



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL

May 10, 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 April 26, 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. 110 - 2021 - Proposal with ARCADIS For Concrete Condition Assessment at WPCP

Resolution accepting a proposal and authorizing the City Manager to execute a contract with Arcadis of New York, Inc. for professional engineering services for a concrete condition assessment of the Energy Dissipation Structure and the primary clarifier influent channel at the Wastewater Treatment Plant in an amount not to exceed \$62,000.00.

Resolución que acepta una propuesta y autoriza al Gerente de la Ciudad a ejecutar un contrato con Arcadis de New York, Inc. para servicios de ingeniería profesional para una evaluación de condiciones concretas de la Estructura de Disipación de Energía y el canal principal de influencia del clarificador en la Planta de Tratamiento de Aguas Residuales por un monto no superior a \$62,000.00.

7. Resolution No. 111 - 2021 - Fire & Codes Department Vehicles Surplus
Resolution declaring Fire Department and Code Compliance Bureau vehicles as surplus.

Resolución que declara vehículos del Departamento de Bomberos y del Buro de Cumplimiento del Código como excedente.

8. Resolution No. 112 - 2021 - Lead Free Water Challenge
Resolution authorizing the City Manager to apply and accept if awarded an Environmental Policy Innovation Center Lead-Free Water Challenge: Lead Service Line Replacement for Small Communities Program Grant for 100 hours of technical assistance to broaden the City of Newburgh Lead Service Line Replacement Project with no City match required.

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado una Subvención del Programa de Comunidades Pequeñas para el Reemplazo de Servicio de Líneas de Plomo: Desafío de Agua Sin Plomo del Centro de Innovación de Pólizas Ambientales por 100 horas de asistencia técnica para ampliar el Proyecto de Reemplazo de Servicio de Líneas de Plomo de la Ciudad de Newburgh el cual no requiere que la Ciudad iguale los fondos.

9. Resolution No. 113 - 2020 - 120 Grand Street - License Agreement with Strongroom for use and access
Resolution authorizing the City Manager to enter into a license agreement with Strongroom to allow use and access to the Newburgh City Club located at 120 Grand Street (Section 24, Block 2, Lot 17) for an artwork display.

Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de licenciatura con Strongroom para permitir el uso y acceso al Club de la Ciudad ubicado en la 120 de la Calle Grand (Sección 24, Bloque 2, Lote 17) para exhibición de arte.

10. Resolution No. 114 - 2020 - Co-Sponsorship Agreements between the City of Newburgh and the Small Business Development Center (SBDC) for a Series of Small Business Training Seminars in the City of Newburgh
Resolution authorizing the City Manager to enter into a Co-sponsorship Agreement with the Small Business Administration for small business workshops to be held in the City of Newburgh.

Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de Co-Auspicio con la Administración de Negocios Pequeños para que se lleven a cabo talleres para negocios pequeños en la Ciudad de Newburgh.

11. Resolution No. 115 - 2021 - To Award a Community Development Block Grant (CDBG) CARES Act (CDBG-CV) Subrecipient Agreement to

Montefiore St. Luke's Cornwall to Provide COVID-19 Barriers to Protect Patients and Staff

Resolution authorizing the City Manager to enter into a Community Development Block Grant (CDBG-CV3) sub-recipient grant agreement in the amount of \$30,000.00 with Montefiore St. Luke's Cornwall for the allocation of Coronavirus Aid, Relief, and Economic Security Act funding to provide protective barriers to patients and staff.

Resolución que autoriza al Gerente de la Ciudad da entrar en un acuerdo como sub-recipiente de la subvención de la Subvención de Bloques de Desarrollo Comunitario (CDBG-CV3) por el monto de \$30,000.00 con Montefiore St. Luke's Cornwall para la asignación de fondos de la Ley de Ayuda, Alivio y Seguridad Económica para Coronavirus a fin de proporcionar barreras protectoras a los pacientes y trabajadores.

12. Resolution No. 116 - 2021 - Amendment No. 2 Extension of DEC PFOS Expense Reimbursement Contract

Resolution authorizing the City Manager to enter into Amendment No. 2 to the agreement with the New York State Department of Environmental Conservation to extend the term for reimbursement of additional costs incurred by the City of Newburgh as a result of providing an alternate source of drinking water.

Resolución que autoriza al Gerente de la Ciudad a entrar en la Enmienda No. 2 de un acuerdo con el Departamento de Conservación Ambiental del Estado de Nueva York para extender el termino para el reembolso de costos adicionales incurridos por la Ciudad de Newburgh como resultado de proporcionar una fuente alternativa de agua potable.

13. Resolution No. 117 - 2021 - Ferry Parking Lot Lease Extension

Resolution authorizing the City Manager to execute a second extension until December 31, 2021 to the Agreement of Lease with Riverside Newburgh Realty, LLC for the continued lease of vacant real property known as Section 31, Block 5, Lots 13.2 and 14 for the purpose of providing parking for the Newburgh-Beacon Ferry commuters.

Resolución que autoriza al Gerente de la Ciudad a ejecutar una segunda extensión hasta el 31 de diciembre de 2021, al Acuerdo de Arrendamiento con Riverside Newburgh Realty, LLC para el arrendamiento continuo de propiedad vacante conocida como Sección 31, Bloque 5, Lote 13.2 y 14 con el propósito de proporcionar estacionamiento a los pasajeros del Transbordador Newburgh-Beacon.

14. Resolution No. 118 - 2021 - Seventh MOU with Metro-North Railroad

Resolution authorizing the City Manager to execute a Seventh Memorandum of Understanding with Metro-North Commuter Railroad Company to provide reimbursement of parking lot lease payments related to the Newburgh-Beacon

Ferry Service.

Resolución que autoriza al Gerente de la Ciudad a ejecutar un Séptimo Memorándum de Entendimiento con Metro-North Commuter Railroad para proporcionar reembolso de pagos de arrendamiento del lote de estacionamiento relacionados con el Servicio del Transbordador Newburgh-Beacon.

15. Resolution No. 119 - 2021 - Lexis Nexis Renewal Agreement

Resolution authorizing the City Manager to execute an agreement with LexisNexis Coplogic Solutions Inc. to provide external accident reporting management services to the City of Newburgh Police Department.

Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo con LexisNexis Coplogic Solutions, Inc. para proporcionar servicios externos administrativos de informes de accidentes al Departamento de Policía de la Ciudad de Newburgh.

16. Resolution No. 120 - 2021 - NYCOMCO Lease Agreement Renewal

Resolution authorizing the City Manager to execute a lease agreement with New York Communications Company, Inc. to provide communications equipment and service for the City of Newburgh Police Department at a cost of \$2,994.00 per month for 84 months.

Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo de arrendamiento con New York Communications Company, Inc. para proporcionar equipos de comunicación y servicios para el Departamento de la Ciudad de Newburgh a un costo de \$2,994.00 por mes por 84 meses.

17. Resolution No. 121 - 2021 - Approving a Consent Judgement

A resolution approving the consent judgement and authorizing Garigliano Law Offices, LLP to sign such consent judgment in connection with the tax certiorari proceeding by the City of Newburgh against the Town of New Windsor in the Orange County Supreme Court Bearing Orange County Index Nos. EF005922-2017, EF007932-2018, EF005909-2019 and EF003957-2020 involving Section, Block and Lot (i) 4-1-12.2; (ii) 4-1-9.21; (iii) 4-1-10; (iv) 4-1-35; (v) 4-1-38; and (vi)4-3-1.1.

Una resolución que aprueba la sentencia de consentimiento y autoriza a Garigliano Law Offices, LLP a firmar dicha sentencia de consentimiento en relación con el procedimiento de certiorari fiscal por la Ciudad de Newburgh contra la Ciudad de New Windsor en el Tribunal Supremo del Condado de Orange con El Índice del Condado de Orange Nos. EF005922-2017, EF007932-2018, EF005909-2019 y EF003957-2020 que involucran la Sección, Bloque y Lote (i) 4-1-12.2; (ii) 4-1-9.21; (iii) 4-1-10; (iv) 4-1-35; (v) 4-1-38; y (vi)4-3-1.1.

18. Resolution No. 122 - 2021 - Authorizing a Settlement Agreement with Aller Nothing Bins

A resolution authorizing the City Manager to execute a payment of claim with Aller Nothing Bins, LLC in the amount of \$14,064.82

Resolución que autoriza al Gerente de la Ciudad a ejecutar un pago de reclamo con Aller Nothing Bins, LLC por la cantidad de \$14,064.82

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

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

Adjournment/ Aplazamiento:

RESOLUTION NO.: 110 - 2021

OF

MAY 10, 2021

**A RESOLUTION ACCEPTING A PROPOSAL AND AUTHORIZING
THE CITY MANAGER TO EXECUTE A CONTRACT WITH
ARCADIS OF NEW YORK INC. FOR PROFESSIONAL ENGINEERING SERVICES
FOR A CONCRETE CONDITION ASSESSMENT OF
THE ENERGY DISSIPATION STRUCTURE AND THE PRIMARY CLARIFIER
INFLUENT CHANNEL AT THE WASTEWATER TREATMENT PLANT
IN AN AMOUNT NOT TO EXCEED \$62,000.00**

WHEREAS, the City of Newburgh Wastewater Treatment Plant ("WWTP") was constructed in the late 1960s and although improvements have been made the WWTP, the Energy Dissipation Structure ("EDS") and primary clarifier influent channel remain original to the WWTP; and

WHEREAS, the City is investing in improvements to the influent sewer, it is prudent to evaluate the condition of both the EDS and primary clarifier influent channel structures to determine remaining service life and options for rehabilitation or replacement; and

WHEREAS, the City solicited and received a proposal from Arcadis of New York, Inc. for professional engineering services for a concrete condition assessment of the Energy Dissipation Structure and the primary clarifier influent channel at the City of Newburgh Wastewater Treatment Plant; and

WHEREAS, such engineering services shall include a complete structural investigation and condition assessment of the EDS and primary clarifier influent channel through visual observation and non-destructive testing and the preparation of a technical memorandum summarizing the field investigation and an opinion of probable construction cost for repairs identified and estimated replacement costs; and

WHEREAS, the cost of such proposal shall not exceed \$62,000.00 and the funds shall be derived from existing NYSEFC grant/loan CWSRF C3-7332-11-00; and

WHEREAS, this Council finds that entering into a contract with Arcadis of New York, Inc. based on the foregoing 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 a proposal and execute a contract with Arcadis of New York, Inc., for professional engineering services for a concrete condition assessment of the Energy Dissipation Structure and the primary clarifier influent channel at the City of Newburgh Wastewater Treatment Plant in an amount not to exceed \$62,000.00.

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

Transmitted Via E-mail: jmorris@cityofnewburgh-ny.gov

Arcadis of New York, Inc.
855 Route 146
Suite 210
Clifton Park
New York 12065
Phone: 518 250 7300
Fax: 518 371 2757
www.arcadis.com

Date: April 21, 2021

Subject: Proposal for Engineering Services

WPCP Concrete Condition Assessment of Energy Dissipation Chamber
and Primary Clarifier Influent Channel

Dear Mr. Morris,

Arcadis is pleased to provide the City of Newburgh (City) with this letter proposal for engineering services to complete a concrete condition assessment of the Energy Dissipation Structure (EDS) and the primary clarifier influent channel at the City's Water Pollution Control Plant (WPCP).

Project Understanding

The City's WPCP was constructed in the late 1960s and since that time there has been several upgrades to the WPCP. The EDS and primary clarifier influent channel have not been upgraded and remain original to the WPCP. The 36" steel WPCP influent sewer enters the EDS approximately 10 feet above that of the influent channel to the Screenings and Grit Removal Building. Wastewater enters the EDS and flows over a series of granite steps to reduce the hydraulic and energy grade line of the influent wastewater protecting the WPCP. After grit removal, flows go through a Parshall Flume, which induces a hydraulic jump to measure flow. There are visible signs of concrete deterioration on the surfaces of the EDS and possible leakage at the primary clarifier influent channel raising questions as to the actual condition of these critical structures. With the City investing in the upgrades to the influent sewer it is prudent to evaluate the condition of both structures to determine remaining service life and if rehabilitation is an option or if these structures need to be replaced.

Scope of Work

Arcadis proposes to complete the work as follows:

Task 1 – Field Investigation

Arcadis will subcontract with Ryan Biggs | Clark Davis (Ryan Biggs), a Woman-owned Business Enterprise (WBE) structural engineer, to complete a structural investigation and condition assessment of the EDS and primary clarifier influent channel through visual observation and non-destructive testing utilizing surface penetrating radar, impact echo, and ultrasonic thickness testing. Arcadis has included up to three days of field work to complete the assessments, with 3 to 4 engineering and support staff.

The structural nondestructive testing shall generally be conducted as follows:

- Conduct initial sounding of accessible concrete surfaces by hand-held hammer and auditory evaluation,
- Utilize 2-D surface penetration radar (SPR) to map reinforcing and thickness variation from exterior surface and correlate with hammer-sounding results.
- Verify/check SPR test results in representative or questionable regions through Impact Echo (IE) evaluation,
- Perform 3-D full structure scans to map representative structure regions as pointed out through 2-D SPR and IE testing.
- Where evaluation includes structural steel elements, employ Ultrasonic Thickness Testing to measure existing material thickness from the exterior. Including portions of the steel sewer entering and leaving the EDS.

To make observations and evaluate the EDS a manlift and operator will be required. Arcadis has included the cost of a manlift and operator for up to three days in the scope of this proposal.

Since the investigation is to be conducted primarily through nondestructive testing and visual observation, removal of existing materials and finishes to observe conditions is not anticipated. Physical access to the interior of the EDS is not anticipated. If cursory visual observation of the EDS interior is conducted, observations will be made from the exterior of the structure through the utility access points at the top surface of the wastewater influent and effluent points. Arcadis will coordinate with City to provide personnel to remove and replace access hatch coverings.

Task 2 – Evaluation of Alternatives

Arcadis in conjunction with Ryan Biggs will prepare a technical memorandum summarizing the field investigation. Ryan Biggs will compile and analyze observation notes and data obtained through SPR, IE, and Ultrasonic Thickness Testing to assess the condition of the structures. The technical memorandum will summarize:

- Identification of problems observed, including photographs or nondestructive testing imagery of representative issues.
- Recommendations for additional removals or testing, if required.
- A priority list of concept-level repair work to address problems observed.
- Estimated remaining service lifespan of existing structures based on both the existing condition and if recommended repairs are conducted.
- An opinion of probable construction cost for repairs identified and estimated replacement costs.
- A plan to maintain plant operations while performing rehabilitation or replacement work.

Arcadis will send a draft technical memorandum for the City to review and schedule a workshop to discuss the alternatives. Based on the outcome of the workshop, Arcadis will address comments raised and finalize the technical memorandum for submission to the City. We will also work with the City to apply for available funding opportunities to help the City offset the costs for the proposed work.

Compensation

Arcadis will complete the scope of services presented herein for a total not to exceed fee of \$62,000 pursuant to a rate schedule for hours worked plus other direct costs markup of 10 percent.

Mr. Jason Morris, PE
City of Newburgh
April 22, 2021

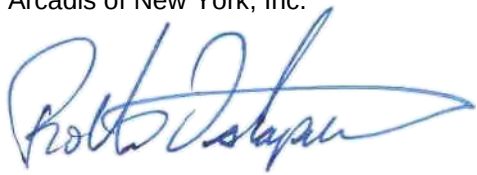
Schedule

Arcadis will complete the field activities in May 2021 and develop and submit the technical memorandum in June 2021.

Arcadis looks forward to continuing to work with the City to improve its critical infrastructure. If you have any questions, please do not hesitate to call me at 518.250.7300 so that I may be of further assistance. We again thank the City for this opportunity.

Sincerely,

Arcadis of New York, Inc.



Robert E. Ostapczuk, PE
Vice President

Email: robert.ostapczuk@arcadis.com
Direct Line: 518.250.7305

CC. A. Brooks, Arcadis

Enclosures:

Rate Sheet
Appendix A: Surface Penetrating Radar
Appendix B: Impact Echo

This proposal and its contents shall not be duplicated, used or disclosed — in whole or in part — for any purpose other than to evaluate the proposal. This proposal is not intended to be binding or form the terms of a contract. The scope and price of this proposal will be superseded by the contract. If this proposal is accepted and a contract is awarded to Arcadis as a result of — or in connection with — the submission of this proposal, Arcadis and/or the client shall have the right to make appropriate revisions of its terms, including scope and price, for purposes of the contract. Further, client shall have the right to duplicate, use or disclose the data contained in this proposal only to the extent provided in the resulting contract.

Rate Sheet

Hourly Rates: Charges for services provided will be in accordance with the following schedule:

Rate Schedule	
Grade 1 – Technician/Administrator I	\$60
Grade 2 – Technician/Administrator II	\$75
Grade 3 – Technician/Administrator III	\$85
Grade 4 – Technician/Administrator IV	\$90
Grade 5 – Professional	\$105
Grade 6 – Professional II	\$115
Grade 7 – Staff Professional	\$135
Grade 8 – Project Professional	\$150
Grade 9 – Senior Professional	\$170
Grade 10 – Principal	\$190
Grade 11 – Associate VP or VP	\$240
Grade 12 – VP or Senior VP	\$270

Reimbursable Expenses. Except for certain in-house services, project expenses incurred with subcontractors and outside vendors will be invoiced at cost plus 10%. These project expenses may include, but are not limited to: shipping charges; printing; supplies; equipment; traveling expenses; special insurance; licenses; permits; and subcontracted services.

In-house services not subject to handling costs are:

Transportation: \$0.56/mile for vehicles; \$0.66/mile for 4x4 vehicles

Invoices. Arcadis will submit invoices to Client for each month during which services were performed. Invoices may include carrying charges at 1.5% per month for delinquent payments outstanding over 30 days and applicable sales or value-added taxes.

APPENDIX A - SURFACE PENETRATING RADAR (SPR)

Material investigation through use of Surface Penetrating RADAR (SPR) technology is based upon the difference in the velocity of electromagnetic energy transmission through various materials (dielectric value). When properly utilized, SPR allows for determination of the thickness of a material and the location of embedded items.

The equipment consists of a RADAR signal generator, set of two fixed antenna (one transmitting and one receiving) mounted on a wheeled cart, a processor, and an output screen. The SPR unit transmits electromagnetic energy (in the form of RADAR waves) into a material through an antenna. When this wave moves through one material to another material having a different dielectric value (such as from concrete to reinforcing bar or concrete to air) it reflects energy back to the SPR unit. The differences in dielectric values of the materials being scanned affect the time required for the reflected wave to return to the receiving antenna.

Although powerful, SPR scanning is limited by several factors and cannot determine everything about a material section.

- Because signal is reflected as the wave travels through a material and encounters an embedded item having a different dielectric value, little or no signal will continue deeper into the material at this location. Therefore, items located adjacent to and below other embedded items will not be indicated in the scan as their presence will be shielded by the object above. (A tightly spaced top layer of reinforcing will hide a lower mat of reinforcing.) Likewise, two side-by-side items will be indicated as a single signal.
- The effective depth of scan is inversely related to the conductivity of the material being scanned. Increased conductivity allows the radar signal to attenuate and not penetrate. For this reason, scanning of materials high in moisture (such as saturated or newly placed concrete) will often yield a hazy or indeterminate image.
- Items having similar dielectric properties will not appear in the output screen as the signal will continue through them without reflection.
- Because the SPR unit measures only the reflection of the signal from the closest surface of an object, the size of an embedded item cannot be directly measured. (No signal is reflected from the bottom surface of an embedded item.)
- The SPR unit can be subject to interference from cell phones or other radio frequencies.

Depending on the required depth of scan, resolution, and need for a 2-D or 3-D image, Ryan-Biggs | Clark Davis provides concrete scanning with either a GSSI StructureScan Mini SPR unit or SIR-3000 unit linked with the RADAN post-processing software package. Both units are equipped with a 1.6 GHz antenna.

