations, proposals, understandings and representations (written or oral) made by and between TSL and Client.

Signature Page Immediately Follows

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

TargetSolutions Learning, LLC

4890 W. Kennedy Blvd., Suite 300

Tampa, FL 33609

City of Newburgh Fire Department

22 Grand Street

Newburgh, NY 12550

By: _____

Printed Name: Phil Coons

Title: Vice President, Sales

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

RESOLUTION NO.: 88 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES
TO PROVIDE GROUP FITNESS INSTRUCTION CLASSES
IN DOWNING PARK THROUGH NOVEMBER 26, 2021**

WHEREAS, the COVID-19 pandemic has caused physical fitness and well-being to suffer from both a provider and recipient standpoint, leaving decreased access to health and well-being instruction for the community; and

WHEREAS, by Resolution No. 189-2020, the City Council responded to that need and authorized the City Manager to enter into agreements by which eligible fitness instructors could provide fitness instruction classes to the public, at no charge to the public or the City, in Downing Park during the 2020 outdoor season; and

WHEREAS, the City Council finds it appropriate and necessary to authorize the City Manager to enter into similar agreements for the 2021 outdoor season; and

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into the referenced agreements in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with eligible fitness instructors to provide group fitness instruction classes in Downing Park through November 26, 2021.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2021, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and _____, a firm [or person] with principal offices at _____, hereinafter referred to as “**VENDOR**.”

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”).

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning as of the date of this Agreement and ending November 26, 2021.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds that may be appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR

without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will

hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof 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 CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, and to the extent practicable and if required by law, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Except for Workers' Compensation and professional liability, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
General Liability	\$1,000,000 aggregate
Professional Liability	\$1,000,000 aggregate

If available, VENDOR shall attach to this Agreement applicable certificates of insurance evidencing VENDOR'S compliance with these requirements.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all

claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 17. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of

VENDOR arising out of the performance of this Agreement.

ARTICLE 19. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 20. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manager of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY

employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 23. ENTIRE AGREEMENT

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 24. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of

the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and

effect to the terms and conditions contained in such Addendum or Change Order.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: _____
Joseph P. Donat
City Manager
Per Resolution No.

BY: _____
NAME: _____
TITLE: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Michelle Kelson
Corporation Counsel

Todd Venning
City Comptroller

SCHEDULE A – SCOPE OF SERVICES: Outdoor Fitness Instructor

This scope of services outlines the schedule and requirements for fitness classes to be provided at the Downing Park Amphitheatre for the 2021 outdoor season, through November 26, 2021.

Vendor Name: [_____]

Proposed date of first class: [_____] / [_____] / [_____]]

Proposed date of last class: [_____] / [_____] / [_____]]

Frequency: [_____]

Class type: [_____]

Dates and times: [_____] at [_____] : [_____] AM / PM
[_____] at [_____] : [_____] AM / PM
[_____] at [_____] : [_____] AM / PM

Responsibilities of the Instructor (for class):

- Arrive at least 15 minutes prior to class in order to ensure the site is prepared.
- Create master sign-in sheet for all class participants.
- Have all participants sign a liability waiver at the beginning of each class. Waivers will be provided to you by the City.
- Ensure all participants are at least 6 feet apart at all times. Maximum 25 participants per class.
- Ensure that all equipment provided by you is cleaned and sanitized both before and after each class session.

Responsibilities of the Instructor (with City of Newburgh):

- Provide required documentation to qualify as eligible instructor.
- Work with Department of Planning and Development program contact to confirm actual class schedule assignments at least one (1) week in advance of class.
- Obtain sufficient number of blank waiver forms for each class.
- Deliver signed waiver forms to Department of Planning and Development program contact within 48 hours after each class.
- Create brief report (in writing) to Department of Planning and Development program contact about the class, including but not limited to number of participants in attendance, personal questions or concerns about the class, and any feedback from class participants.
- Notify the City's program contact immediately via e-mail if you need to cancel class for any reason.

As consideration for the services provided above, the City of Newburgh will promote the classes on its website and other social media platforms. Vendor shall not charge any fees or other consideration to the City or to class participants.

Informed Consent and Liability Waiver Release for Participation in City of Newburgh Exercise Program

READ THIS DOCUMENT CAREFULLY. IT IS AN IMPORTANT LEGAL DOCUMENT WITH LEGAL CONSEQUENCES.