APPENDIX B – IMPACT ECHO (IE)

Impact Echo (IE) is a nondestructive testing (NDT) process that can be performed on concrete, masonry, stone, or other similar materials to determine certain in situ properties or physical characteristics. Examples of detectable physical features include: sample thickness, delamination, cracks, crack depth, voids, debonding, honeycombing in concrete, and internal defects in masonry construction. The presence of reinforcing in the concrete does not interfere with impact echo testing unless there is a high reinforcing bar diameter to depth ratio.

Ryan Biggs Clark Davis utilizes an Impact-Echo Instruments, LLC testing kit with a dual-head transducer, two single transducer units (pistol and cylindrical), a variety of impactor sizes, a data acquisition system, and a laptop. The impact echo testing is a two-step process that follows ASTM D1383-15, Test Method for Measuring P-Wave Speed and the Thickness of Concrete Plates Using the Impact-Echo Method. The first step is to determine the wave speed of the material by using the dual-head transducer. An impactor is struck against the material to produce P-waves and R-waves through the material. The transducer heads are at a fixed distance so the time can be measured between when the P-wave reaches the first transducer and when it reaches the second transducer. Once the wave speed is determined, the impact test is performed. The impact test is conducted using one of the single transducer units. The single transducer reads the wave reflection from the back face of the sample to determine the peak frequency of the material. When the wave speed and peak frequency are known, a thickness can be determined by calculation. By using this two-step process with variations based on what defects are expected in the material type, the material's physical characteristics noted previously can be determined.

Impact Echo testing is often employed for investigation of materials where access to surfaces is limited or direct measurement of material thickness is either not possible or would require significant costs. In industrial applications, interruption of processes in industrial settings can often be avoided with IE testing as there is no need to temporarily shut off service to access interior surfaces of process critical structures. Noise within the facility does not interfere with the testing performance. IE NDT has been successfully conducted in locations such as on parking garages, bridge decks, tunnels, retaining walls, water treatment facilities, and historic masonry structures.

The limitations of the impact echo are as follows:

- A smooth surface is needed for adequate contact between the transducers and the surface. (A typical broom finish is acceptable for good contact.) If the material surface is rough, then additional time will be needed to grind the surface smooth to get an accurate reading from the testing.
- At least two results are needed at each location to ensure an accurate reading has been performed by the equipment. This results in a longer process to perform the same testing as other equipment with similar capabilities. By pairing the impact echo testing with other forms of testing, an accurate understanding of the material condition can be obtained.

RESOLUTION NO.: 111 - 2021

OF

MAY 10, 2021

**A RESOLUTION DECLARING FIRE DEPARTMENT AND
CODE COMPLIANCE BUREAU VEHICLES AS SURPLUS**

WHEREAS, the City of Newburgh Fire Department Code Compliance Bureau possess vehicles identified as two 2004 Jeep Grand Cherokees, VIN#1JGW48S04C429373 and VIN#1J4gw48S94C429372 which are no longer of use to the City; and

WHEREAS, the City of Newburgh Fire Department possesses vehicles identified as a 1998 GMC Suburban VIN#1GKGK26R6XJ701984, 1991 Chevrolet Pickup VIN#2FACP72FOMX161447, and a 1991 Ford F Series VIN# 2FDKF37HXMCA37457, which are no longer of use to the City; and

WHEREAS, the Fire Department has requested that the vehicles be designated as surplus and sold; and

WHEREAS, the City Council has determined that declaring the vehicles 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 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]

From: [Spinelli, Francis](#)
To: [Donat, Joseph](#); [Kelson, Michelle](#); [Kaufman, Jeremy](#)
Subject: Surplus Vehicles
Date: Tuesday, April 20, 2021 4:01:39 PM

Good Afternoon Everyone,

I would like to surplus a number of fire department vehicles. Where does the process begin?

Specifically:

0401	2004 Grand Cherokee	1JGW48S04C429373	Codes	113,000
0402	2004 Grand Cherokee	1J4gw48S94C429372	Codes	120,600
9801	1998 GMC Suburban	1GKGK26R6XJ701984	Staff	96,000
9102	1991 Chevrolet Pickup	2FACP72FOMX161447	Master Mechanic	76,600
9006	1991 Ford F Series	2FDKF37HXMCA37457	Fire Alarm Truck	30,150

Each vehicle has outlived it's useful purpose. The Fire Alarm Truck needs thousands of dollars in hydraulic work to be operational.

Thanks,

F. J.

Chief F. J. Spinelli, CFO
City of Newburgh Fire Department
22 Grand Street
Newburgh, NY 12550

Office: 845-569-7412
Cell: (845) 549-0052
Dispatch: 845-569-7420

fspinelli@cityofnewburgh-ny.gov

RESOLUTION NO.: _____112_____ - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY AND
ACCEPT IF AWARDED AN ENVIRONMENTAL POLICY INNOVATION CENTER
LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR
SMALL COMMUNITIES PROGRAM GRANT FOR 100 HOURS
OF TECHNICAL ASSISTANCE TO BROADEN
THE CITY OF NEWBURGH LEAD SERVICE LINE REPLACEMENT PROJECT
WITH NO CITY MATCH REQUIRED**

WHEREAS, through a New York State Department of Health Lead Service Line Replacement Program Grant the City of Newburgh Water Department established a Lead Service Line Replacement Program; and

WHEREAS, the Environmental Policy Innovation Center offers technical assistance to small communities with a high percentage of low and middle income residents, disadvantaged and/or Environmental Justice communities to establish and expand lead service line replacement programs through its Lead-Free Challenge: Lead Service Line Replacement for Small Municipalities Program; and

WHEREAS, the City of Newburgh Water Department proposes to apply for and accept if awarded a grant for technical assistance in an amount up to 100 hours, with no City match required, from the Environmental Policy Innovation Center through its Lead-Free Challenge: Lead Service Line Replacement for Small Municipalities Program to broaden the City's Lead Service Line Replacement Program; and

WHEREAS, this Council has determined that applying for and accepting such technical assistance is 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 apply for and accept if awarded technical assistance in an amount up to 100 hours, with no City-match required from the Environmental Policy Innovation Center Lead-Free Challenge: Lead Service Line Replacement for Small Municipalities Program to broaden the City's Lead Service Line Replacement; 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 program funded thereby.



LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR SMALL MUNICIPALITIES

SCOPE OF WORK

EPIC will provide up to **100 hours of technical assistance** for the selected applicants, targeted at accomplishing some or all of the following:

Launching and implementing a lead service line replacement program:

- Conduct an initial needs assessment with the water system
- Develop an action plan for becoming lead-free with the water system

Building a broad base of support:

- Identify and approach local elected officials and others who can become champions for the program
- Reach out to local organizations, especially with local grassroots, community, or environmental justice groups
- Generate earned media opportunities
- Develop and/or access educational materials

Developing a grant/loan financing strategy:

- Identify and connect with State Revolving Fund administrators, federal and state programs, foundations, and private corporations
- Assist with grant/loan applications

Connecting to other resources:

- Connect with groups offering other resources
- Set up a peer-to-peer network for municipalities
- Connect with technical expertise to develop a lead service line inventory

Policy expertise:

- Provide templates of ordinances and other potential policies to support lead replacement
- Provide guidance on federal regulations on lead



Fact Sheet

LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR SMALL MUNICIPALITIES

WHO IS EPIC?

The Environmental Policy Innovation Center (EPIC) is a nonprofit organization based in Washington, DC whose mission is to build policies that deliver spectacular improvements in the speed and scale of conservation and environmental progress. In our water work, we focus on innovative policies that improve health, access, and affordability; eliminate disparities across water systems; and build public trust in water supplies.

WHY ARE WE LAUNCHING THIS CHALLENGE?

EPIC is launching a *Lead-Free Water Challenge* because we know that small municipalities and water systems may not have the resources that bigger municipalities have. Launching a lead service line replacement should not be difficult but it does take time and energy, so EPIC is willing to roll up our sleeves and help small municipalities get their own programs started.

WHO IS ELIGIBLE TO APPLY?

EPIC welcomes any applicants from small municipalities or water systems to apply. Although we are targeting water systems with a population of roughly 5,000-35,000, we will consider other population sizes.

HOW SHOULD INTERESTED MUNICIPALITIES APPLY?

Municipalities interested in applying to this challenge should complete our application through this [online form](#). The application is also available at www.policyinnovation.org/water/leadfree. **The deadline to submit the application is June 15, 2021.** Early applications are highly encouraged.



LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR SMALL MUNICIPALITIES

HOW WILL EPIC SELECT MUNICIPALITIES?

EPIC will review applications on a rolling basis through June 15, 2021, and interview final candidates before selecting five municipalities by July 1, 2021.

We will select municipalities based on the following criteria:

- Existence (if known) of a high number of lead service lines identified in maps, an inventory, and/or presence of older housing stock
- High percentage of low and middle income residents, disadvantaged, and/or Environmental Justice communities
- History of lead action level exceedances
- Willingness to pursue a goal of becoming lead-free in drinking water over a decade and to sign an agreement with EPIC to work together
- Willingness to participate in a peer network of like-minded municipalities aiming to remove and replace lead pipes

WHAT HAPPENS ONCE A MUNICIPALITY IS ACCEPTED INTO THE PROGRAM?

EPIC will ask each selected municipality to sign a Memorandum of Understanding, agreeing to work together. EPIC will provide up to **100 hours of technical assistance** for the selected applicants, targeted at accomplishing some or all of the following:

- Launching and implementing a lead service line replacement program
- Building a broad base of support
- Developing a grant/loan financing strategy, though EPIC will not provide any direct funds to municipalities
- Connecting to other resources like other municipalities and other organizations with specific expertise
- Policy expertise



ENVIRONMENTAL POLICY
INNOVATION
CENTER

Request for Applications

LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR SMALL MUNICIPALITIES

EXECUTIVE SUMMARY

The Environmental Policy Innovation Center (EPIC) is a nonprofit organization based in Washington, DC whose mission is to build policies that deliver spectacular improvements in the speed and scale of conservation and environmental progress. In our water work, we focus on innovative policies that improve health, access, and affordability; eliminate disparities across water systems; and build public trust in water supplies.

EPIC is launching a **Lead-Free Water Challenge** to help small municipalities interested in replacing lead service lines launch their own programs by offering technical assistance, connections to resources and funders, and information-sharing through peer networks. We know that eliminating lead pipes will significantly reduce the problem of lead contamination in drinking water. Removing these pipes will result in greater health equity and clean water for all if we focus on full lead service line replacement (i.e. both public and private service line replacement).

Our **Lead-Free Water Challenge** is supported by the Robert Wood Johnson Foundation and Spring Point Partners and also includes other partners:

Robert Wood Johnson Foundation



CENTER FOR
**GEOSPATIAL
SOLUTIONS**



BlueConduit



LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR SMALL MUNICIPALITIES

BACKGROUND AND OPPORTUNITY

Lead in drinking water, unlike many other water contamination issues, has a relatively straightforward solution: remove and replace lead service lines, where they exist, from the water main to a home or residential building. While there are many larger cities across the United States working hard to replace lead service lines, many others - of the 11,000 communities who have lead pipes - have not yet launched a program. And until we replace the estimated 6 to 10 million lead service lines in the country, the threat of lead poisoning from drinking water remains.

With the pending revised federal Lead and Copper Rule (whose effective date has been extended by the Biden-Harris administration to allow for additional public input), there will likely be many changes affecting water systems across the United States, including a new mandate for all water systems to develop a lead service line inventory or demonstrate an absence of lead service lines within the first three years of the publication of the final rule.

EPIC is launching a ***Lead-Free Water Challenge*** to help incentivize smaller municipalities who are interested in working with us to move towards becoming lead-free in drinking water by replacing lead pipes over the next decade. We welcome submissions from public water systems (either directly or through their municipality) willing to make a commitment to remove all their lead pipes, with an emphasis on those who are aiming to replace full service lines, which means both the public side and the private side. We encourage interested public water systems from smaller municipalities to apply.



LEAD-FREE WATER CHALLENGE: LEAD SERVICE LINE REPLACEMENT FOR SMALL MUNICIPALITIES

ELIGIBILITY

EPIC welcomes applicants who demonstrate some or all of the following criteria:

- Public water system serving a municipality with a population of roughly 5,000-35,000 (though we will consider other population sizes)
- Areas with likely high number of lead service lines identified in maps, an inventory, and/or presence of older housing stock
- Little or no current lead service line replacement programs in place
- High percentage of low and middle income residents, disadvantaged, and/or Environmental Justice communities
- History of lead action level exceedances
- Willingness to pursue a goal of becoming lead-free in drinking water over a decade
- Willingness to participate in a peer network of like-minded municipalities aiming to remove and replace lead pipes

TO APPLY

Municipalities interested in applying to this challenge should complete our application through this [online form](https://www.policyinnovation.org/water/leadfree) available at www.policyinnovation.org/water/leadfree.

The deadline to submit the application is June 15, 2021. Early applications are highly encouraged. Proposals will be reviewed on a rolling basis, and follow-up interviews will be conducted before acceptance into the program. Successful applicants will be notified by July 1, 2021.

Please send inquiries to Maureen Cunningham, Deputy Director of Water at EPIC, at maureen@policyinnovation.org.

RESOLUTION NO.: 113 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO A LICENSE AGREEMENT WITH STRONGROOM TO ALLOW USE AND
ACCESS TO THE NEWBURGH CITY CLUB LOCATED AT 120 GRAND STREET
(SECTION 24, BLOCK 2, LOT 17) FOR AN ARTWORK DISPLAY**

WHEREAS, Strongroom, a non-profit organization producing contemporary art installations, has invited artist Martin Roth to propose a site-specific work in the City of Newburgh; and

WHEERAS, Strongroom and Martin Roth propose a homage to Andrew Jackson Downing in the only building of his design still standing in the City of Newburgh in the form of a condensed version of Andrew Jackson Downing's original design for New York City's Central Park to be installed inside the walls of the City Club located at 120 Grand Street, more accurately described as Section 24, Block 2, Lot 17 on the official Tax Map of the City of Newburgh, and open for the public to observe and enjoy; and

WHEREAS, the proposed installation would include paths and benches for the public to enjoy along with a subtle sound system to reflect the sounds of the growing plants and movement by people and nature among them to create a "natural" concert hall; and

WHEREAS, by Resolution No. 251-2017 of September 11, 2017 and Resolution No. 127-2019 of May 28, 2019, the City Council authorized the City Manager to execute license agreements for the proposed art installation providing additional time to raise sufficient funding and complete the required engineering work in order to install the proposed art installation; and

WHEREAS, due to the coronavirus pandemic, Strongroom has requested more time and an extension of the license agreement to install the project in the summer of 2021; and

WHEREAS, this Council has determined that extending the term and entering into a new license agreement would be 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 the attached license agreement with Strongroom to allow access to City-owned property known as the City Club located at 120 Grand Street (Section 24, Block 2, Lot 17) for the purpose of installing and displaying a temporary art exhibit for public viewing.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, dated as of _____, 2021, by and between:

THE CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, City Hall, Newburgh, New York 12550 (“City” or “Licensor”); and

STRONGROOM, a non-profit corporation with an address of 234 Grand Street, Newburgh, New York 12550 (“Licensee”).

WHEREAS, the City is the owner of the City Club located at 120 Grand Street in the City of Newburgh, and more accurately described as Section 24, Block 2, Lot 17 on the official tax map of the City of Newburgh (hereinafter referred to as “the Property”); and

WHEREAS, the Licensee has requested access to the Property for the purpose of undertaking the installation and exhibition of a temporary art exhibit;

NOW, THEREFORE, it is hereby agreed between the parties as follows:

Section 1. Grant of License. The City hereby represents that it owns the City Club, located at 120 Grand Street in the City of Newburgh, and more accurately described as Section 24, Block 2, Lot 17 on the official tax map of the City of Newburgh, and that it has duly authorized this License Agreement. The City hereby grants Licensee a revocable license for Licensee and Licensee’s employees, volunteers, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor’s property located at 120 Grand Street, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary, for the purposes of and to install and display a temporary art exhibit for public display.

Section 2. Use of and Access to 120 Grand Street (“the City Club”). Entry to the City Club is limited to the use and access necessary to install and display a temporary art exhibit for public viewing. Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby. Licensee shall perform regular trash clean-up and maintenance of the grounds around the City Club. Licensee shall give Licensor no less than forty-eight (48) hours advance notice of its commencement of work in or on the City Club. Licensee acknowledges that the City intends to convey the City Club to a developer and shall cooperate with the City’s developer, and its partners, employees, agents and contractors, in connection with any and all pre-development activities that may be authorized by the City during the term of this license agreement.

Section 3. Insurance. The Licensee shall not commence or perform work nor operate machinery under this License Agreement until it has obtained all insurance required under this Section 3 and such insurance has been approved by the City.

A. Workers' Compensation Insurance - The Licensee shall take out and maintain during the life of this agreement such Workers' Compensation Insurance for its employees or members to be assigned to the work hereunder as may be required by New York State Law.

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it and the City which shall be named as additional insured on all such policies from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance at the time of the public opening of the installation shall be as follows:

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.

2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this License Agreement. Prior to the public opening and for the purpose of creating the installation, Licensee shall maintain liability insurance in the amount of \$1,000,000.00 per occurrence.

C. Licensee may retain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, Licensee and such agents shall provide and maintain insurances as required by this Section 3 and name Licensor as additional insured under insurance coverage concerning Licensee's performance of the work referenced herein.

Section 4. Damages. The relation of the Licensee to the City as to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances arising out of the negligent performance, other than those wholly caused by Acts of God. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance or arising out of its activities licensed hereby.

Section 5. Defense and Indemnity. Licensee shall defend, indemnify and hold the City harmless against any and all claims, actions, proceedings, and lawsuits arising out of or relating to the access and use of the City Club under this License Agreement, excepting gross negligence or misconduct by the City.

Section 6. Term of License. The license or privilege hereby given shall commence upon the signing of this licensee agreement and shall expire without further notice to either party to the other on the earlier of the conveyance of the City Club by the City to a third party or midnight November 1, 2021.

Section 7. Assignment of License; No Sub-Licensing. This License may not be assigned or sub-let to any other party.

Section 8. Termination of License. Either party may terminate this license prior to the expiration of the term specified in paragraph 6, with or without cause, on at least thirty (30) days prior written notice to the other party. Upon termination by either party, Licensee shall not be entitled to reimbursement of any of its costs, and Licensee and its agents, employees and contractors will restore of the property to a clean and orderly state and in substantially the same condition as existed prior to the granting of this license. The City may terminate this license agreement by ten (10) days' written notice when and if in its sole judgment it deems such termination is necessary in the City's sole reasonable discretion.

Section 9. New York Law. This License Agreement shall be construed under New York law and any and all proceedings brought by either party arising out of or related to this License shall be brought in the New York Supreme Court, Orange County.

Section 11. Modification of License Agreement. This License Agreement may not be modified except by a writing subscribed by both parties to this Agreement.

Section 12. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

WITNESSETH:

THE CITY OF NEWBURGH
LICENSOR

By: _____
Joseph P. Donat, City Manager
Per Resolution No.:

STRONGROOM
LICENSEE

By: _____

Approved as to form:

MICHELLE KELSON
Corporation Counsel

TODD VENNING
City Comptroller

STRONGROOM presents
Martin Roth: “A Home With a Garden”

Installation by artist Martin Roth in
the Newburgh “City Club”

History of past attempts

2018: Project conceived and proposed to the City of Newburgh. City required a third party engineer must sign off on the safety of the site for the public to enter. Strongroom sought local engineer but was unsuccessful in securing an engineering partner this season.

2019: Strongroom secured an engineering partner with Silman Engineers. Silman provided a letter with safety stipulations for Strongroom to follow to complete this project. This letter was provided along with a signed contract with the City and proof of insurance. We cleared the building of debris and poison ivy, and began preparation for plantings. The project was cancelled when the artist, Martin Roth, suddenly and unexpectedly passed away just as we were launching our fundraiser and installation.

Please see our 2019 Kickstarter video (cancelled after two days), that concisely explains the project. This will be updated for this year if approved:

<https://www.strongroom.us/roth>

2020: Strongroom, together with the artist's widow, had hoped to complete the project in Martin's memory. Unfortunately due to Covid, the engineer would not travel to Newburgh, and would not sign off on the building's safety without an in-person site visit.

2021: Proposal for this season enclosed. We hope to finally be able to realize this ambitious and beautiful project as Martin envisioned it.



Brief summary of project

STRONGROOM is a non-profit organization producing contemporary art installations in Newburgh, NY. For this project, artist Martin Roth proposed a site-specific installation and “plant concert” inside the site of the former Newburgh “City Club,” now a ruin overtaken by nature.

We will turn the site into a temporary “secret garden” and sound installation. The structure was originally designed by “the Father of American Landscape Design,” Andrew Jackson Downing, and his student, Calvert Vaux. The layout and garden plantings will be based on Andrew Jackson Downing’s park designs and philosophy that homes should be part of nature.

A sound installation will also be installed, amplifying the sound of the plants themselves through small sensors placed on their leaves - which interpret their varying frequencies into musical notes. Growth, the wind blowing, or a visitor moving amongst the plants, creates the sound, which represents the “heartbeat” of the plants. This will create a kind of natural concert hall.

This project honors Downing, one of Newburgh’s most important historical figures and architect of this building, whose estate was just blocks away from the site. In addition to creating a conceptual installation and community space, this project will celebrate Newburgh’s architectural history and relationship to landscape design, as championed by our native Downing.

Conceptually the artist is most interested in Downing’s perspective that architecture and nature should exist harmoniously. Bringing the park plan inside this structure is a way to contemplate parks as the domestication of nature.

Extended summary of project

Without human disturbance (and without a roof) nature has been able to thrive inside the walls of the former City Club. “While citizens of Newburgh are very aware of nature overtaking buildings and mainly see this as a nuisance I want to alter and shape the environment inside the building to emphasize the beauty in nature reclaiming a site in an urban setting.”

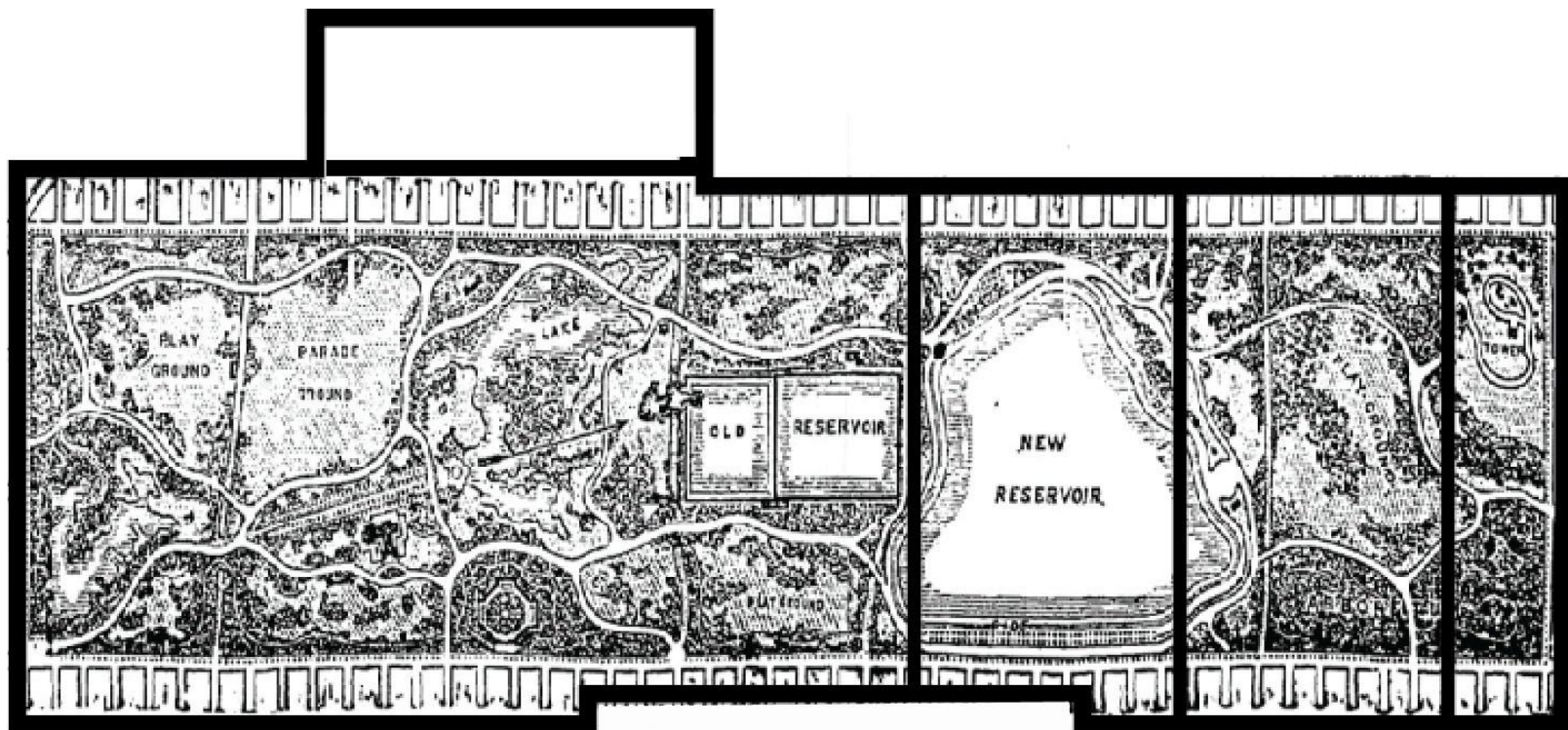
This magical garden with pathways crisscrossing an environment filled with trees and flowers, will of course be only temporary until development of the site takes place. Martin Roth says “I strongly believe that art should be subject to risks of being alive, allowed to grow, grow old, and ultimately even allowed to die”

“For the duration of the exhibition I would like the City Club to exist in two parallel realities: as the site of the former City Club but also as the home of this new extraordinary illusionary public garden. I want to work closely with the natural environment of trees and bushes that already exist inside the City Club but I want to alter it, and in a sense cultivate it, with more colorful plants and flowers. I believe that if you change reality just a little bit, everything changes.”

Referencing A.J. Downing’s ideas for this building when it was first built as the home of William Culbert, it will be as Downing stated, “a home with a garden”. More specifically, it will be a home with a view – an internal view. While the building was used as the Newburgh City Club, it was a club for the city’s leading businessmen and politicians in the past - in today’s climate it will be especially exciting to make a statement that makes this space a club for everyone in Newburgh.

Artist Rendering





Artist Rendering





Artist Rendering



Artist Rendering





Artist Rendering

Artist Rendering



About the Artist, Martin Roth

Austrian Artist Martin Roth conceived this project in 2018 and passed away unexpectedly in 2019. We are hoping to complete his vision for this installation posthumously this summer.

He received a MFA from Hunter College, New York in 2011. Previous to that he studied at Salzburg International Summer Academy of Fine Arts and SOMA, Mexico City. Roth exhibited internationally, including group exhibitions at The Hessel Museum of Art, Annandale-on-Hudson, NY; Künstlerhaus and mumok, Vienna, Austria; Dittrich & Schlechtriem, Berlin, Germany; The Artist's Institute and Kunstraum, New York, NY; and solo shows at Capitol Gallery, San Francisco, CA; Biquini Wax, Mexico City, Mexico; and Louis B. James, New York, NY. Most recently he had a solo exhibition at the Austrian Cultural Foundation in New York City.

In his installations, Roth often played with the clash of natural and artificial. His practice consistently pushed at the various interdependencies that make up one's habitat, calling into question the idea of a "natural environment" through a mutual contamination of organic and artificial elements. Often circling around the nurture of living organisms, his works are strangely intimate and invite the viewer if not to engage directly, at least to consider their relationship to the work on a human scale.

To see examples of Martin's work, please visit: <http://martinroth.at/en/>

About STRONGROOM

Strongroom is a 501(c)(3) organization founded in 2016 and based exclusively in Newburgh. We do not have a permanent space. Instead, our mission is to bring high-quality contemporary art installations and related public programs to various neighborhoods in Newburgh, utilizing empty spaces through temporary site-specific installations by professional artists.

Newburgh is an incredibly inspiring place for artists. The connection between art, architecture, and history, have proven to be an important thread in Strongroom's programming so far.

Strongroom was founded by Kelly Schroer, who has been a Newburgh resident since March 2014. Kelly has an MA in Contemporary Art and BA in Art History, and has worked in the art world for over a decade in both non-profit and commercial sectors, while also continuing an independent curatorial practice. From 2010- 2018 Kelly was on the Sales team of David Zwirner gallery in New York and currently works as an art advisor and independent curator, in addition to producing Strongroom projects in Newburgh.

For images of our past projects, please see our website: www.strongroom.us

Engineering partner

Silman

Silman Engineers will provide a letter to certify that the building is structurally suitable for entry by attendees to the art installation with some basic limitations:

1. This letter will apply to the 2021 “season” only
2. There would be some areas which would be off-limits to the attendees and blocked off. For example, two such areas would be the space immediately below the 2nd floor fireplace and the small side area to the north of the main area.
3. The installation be closed to attendees during a thunderstorm or if wind speeds are forecast to be over 25 mph.
4. Engineer to include explanation that the structure has very limited capacity to resist seismic activity in its present state. While the probability of an earthquake occurring while people are inside is very low, but the risk is not zero. If a seismic event did occur, the structure has a high probability of failure.
5. *****NEW THIS YEAR*** STRONGROOM MUST ERECT SCAFFOLDING ALONG THE BACK HALF OF THE SOUTH SIDE OF THE BUILDING, AND BACK SOUTH/EAST CORNER TO PROTECT ANYONE WALKING OUTSIDE THE BUILDING FROM POTENTIAL FALLING DEBRIS**

Technical details

Sound installation:

The garden will serve as a “natural concert hall” by creating its own sound. For this the artist will connect several larger trees and bushes growing inside the building to a "music of the plants" device. This device would allow the trees and plants to play their own sound. This plant device was developed by a group of scientists with a background in electronics in order to investigate how plants perceive and act. Two electrodes will be connected to each plant measuring and mapping the variation of the electrical resistance of the plant and turning them into musical notes in the synthesizer. Several wireless outdoor speakers would be arranged around the edges of the interior of the space. The sound will be subtle and calming.

Garden installation:

The plan and plantings for the garden will be loosely based on Downing’s original Central Park plan, and will be heavily researched through his writings and known sites, including his estate on Grand Street in Newburgh. Examples of plantings would include: Wisteria, hydrangeas, daisies, sedums, roses, Russian sage, rosemary, long grasses, wild flowers, Japanese iris, hibiscus, phlox, hollyhocks, and various vines. This is to alter and enhance the plants that have already grown on their own inside the site.

Timeline and Funds

Timeline:

We would like to realize this project for summer of 2021, opening to the public in mid-end of June (exact date TBC). The installation will be open daily through the end of the season, towards the end of October.

Funding:

Strongroom will fund the project in its entirety.

Insurance:

Strongroom has liability insurance and will provide the City of Newburgh with an additionally insured certificate.

Public access and programs

The installation will be open during set hours each week, to be confirmed. Opening hours will be advertised and posted with signage at the site.

Entry will be through the back door closest to the Library. If budget allows we also hope to build a viewing platform from the Grand Street entrance so it can be viewed at all times.

Strongroom will also produce public programs in the installation during its duration, which could include performances, readings, and workshops, as well as talks on its historical relevance and Downing connection, urban farming and urban planning, etc. Dates and details will be announced after it opens.

THANK YOU FOR YOUR CONSIDERATION

Thank you for your support in fostering the arts in our community.

Please contact me if I can provide any additional information:

Kelly Schroer
Founder, Strongroom
info@strongroom.us
schroer.kelly@gmail.com
646 894 0453

RESOLUTION NO.: 251 - 2017

OF

SEPTEMBER 11, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A LICENSE AGREEMENT WITH STRONGROOM TO ALLOW USE AND ACCESS TO
THE NEWBURGH CITY CLUB LOCATED AT 120 GRAND STREET
(SECTION 24, BLOCK 2, LOT 17) FOR AN ARTWORK DISPLAY**

WHEREAS, Strongroom, a non-profit organization producing contemporary art installations, has invited artist Martin Roth to propose a site-specific work in the City of Newburgh; and

WHEERAS, Strongroom and Martin Roth propose a homage to Andrew Jackson Downing in the only building of his design still standing in the City of Newburgh in the form of a condensed version of Andrew Jackson Downing's original design for New York City's Central Park to be installed inside the walls of the City Club located at 120 Grand Street, more accurately described as Section 24, Block 2, Lot 17 on the official Tax Map of the City of Newburgh, and open for the public to observe and enjoy; and

WHEREAS, the proposed installation would include paths and benches for the public to enjoy along with a subtle sound system to reflect the sounds of the growing plants and movement by people and nature among them to create a "natural" concert hall; and

WHEREAS, the proposed art installation requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be 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 the attached license agreement with Strongroom to allow access to City-owned property known as the City Club located at 120 Grand Street (Section 24, Block 2, Lot 17) for the purpose of installing and displaying a temporary art exhibit for public viewing.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, dated as of Nov. 28, 2017, by and between:

THE CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City" or "Licensor"); and

STRONGROOM", a non-profit corporation with an address of 234 Grand St. Newburgh ("Licensee").

WHEREAS, the City is the owner of the City Club located at 120 Grand Street in the City of Newburgh, and more accurately described as Section 24, Block 2, Lot 17 on the official tax map of the City of Newburgh (hereinafter referred to as "the Property"); and

WHEREAS, the Licensee has requested access to the Property for the purpose of undertaking the installation and exhibition of a temporary art exhibit;

NOW, THEREFORE, it is hereby agreed between the parties as follows:

Section 1. Grant of License. The City hereby represents that it owns the City Club, located at 120 Grand Street in the City of Newburgh, and more accurately described as Section 24, Block 2, Lot 17 on the official tax map of the City of Newburgh, and that it has duly authorized this License Agreement. The City hereby grants Licensee a revocable license for Licensee and Licensee's employees, volunteers, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 120 Grand Street, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary, for the purposes of and to install and display a temporary art exhibit for public display.

Section 2. Use of and Access to 120 Grand Street ("the City Club"). Entry to the City Club is limited to the use and access necessary to install and display a temporary art exhibit for public viewing. Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby. Licensee shall perform regular trash clean-up and maintenance of the grounds around the City Club. Licensee shall give Licensor no less than forty-eight (48) hours advance notice of its commencement of work in or on the City Club. Licensee acknowledges that the City intends to convey the City Club to a developer and shall cooperate with the City's developer, and its partners, employees, agents and contractors, in connection with any and all pre-development activities that may be authorized by the City during the term of this license agreement.

Section 3. Insurance. The Licensee shall not commence or perform work nor operate machinery under this License Agreement until it has obtained all insurance required under this Section 3 and such insurance has been approved by the City.

A. Workers' Compensation Insurance - The Licensee shall take out and maintain during the life of this agreement such Workers' Compensation Insurance for its employees or members to be assigned to the work hereunder as may be required by New York State Law.

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it and the City which shall be named as additional insured on all such policies from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows; *at the public opening of the installation: ** -K.S.

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.

2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this License Agreement. ** Prior to public opening, and for the purpose of creating the installation, strongroom will be covered up to \$1,000,000 per occurrence. -KS.*

C. Licensee may retain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, Licensee and such agents shall provide and maintain insurances as required by this Section 3 and name Licensor as additional insured under insurance coverage concerning Licensee's performance of the work referenced herein.

Section 4. Damages. The relation of the Licensee to the City as to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances arising out of the negligent performance, other than those wholly caused by Acts of God. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance or arising out of its activities licensed hereby.

Section 5. Defense and Indemnity. Licensee shall defend, indemnify and hold the City harmless against any and all claims, actions, proceedings, and lawsuits arising out of or relating to the access and use of the City Club under this License Agreement, excepting gross negligence or misconduct by the City.

Section 6. Term of License. The license or privilege hereby given shall commence upon the signing of this licensee agreement and shall expire without further notice to either party to the other on the earlier of the conveyance of the City Club by the City to a third party or midnight December 31, 2018.

Section 7. Assignment of License; No Sub-Licensing. This License may not be assigned or sub-let to any other party.

Section 8. Termination of License. Either party may terminate this license prior to the expiration of the term specified in paragraph 6, with or without cause, on at least thirty (30) days prior written notice to the other party. Upon termination by either party, Licensee shall not be entitled to reimbursement of any of its costs, and Licensee and its agents, employees and contractors will restore of the property to a clean and orderly state and in substantially the same condition as existed prior to the granting of this license. The City may terminate this license agreement by ten (10) days' written notice when and if in its sole judgment it deems such termination is necessary in the City's sole reasonable discretion.

Section 9. New York Law. This License Agreement shall be construed under New York law and any and all proceedings brought by either party arising out of or related to this License shall be brought in the New York Supreme Court, Orange County.

Section 11. Modification of License Agreement. This License Agreement may not be modified except by a writing subscribed by both parties to this Agreement.

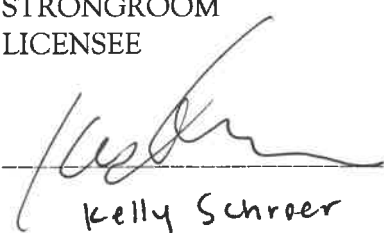
Section 12. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

WITNESSETH:

THE CITY OF NEWBURGH
LICENSOR

By: _____
Michael G. Ciaravino, City Manager
Per Resolution No.:

STRONGROOM
LICENSEE

By:  _____
Kelly Schraer
Executive Director, Strongroom Inc.

Approved as to form:

MICHELLE KELSON
Corporation Counsel

KATHRYN MACK
City Comptroller

RESOLUTION NO.: 114 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A CO-SPONSORSHIP AGREEMENT WITH THE SMALL BUSINESS ADMINISTRATION
FOR SMALL BUSINESS DEVELOPMENT WORKSHOPS
TO BE HELD IN THE CITY OF NEWBURGH**

WHEREAS, following a Community Needs Assessment and Federal Partners Tour organized by the New York Office of the U.S. Department of Housing and Urban Development, in December 2016, the Small Business Administration (“SBA”) has completed plans to develop workforce training geared to assist entrepreneurial interest in new business development and skill in writing and managing business plans; and

WHEREAS, by Resolution No. 103-2018 of April 23, 2018 and Resolution No. 94-2020 of April 13, 2020, the City Council authorized the City Manager to enter into an agreement with the U.S. Small Business Administration to co-sponsor the “Small Business Basics Workshops” in the City of Newburgh; and

WHEREAS, the SBA has proposed two workshops for 2021: The Basics of Business Law, scheduled for May 13, 2021, and Diversity is Good for Business, scheduled for June 17, 2021, designed to educate the community in order to assist, prepare and counsel them in their quest to become entrepreneurs; and

WHEREAS, the administration of the workshops requires an agreement between the City of Newburgh and the SBA, which agreement is annexed hereto; and

WHEREAS, the City Council has reviewed the agreement and finds that the execution of same is in the best interests of the City of Newburgh and its citizens;

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 the U.S. Small Business Administration, in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by Counsel, to co-sponsor the “Small Business Basics Workshops” in the City of Newburgh.



New York Small Business Development Center Co-Sponsorship Agreement

It is agreed by and between the Mid-Hudson SBDC and **The City of Newburgh**, hereinafter known as the co-sponsor, to provide training as specified in this agreement.