I agree, affirm, and consent to the following:

1. I am voluntarily participating in an exercise fitness program conducted by _____ (“Instructor”) at the Downing Park Amphitheater, Newburgh, New York. I recognize that the program requires physical exertion that may be strenuous at times and may cause physical injury, serious physical injury, and/or death. I am fully aware of the risks and hazards involved.
2. I understand that it is my responsibility to consult with a physician prior to and regarding my participation in the above-mentioned program. Depending on the condition of my overall health, physical exercise may have inherent dangers and may be hazardous. I represent and warrant that I have no medical condition that would prevent my participation in the program.
3. I agree to assume full responsibility for any risks, injuries or damage known or unknown which I might incur as a result of participating in the program. Such injuries may include, but are not limited to, heart attacks, muscle strains, muscle pulls, muscle tears, broken bones, shin splints, heat prostration, injuries to knees, injuries to back, injuries to foot, or any other illness or soreness, including death.
4. I knowingly, voluntarily and expressly waive any claims and/or damages I may have against the City of Newburgh or the Instructor for personal injury, death, property damage, or general damages that I may sustain as a result of participating in the program.
5. I, along with my heirs, successors, or representatives, forever release, waive, discharge, and covenant not to sue the City of Newburgh or the Instructor for any injury or death caused by its negligence or any other acts.
6. I will indemnify and hold the City of Newburgh and the Instructor harmless from any loss, liability, damage, cost or expense, including litigation, which it may incur as a result of any injury, death, property damage, or any other damage which I might sustain while participating in said activities.
7. I agree for myself and my heirs, successors, or representatives, that the above representations, acknowledgements and releases are contractually binding, and that should I, or my heirs, successors, or representatives, assert a claim in contravention of this release, the asserting party shall be liable for the expenses (including legal fees) incurred by the other party or parties, in defending any such claim.

8. I understand and agree that this release is intended to discharge the Instructor and the City of Newburgh, its officers, employees and agents from and against any and all liability for any reason, at any time, related to the activities stated herein.
9. I understand the City of Newburgh has the right to cancel or change programming for any reason, at any time, without notice.
10. While the City of Newburgh provides the setting for the fitness program, I acknowledge and affirm that I am not an employee of the City of Newburgh for Workers' Compensation purposes.
11. By my signature below, I indicate that I have read the above waiver and release of liability and fully understand its contents. I voluntarily agree to the terms and conditions stated above.

Date: _____

Print Name: _____

Signature: _____

RESOLUTION NO.: 89 - 2021

OF

APRIL 12, 2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
URGING THE UNITED STATES CONGRESS TO PASS H.R. 2307
TO ENACT A CARBON DIVIDEND TRUST FUND**

WHEREAS, an Intergovernmental Panel on Climate Change issued a special report on the impacts of global warming of 1.5 °C above pre industrial levels in October 2018 warning that global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate; and

WHEREAS, the United Nations climate science body said in a monumental climate report that we have only 12 years left to make massive and unprecedented changes to global energy infrastructure to limit global warming to moderate levels; and

WHEREAS, the United States government released its Fourth Annual Climate Assessment in November 2018 reporting that the impacts of climate change are already being felt in communities across the country, and that more frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities; and

WHEREAS, conservative estimates by the world's climate scientists state that to achieve climate stabilization and avoid cataclysmic climate change, emissions of greenhouse gases (GHGs) must be brought to 80-95% below 1990 levels by 2050; and

WHEREAS, presently the environmental, health, and social costs of carbon emissions are not included in prices paid for fossil fuels, but rather these externalized costs are borne directly and indirectly by all Americans and global citizens; and

WHEREAS, to begin to correct this market failure, Congress can enact the Energy Innovation and Carbon Dividend Act to assess a national carbon fee on fossil fuels based on the amount of CO₂ the fuel will emit when burned and allocate the collected proceeds to all U.S. Households in equal shares in the form of a monthly dividend; and

WHEREAS, for efficient administration, the fossil fuels fee can be applied once, as far upstream in the economy as practical, or at the port of entry into the United States; and

WHEREAS, as reintroduced in the 117th Congress as H.R. 2307, to enact a Carbon Dividend Trust Fund, a national, revenue-neutral carbon fee starting at a relatively low rate of \$15 per ton of CO₂ equivalent emissions and resulting in equal charges per ton of CO₂ equivalent emissions potential in each type of fuel or greenhouse gas should be assessed to begin to lower what are now

dangerously high CO2 emissions. The yearly increase in carbon fees including other greenhouse gases, shall be at least \$10 per ton of CO2 equivalent each year, with the Department of Energy determining whether an increase larger than \$10 per ton per year is needed to achieve program goals; and

WHEREAS, H.R. 2307, to enact a Carbon Dividend Trust Fund, specifies that, in order to protect low and middle income citizens from the economic impact of rising prices due to the carbon fee, equal monthly per-person dividend payments shall be made to all American households (1/2 payment per child under 19 years old) each month from the fossil fuel fees collected. The total value of all monthly dividend payments shall represent 100% of the net carbon fees collected per month; and

WHEREAS, H.R. 2307, to enact a Carbon Dividend Trust Fund, encourages market-driven innovation of clean energy technologies and market efficiencies which will reduce harmful pollution and leave a healthier, more stable, and more prosperous nation for future generations; and

WHEREAS, H.R. 2307 to enact a Carbon Dividend Trust Fund, will, after 12 years, lead to a decrease in America's CO2 emissions of 40 percent and an increase in national employment of 2.1 million jobs; and

WHEREAS, border adjustments - carbon content-based tariffs on products imported from countries without comparable carbon pricing, and refunds to our exporters of carbon fees paid - can maintain the competitiveness of U.S. businesses in global markets; and

WHEREAS, a national carbon fee can be implemented quickly and efficiently, and will respond to the urgency of the climate crisis because the federal government already has in place mechanisms, such as the Internal Revenue Service, needed to implement and enforce the fee, and already collects fees from fossil fuel producers and importers; and

WHEREAS, A national revenue-neutral carbon fee would make the United States a leader in mitigating climate change and in the clean energy technologies of the 21st century and would provide incentive to other countries to enact similar carbon fees, reducing global CO2 emissions without the need for complex international agreements;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh urges the United States Congress to pass without delay H.R. 2307 to enact a Carbon Dividend Trust Fund; and

BE IT FURTHER RESOLVED, that the City Clerk, no later than 30 days after passage of this Resolution, shall transmit copies of this resolution to President Joseph R. Biden, Jr. and Vice President Kamala Harris, to Representative Nancy Pelosi, Speaker of the House of Representatives, to Senator Charles E. Schumer, the Majority Leader of the Senate, to Senator Kirsten Gillibrand, and Representative Sean Patrick Maloney.

RESOLUTION NO.: 90 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A PAYMENT OF A CLAIM WITH
NEW YORK MUNICIPAL INSURANCE RECIPROCAL A/S/O CITY OF BEACON
IN THE AMOUNT OF \$3,488.00**

WHEREAS, Network Adjustors, Inc., as claim representative of New York Municipal Insurance Reciprocal a/s/o City of Beacon, brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the claim in the amount of Three Thousand Four Hundred Eight-Eight and 00/100 Dollars (\$3,488.00) in exchange for a release to resolve all claims among them; and

WHEREAS, the City of Newburgh proposes to engage in discussions with the City of Beacon to enter an inter-municipal mutual aid agreement to address the allocation of costs of providing and receiving mutual aid; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to settle the claim of New York Municipal Insurance Reciprocal a/s/o City of Beacon as brought by Network Adjustors, Inc. in the total amount of Three Thousand Four Hundred Eight-Eight and 00/100 Dollars (\$3,488.00) and that the City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement as herein described.

RESOLUTION NO.: 91 - 2021

OF

APRIL 12, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A PAYMENT OF CLAIM WITH THE TOWN OF NEWBURGH
IN THE AMOUNT OF \$13,875.26**

WHEREAS, the Town of Newburgh brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the claim in the amount of Thirteen Thousand Eight Hundred Seventy-Five and 26/100 Dollars (\$13,875.26) in exchange for a release to resolve all claims among them; and

WHEREAS, the City of Newburgh proposes to engage in discussions with the Town of Newburgh to enter an inter-municipal mutual aid agreement to address the allocation of costs of providing and receiving mutual aid; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to settle the claim of Town of Newburgh in the total amount of Thirteen Thousand Eight Hundred Seventy-Five and 26/100 Dollars (\$13,875.26) and that the City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement as herein described.

ORDINANCE NO.: 3 - 2021

OF

APRIL 12, 2021

AN ORDINANCE AMENDING CHAPTER 249, SIDEWALK CAFES,
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO PERMIT TEMPORARY SIDEWALK CAFÉ OPERATIONS
IN DESIGNATED PUBLIC PARKING AREAS

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 249 of the Code of the City of Newburgh is hereby amended as follows:

SECTION 1. Amendment

§ 249-3. Conditions for issuance of permit.