Title of Event: Diversity is Good for Business
Date: Thursday, June 17th, 2021 Time: 6:00-7:30 PM
Location: Virtual
Fee: N/A
Fees Collected: N/A
Co-Sponsor: The City of Newburgh
Fees Distributed: N/A Co-Sponsor: Mid-Hudson SBDC

This agreement is subject to the following terms:

1. Printed material promoting the availability of the training should include this language whenever possible:

*Funded in part through a Cooperative Agreement with the U.S. Small Business Administration. Reasonable accommodations for persons with disabilities will be made if requested at least two weeks in advance.
Contact the Mid-Hudson SBDC (845)802-9150 or sbdc@sunyulster.edu to make arrangements. Services are extended to the public on a nondiscriminatory basis.*

2. Co-sponsors agree to the following:

Assist with the organization, logistics and promotion of the event.
Provide informational material if available

3. SBDC agrees to provide the following:

Assist with the organization, logistics and promotion of the event.
Provide informational material if available. Provide a presenter.

NY SBDC Representative

April 15th, 2021

The City of Newburgh
Representative

April 15th, 2021



New York Small Business Development Center Co-Sponsorship Agreement

It is agreed by and between the Mid-Hudson SBDC and **The City of Newburgh**, hereinafter known as the co-sponsor, to provide training as specified in this agreement.

Title of Event: Basic of Business Law
Date: Thursday, May 13th, 2021 Time: 6:00-7:30 PM
Location: Virtual
Fee: N/A
Fees Collected: N/A
Co-Sponsor: The City of Newburgh
Fees Distributed: N/A Co-Sponsor: Mid-Hudson SBDC

This agreement is subject to the following terms:

1. Printed material promoting the availability of the training should include this language whenever possible:

*Funded in part through a Cooperative Agreement with the U.S. Small Business Administration. Reasonable accommodations for persons with disabilities will be made if requested at least two weeks in advance.
Contact the Mid-Hudson SBDC (845)802-9150 or sbdc@sunyulster.edu to make arrangements. Services are extended to the public on a nondiscriminatory basis.*

2. Co-sponsors agree to the following:

Assist with the organization, logistics and promotion of the event.
Provide informational material if available

3. SBDC agrees to provide the following:

Assist with the organization, logistics and promotion of the event.
Provide informational material if available. Provide a presenter.

NY SBDC Representative

April 15th, 2021

The City of Newburgh
Representative

April 15th, 2021

RESOLUTION NO.: 115 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV3)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$30,000.00
WITH MONTEFIORE ST. LUKE'S CORNWALL FOR THE ALLOCATION
OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT FUNDING
TO PROVIDE PROTECTIVE BARRIERS TO PATIENTS AND STAFF**

WHEREAS, by Resolution No. 6-2021 of January 11, 2021, the City Council adopted a second substantial amendment to the City of Newburgh Community Development Block Grant ("CDBG") FY2019 annual action plan for the allocation of Coronavirus Aid, Relief, and Economic Security ("CARES") Act funding; and

WHEREAS, the new Activities added to the CDBG FY2019 annual action plan include Public Service activities providing equipment , supplies, and material necessary to carry out a public service; and

WHEREAS, Montefiore St. Luke's Cornwall installed two automatic doors between the parking garage and the pedestrian bridge to prevent patients, families, employees and medical staff from having to touch door handles and purchased protective eyewear for staff from a local company to block aerosols in furtherance of COVID-19 infection prevention; and

WHEREAS, funding for the cost of such protective equipment in the amount of \$30,000.00 will be derived from D1.8760.0400.8040.2020; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into a sub-recipient grant agreement with Montefiore St. Luke's Cornwall to provide funding for said equipment purchase and installation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a sub-recipient grant agreement with Montefiore St. Luke's Cornwall in the amount of \$30,000.00, with all such terms and conditions as may be required by the Corporation Counsel, for COVID-19 healthcare related equipment providing protective barriers to patients and medical staff.

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
MONTEFIORE ST. LUKE'S CORNWALL**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the 1st day of April, 2021, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Montefiore St. Luke's Cornwall, a Hospital non-profit corporation ("Subrecipient"), with an address of 70 Dubois Street, Newburgh, NY 12550.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is April 2, 2020. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MW-36-0119 . The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in **Exhibit A** (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2021.

SECTION 2 SUBRECIPIENT OBLIGATIONS

- 1. Use of CDBG Funds. Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this Agreement. The project is more particularly set forth in **Exhibit A** attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as **Exhibit B** and incorporated herein by reference. The City may approve minor changes to the budget that do not exceed the maximum amount in Section 3 of this Agreement.
- 2. Representation and Warranties. Subrecipient hereby represents and warrants to the City as follows:

- a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
 - b. Subrecipient is a non-profit organization permitted to receive CDBG funds under the Act and the Regulations.
 - c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.
3. Compliance with Law. Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and Regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:
 - a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;
 - b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and
 - c. If Subrecipient is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.
 - d. OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."
4. Licenses, Permits, Fees and Assessments. Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.
5. Personnel and Participant Conditions.
 - a. Civil Rights
 - i. Compliance. Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

- ii. Nondiscrimination. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- iii. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
- iv. Section 504. Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program.

b. Affirmative Action

- i. EO 11246. Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction Agreements. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.
- ii. Women- and Minority-Owned Businesses (W/MBE). Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-

Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
 - iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
 - vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.
- c. Employment Restrictions
- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
 - ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.
- d. "Section 3" Clause
- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the Subrecipient and any sub-Subrecipients, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The

Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

- ii. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.
- iii. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of Regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub- Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Environmental Requirements. Lead Based Paint. In accordance with 24 CFR Part 570.608, Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five- tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.
- f. Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

SECTION 3 DISBURSEMENT OF FUNDS

1. **Maximum Amount of CDBG Funds.** The maximum amount of CDBG funds to be provided to Subrecipient is \$30,000.00 in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. **Maximum Amount of General Funds.** Not applicable.
3. **Termination of Fund Obligation.** The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. **Method of Payment- CDBG Funds.** Unless otherwise specified in **Exhibit A**, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (**Exhibit B**) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. **Method of Payment - General Funds, if applicable.** City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. **Program Income.** Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, as long as the amount held does not exceed the subrecipient's projected cash needs for CDBG activities including activities to prevent, prepare for, and respond to coronavirus. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

7. Separation of Funds. The Subrecipient shall certify that Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.
8. Indirect Costs. Not applicable.

SECTION 4 PERFORMANCE SCHEDULE

1. Schedule of Performance. Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" as referenced in Exhibit A.
2. Reversion of Assets. Upon the expiration or sooner termination of this Agreement, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

SECTION 5 COORDINATION OF WORK

1. Representative of Subrecipient. The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.
2. Contract Officer. Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
3. Prohibition Against Subcontracting or Assignment. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this

Agreement shall be void. No approved transfer shall release Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.

4. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.
5. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.
6. The Subrecipient hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contractor, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
 - c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

- d. Lobbying Certification - Paragraph d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SECTION 6 INSURANCE REQUIREMENTS

1. Insurance. Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Subrecipient and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Subrecipient shall maintain all required insurance listed herein for the duration of this Agreement.
2. Workers' Compensation. Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subrecipient, its employees, agendas, and subcontractors.
 - a. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:
 - i. Certificate of Liability Insurance in the amounts specified in the section; and
 - ii. Waiver of Subrogation Endorsement as required by the section.
 - b. Commercial General and Automobile Liability Insurance.
 - i. General Requirements. Subrecipient, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not

less than one million dollars (\$1,000,000) and automobile liability insurance for the term of this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- ii. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- [A] The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- [B] City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Subrecipient; or automobiles owned, leased, hired, or borrowed by the Subrecipient.

- [C] Subrecipient hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subrecipient agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

- [D] For any claims related to this Agreement or the work hereunder, the Subrecipient's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

- iii. Submittal Requirements. To comply with Subsection 6.3 Subrecipient shall submit the following:

- [A] Certificate of Liability Insurance in the amounts specified in the section;

- [B] Additional Insured Endorsement as required by the section;

- [C] Waiver of Subrogation Endorsement as required by the section; and

- [D] Primary Insurance Endorsement as required by the section.

- c. Professional Liability Insurance.

- i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - [A] The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - [B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - [C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
 - [D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
 - iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
 - iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- d. All Policies Requirements.
- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
 - ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before

beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- iii. Wasting Policies. No policy required by this Section 6 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).
- iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.
- v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient’s breach:

[A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

[B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles

for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

2. Documentation and Record-Keeping

- a. Records to be Maintained. Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - i. Records providing a full description of each activity undertaken;
 - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
 - iii. Records required determining the eligibility of activities;
 - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - vi. Financial records as required by 24 CFR Part 570.502, and Part 84; and
 - vii. Other records necessary to document compliance with Subpart K of 24 CFR 570.
 - b. Retention. Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.
3. Client Data. Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
 4. Disclosure. Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 5. Property Records. The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
 6. National Objectives. Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG program's national objectives: (a) benefit low/moderate income persons, (b) aid in the

prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. Close-Outs. Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. Audits and Inspections. All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

SECTION 8 ENFORCEMENT OF CONTRACT

1. Applicable Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of New York and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Supreme Court of the County of Orange, State of York, or the United States District Court for the Southern District of New York. Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
2. Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to

any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.

3. Remedies Upon Default by Subrecipient. In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8:
 - a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
 - b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
 - c. Wholly or partially suspend or terminate the award and this Agreement; and;
 - d. Withhold further awards for the project and/or the facility; and
 - e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the Regulations.
4. Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.
5. Waiver. No delay or omission in the exercise of any right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
6. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
7. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.
8. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be

entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 9 CITY OFFICERS AND EMPLOYEES

1. Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
2. Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
3. Indemnify and Hold Harmless. Subrecipient agrees to indemnify, defend, and hold harmless City and its officers, agents and employees, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Subrecipient's performance under this Agreement. Nothing herein shall be construed to require Subrecipient to indemnify the City, its officers, agents and employees against any responsibility or liability.

SECTION 10 MISCELLANEOUS PROVISIONS

1. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Newburgh
attn.: City Clerk
83 Broadway, 1st Floor
Newburgh, New York 12550

copy to: City of Newburgh
attn.: Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

To Subrecipient: Montefiore St. Luke's Cornwall
 70 Dubois Street
 Newburgh, NY 12550

2. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
3. Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
4. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
5. Corporate Authority. The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the City and Subrecipient have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2021 **CITY OF NEWBURGH**

By: _____
Name: Joseph P. Donat
Title: City Manager

DATED: _____, 2021 **Montefiore St. Luke's Cornwall**

By: _____
Name: Daniel J. Maughan
Title: President & Chief Operating Officer

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

On this ____ day of _____, in the year 2021, before me personally appeared Joseph P. Donat, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On this ____ day of _____, in the year 2021, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A

Community Development Block Grant (CDBG)

Scope of Services:

In direct response to the COVID-19 Pandemic, Montefiore St. Luke's Cornwall (MSLC), a 242-bed acute care hospital kindly requests funding under this Subrecipient Agreement (SRA) for enhancements to our physical plant as well as Protective Eyewear for our employees and medical staff.

Specifically, as it relates to the physical plant of the hospital, MSLC installed 2-Automatic Doors leading from our Garage into our Pedestrian Bridge to prevent patients, families, employees, and medical staff from having to touch door handles. Additionally, protective eyewear had become hard to find, and as the pandemic has gone on, ensuring we had eyewear that completely protected the eye from aerosolization, or fluid splashing became more difficult. MSLC was able to work out a deal with a local company to receive 1,000 pairs of protective goggles for our staff at a cost of \$10.11/each.

About MSLC/Demographics:

Montefiore St. Luke's Cornwall (MSLC) is a not-for-profit 242-bed acute care community hospital with campuses in Newburgh and Cornwall, NY, as well as off-site facilities, that provide dedicated care to more than 250,000 patients per year. MSLC provides care to a geographic coverage area that serves a population of approximately 400,000 people. As a safety net provider, MSLC serves a population that has been designated as a medically underserved area (MUA), specifically in the City of Newburgh. The urban portions of the county are burdened with several severe health inequities and socioeconomic factors, with one third of the population living below the poverty line, residing in the county's three major cities of Newburgh, Middletown, and Port Jervis.

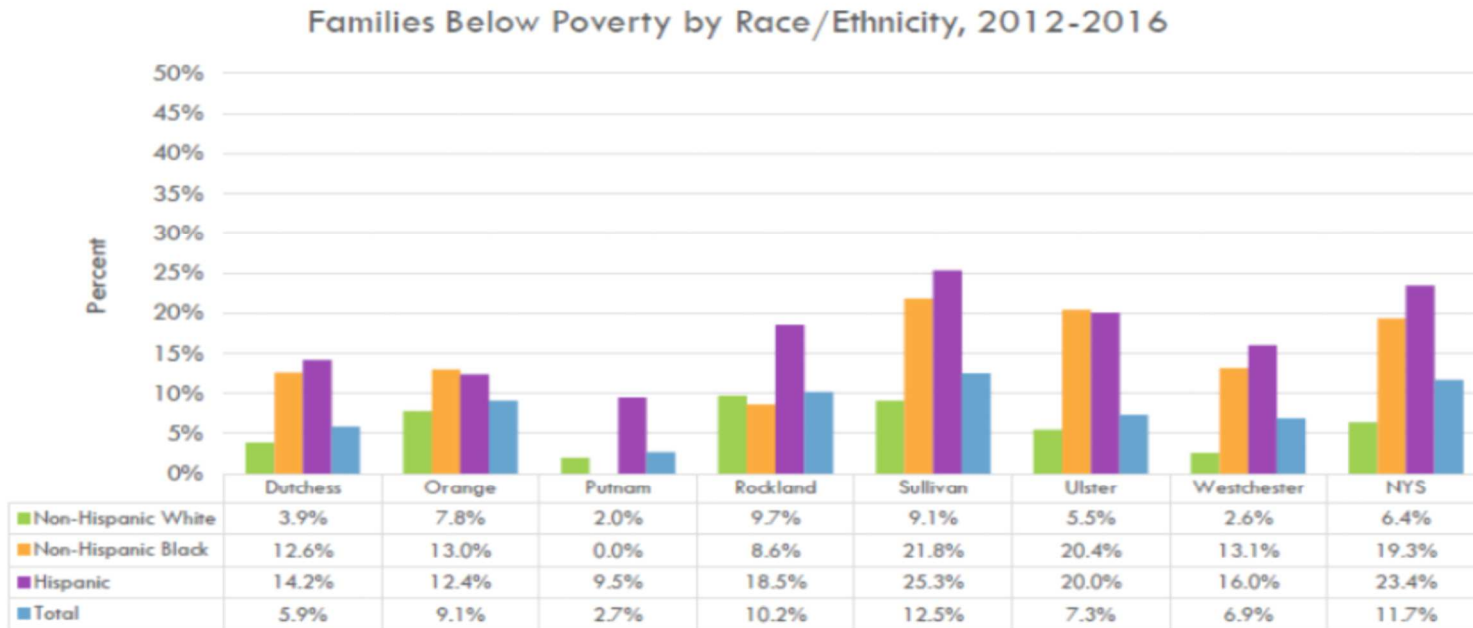
According to the 2019-2021 Mid-Hudson Regional Community Health Assessment, Orange County's population is 65.4% non-Hispanic White, with the second largest group being Hispanic at 19.7%. However, in the City of Newburgh, the largest population broken down by race/ethnicity is Hispanic, at 51%.



EXHIBIT A

Community Development Block Grant (CDBG)

The Mid-Hudson Region Community Health Assessment reports that the Non-Hispanic Black population had the highest rate of families below the poverty line. Orange County had 9.1% rate of families below the poverty line, which was the fourth highest rate in the Mid-Hudson Region, with Sullivan being the highest at 12.5%, however, see below the following grid with respect to the City of Newburgh:



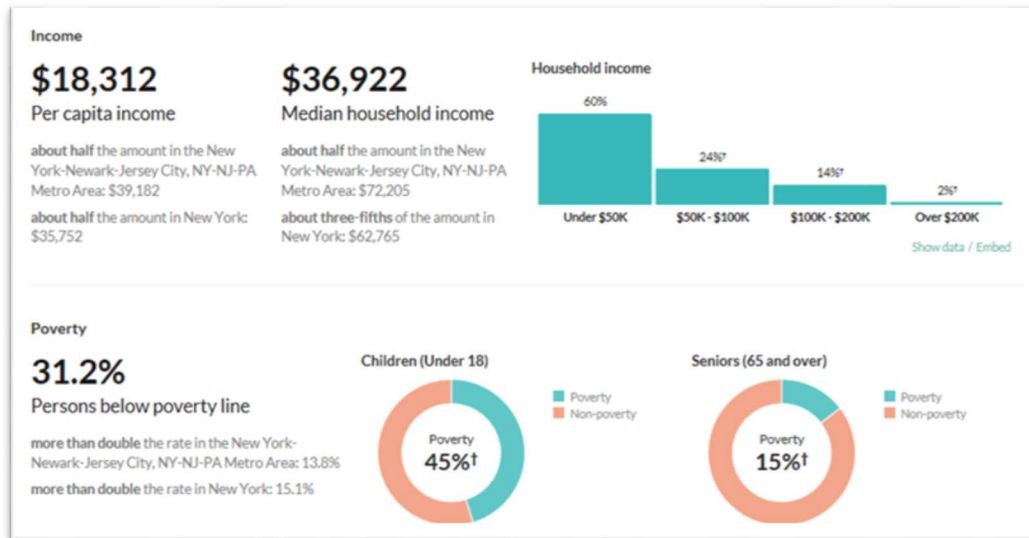
Source: U.S. Census Bureau, 2012-2016, American Community Survey, 5-year estimates

<https://www.health.ny.gov/statistics/community/minority/county/index.htm>

EXHIBIT A

Community Development Block Grant (CDBG)

In the city of Newburgh, only 14% of residents have an annual income of greater than \$100,000, with a median household income of \$36,922 and 31.2% of the population below the poverty line.



Source: <https://data.census.gov/cedsci/profile?hidePreview=true&g=1600000US3650034>

Only 39.7% of Orange County residents had an associate degree or higher. The City of Newburgh educational attainment rates were far worse. Six percent of City of Newburgh residents have attained an associate degree, and roughly 36% of the population has achieved a high school or equivalent degree.

EXHIBIT B

Community Development Block Grant (CDBG)

Line Item Budget Form – Line Item Budget Template

Please use the following template to present your proposed line item budget. In column A, list the items for which you anticipate the need for CDBG funds. In Column B, provide the calculation explaining how you arrived at the estimated cost of the line item. In Column C, provide the projected request for CDBG funds. Note: The Budget Items are examples.

Organization/Agency Name:	St. Luke's Cornwall Hospital
----------------------------------	------------------------------

A Budget Item	B Calculation	C CDBG Funding
Automatic Door	\$10,500.00	\$10,500.00
Automatic Door	\$11,588.00	\$11,588.00
Protective Eyewear	\$10,110.00	\$7,912.00
TOTAL OPERATING COSTS	\$32,198	\$30,000.00

RESOLUTION NO.: 116 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN AMENDMENT NO. 2 TO THE AGREEMENT WITH THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO EXTEND THE TERM OF
THE AGREEMENT FOR REIMBURSEMENT OF ADDITIONAL COSTS
INCURRED BY THE CITY OF NEWBURGH
AS A RESULT OF PROVIDING AN ALTERNATE SOURCE OF DRINKING WATER**

WHEREAS, perfluorooctane sulfonic acid (PFOS) has been detected in the City of Newburgh's water supply at levels in excess of the Environmental Protection Agency's recently released lifetime health advisory level; and

WHEREAS, there is a continuing need to provide a temporary alternate source of drinking water to residents of the City of Newburgh, which has access to New York City's Catskill Aqueduct as a backup source of drinking water; and

WHEREAS, by Resolution No. 204-2016 of August 8, 2016, the City Council of the City of Newburgh authorized the City Manager to enter Contract No. C010219 with the New York State Department of Environmental Conservation for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct, which Contract term was extended by Resolution No. 326-2017 of November 27, 2017; Resolution No. 227-2018 of August 13, 2018, and Resolution No. 57-2021 of March 22, 2021; and

WHEREAS, by Resolution No. 58-2021 of March 22, 2021, the City Council of the City of Newburgh authorized the City Manager to enter into new Contract No. C011789 with the New York State Department of Environmental Conservation for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct; and

WHEREAS, as a result of the necessity to obtain the alternate source of drinking water, the City of Newburgh has incurred and continues to incur additional costs over and above the actual cost of the water; and

WHEREAS, by Resolution No. 105-2017 of April 24, 2017, the City Council of the City of Newburgh authorized the City Manager to enter into Contract No. C010563 with New York State Department of Environmental Conservation for reimbursement of the additional expenses incurred by the City of Newburgh associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct not covered by Contract No. C010219; and

WHEREAS, by Resolution No. 137-2018 of May 29, 2018, the City Council authorized Amendment No. 1 to Contract No. C010563, extending the term and the reimbursement amount of the contract; and

WHEREAS, the City Council finds that it is necessary to further extend the term and the reimbursement amount of Contract No. C010563 with the Department of Environmental Conservation for reimbursement of the additional costs associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct not covered by Contract No. C010219; the same being in the best interest 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 enter into Amendment No. 2 to Contract No. C010563 with the New York State Department of Environmental Conservation to extend the term of the Contract for reimbursement for the additional expenses incurred by the City of Newburgh associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct not covered by Contract No. C010219.

AMENDMENT TO CONTRACT No. C010563
between
STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION
and
CITY OF NEWBURGH

AMENDMENT No. 2

THIS AMENDMENT, entered into by and between the STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION (hereinafter referred to as the DEPARTMENT), having offices at 625 Broadway, Albany, New York 12233, and the City of Newburgh (hereinafter referred to as Newburgh), with offices at 83 Broadway, Newburgh, New York 12550, is hereby attached to and becomes incorporated into the above referenced contract.

WITNESSETH:

WHEREAS, the parties entered into a prior Contract which was duly assigned Contract Number C010563 which said Contract the parties now desire to amend; and

WHEREAS, an amendment is necessary to revise the maximum payable amount under this Contract and to extend the term of the Contract; and

WHEREAS, both parties originally agreed that the Department would pay the Newburgh documented and Department approved actual costs of certain additional expenses incurred by Newburgh in response to PFOS contamination in Newburgh's drinking water as a result of the discharges from the Air National Guard at Stewart International Airport; and

WHEREAS, the Contract provides for amending and extending the Contract in Articles 2 and 3.

NOW THEREFORE, the parties hereto agree as follows:

1. Article 2 revises the maximum amount payable under this Contract of \$1,175,000.00, by increasing by \$212,000.00, for a new maximum amount payable of \$1,387,000.00.
2. Article 3 is revised by extending the completion date from December 31, 2019 to December 31, 2020.
3. Appendix A, dated January 2014, is hereby deleted, and Appendix A, dated October 2019 is attached hereto.
4. Standard Clauses for Ethics in All NYSDEC Contracts is hereby inserted as Appendix C.

5. Article 7 is hereby replaced as follows:

ARTICLE 7: STANDARD CONTRACT CLAUSES

Newburgh will be required to comply with all the mandatory New York State and Department contracting provisions contained in the following three documents:

1. Appendix A Standard Clauses for All New York State Contracts;
2. Appendix B Standard Clauses for All NYSDEC Contracts;
3. Appendix C Standard Clauses for Ethics in All NYSDEC Contracts.

6. Article 8 is hereby replaced as follows:

ARTICLE 8: ENTIRE CONTRACT

This Contract consists of the following documents in the following order or precedence.

1. Appendix A Standard Clauses for All New York State Contracts;
2. Appendix B Standard Clauses for All NYSDEC Contracts;
3. Appendix C Standard Clauses for Ethics in All NYSDEC Contracts.
4. The Contract (including Schedule A, and any amendments).

7. Article 14: Executive Order 177 is hereby added as follows:

ARTICLE 14: Executive Order 177

- A. Executive Order No. 177, Prohibiting State Contracts with Entities the Support Discrimination, orders that New York State's government will not do business with entities that promote or tolerate discrimination or infringement on the civil rights and liberties of New Yorkers, New York State is dedicated to ensuring that all individuals are treated equally, regardless of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis. To the end, New York has enacted numerous laws, regulations, and policies, and will continue to aggressively enforce its strong protections against discrimination to the maximum extent allowable by law.
 - B. In order to comply with this order, the Contractor is required to complete the Executive Order No. 177 Certification which certifies that is does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.
8. All other terms and conditions of Contract Number C010563 as amended will remain in full force and effect.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. **Postponement, suspension, abandonment or termination by the Department:**

The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. **Conflict of Interest**

(a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may,

without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has

developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. Requests for Payment All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

- (1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
- (2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
- (3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Bureau Director

(Name and Title)

NYS Dept. of Env. Conservation - Remediation
625 Broadway, 12th FL, Albany, NY 12233-7012

(Address)

(518) 402-9764

(Telephone)

The designated appeal individual to review decisions is:

Division Director

(Name and Title)

NYS Dept. of Env. Conservation - Remediation
625 Broadway, 12th FL, Albany, NY 12233-7011

(Address)

(518) 402-9706

(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation
Nancy W. Lussier Chair
Contract Review Committee
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
- (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
- (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.
- (4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

- (1) procure for the Department the right to continue using the same item or parts thereof;
- (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
- (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
- (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVI. Force Majeure The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVII. Freedom of Information Requests The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release

and to support its position.

XVIII. Precedence In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

XIX. Article 15-Requirements

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). 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") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1) For purposes of this procurement, the Department hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

<https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

(c) Equal Employment Opportunity (EEO)

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i) Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the

areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii) The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the

implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of 10% Minority Labor Force Participation, 10% Female Labor Force Participation.

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- (2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(d) MWBE Utilization Plan

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- (3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Waivers

- (1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Liquidated Damages - MWBE Participation

(1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the

Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at
<http://www.dec.ny.gov/about/48854.html>

Appendix C

Standard Clauses for Ethics in all NYSDEC Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Offeror" herein refers to any party submitting an application, bid, proposal, or other documents in response to this procurement. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Conflict of Interest

A. Procurement Phase:

1. An Offeror will disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Offeror or former officers and employees of the Agencies and their Affiliates, in connection with the Offeror rendering services enumerated in this procurement. If a conflict does or might exist, the Offeror will describe how the Offeror would eliminate or prevent it. This description will include, but not be limited to what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
2. The Offeror must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included in the Offeror's response indicating how any matter before the Commission was resolved or whether it remains unresolved.
3. The Offeror/Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect attached hereto), signed by an authorized executive or legal representative attesting that the Offeror's/Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Offeror/Contractor to breach any other contract currently in force with the State of New York, that the Offeror/Contractor will not act in any manner that is detrimental to any State project on which the Offeror/Contractor is rendering services.

B. Contract Phase:

1. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this contract. The Contractor shall have a duty to notify the Department immediately of any actual or potential conflicts of interest.

2. In conjunction with any subcontract under this contract, the Contractor shall obtain and deliver to the Department, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Department a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
3. The Department and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing or establish new relationships. The Department will review the nature of any relationships and reserves the right to terminate this contract for any reason, or for cause, if, in the judgment of the Department, a real or potential conflict of interest cannot be cured.
4. In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without prior Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.
5. The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid a conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be allowed by law or other applicable provisions of this contract regarding termination.
6. The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package.
7. ***If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.***

Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

- a. The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to

represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

- b. The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

II. PUBLIC OFFICERS LAW

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

III. ETHICS REQUIREMENTS

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements").

The Contractor certifies that all of its employees and those of its subcontractors who are former employees of the State and who are assigned to perform services under this contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under this contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions.

The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State

shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

IV. SUBCONTRACTING

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the Department. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Contract to be subcontracted to qualified, responsible subcontractors, subject to prior approval of the Department. If the Contractor decides to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this contract must be fully explained by the Contractor to the Department. As part of this explanation, the subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this contract.

The Contractor retains ultimate responsibility for all services performed under the contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this contract including, but not limited to, the body of this contract, Appendix A – Standard Clauses for New York State Contracts, Appendix B – Standard Clauses for All New York State Department of Environmental Conservation Contracts, Appendix C - Standard Clauses for Ethics in all New York State Department of Environmental Conservation Contracts, and the Solicitation Document.

Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Department.

The Department reserves the right, at any time during the term of the contract, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this contract. The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the contract.

If at any time during performance under this contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, or as otherwise requested by the Department that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this Procurement/Contract, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Procurement/Contract does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this Procurement;
5. During the negotiation and execution of any contract resulting from this Procurement, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this Procurement, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

RESOLUTION NO.: 117 - 2021

OF

MAY 10, 2021

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A SECOND EXTENSION UNTIL DECEMBER 31, 2021 TO THE AGREEMENT OF LEASE
WITH RIVERSIDE NEWBURGH REALTY, LLC
FOR THE CONTINUED LEASE OF VACANT REAL PROPERTY KNOWN AS
SECTION 31, BLOCK 5, LOTS 13.2 AND 14 FOR THE PURPOSE OF PROVIDING
PARKING FOR THE NEWBURGH-BEACON FERRY COMMUTERS**

WHEREAS, the City of Newburgh ("City") and Memorare Realty Holding Corp. ("Memorare") executed a Lease on July 30, 2004 for the lease and use of approximately 3.65 acres of vacant real property situated on the Hudson River known as Section 31, Block 5, Lots 13.2 and 14, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours, with the City being reimbursed by New York State for the rental payments and improvements provided under such Lease; and

WHEREAS, by Resolution No. 142-2010 of June 14, 2010, the City Council authorized the City Manager to execute a First Amended Agreement of Lease with Memorare to accord with the amended reimbursement agreement with New York State that was effective April 21, 2010; and

WHEREAS, by Resolution No. 169-2014 of July 14, 2014, Resolution No. 308-2014 of December 15, 2014, Resolution No. 75-2015 of April 13, 2015 and Resolution No. 318-2015 of December 15, 2015, the City Council authorized extensions of the renewal term of the First Amended Lease through January 31, 2017; and

WHEREAS, the First Amended Lease was assigned to RBG of Newburgh, LLC ("RBG"), and by Resolution No. 10-2017 of January 10, 2017, the City Council authorized a New Agreement of Lease ("New Lease") with RBG for the period February 1, 2017 through December 31, 2018; and

WHEREAS, the New Lease was assigned to Riverside Newburgh Realty, LLC ("Riverside"), and by Resolution No. 372-2018 of December 10, 2018, the City council authorized an extension of the New Lease through June 30, 2019; and

WHEREAS, by Resolution No. 145-2019 of June 10, 2019, the City Council authorized a Second New Lease between the City and Riverside for the period July 1, 2019 through December 31, 2020; and

WHEREAS, due to the Coronavirus pandemic, by Resolution No. 307-2020 of December 14, 2020, the City Council authorized a six (6) month extension of the Second New Lease for the period January 1, 2021 through June 30, 2021; and

WHEREAS, the City and Riverside agree that the Coronavirus pandemic warrants a second six (6) month extension of the Second New Lease for the period July 1, 2021 through December 31, 2021 to provide additional time to adequately evaluate renewal options; the same being 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 on behalf of the City of Newburgh, be and he is hereby authorized to execute a Second Addendum to the Second New Agreement of Lease providing for a six (6) month extension for a term beginning on July 1, 2021 through December 31, 2021 with Riverside Newburgh Realty, LLC, in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and uses associated therewith.

ADDENDUM TO AGREEMENT OF LEASE

THIS ADDENDUM TO AGREEMENT OF LEASE ("Addendum"), made as of this ____ day of _____, 2021, by and between Riverside Newburgh Realty, LLC., a New York limited liability corporation, having an address of P.O. Box 8, Newburgh, New York 12551, ("Riverside"), and the City of Newburgh, a New York municipal corporation with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City").

WITNESSETH:

WHEREAS, Riverside and the City executed an Agreement of Lease dated June 21, 2019 for a term commencing on July 1, 2019 and terminating on December 31, 2020 (the "Lease Agreement"), covering certain vacant real property situated along the west bank of the Hudson River and comprised of portions of two contiguous parcels of land (commonly known, respectively, Tax Map Nos.: Section 31, Block 5, Lot 13.2 and; Section 31, Block 5, Lot 14) with an aggregate of approximately 3.65 acres, in the City of Newburgh, in the County of Orange and State of New York (the "Property"); and

WHEREAS, the Lease Agreement was to expire on December 31, 2020 and the parties agreed to extend the term of the Lease agreement for the period January 1, 2021 through June 30, 2021 ("Addendum to Lease Agreement"); and

WHEREAS, the City desires to continue to lease from Riverside the Property for use in connection with parking to be used for ferry service between the Cities of Newburgh and Beacon and uses associated therewith (the "Project") and Riverside desires to lease to City the Property therefor and the parties agree that it is necessary to extend the term of the Lease Agreement for the period July 1, 2021 through December 31, 2021:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The term set forth in Paragraph 1.3 of the Lease Agreement, as amended by paragraph 1 of the Addendum to Lease Agreement, shall be extended for an additional extension term commencing on July 1, 2021 and terminating on December 31, 2021 ("Second Extension Term").
2. The Renewal Options set forth in Paragraphs 5.1 and 5.2 of the Lease Agreement as amended by paragraph 2 of the Addendum to Lease Agreement, are amended as follows:
 - a. No later than two (2) months prior to the expiration of the Second Extension Term, unless the Lease is sooner terminated, each party shall have the right to notify the other of its intention to terminate the Lease Agreement, or to seek a renewal thereof.
 - b. Upon the mutual agreement of the parties, the Lease may be renewed for two (2) additional terms: The first renewed term commencing on January 1, 2022 and expiring on December 31, 2022 and the second renewed term commencing on January 1, 2023 and expiring on December 31, 2024; provided, however, if the first renewal term is not agreed upon by the parties, there shall be no option to renew for the second renewal term.

3. For the balance of the Second Extension Term, rent shall be payable monthly in advance in equal monthly installments of Twenty-One Thousand Nine Hundred Sixteen (\$21,916) Dollars, provided however that City shall have the right to terminate this lease if the City has not received reimbursement from state sources, including but not limited to the Metropolitan Transportation Authority, Metro-North Railroad and/or The New York State Department of Transportation, of the full amount of the rent under the Lease Agreement, and in no event shall City's obligation to pay rent to Riverside exceed City's reimbursement from other sources.
4. All other terms and conditions set forth in the Lease Agreement shall remain in full force and effect during the Renewal Term.

IN WITNESS WHEREOF, Riverside, as Landlord, and the City, as Tenant have duly executed this Lease Addendum in duplicate as of the day and year first above written.

RIVERSIDE NEWBURGH REALTY, LLC Landlord

CITY OF NEWBURGH, Tenant

By: _____
William Kaplan, Manager

By: _____
Joseph P. Donat
City Manager
Per Res. No

By: _____
Joseph A. Bonura, Sr., Manager

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COUNTY OF ORANGE)

COUNTY OF ORANGE)

COUNTY OF ORANGE)

RESOLUTION NO.: 118 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A SEVENTH MEMORANDUM OF UNDERSTANDING WITH
METRO-NORTH COMMUTER RAILROAD COMPANY TO PROVIDE
REIMBURSEMENT OF PARKING LOT LEASE PAYMENTS RELATED TO
THE NEWBURGH-BEACON FERRY SERVICE**

WHEREAS, the City of Newburgh and Metro-North Commuter Railroad (“MNR”) entered into an Agreement, dated August 16, 2004 (the “Agreement”), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by MNR or its contractor between the City of Beacon and the City of Newburgh; and

WHEREAS, in compliance with the terms of the Agreement, the City entered into a lease with the owner of certain premises to provide a docking facility and 250 space parking lot for the ferry service, beginning July 30, 2014, and superseded by a First Amended Lease, effective April 21, 2010 and extended through December 31, 2015, (the “Amended Lease”); and

WHEREAS, by Resolution No. 169 - 2014 of July 14, 2014, Resolution No. 308-2014 of December 15, 2014, Resolution No. 75 -2015 of April 13, 2015, and Resolution No. 318-2015 of December 15, 2015, the City Council authorized extensions of the renewal term of the First Amended Lease through January 31, 2017; and

WHEREAS, the First Amended Lease was assigned to new owner, RBG of Newburgh, LLC (“RBG”), and by Resolution No. 10-2017 of January 10, 2017, the City authorized a New Agreement of Lease with RBG for the period February 1, 2017 through December 31, 2018 (the “New Lease”); and

WHEREAS, the New Lease was assigned to Riverside Newburgh Realty, LLC (“Riverside”), and by Resolution No. 372-2018 of December 10, 2018, the City authorized an extension of the New Lease for the period January 1, 2019 through June 30, 2019; and

WHEREAS, by Resolution No. 145-2019 of June 10, 2019, the City Council authorized a Second New Lease between the City and Riverside for the period July 1, 2019 through December 31, 2020 (the “Second New Lease”); and

WHEREAS, by Resolution No. 111-2015 of May 11, 2015, Resolution No. 11-2017 of January 9, 2017, Resolution No. 373-2018 of December 10, 2018, and Resolution No. 146-2019 of June 10, 2019, the City Council authorized a Second, Third, Fourth, and Fifth Memorandum of Understanding with MNR to provide reimbursement to the City of Newburgh for payments

made under the First Amended Lease, New Lease, and Second New Lease for the purpose of providing parking for users of the Newburgh-Beacon Ferry; and

WHEREAS, due to the Coronavirus pandemic, by Resolution No. 308-2020 of December 14, 2020, the City Council authorized a Sixth Memorandum of Understanding for the period January 1, 2021 through June 30, 2021 to ensure continuation of ferry service between the Cities of Newburgh and Beacon by providing continued reimbursement to the City for payments under the Second New Lease Extension with Riverside consistent with its term; and

WHEREAS, the City and MNR agree that the Coronavirus pandemic warrants a Seventh Memorandum of Understanding for the period July 1, 2021 through December 31, 2021 to coterminous with the Second New Lease Second Extension with Riverside ensure continuation of ferry service between the Cities of Newburgh and Beacon by providing continued reimbursement to the City for payments under the Second New Lease Second Extension with Riverside consistent with its term; the same being 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 on behalf of the City of Newburgh, be and he is hereby authorized to execute a Seventh Memorandum of Understanding coterminous with the period of the second extension of the Second New Agreement of Lease, with such other terms and conditions as may be recommended by the Corporation Counsel, for Metro-North Commuter Railroad to provide reimbursement to the City of Newburgh for payments made under the Second New Lease Second Extension with Riverside Newburgh Realty, LLC for the purpose of providing parking for users of the Newburgh-Beacon Ferry.

SEVENTH MEMORANDUM OF UNDERSTANDING

SEVENTH MEMORANDUM OF UNDERSTANDING (“SEVENTH MOU”) dated _____, 2021, by and between Metro-North Commuter Railroad Company (“Metro-North”), a public benefit corporation of the State of New York and a subsidiary of the Metropolitan Transportation Authority (“MTA”), with its principal offices at 420 Lexington Avenue, 11th floor, New York, New York 10170 and the City of Newburgh (“City”), a municipal corporation with its principal offices located at City Hall, 83 Broadway, Newburgh, New York 12550 (collectively, the “Parties”).