G. Permits may be issued only during the period from ~~May 15~~ April 13, 2021 to ~~October 31~~ November 26, 2021 and shall be for such duration, within the time provided herein, as the applicant may request.

§ 249-9. Sidewalk Café Operations in Designated Parking Areas

G. There shall be no fee for a permit pursuant to this Chapter for the year ~~2020~~ 2021.

H. This Section 249-9, and any authority granted pursuant thereto, shall automatically expire on ~~November 30, 2020~~ November 26, 2021 or when terminated earlier by State action.

SECTION 2. Severability.

The provisions of this Ordinance 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 Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance 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 Ordinance or part here of is held inapplicable had been specifically exempt therefrom.

Underlining denotes additions

~~Strikethrough~~ denote deletions

SECTION 3. Codification.

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Ordinance shall be included in the Code of Ordinances of the City of Newburgh; that the sections and subsections of this Ordinance may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term "Ordinance" shall be changed to "Chapter", "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 Ordinance or the provisions of the Code of Ordinances affected thereby.

SECTION 4. Validity

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

SECTION 5. This ordinance shall take effect immediately.

Underlining denotes additions
~~Strikethrough~~ denote deletions

APPLICATION PROCESS

1. Complete all fields of the application. Be as specific as possible. Incomplete or vague applications may be delayed.
2. Submit the prescribed application, along with the following:
 - a. Proof of Insurance (policy must list the “City of Newburgh” as additional insured and “City Manager - City of Newburgh” as the certificate holder)
 - b. Site Map/Site Plan
 - c. Copy of any State Liquor Authority (“SLA”) License for the restaurant, if applicable
3. Deliver the completed application package to the Fire Prevention Office, 123 Grand Street, Newburgh, New York 12550.
4. After delivery of your application, the Fire Prevention Bureau will contact you to schedule a site inspection.
5. Once the site is approved, you may set up your operations in accordance with the approved site map/site plan.
6. Once your operations are set up, contact the Fire Prevention Bureau for a final inspection.
7. After passing the final inspection, the City of Newburgh will issue you a permit for the OPERATION OF A SIDEWALK CAFÉ which will expire on November 26, 2021.
8. You must frame the permit and display it inside the host restaurant in a place designated by the Fire Prevention Bureau.

City of Newburgh Department of Code Compliance
Sidewalk Café Permit Application

GENERAL RULES AND REGULATIONS

1. All outdoor dining operations must meet social distancing requirements and follow all applicable health guidelines as set forth by the CDC, New York State (including Executive Order), and Orange County Department of Health.
2. Applicants must provide a floor plan diagram indicating the total square footage of public property used for the outdoor dining area; the location of all tables and chairs; pedestrian and cafe areas; width and length of cafe area; fire escape drop ladder and all permanent street obstructions (e.g. signs, bus stops, fire hydrants, etc.) between the cafe area and curb line.
3. The sidewalk abutting the property, from the property line to the curb line, must not be less than 10 feet in width.
4. The area to be used for the sidewalk cafe must not encroach onto the sidewalk more than 10 feet from the property line abutting the sidewalk and must not extend beyond the extension of the side property lines onto the sidewalk.
5. No permanent structures may be affixed to the sidewalk area used for the cafe or affixed to the building abutting the area for purposes of the cafe, and the area may be occupied only by chairs, tables, benches, umbrellas, movable railings, and planters for the convenience of the patrons to be served in such area. Movable railings or planters shall be so arranged as to enclose the dining area, and the sidewalk shall be inconspicuously marked to delineate the approved position of such barriers.
6. A clear, unoccupied space must be provided, not less than three feet in width, from all entrances of the building abutting the sidewalk to the unoccupied portion of the public sidewalk.
7. Neither outdoor lighting nor live or mechanical music may be used on or for the cafe area, except that in such cases where street lighting is insufficient to so illuminate the dining area so that a hazard to those traveling the sidewalk may be created, the Fire Chief shall direct and the applicant shall provide such lighting for nighttime hours as the Fire Chief shall require.
8. General comprehensive liability insurance naming the applicant and the City of Newburgh, its officers, agents and employees as named insureds must be provided, with limits of \$25,000/\$50,000 for property damage and \$1,000,000/\$2,000,000 for personal injury, effective for the duration of the permit.
9. There shall be a minimum clear distance of five feet, exclusive of the area occupied by the sidewalk cafe, free of all obstructions, such as trees, parking meters, utility poles, streetlights, benches, planters, and movable railings in order to allow for adequate and safe pedestrian movement.

10. All sidewalk cafes shall cease operations by 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday.
11. Applicants must provide current license information issued by the New York State Liquor Authority if they intend to serve alcohol. The operator of a sidewalk cafe should be in full compliance with the licensing requirements of the State Liquor Authority, as the same may exist, and shall comply with all other laws and regulations concerning the sale of alcoholic beverages in the state. All alcoholic beverages shall be prepared within the existing restaurant and shall only be served to patrons while seated at tables. In the event that said sidewalk cafe is not in full compliance with State Liquor Authority laws, rules and regulations concerning the sale of alcoholic beverages, then serving alcoholic beverages in the sidewalk cafe area shall be prohibited.
12. The restaurant shall not serve food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
13. Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance which might damage the sidewalk or cause injury to pedestrians.
14. Sidewalks adjacent to the entire building must be in good condition, without violations.
15. Any use of propane patio heaters must comply with National Fire Protection Association (“NFPA”) 1, Section 69.3.13.

SITE MAP REQUIREMENTS

The applicant must submit a site map of the proposed sidewalk café area. The map, at a minimum, must show:

1. The design and location of all structures within the proposed area, such as security barriers, planters, landscaping, tables, chairs, and umbrellas.
2. The number of proposed tables.
3. The linear square footage of the proposed space.
4. Compliance with all requirements of the Americans with Disabilities Act.
5. Sufficient barriers, such as planters or railings, that physically separate patrons from both pedestrian and vehicular traffic (where applicable).
6. Location of signage indicating that food and/or beverages can only be consumed while seated at a table, bar, counter.

APPLICATION INFORMATION

Date: _____

Property Owner Information (if corporate entity):

Business Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____

Name of Officer or Authorized Signor: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____

Property Owner Information (if individual/natural person):

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____

Café Owner/Operator Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____

For Office Use Only:

Site Inspection Date: _____ Inspector: _____
Final Inspection Date: _____ Inspector: _____

Fire Chief Approval: _____

Police Chief Approval: _____

City Manager Approval (to suspend parking, if applicable): _____

Fee Amount: Waived (by Ordinance _____) Collected By: _____

Insurance Certificate Attached: _____

Permit Issued Date: _____

ACKNOWLEDGEMENTS/ATTESTATIONS

The undersigned requests the issuance of a Sidewalk Café Permit, in accordance with State and local orders, rules, and regulations both generally and related to the COVID-19 pandemic, in order to expand its current restaurant capacity in outdoor space.

The undersigned agrees that the outdoor restaurant business or Sidewalk Café shall be operated in accordance with New York State laws, rules, and regulations, including Executive Orders, Orange County Department of Health rules, regulations, and COVID-19 guidelines, and all relevant sections of the Newburgh City Code attached to this permit application.

The undersigned agrees that the outdoor restaurant business or Sidewalk Café shall be operated only on that property of which undersigned has ownership, control, possession or permission (proof required) to use.

The undersigned has received, reviewed, agrees to abide by the following:

1. Food Service Guidelines for Employers & Employees
2. Interim Guidance for Outdoor and Take Out-Delivery Food Services During the COVID-19 Public Health Emergency
3. Interim Guidance for Food Services During the COVID-19 Public Health Emergency

The undersigned hereby AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY OF NEWBURGH AND ITS EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, LIENS, DEMANDS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE AMOUNT OF JUDGEMENTS, PENALTIES, INTEREST COURT COST AND LEGAL FEES INCURRED BY THE CITY IN DEFENSE OF SAME ARISING IN FAVOR OF CLAIMS, LIENS, DEBTS, PERSONAL INJURIES, INCLUDING PERSONAL INJURIES SUSTAINED BY EMPLOYEES OF THE CITY, DEATH OR DAMAGE TO PROPERTY, INCLUDING PROPERTY OF THE CITY, AND WITHOUT LIMITATION BY ENUMERATION, ALL OTHER CLAIMS OR DEMANDS OF EVERY CHARACTER OCCURRING OR IN ANY WAY INCIDENT TO THE OPERATION OF THE OUTDOOR RESTAURANT BUSINESS AT ITS EXPENSE, AGREES TO, INVESTIGATE, HANDLE RESPOND TO, PROVIDE DEFENSE FOR AND DEFEND ANY CLAIM MADE AGAINST THE CITY FOR WHICH CLAIMS IS, IN WHOLE OR PART, LIABLE AND AGREES TO BEAR ALL COST AND EXPENSES RELATED THERETO, INCLUDING ATTORNEY'S FEES AND COSTS EVEN IF SUCH CLAIM IS GROUNDLESS, FALSE OR FRAUDULENT.