WHEREAS, the Parties entered into an Agreement dated August 16, 2004 (the “Agreement”), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by Metro-North or its contractor between the City of Beacon and the City of Newburgh (“Ferry Service”); and

WHEREAS, the Agreement states that the City will enter into a lease with the owner of certain premises (“Premises”) to provide a docking facility and 250 space parking lot for the Ferry Service (the “Lease”), and the City did enter into such Lease, beginning July 30, 2004 and superseded by a First Amended Lease effective April 21, 2010 and extended through December 31, 2015 (the “Amended Lease”); and

WHEREAS, the City and the New York State Department of Transportation (“NYSDOT”) had entered into a contract dated July 12, 2006, by which NYSDOT reimbursed the City for the rent payments under the Lease, but this contract expired; and

WHEREAS, the City had represented that it lacked funds to make the rent payments under the Amended Lease for the period from May 2015 through December 2015 (“May-December Period”) and had requested that Metro-North reimburse the City for the rent payments under the Amended Lease for the May-December Period; and

WHEREAS, NYSDOT had indicated to the City that it will reimburse the City for the rent payments under the Amended Lease up to and including April 2015, and thereafter had committed to provide Congestion Mitigation and Air Quality (“CMAQ”) funds to Metro-North, which could be used to reimburse Metro-North for assistance payments made to the City by Metro-North to fund the Amended Lease; and

WHEREAS, the City and Metro-North had entered into a Memorandum of Understanding dated May 26, 2015 (“MOU”) whereby Metro-North had agreed to reimburse the City for the rent payments made by the City under the Amended Lease for the May-December Period at the rate of \$21,278 per month; and

WHEREAS, the Amended Lease was further extended for the period January 1, 2016 through January 31, 2017 at the same rate of \$21,278 per month (“January 1, 2016 – January 31, 2017 Period”); and

WHEREAS, the City had represented that it lacked the funds to make the rent payments under the Amended Lease for the January 1, 2016 – January 31, 2017 Period and had requested that Metro-North reimburse the City for the rent payments under the Amended Lease for the January 1, 2016 – January 31, 2017 Period; and

WHEREAS, the City and Metro-North entered into a Second Memorandum of Understanding dated January 26, 2016 (“Second MOU”) whereby Metro-North had agreed to reimburse the City for the rent payments made by the City under the Amended Lease for the January 1, 2016 – January 31, 2017 Period at the rate of \$21,278 per month; and

WHEREAS, the City entered into a new lease with the new owner of the Premises to provide a docking facility and 250 space parking lot for the Ferry Service (the “New Lease”) for a term beginning February 1, 2017 and continuing until December 31, 2018 with rent payments of \$21,278 per month (“February 1, 2017 – December 31, 2018 Period”) and requested that Metro-North reimburse the City for the rent payments under the New Lease for the February 1, 2017 – December 31, 2018 Period; and

WHEREAS, the City and Metro-North entered into a Third Memorandum of Understanding dated January 31, 2017 (“Third MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the New Lease for the February 1, 2017 – December 31, 2018 Period at the rate of \$21,278 per month; and

WHEREAS, the New Lease was extended for the period January 1, 2019 through June 30, 2019 (“New Lease Extension”) at the same rate of \$21,278 per month (“January 1, 2019 – June 30, 2019 Period”) and the City requested that Metro-North reimburse the City for the rent payments under the New Lease Extension for the January 1, 2019 – June 30, 2019 Period; and

WHEREAS, the City and Metro-North entered into a Fourth Memorandum of Understanding dated February 14, 2019 (“Fourth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the New Lease Extension for the January 1, 2019 – June 30, 2019 Period at the same rate of \$21,278 per month; and

WHEREAS, the City entered into a second new lease with a second new owner of the Premises to provide a docking facility and 250 space parking lot for the Ferry Service (“Second New Lease”) for a term beginning on July 1, 2019 and continuing until December 31, 2020 with rent payments of \$21,916 per month (“July 1, 2019 – December 31, 2020 Period”) and requested that Metro-North reimburse the City for the rent payments under the Second New Lease for the July 1, 2019 – December 31, 2020 Period; and

WHEREAS, the City and Metro-North entered into a Fifth Memorandum of Understanding dated July 30, 2019 (“Fifth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the Second New Lease for the July 1, 2019 – December 31, 2020 Period at the same rate of \$21,916 per month; and

WHEREAS, the Second New Lease was extended for the period January 1, 2021 through June 30, 2021 (“Second New Lease Extension”) at the same rate of \$21,916 per month (“January 1, 2021 – June 30, 2021 Period”); and

WHEREAS, the City and Metro-North entered into a Sixth Memorandum of Understanding dated January [REDACTED], 2021 (“Sixth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the Second New Lease Extension for the January 1, 2021 – June 30, 2021 Period at the same rate of \$21,916 per month; and

WHEREAS, the Second New Lease was extended for the period July 1, 2021 through December 31, 2021 (“Second New Lease Second Extension”) at the same rate of \$21,916 per month (“July 1, 2021 – December 31, 2021 Period”); and

WHEREAS, the City continues to maintain that it lacks funds to make the rent payments under the Second New Lease Second Extension for the July 1, 2021 – December 31, 2021 Period; and

WHEREAS, unless the rent payments under the Second New Lease Second Extension are made to the landlord for the July 1, 2021 – December 31, 2021 Period, the Ferry Service is in danger of being discontinued; and

WHEREAS, the Ferry Service is important to the City as well as being an important part of Metro-North’s provision of commuter service to its ridership, especially for commuters from Orange and Dutchess Counties; and

WHEREAS, the Parties desire to prevent the discontinuance of the Ferry Service.

NOW THEREFORE, in consideration of the benefits accruing to each of the Parties hereto, the Parties agree as follows:

1. Supplement. Unless otherwise stated herein, this Seventh MOU supplements the terms set forth in the Agreement, the MOU, the Second MOU, the Third MOU, the Fourth MOU, the Fifth MOU, and the Sixth MOU.

2. Lease Rent Payments: Metro-North agrees to reimburse the City for the rent payments made by the City under the Second New Lease Second Extension for the July 1, 2021 – December 31, 2021 Period only, at the rate of \$21,916 per month. For the July 1, 2021 – December 31, 2021 Period, the City will make timely monthly rent payments to the lessor under the Second New Lease Second Extension. The City will submit proof of each timely monthly rent payment along with an invoice for that monthly rent payment to Metro-North within ten (10) days of making the rent payment. Metro-North agrees to pay the City within thirty (30) days of receipt of the City’s invoice for the monthly rent payment and proof of timely payment of the monthly rent payment under the Second New Lease Second Extension.

3. During the July 1, 2021 – December 31, 2021 Period, the City agrees to comply with all terms under the Second New Lease Second Extension, not to terminate the Second New

Lease Second Extension and not cause the landlord to terminate the Second New Lease Second Extension. If the City or the landlord terminates or cancels the Second New Lease Second Extension, then this Seventh MOU shall automatically terminate at the same time as the termination or cancellation of the Second New Lease Second Extension. Upon termination or cancellation of the Second New Lease Second Extension, Metro-North shall have no further obligations under this Seventh MOU and Metro-North shall have the right to discontinue the Ferry Service.

4. Metro-North is not required to reimburse the City for any late fees, interest or other charges under the Second New Lease Second Extension.

5. This Seventh MOU does not create any obligations for Metro-North in connection with the Second New Lease Second Extension, or create any landlord-tenant relationship between the Parties.

6. The Parties agree to diligently work together in a cooperative and time sensitive manner to identify and make available alternative locations for the Ferry Service, docking facility and parking facility suitable to the needs of each party, and to cooperatively work together to identify other sources of funding for the Ferry Service, docking facility and parking facility.

7. Assignment: Neither party shall assign, transfer or delegate any of its rights or obligations under this Seventh MOU without the written consent of the other party, provided that Metro-North may so assign, transfer or delegate to the MTA any such right or obligation upon written notice to the City.

8. Personal Liability: No officer, director, member or employee of either of the parties hereto shall be liable personally or be sued individually for damages under or by reason of this Seventh MOU.

9. Notices: (a) Any notice, request, approval, demand or other communication under this Seventh MOU shall be in writing and given by (i) hand delivery, (ii) mailing the same by registered or certified mail, return receipt requested, (iii) reputable overnight courier service, or (iv) email transmission with an original sent by any manner above described, addressed in each case as follows:

If to Metro-North:

Metro-North Commuter Railroad Company
420 Lexington Avenue, 11th floor
New York, New York 10170
Attention: General Counsel
Email: sarch@mnr.org

If to the City:

City of Newburgh
City Hall
83 Broadway

Newburgh, New York 12550
Attn: City Manager
Email: jdonat@cityofnewburgh-ny.gov

With a copy to:

City of Newburgh
City Hall
83 Broadway
Newburgh, New York 12550
Attn: Corporation Counsel
Email: mkelson@cityofnewburgh-ny.gov

(b) Any party may by notice to the other change the addresses to which notice to such party or copies of such notices shall thereafter be sent. Notices shall be deemed to have been given (i) immediately upon acknowledgement of receipt when delivered by personal service on the person(s) designated to receive notice, (ii) on the fourth (4th) business day after the same shall have been deposited in the United States mails as aforesaid, (iii) on the next business day after the same shall have been sent by overnight courier service and (iv) upon receipt of the email; provided that no notice shall be deemed to have been given until a copy thereof has been given to each person entitled thereto as set forth above.

10. No Third-Party Rights. No provision of this Seventh MOU shall create or give to third-parties any claim or right of action against the Parties hereto.

11. Miscellaneous:

a) This Seventh MOU contains the entire agreement of the Parties respecting the subject matter hereof.

b) This Seventh MOU may be amended, modified or supplemented only by an instrument in writing signed by the Parties hereto.

c) The headings of the various paragraphs, exhibits and attachments of this Seventh MOU are for the convenience of reference only and do not in any way define or limit the scope of intent of any provision hereof.

d) If any provision of this Seventh MOU is to any extent invalid or unenforceable, the remainder of this Seventh MOU, and the application of such provision to matters as to which it is not invalid or unenforceable, shall not be affected thereby.

e) This Seventh MOU shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

f) This Seventh MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g) This Seventh MOU shall be governed by and construed in accordance with the laws of the State of New York.

h) Either party may terminate this Seventh MOU upon sixty (60) days written notice, provided that any obligations incurred by either party prior to the termination date, shall survive such termination.

IN WITNESS WHEREOF, Metro-North and the City have caused this Seventh Memorandum of Understanding to be duly executed as of the date first above written.

METRO-NORTH COMMUTER RAILROAD COMPANY

BY:

CITY OF NEWBURGH

BY: Joseph P. Donat, City Manager
Per Resolution No.

RESOLUTION NO.: 119 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH LEXISNEXIS COPLOGIC SOLUTIONS INC.
TO PROVIDE EXTERNAL ACCIDENT REPORTING MANAGEMENT SERVICES
TO THE CITY OF NEWBURGH POLICE DEPARTMENT**

WHEREAS, by Resolution No. 46-2016 of February 22, 2016, the City Council authorized the City Manager to enter into an agreement with APPRISS, Inc., d/b/a GetCrashReports.com to provide external accident reporting management services to the City of Newburgh Police Department; and

WHEREAS, LexisNexis Coplogic Solutions Inc. acquired crash reporting service and requires new user agreements; and

WHEREAS, the City of Newburgh Police Department finds that such motor vehicle accident reporting services improves the efficiency and effectiveness of staff and resources; and

WHEREAS, the City Council finds that entering into the new user agreements 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 user agreements with LexisNexis Coplogic Solutions Inc. to provide external accident reporting management services to the City of Newburgh Police Department.

Order No. 1
eCommerce Services

This Order No. 1 ("Order") is entered into this _____ day of _____, 2021 ("Order Effective Date") between Newburgh City Police Department ("Agency") and LexisNexis Coplogic Solutions Inc. ("Provider") and subject to the terms and conditions of the Law Enforcement Agreement effective _____, 2021 ("Agreement") between the Parties.

1. **TERMS AND CONDITIONS.** All of the terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this Order except as expressly modified herein. To the extent that the terms and conditions of this Order are in conflict with the terms and conditions of the Agreement, or any other incorporated item, this Order shall control. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Agreement.
2. **DESCRIPTION OF SERVICES.** Provider, as part of its business, has developed web based portal(s) to distribute Reports to Authorized Requestors and other authorized entities online. In exchange for the Services provided to Agency, Agency agrees that Provider shall have the sole and exclusive right to sell the Agency's crash reports online and to distribute data extracted from the Reports via Provider's eCommerce portal(s), LexisNexis® BuyCrash™, or its successor(s). Agency retains the rights to fulfill requests for Reports made pursuant to state freedom of information laws.
3. **SCOPE OF SERVICES.** Provider agrees to provide the following Services to Agency subject to the provisions of this Order. Except as provided in Section 2.2 of the Agreement, any change to the Services as set forth in this Order that occur after the Order Effective Date must be made by amendment to this Order, signed by both Parties. Provider will provide the following Services subject to Agency's technology capabilities, processes, and work-flow functionality:
 - 3.1. Access to an online agency administration portal to view Reports, generate analytics, and obtain information related to Agency's Reports.
 - 3.2. Establish a communication protocol to electronically or manually transfer Reports in a timely manner from Agency to Provider.
 - 3.3. Provide Report distribution services as set forth in Section 5 of the Agreement.
 - 3.4. Pursuant to Section 2.1 of the Agreement, Agency agrees that it shall not use the Services for marketing or commercial solicitation purposes.
 - 3.5. Subject to Section 5.1 of the Agreement, Agency agrees to allow access to Agency's Reports by Participating Agencies and, in return, shall receive access to Participating Agencies' Reports. Agency agrees that it shall use Participating Agency Reports strictly for investigative and/or law enforcement purposes only.
 - 3.6. As provided by Section 7.1 of the Agreement, Agency acknowledges that certain Services provided under this Order may include the provision of certain personal information data obtained from the state Department of Motor Vehicles ("DMV Data") and that such DMV Data may be governed by the Federal Driver's Privacy Protection Act, (18 U.S.C. § 2721 et seq.) and related state laws (collectively, the "DPPA"), and that Agency is required to comply with the DPPA, as applicable. Agency certifies it has a permissible use under the DPPA to use and/or obtain such information and Agency further certifies it will use such information obtained from Services only for the permissible purpose selected below or for the purpose indicated by Agency electronically while using the Services, which purpose will apply to searches performed during such electronic session.

Please check one below (required):

	1.	No permissible use.
	2.	Use by a government agency, but only in carrying out its functions.

3.7. Other Services: _____

4. **TERM AND TERMINATION.** This Order shall commence upon the Order Effective Date and shall continue for an initial term of thirty six (36) months ("**Initial Term**"), whereupon this Order shall automatically renew for additional twelve (12) month periods ("**Renewal Term**") unless either Party provides written notice to the other Party, at least sixty (60) days prior to the expiration of the Renewal Term.
5. **FEES.** Pursuant to Section 4 of the Agreement, the Agency Fee is Eight Dollars and 00/100 (\$8.00). There shall be no fee to Agency for the Services.

5.1. For the avoidance of doubt, no Agency Fee will be paid with respect to the following:

- a) When an Affiliate of Provider has paid an Agency Fee to acquire a Report for an Authorized Requestor and such Affiliate later resells that Report from its inventory of previously purchased Reports to another Authorized Requestor; or
- b) When one or more components of a Report (e.g., VIN number) is provided to an Authorized Requestor or an Affiliate of Provider by Provider rather than the entirety of the Report being provided; or
- c) When a Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or
- d) When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Order shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Report and/or specific data extracted from the Report to a third party after the Authorized Requestor has purchased such Report from the Affiliate's inventory of previously purchased Reports. Agency acknowledges that all Reports requested by Agency Requestors shall be provided free of charge.

IN WITNESS WHEREOF, the Parties have caused this Order to be executed by their respective authorized representatives as of the Effective Date.

Agency: **Newburgh City Police Department**

Provider: **LexisNexis Coplogic Solutions Inc.**

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

LAW ENFORCEMENT AGREEMENT

This Law Enforcement Agreement (“**Agreement**”) is dated _____, 2021 (“**Effective Date**”) by and between LexisNexis Coplogic Solutions Inc., with its principal place of business at 1000 Alderman Drive, Alpharetta, Georgia 30005 (“**Provider**”), and Newburgh City Police Department, with its principal place of operations at 55 Broadway, Newburgh, New York 12550 (“**Agency**”). Provider and Agency may be referred to herein individually as a “**Party**” and collectively referred to as “**Parties**”.

1. SCOPE.

Provider as part of its business has developed several comprehensive products and services for law enforcement. Subject to the terms and conditions of this Agreement, Agency desires to order and Provider agrees to provide the various products and services contained herein (collectively referred to as the “**Services**”) as described in an applicable order to this Agreement (“**Order**”). The Parties acknowledge Agency is a law enforcement entity with responsibility for the documentation, retention, and management of information and reporting related to vehicle accidents, citations, and incidents occurring within its jurisdiction (as used within this Agreement, each documented event is a “**Report**”). “**Report**” shall also include any associated or supplemental information provided with the Report including Agency name, images and upload date, as applicable. The Parties further acknowledge that Provider acts on behalf of Agency to the extent it assists in carrying out Agency’s obligations to provide the public access to vehicle accident reports and Provider shall provide such access in accordance with the Federal Driver’s Privacy Protection Act, (18 U.S.C. § 2721 et seq.).

2. LICENSE AND RESTRICTIONS.

2.1. License Grant and License Restrictions. Upon execution of an applicable Order, Provider hereby grants to Agency a restricted, limited, revocable license to use the Services only as set forth in this Agreement and any applicable Order, and for no other purposes, subject to the restrictions and limitations set forth below:

- (a) Agency shall not access or use Services from outside the United States without Provider’s prior written approval; and
- (b) Agency shall not use the Services to create a competing product, provide data processing services to third parties, resell, or broker the Services to any third-party, or otherwise use the Services for any personal (non-law enforcement) purposes; and
- (c) Agency’s use of the Services hereunder will not knowingly violate any agreements to which Agency is bound; and
- (d) Agency shall not harvest, post, transmit, copy, modify, create derivative works from, tamper, distribute the Services, or in any way circumvent the navigational structure of the Services, including to upload or transmit any computer viruses, Trojan Horses, worms or anything else designed to interfere with, interrupt or disrupt the normal operating procedures of Services; and
- (e) Agency may not use the Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights or otherwise infringe on the rights of others; and
- (f) Agency shall not reveal any user accounts or passwords for the Services to any third parties (third parties shall not include Agency’s employees who have a need to know such information); and
- (g) Agency shall not permit any third party (third parties shall not include Agency’s employees who have a need to know such information) to view or use the Services, even if such third party is under contract to provide services to Agency; and
- (h) Agency shall comply with all laws, regulations, and rules which govern the use of the Services.

2.2. Other Restrictions. In addition Provider may, at any time, impose restrictions and/or prohibitions on the Agency’s use of the Services, or certain data or no longer offer certain functionalities or features that may be the result of a modification in Provider policy, a modification of third-party agreements, a modification in industry standards, a Security Event (defined

below), a change in law or regulation, or the interpretation thereof, and/or an order from a Court, regulator, tribunal or other authority that has jurisdiction over Agency or Provider. Upon written notification by Provider of such restrictions, Agency agrees to comply with such restrictions or, in the event that Agency is unable to comply, it shall notify Provider in writing of its inability to comply within ten (10) days after receipt of Provider's written notification. In that event, either Party may immediately terminate this Agreement by providing written notice thereof to the other Party without such termination constituting a breach of this Agreement. Provider shall be Agency's designated preferred provider of such Services as are mutually agreed to and defined hereunder, related to the handling of Agency's Reports.

- 2.3. Violation of License Terms and / or Restrictions.** Agency agrees that, if Provider determines or reasonably suspects that: (i) Agency is violating any license terms, restrictions, or other material provision of the Agreement; or (ii) Agency has experienced a Security Event (as herein defined), Provider may, at its sole option, take immediate action up to and including, without further obligation or liability of any kind, terminating Agency's account and the license to use the Services.