Notary Public

LOCAL LAW NO.: 3 - 2021

OF

APRIL 12, 2021

A LOCAL LAW AMENDING SECTION C4.01 ENTITLED "RULES OF ORDER"
OF THE CHARTER OF THE CITY OF NEWBURGH

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Section C4.01 entitled 'Rules of Order' of the Charter of the City of Newburgh".

SECTION 2 - AMENDMENT

§ C4.01. Rules of order; ~~sanctions.~~

A. The Council shall determine the rules of its own proceedings and be the judge of the election, returns and qualifications of its members. The Council may compel the attendance of absent members at any meeting properly called and may punish or expel a member for excessive or unexcused absence or disorderly conduct, as defined in this section, or ~~and may declare the member's~~ his seat vacant as provided by the standards and procedures set forth in this section ~~by reason of inexcusable absence, provided that such absence has continued for four consecutive regular meetings, but no expulsion shall take place and no vacancy on account of absence shall be declared until the delinquent member has had an opportunity to be heard in his defense.~~

1. Excessive and Unexcused Absence

- a. Every member of the Council shall attend the sessions of the Council unless duly excused or unable to attend because of extenuating circumstances. Any member desiring to be excused shall notify the Mayor and the City Clerk.
- b. A member of Council absent from 4 consecutive regular meetings or 6 regular meetings within a calendar year without excuse shall constitute excessive absence.

2. Disorderly Behavior

- a. Members of the Council shall not engage in disorderly behavior, which shall include but is not limited to: willful violation or evasion of any provision of law relating to such member's discharge of his or her official duties; commission of

Underlining denotes additions

~~Strikethrough~~ denotes deletions

fraud upon the City; conversion of public property to such member's own use; knowingly permitting or allowing by gross culpable conduct another person to convert public property; violation of the Council's duly adopted Rules and Order of Procedure, violation of the City's Code of Ethics, or violation of City policy or policies against discrimination, harassment and workplace violence.

3. A member of Council charged with conduct constituting excessive and unexcused absence or disorderly behavior or grounds for forfeiture of office other than those grounds causing an immediate vacancy, by operation of state law, shall have the right to a public hearing by filing a written demand within 7 working days of receiving written notice of the charged conduct. In the event that a member of Council makes such request for a public hearing, the opportunity to be heard shall be afforded at a regular or special meeting of the Council to be held within 15 working days of the Council's receipt of such written request. Notice of such hearing shall be published in one (1) or more newspapers of general circulation in the City at least one (1) week in advance of the hearing. A transcript of the hearing shall be retained by the City Clerk.
4. Upon a finding by the Council that a member has engaged in excessive or unexcused absence or disorderly behavior as set forth in subsection A(1) or subsection A(2) of this Section, the Council may impose one or more of the following sanctions:
 - a. Denial or limitation of any right, power, or privilege of the Member;
 - b. Reprimand;
 - c. Censure;
 - d. Fine;
 - e. Expulsion from the Council; and
 - f. Any other sanction determined by the Council to be appropriate.

All sanctions shall be imposed by a majority plus one vote of all members of Council.
5. A decision made by the Council under this subsection imposing the sanction of removal from office shall be subject to review by the courts in accordance with the laws of New York State. In determining the qualifications of its members, the Council shall use the standards set forth in the Public Officers Law and General Municipal Law, and such additional standards as may be enacted by Charter amendment or local law, provided that the same are not inconsistent with the Public Officers Law or General Municipal Law.

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

Underlining denotes additions

~~Strikethrough~~ denotes deletions

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 Charter 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 “Charter”, “Article”, 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 City Charter 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 shall be effective after the filing in the Office of the New York State Secretary of State and the approval of the qualified voters of the City of Newburgh at the November 2, 2021 election in accordance with the provisions of New York State Municipal Home Rule Law.

Underlining denotes additions
~~Strikethrough~~ denotes deletions