3. SUPPORT AND MAINTENANCE.

- 3.1. Ongoing Maintenance.** Provider will, from time-to-time issue and/or provide maintenance including bug fixes, enhancements, new features, or new functionality that are generally made available to customers along with any corresponding changes to documentation ("**Maintenance**"). Maintenance does not include work to custom code, customized configurations, or to unauthorized modifications of the Services. Any Provider assistance beyond standard Maintenance will be billed at Provider's then current pricing schedule, as agreed upon in advance by the Parties. Additionally, upon Agency's written notice of new or revised legislation, statutes, or ordinances requiring any Services to be updated, Provider shall update or modify the Services or particular form consistent with such new regulation within a reasonable time.
- 3.2. Support Services.** Provider will provide ongoing support services for problems, queries or requests for assistance ("**Support**") provided that all requests for Support must be made to Provider Monday through Friday from 8:00 AM ET to 8:00 PM ET at 1-888-949-3835. Provider will also provide limited after hours Support including the ability to leave a message and receive a call back the following business day or sooner, if critical. In order to provide Support, Agency will provide all information reasonably required by Provider to identify the issue, including: an Agency point of contact (familiar with the Services and issue), description of issue, screenshots, the impact, and assist in Provider's efforts to reproduce the problem (as applicable). Provider will work to resolve problem with reasonable promptness for issues that are application or Services related (Provider is not responsible for resolving issues caused by Agency hardware). The Agency agrees to provide Provider with data transfers, as requested, remote access to the Services system, and with sufficient test time on the Agency's computer system to duplicate the problem, to certify that the problem is with the Services, and to certify that the problem has been corrected. If the problem cannot readily be resolved, Provider will attempt to identify a work around. Upon resolution of any issue, Provider shall notify the Agency of such resolution via email. The Parties agree that Provider is not obligated to ensure that its Services are compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating services or database engines.
- 3.3. On Site Support.** In response to written Agency requests for Provider to provide on-site routine non-emergency support, Provider shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Agency staff or other resources or materials. Any on-site support provided by Provider shall only be invoiced by Provider or paid by Agency if the problem arose due to something other than a defect in the Services. The Agency shall reimburse Provider at the rate of two thousand five hundred (\$2,500.00) dollars per day for each Provider employee who provides any on-site support, and such fees will not include any reimbursement for Provider travel time or travel expenses.

4. FEES.

- 4.1. Fees due to Provider.** Any fees due to Provider for Services hereunder shall be specified in an Order ("**Fees**"). For any Order where Fees are specified, Provider will issue an invoice to Agency pursuant to the terms in the Order. Invoices shall be paid in full by Agency within thirty (30) days from invoice date. Provider may increase or decrease the Fee following the Initial Term (as defined in an applicable Order) by providing Agency no less than sixty (60) days written notice prior to the effective date of such pricing change. To the extent an interface or other technological development is required to enable an Agency designated third party (i.e., RMS Vendor) to receive Reports from Provider at Agency's request or to enable Provider to intake Agency Data, such cost shall not be borne by Provider.

4.1.1. Disputes. In the event Agency has a good faith dispute on all or a portion of an unpaid invoice (“**Dispute**”), Agency shall notify Provider in writing and follow the procedures set forth herein. In the event of a Dispute, Agency shall promptly, but in no case more than thirty (30) days from receipt of the invoice, notify Provider in writing pursuant to the notice provisions of this Agreement (“**Dispute Notice**”). Agency shall identify in writing the specific cause of the Dispute, the amount in dispute, and reasonable documentation supporting the Dispute. Invoices not disputed within ninety (90) days of the invoice date will be deemed valid and may not later be disputed. The Parties agree to use best efforts to resolve all Disputes promptly and in good faith. However, in the event the Parties are not able to resolve a Dispute within sixty (60) days from Provider’s receipt of a Dispute Notice, Provider shall have the right to terminate this Agreement (including all Services) or the right to discontinue the applicable Service immediately, without such action constituting a breach or incurring any liability herein. All Fees not properly disputed or paid shall accrue interest at the rate of eighteen percent (18%) per annum. All Fees are calculated for payment made via ACH, Wire, or Agency check. Agency agrees that Fees exclude taxes (if applicable) or other cost incurred by Agency’s RMS Vendor or other third parties and agrees such costs shall be passed on to Agency. Provider shall not be required to enter into a third-party relationship to obtain payment for the Service provided to Agency; however, should Provider elect to do so, Provider reserves the right to charge Agency additional fees for such accommodation.

4.2. Fees due to Agency. Using the process as herein defined, on behalf of Agency, Provider will collect and remit to Agency a fee for all Reports (“**Agency Fee**”) purchased from the eCommerce portal set forth on the applicable Order, including but not limited to fees for purchases of Reports from that eCommerce portal by an Affiliate. On a monthly basis, Provider will electronically transfer to Agency’s designated account, the total amount of applicable Agency Fee collected by Provider during the previous month. Provider will make available a monthly report to Agency identifying the number of Reports provided on its behalf via the LexisNexis® Command Center (“**Command Center**”) administration portal and/or its successor.

4.2.1. No Agency Fee will be paid with respect to the following:

- (a) When an Affiliate of Provider has paid an Agency Fee to acquire a Report for an Authorized Requestor (including Reports purchased before the applicable Order Effective Date) and such Affiliate later resells that Report from its inventory of previously purchased Reports to another Authorized Requestor; or
- (b) When one or more components of a Report (e.g., VIN number), rather than the Report in its entirety, is provided by Provider to an Authorized Requestor or an Affiliate of Provider ; or
- (c) When a Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or
- (d) When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Agreement shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Report and/or specific data extracted from the Report to a third party after the Authorized Requestor has purchased such Report from the Affiliate’s inventory of previously purchased Reports. Agency acknowledges that all reports requested by Agency Requestors shall be provided free of charge.

4.3. Fees retained by Provider. Where permitted by law, Provider will charge a convenience fee for each Report provided to an Authorized Requestor (“**Convenience Fee**”) which shall be retained by Provider. The Convenience Fee shall be established by Provider at its discretion, but in no event shall it exceed the amount Provider may legally charge an Authorized Requestor.

5. CONTRIBUTION/DISTRIBUTION.

- 5.1.** Agency acknowledges and agrees that Provider has compiled certain databases of person data, vehicle data, and/or incident data contributed from other law enforcement agencies (“**Participating Agencies**”) accessing certain of the Services. Agency further acknowledges and agrees that such contribution data (a) is available only to Participating Agencies that have authorized the contribution and distribution of their data via such databases and (b) may be used solely for investigative and/or law enforcement purposes and for no other purpose whatsoever.
- 5.2.** For Services that contemplate the sale of Reports, as more specifically described in an Order, Provider shall distribute Reports and/or specific data extracted from the Report to individuals or legal entities (“**Authorized Requestors**”) and other authorized law enforcement entities (“**Agency Requestors**”) in accordance with applicable laws, regulations, and/or an order from a court, regulator, tribunal or other authority that has jurisdiction over Agency or Provider. Nothing in this

Agreement shall prohibit Provider's Affiliates (defined in Section 16.1, "Affiliates" below) from purchasing Reports from the ecommerce portal set forth in the Order, or from distributing previously purchased Reports and/or specific data extracted from the Report to Authorized Requestors or Agency Requestors in accordance with the terms of the Order and applicable laws, regulations, and/or an order from a court, regulator, tribunal or other authority that has jurisdiction over Agency or Provider. Nothing in this Agreement shall prohibit Affiliates from acquiring Reports from a source other than the ecommerce portal set forth in the Order.

6. TERMS AND TERMINATION.

6.1. Term. This Agreement shall commence upon the Effective Date and shall continue until terminated in accordance with this Agreement. Each Order shall set forth the specified term for the particular Service.

6.2. Termination.

6.2.1. Either Party may terminate this Agreement or any Order for cause if the other Party breaches a material obligation under the terms of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching Party, provided, however, that if such material breach is of a nature that it cannot be cured, immediate termination shall be allowed. Failure to pay by either Party shall be considered a material default.

6.2.2. Either Party may elect to terminate this Agreement or any Order by providing written notice to the other of such intent, at least ninety (90) days prior to the end of the applicable Order term.

6.2.3. Provider may, upon six (6) months written notice to Agency, terminate any Service that will no longer be supported or offered by Provider. Provider will make reasonable efforts to transition Agency to a similar Service, if available. Further, Provider may at any time cease to provide Agency access to any portions of features of the Services thereof which Provider is no longer legally or contractually permitted to provide.

6.3. Effect of Termination. Upon termination of this Agreement, each Party shall be liable for payment to the other Party of all amounts due and payable for Services provided through the effective date of such termination. Upon receipt of Agency's written request after termination, Provider shall provide Agency with access to Reports provided by Agency under this Agreement and/or data provided through provision of the Services by Agency under an applicable Order so Agency may download and/or copy such information. Provider shall not be obligated to delete from its databases (or from other storage media) and/or return to Agency, Reports already provided to Provider by Agency, and shall be permitted to continue to maintain and distribute the Reports already in its possession to Authorized Requestors in compliance with applicable laws, regulations, and/or an order from a court, regulator, tribunal or other authority that has jurisdiction over Agency or Provider.

7. RELEVANT LAWS.

Each Party shall comply with all applicable federal, state, and local laws and regulations related to its performance hereunder, including:

7.1. Driver's Privacy Protection Act. Agency acknowledges that certain Services provided under this Agreement may include the provision of certain personal information data obtained from state Departments of Motor Vehicles ("**DMV Data**") and that such DMV Data may be governed by the Federal Driver's Privacy Protection Act, (18 U.S.C. § 2721 et seq.) and related state laws ("**DPPA**"), and that Agency is required to comply with the DPPA, as applicable. Agency acknowledges and agrees that it may be required to certify its permissible use of DPPA or DMV Data at the time it requests information in connection with certain Services and will recertify upon request by Provider.

7.2. Fair Credit Reporting Act. The Services provided pursuant to this Agreement are not provided by "consumer reporting agencies" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) ("**FCRA**") and do not constitute "consumer reports" as that term is defined in the FCRA. Agency certifies that it will not use any of the information it receives through the Services in whole or in part as a factor in determining eligibility for credit, insurance, or employment or for any other eligibility purpose that would qualify the information in as a consumer report.

7.3. Protected Health Information. Unless otherwise contemplated by an applicable Business Associate Agreement executed by the Parties, Agency will not provide Provider with any Protected Health Information (as that term is defined in 45 C.F.R.

Sec. 160.103) or with Electronic Health Records or Patient Health Records (as those terms are defined in 42 U.S.C. Sec. 17921(5), and 42 U.S.C. Sec. 17921(11), respectively) or with information from such records without the execution of a separate agreement between the Parties.

- 7.4. Social Security Numbers. Social Security Numbers may be available hereunder as part of Reports and/or related data provided from certain states. However, Agency shall not provide Social Security Numbers to Provider under any circumstances under this Agreement. Should Agency require more information on Social Security Numbers or its obligations in relation thereto, Agency should contact Provider Agency Service at 1-866-215-2771 for assistance.
- 7.5. Privacy Principles. Agency shall comply with the "Provider Data Privacy Principles" available at <http://www.lexisnexis.com/privacy/data-privacy-principles.aspx>, as updated from time to time. Provider shall notify Agency in writing in the event that material changes are made to the Provider Data Privacy Principles.
- 7.6. Security. Agency agrees to protect against the misuse and/or unauthorized access of the Services provided to Agency in accordance with this Agreement and as set forth in Exhibit A, attached hereto.

8. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY OWNERSHIP.

- 8.1. Definition. "Confidential Information" means all non-public information provided by the disclosing Party to the receiving Party hereunder, including, without limitation, the terms of this Agreement, all information related to technical, financial, strategies and related information, business information, computer programs, algorithms, know-how, processes, databases, systems, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined by applicable law) and other information (whether written or oral). Confidential Information does not include Reports and information related thereto. Confidential Information does not include information that was, at the time of the disclosure: (a) or becomes (through no improper action or inaction by the recipient) generally known to the public; (b) lawfully disclosed to recipient by a third-party and received in good faith and without any duty of confidentiality by the recipient or the third-party; (c) in recipient's possession or known to it prior to receipt from discloser; or (d) independently developed by recipient; provided in each case that such forgoing information was not delivered to or obtained by recipient as a result of any breach of this Agreement.
- 8.2. Treatment of Confidential Information. Each Party agrees to protect the Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature, but not less than a reasonable standard of care and not to use the other Party's Confidential Information other than as necessary to perform its obligations or as permitted under this Agreement. A Party shall not remove or destroy any proprietary or confidential legends or markings placed upon or contained within any Confidential Information.
- 8.3. Intellectual Property Ownership. Each Party retains all right, title, and interest under applicable contractual, copyright and related laws to their respective Confidential Information, including the right to use such information for all purposes permissible by applicable laws, rules, and regulations. Provider retains all rights (other than the limited license granted herein), title, interest, ownership and all intellectual property rights in the Services including any improvements or modifications thereto, and Agency shall use such information consistent with such right, title and interest and notify Provider of any threatened or actual infringement thereof. Agency shall not remove or obscure any copyright or other notices from the Services or materials provided hereunder.
- 8.4. Exception for Subpoenas and Court Orders. A Party may disclose Confidential Information solely to the extent required by subpoena, court order or other governmental authority, provided that the receiving Party provides the disclosing Party prompt written notice of such subpoena, court order or other governmental authority so as to allow the disclosing Party an opportunity to obtain a protective order to prohibit or limit such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information.
- 8.5. Duration. Each Party's obligations with respect to Confidential Information shall continue for the term of this Agreement and for a period of five (5) years after termination of this Agreement, provided however, that with respect to Trade Secrets, each Party's obligations shall continue for so long as such Confidential Information continues to constitute a Trade Secret.
- 8.6. Return of Confidential Information. Upon the written request of a Party (and except as otherwise specifically set forth in an applicable Order), each Party shall return or destroy (and certify such destruction in a signed writing) any of the other Party's

Confidential Information unless retention of such information is required by law, regulations, and/or an order from a court, regulator, tribunal or other authority that has jurisdiction over Agency or Provider.

- 8.7. Injunctive Relief. In the event of a breach or a threatened breach of the confidentiality or privacy provisions of this Agreement, the non-breaching Party may have no adequate remedy in monetary damages and, accordingly, may seek an injunction against the breaching Party.
- 8.8. Other. During the term of this Agreement and subject to approval by Agency, Agency agrees to serve as a reference for the Services, which may include (i) reference calls with mutually acceptable prospects; (ii) a published "success story" describing the partnership with Provider; (iii) the use of Agency's name in Provider marketing activities; or (iv) a favorable reference of Provider to an industry analyst or at an industry conference.

9. PROVIDER AUDIT RIGHTS.

Agency understands and agrees that, in order to ensure Agency's compliance with the Agreement, as well as with applicable laws, regulations and rules, Provider's obligations under its contracts with its data providers, and Provider's internal policies, Provider may conduct periodic reviews of Agency's use of the Services and may, upon reasonable notice, audit Agency's records, processes and procedures related to Agency's use, storage and disposal of the Services and information received therefrom. Agency agrees to cooperate fully with any and all audits and to respond to any such audit inquiry within ten (10) business days, unless an expedited response is required. Violations discovered in any review and/or audit by Provider will be subject to immediate action including, but not limited to, invoicing for any applicable fees (if Services are based on number of users and Agency's use exceeds licenses granted), suspension or termination of the license to use the Services, legal action, and/or referral to federal or state regulatory agencies.

10. REPRESENTATIONS AND WARRANTIES.

Agency represents and warrants to Provider that Agency is fully authorized to disclose Reports, information, and related data or images to Provider in accordance with this Agreement and to grant Provider the rights to provide the Services as described herein. Where redaction of Reports is required prior to provision to Provider, Agency represents and warrants it will redact applicable Reports consistent with all laws and regulations. In performing their respective obligations under this Agreement, each Party agrees to use any data and provide any Services, in strict conformance with applicable laws, regulations, and/or an order from a court, regulator, tribunal or other authority that has jurisdiction over Agency or Provider and consistent with the terms of this Agreement.

11. LIMITATION OF WARRANTY.

FOR PURPOSES OF THIS SECTION, "**PROVIDER**" INCLUDES PROVIDER AND ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AND DATA PROVIDERS. THE SERVICES PROVIDED BY PROVIDER ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING ITS ACCURACY OR PERFORMANCE INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, ORIGINALITY, OR OTHERWISE, OF ANY SERVICES, SYSTEMS, EQUIPMENT OR MATERIALS PROVIDED HEREUNDER.

12. INDEMNIFICATION.

To the extent permitted under applicable law, each Party shall defend, indemnify, and hold harmless the other Party, its affiliates, and their officers, directors, employees, and agents (the "**Indemnified Parties**") against and from any and all losses, liabilities, damages, actions, claims, demands, settlements, judgments, and any other expenses (including reasonable attorneys' fees), which are asserted against the Indemnified Parties by a third party, but only to the extent caused by (i) violation of law in the performance of its obligations under this Agreement by the Indemnifying Party, its affiliates, or the officers, agents or employees of such Party (the "**Indemnifying Parties**"); (ii) the gross negligence or willful misconduct of the Indemnifying Parties during the term of this Agreement; (iii) violation, infringement or misappropriation of any U.S. patent, copyright, trade secret or other intellectual property right; or (iv) with respect to Agency, violation of any of the license terms or restrictions contained in this Agreement. The indemnities in this section are subject to the Indemnified Parties promptly notifying the Indemnifying Parties in writing of any claims or suits.

13. LIMITATION OF LIABILITY.

To the extent permitted by applicable law, Provider's entire liability for any claims(s) resulting from its acts or omissions, including, but not limited to negligence claims under this Agreement shall not exceed the total amount of Fees actually received by Provider from Agency (excluding pass through or out of pocket expenses) for the specific Services from which liability arises during the twelve (12) month period immediately preceding the event first giving rise to such liability, and if not yet in the twelfth (12th) month of this Agreement, for the period leading up to such event. To the extent the relevant Services are made available at no cost to Agency, then in no event shall Provider's liability to Agency under this Agreement exceed one hundred dollars (\$100.00) in the aggregate. This limitation of liability will not apply to any claims, actions, damages, liabilities or fines relating to or arising from Provider's gross negligence or willful misconduct. In no event shall Provider be liable for any indirect, special, incidental, or consequential damages in connection with this Agreement or the performance or failure to perform hereunder, even if advised of the possibility of such damages.

14. FORCE MAJEURE.

Neither Party will be liable for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control, including but not limited to natural disaster, pandemic, casualty, act of god or public enemy, riot, terrorism, or governmental act; provided, however, that such Party will not have contributed in any way to such event. If the delay or failure continues beyond thirty (30) calendar days, either Party may terminate this Agreement or any impacted Order with no further liability, except that Agency will be obligated to pay Provider for the Services provided under this Agreement prior to the effective date of such termination.

15. NOTICES.

All notices, requests, demands or other communications under this Agreement shall be in writing to the address set forth in the opening paragraph and shall be deemed to have been duly given: (i) on the date of service if served personally on the Party to whom notice is to be given; (ii) on the day after delivery to a commercial or postal overnight carrier service; or (iii) on the fifth day after mailing, if mailed to the Party to whom such notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed. Any Party hereto may change its address for the purpose of this section by giving the other Party timely, written notice of its new address in the manner set forth above.

16. MISCELLANEOUS.

16.1. Affiliates. For purposes of this Agreement, "**Affiliate**" means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Provider. Affiliates shall not be bound by the terms and conditions of this Agreement with respect to the provision of their applicable Services hereunder and nothing in this Agreement shall prevent or limit Affiliates from offering previously purchased Reports or data extracted from Reports for sale.

16.2. Independent Contractor/No Agency. Each Party acknowledges that it has no authority to bind or otherwise obligate the other Party.

16.3. Assignment. Neither Party shall assign this Agreement in whole or in part without the prior written consent of the other Party, and any such attempted assignment contrary to the foregoing shall be void. Notwithstanding the foregoing, an assignment by operation of law, as a result of a merger or consolidation of a Party, does not require the consent of the other Party. This Agreement will be binding upon the Parties' respective successors and assigns.

16.4. Headings, Interpretation, and Severability. The headings in this Agreement are inserted for reference only and are not intended to affect the meaning or interpretation of this Agreement. The language of this Agreement shall not be construed against either Party. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16.5. Waiver; Remedies Non-Exclusive. No failure or delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate as a waiver thereof. Unless otherwise provided herein, any remedy will be cumulative to any other right or remedy available at law or in equity.

16.6. Survival. Sections 2-4, 7-12, and 15 shall survive the termination or rescission of this Agreement.

16.7. Provider Shared Facilities. Provider may utilize facilities located outside the United States to provide support or the Services under this Agreement, and if such centers are utilized they shall be under the control of Provider and subject to all Provider policies that govern data access, protection and transport in the United States.

16.8. Entire Agreement. This Agreement represents the entire Agreement of the Parties and supersedes all previous and contemporaneous communications or agreements regarding the subject matter hereto. Agency by its signature below hereby certifies that Agency agrees to be bound by the terms and conditions of this Agreement including those terms and conditions posted on web pages specifically set forth herein or contained with any software provided under this Agreement, as may be updated from time to time. Any additional terms or conditions contained in purchase orders or other forms are expressly rejected by Provider and shall not be binding. Acceptance or non-rejection of purchase orders or other forms containing such terms; Provider's continuation of providing Products or Services; or any other inaction by Provider shall not constitute Provider's consent to or acceptance of any additional or different terms from that stated in this Agreement. This Agreement may only be modified by a written document signed by both Parties.

16.9. Governing Law. The Agreement will be governed by and construed under the laws of the State of New York excluding its conflict of law rules.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives as of the Effective Date.

Agency: **Newburgh City Police Department**

Provider: **LexisNexis Coplogic Solutions Inc.**

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A - SECURITY AND NOTIFICATION REQUIREMENTS

1. Data Protection. Agency shall take appropriate measures to protect against the misuse and unauthorized access through or to Agency's (i) credentials ("**Account IDs**") used to access the Services; or (ii) corresponding passwords, whether by Agency or any third party; or (iii) the Services and/or information derived therefrom. Agency shall manage identification, use, and access control to all Account IDs in an appropriately secure manner and shall promptly deactivate any Account IDs when no longer needed or where access presents a security risk. Agency shall implement its own appropriate program for Account ID management and shall use commercially reasonable efforts to follow the policies and procedures for account maintenance as may be communicated to Agency by Provider from time to time in writing.
2. Agency's Information Security Program. Agency shall implement and document appropriate policies and procedures covering the administrative, physical and technical safeguards in place and relevant to the access, use, storage, destruction, and control of information which are measured against objective standards and controls ("**Agency's Information Security Program**"). Agency's Information Security Program shall: (1) account for known and reasonably anticipated threats and Agency shall monitor for new threats on an ongoing basis; and (2) meet or exceed industry best practices. Agency will promptly remediate any deficiencies identified in Agency's Information Security Program. Agency shall not allow the transfer of any personally identifiable information received from Provider across any national borders outside the United States without the prior written consent of Provider.
3. Agency Security Event. In the event Agency learns or has reason to believe that Account IDs, the Services, or any information related thereto have been misused, disclosed, or accessed in an unauthorized manner or by an unauthorized person (an "**Agency Security Event**") Agency shall:
 - (a) provide immediate written notice to:
 - (i) the Information Security and Compliance Organization at 1000 Alderman Drive, Alpharetta, Georgia 30005; or
 - (ii) via email to (security.investigations@lexisnexis.com); or
 - (iii) by phone at (1-888-872-5375) with a written notification to follow within twenty four (24) hours; and
 - (b) promptly investigate the situation; and
 - (c) obtain written consent from Provider, not to be unreasonably withheld, prior to disclosing Provider or the Services to any third party in connection with the Agency Security Event; and
 - (d) if required by law, or in Provider's discretion, Agency shall:
 - (i) notify the individuals whose information was disclosed that an Agency Security Event has occurred; and
 - (ii) be responsible for all legal and regulatory obligations including any associated costs which may arise in connection with the Agency Security Event; and
 - (e) remain solely liable for all costs and claims that may arise from the Agency Security Event, including, but not limited to: litigation (including attorney's fees); reimbursement sought by individuals (including costs for credit monitoring and other losses alleged to be in connection with such Agency Security Event); and
 - (f) provide all proposed third party notification materials to Provider for review and approval prior to distribution.

In the event of an Agency Security Event, Provider may, in its sole discretion, take immediate action, including suspension or termination of Agency's account, without further obligation or liability of any kind.

RESOLUTION NO.: ____120__ - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A LEASE AGREEMENT WITH NEW YORK COMMUNICATIONS COMPANY, INC.
TO PROVIDE COMMUNICATIONS EQUIPMENT AND SERVICE FOR
THE CITY OF NEWBURGH POLICE DEPARTMENT
AT A COST OF \$2,994.00 PER MONTH FOR 84 MONTHS**

WHEREAS, the City of Newburgh Police Department's agreement with New York Communications Company, Inc. ("NYCOMCO") for equipment and service of its communications equipment has expired; and

WHEREAS, the Police Department has received the renewal service and lease agreement;
and

WHEREAS, said renewal agreement is being provided at a monthly cost of \$2,994.00 for 84 months, and includes upgraded dispatch consoles and new headsets which allow dispatchers to switch between telephone and radio; and

WHEREAS, such funding has been appropriated within the Police Department budget;
and

WHEREAS, the City Council has examined such lease agreement and determined it to be in the best interests of the City of Newburgh to enter into such agreement;

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 annexed agreement with NYCOMCO for communications equipment and the service of the communications equipment at a monthly rate of \$2,994.00 for 84 months for the City of Newburgh Police Department.

(To be filled in by NYCOMCO)

IT IS FURTHER AGREED BY THE PARTIES:

(1) ASSIGNMENT. (a) The Lessor may assign the equity interest of the equipment described in this lease to a bank or financial institution. The Lessor will continue to collect the monthly payments due under this lease and will continue to provide service and maintenance of the equipment for the Lessee. No obligation is imposed upon the bank or financial institution to which the equity value of the equipment may be assigned to perform or fulfill any obligations of the Lessor under this lease. The Lessee acknowledges that any claim it may have under this lease shall be asserted against the Lessor only and not against an assignee of the equity value of the equipment.

(b) The Lessee may not assign this lease or any right to or use of the equipment described herein without the written consent of the Lessor first obtained. Notwithstanding an assignment, the Lessee will remain fully obligated under this lease unless specifically released by the Lessor and any person or company which takes over the rights or obligations under this lease will have all of the rights and will be obligated to keep all of the promises and agreements made herein.

(2) DEFAULT. If the Lessee be adjudicated a bankrupt or there is filed against it a petition under the bankruptcy laws, or if any insolvency proceedings is initiated by or against the Lessee, or if the equipment or any part thereof is encumbered, pledged, or attached, seized or taken under any judicial process, the Lessor or its assignee may at any time terminate this lease agreement and enter any premises or vehicles where the leased equipment may be located, without process of law, and remove all said equipment, without prejudice to any other rights or remedies of the lessor or its assignee.

(3) SERVICE. The performance of equipment and the liability of the Lessor under the service provision is contingent upon maintenance by a qualified communications technician, employed and certified by NYCOMCO. This maintenance is the liability of NYCOMCO and is included in the lease charges.

(4) PATENT INDEMNITY. The Lessor will defend any suit or proceeding brought against the Lessee so far as based on a claim that any leased equipment, or any part thereof, constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information, and assistance (at the Lessor's expense) for the defense of same, and the Lessor shall pay all damages and costs awarded therein against the Lessee.

(5) OPTION TO RENEW. The Lessee shall have the option to renew this lease agreement at a monthly payment to be determined at or before the expiration of the lease term, by written notice prior to expiration of the lease term by execution of a renewal form.

(6) LESSEE'S OBLIGATIONS. The Lessee shall

(a) keep the equipment described herein at the location designated and shall not move it elsewhere without prior written authorization from the Lessor;

(b) notify the Lessor of the name and mailing address of any party having a right or interest in any motor vehicle not unconditionally owned by the Lessee in which any of the equipment listed herein is installed;

(c) at the expiration of this lease agreement, return to the Lessor in good condition except for normal wear and tear all leased equipment, together with all parts and accessories added to or installed in the leased equipment;

(d) keep the label reading "Property of New York Communications Company, Inc." affixed to all leased equipment at all times, and make equipment available for Lessor's inspection at reasonable times upon reasonable notice;

(e) be responsible during the lease term for loss or theft of all portable radios listed herein and maintain adequate insurance thereon payable to the Lessor and Lessee as their interests may appear;

(f) arrange for access by the Lessor or any person acting in its behalf to the location where the leased equipment is to be installed.

(7) LIMITATION OF LIABILITY. In no event shall the Lessor be liable for special or consequential damages. The Lessor's liability on any other claim for loss of liability, arising out of or connected with this lease, or the use of any equipment covered by this lease (including, but not limited to, loss or liability arising from breach of contract) shall in no case exceed the prorated total monthly payment then paid on the particular unit involved in the claim, except as provided in the paragraphs entitled "SERVICE" and "PATENTS".

(8) GOVERNMENT AUTHORIZATIONS. Neither the Lessor nor any of its employees is an agent or representative of the Lessee and the Lessee is solely responsible for obtaining any required authorizations from the Federal Communications Commission and for compliance therewith. If this lease includes the furnishing of a tower and installation, the Lessee shall have the sole responsibility for obtaining all necessary Federal, State and Local permits or authorizations pertaining thereto. The Lessor will comply with all other applicable Federal, State or Local laws and specifically represents that any goods to be delivered hereunder shall be produced in compliance with the Fair Labor Standards Act of 1938 as amended. Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the lease and not for the benefit of any other person.

(9) AMENDMENTS. This lease agreement (and any amendments attached hereto and signed by both parties) contains the entire understanding between the parties concerning the subject matter hereof and any representation, promise, modification or amendment shall not be binding upon either party unless reduced in writing and signed on behalf of each by a duly authorized representative.

NEW YORK COMMUNICATIONS COMPANY, INC.



53 WEST CEDAR STREET * POUGHKEEPSIE, NY
(845) - 471-5520, FAX (845) - 471-5593

WWW.NYCOMCO.COM

LEASE ORDER: 281632-00
DATE: 3/02/21
SALESREP: WILLIAM TUTHILL
LEASE #: 1466 -SLE-00
EXPIRATION DATE:

Bill To: 14660
NEWBURGH PD CITY
ATTN:A/P CITY HALL-COMPTROLLER
83 BROADWAY 4th FLOOR
NEWBURGH NY 12550

Fax: 845-565-5662

CUSTOMER CONTACTS: CHIEF BUTCH AMTHOR

PHONE: (845) 569-7571

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
1	ZETRON MAX DISPATCH	UPDATED, EXISTING, THREE POSITION ZETRON MAX IP DISPATCH CONSOLE WITH 3 NEW WORKSTATIONS, NEW TOUCH SCREEN MONITORS, MAX CENTRAL WITH NEW OPERATING SYSTEM SOFTWARE AND ZETRON LICENSES. INCLUDES TWO EXISTING GATEWAYS, REDUNDANT POWER SUPPLIES, NETWORK SWITCHES, ACCESS RELAY MODULE, DESK MICROPHONES SPEAKERS AND EQUIPMENT ENCLOSURE AND ADDITION OF 3 UPGRADED JACK-BOXES, (ONE PER POSITION), FOR USE OF NBG PD OWNED 2 PRONG ADAPTERS AND HEADSETS. >INCLUDES TELEPHONE SYSTEM INTEGRATION. INCLUDES 24/7/365 SERVICE FOR FULL TERM 84 MONTH LEASE AGREEMENT ON CONSOLE, TWO NBG PD OWNED APX6500 BASE STATIONS, ANTENNA SYSTEMS AND JACK-BOXES. SERVICE PROGRAM PROVIDES FOR REPAIR, NOT REPLACEMENT, OF THE 2 APX 6500 BASE STATIONS SUPPORTED BY ZETRON CONSOLE. EXCLUDES SERVICE OF APX6500 BASE IN EOC, TWO PRONG ADAPTERS AND HEADSETS OWNED BY CITY OF NEWBURGH POLICE DEPT. Comments: ALL INCLUSIVE LEASE PROGRAM AS DESCRIBED. WITH TOUCH SCREEN MONITORS, TELEPHONE LINE INTEGRATION AND (3) UPGRADED TELEPHONE / RADIO JACK BOXES. SERVICE INCLUDED WITH NYCOMCO 84 MONTH LEASE PROGRAM.	2,994.00 /MO	2,994.00 /MO
			TOTAL:	2,994.00 /MO

AUTHORIZED SIGNATURE _____

PRINT NAME _____

TITLE/DATE _____

RESOLUTION NO.: ____121____-2021

OF

MAY 10, 2021

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING GARIGLIANO LAW OFFICES, LLP TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING BY THE CITY OF NEWBURGH AGAINST THE TOWN OF NEW WINDSOR IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NOS. EF005922-2017, EF007932-2018, EF005909-2019 AND EF003957-2020 INVOLVING SECTION, BLOCK AND LOT (i) 4-1-12.2; (ii) 4-1-9.21; (iii) 4-1-10; (iv) 4-1-35; (v) 4-1-38; and (vi) 4-3-1.1

WHEREAS, City of Newburgh (“City”) has commenced the following tax certiorari proceedings against the Town of New Windsor in the Supreme Court of the State of New York, County of Orange, bearing Orange County Index Nos. EF005922-2017, EF007932-2018, EF005909-2019 and EF003957-2020; and

WHEREAS, it appears from the recommendation of Garigliano Law Offices, LLP, counsel to the City in the aforesaid proceeding and following consultation with Robinson Appraisal Consultants, LLC and upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matter as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, the City is willing to settle this proceeding without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the Town of New Windsor assessment roll for the year 2021-2022 as tax map number 4-1-12.2 (“Washington Lake Parcel”) be reduced to an assessed value of Ninety Thousand and 00/100 (\$90,000.00) Dollars.
- 2- That the assessed values of all parcels included in the Petitions other than the Washington Lake Parcel shall be subject to the Real Property Tax Law Section 727 Three-Year repose period (“Repose Period”) with the assessed values to remain at the 2020-2021 assessment roll levels for the Repose Period unless one of the exceptions listed in RPTL §727 occurs.
- 3- That the assessed value of the Washington Lake Parcel shall remain at Ninety Thousand and 00/100 (\$90,000.00) Dollars for the Repose Period unless one of the exceptions listed in RPTL §727 occurs or in the event Washington Lake shall be reestablished as the primary drinking water supply for the City.
- 4- All claims related to all parcels included in the petitions for the 2017-2018; 2018-2019; 2019-2020; and 2020-2021 assessment years be discontinued.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above, and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law.

BE IT FURTHER RESOLVED, that Walter F. Garigliano, Esq. of Garigliano Law Offices, LLP be and he hereby is designated to execute a Consent Judgment on behalf of the City.

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ORANGE

In the Matter of the Application of

CITY OF NEWBURGH/WATER SUPPLY,

Petitioner,

-against-

**THE ASSESSOR, THE BOARD OF ASSESSMENT
REVIEW OF THE TOWN OF NEW WINDSOR, THE
NEWBURGH ENLARGED CITY SCHOOL DISTRICT,
and THE COUNTY OF ORANGE,**

Respondents

**STIPULATION AND
ORDER OF
SETTLEMENT**

Index Nos. EF005922-2017
EF007932-2018
EF005909-2019
EF003957-2020

For review of the assessments of certain real property contained in the said Town of New Windsor for the 2017, 2018, 2019 and 2020 assessment rolls.

The above-named Petitioner having duly brought the above referenced Real Property Tax Law ("RPTL") Article 7 proceedings to review the tax assessments made against those certain properties owned by the Petitioner for the respective years described in the respective Petitions referenced above which are as follows: (a) 660 Little Britain Road (SBL No. 4-1-12.2) in the Town of New Windsor, County of Orange, State of New York (the "660 LBR Parcel"); (b) Union Avenue (SBL No. 4-1-9.21) in the Town of New Windsor, County of Orange, State of New York (the "Union Parcel"); (c) 856 Little Britain Road (SBL No. 4-1-10) in the Town of New Windsor, County of Orange, State of New York (the "856 LBR Parcel"); (d) Route 207 (SBL No. 4-1-35) in the Town of New Windsor, County of Orange, State of New York (the "Rt 207(-35) Parcel"); (e) County Highway 69 (SBL No. 4-1-38) in the Town of New Windsor, County of Orange, State of New York (the "Highway 69 Parcel"); and (f) Route 207 (SBL No. 4-3-1.1) in the Town of New Windsor, County of Orange, State of New York (the "Rt 207(-1.1) Parcel") (collectively the 660 LBR Parcel,

the Union Parcel; the 856 LBR Parcel, the Rt 207(-35) Parcel, Highway 69 Parcel and Rt 207(-1.1) Parcel are hereinafter collectively called the "Parcels") and being the real properties mentioned and more fully described in the respective petitions made and filed herein, and issue having been duly joined herein, and the Petitioner having appeared by Garigliano Law Offices, LLP, Walter F. Garigliano, Esq., the Respondent, Town of New Windsor, having appeared by the Goldman Attorneys PLLC, Paul J. Goldman, Esq., and Respondent-Intervenor, Newburgh Enlarged City School District, having appeared by Shaw, Perelson, May & Lambert, LLP, Elizabeth A. Ledkovsky, Esq., and the parties having entered into and consent to this Stipulation and Order of Settlement;

NOW, on joint motion of the Petitioner and Respondents, it is hereby,

1. ORDERED, ADJUDGED and DECREED, that the assessed value of the Parcels shall remain unchanged for the 2017, 2018, 2019 and 2020 assessments; and it is further

2. ORDERED, ADJUDGED and DECREED, that the respective 2017, 2018, 2019 and 2020 assessment review proceedings set forth above in the respective Petitions having the respective index numbers above are discontinued with prejudice and deemed resolved in their entirety and respective assessments on the 2017, 2018, 2019 and 2020 assessments are deemed confirmed and without any further adjustment or reduction in the assessments.

3. ORDERED, ADJUDGED and DECREED, that the 2021 assessment of the 660 LBR Parcel shall be reduced from \$295,000 to \$90,000; and it is further,

4. ORDERED, ADJUDGED and DECREED, that the 2021 assessments of the other Parcels shall be established at the following assessed values:

<u>Parcel</u>	<u>Assessed Value</u>
Union Parcel	\$ 23,500
856 LBR Parcel	\$ 167,000
Rt 207(-35) Parcel	\$1,934,700
Highway 69 Parcel	\$ 33,700

Rt 207(-1.1) Parcel

\$ 48,500

5. ORDERED, ADJUDGED and DECREED, that the provisions of RPTL §727 shall be applicable to the assessments for all of the Parcels set forth Paragraphs 3 and 4 set forth above and which assessments set forth in Paragraphs 3 and 4 shall be held for the 2022, 2023 and 2024 assessment rolls (the “Repose Period”).

6. ORDERED, ADJUDGED and DECREED, that the provisions of RPTL §727(2) are incorporated herein with an additional exception to the statutory Repose Period as follows:

- (j) The 660 LBR Parcel is used as the primary drinking water supply source by City of Newburgh

7. The Petitioner and the Respondent Assessor will utilize reasonable commercially reasonable efforts to stipulate to the reduction of the 660 LBR Parcel set forth in Paragraph 3 herein to the Town of New Windsor Board of Assessment Review for the 2021 assessment roll. The reductions in the assessment set forth in Paragraph 3 are agreed and deemed to be as a result of such assessment being deemed unequal as a result of a court order set forth in RPTL §727(1) so that in consideration for the establishment of the final assessments set forth in Paragraphs 3 and 4, respectively, all of such assessments shall be subject to the RPTL §727 for the Repose Period.

8. In the event that the assessment of the 660 LBR Parcel set forth in Paragraph 3 herein is not established on the 2021 final assessment roll, then the Petitioner may utilize this Stipulation and Order of Settlement to obtain a corrected 2021-2022 Newburgh Central School District tax bill.

Dated: May ___, 2021
Goshen, New York

Hon. Catherine M. Bartlett
Acting Supreme Court Justice

STIPULATION

The Attorneys for the respective Parties do hereby consent to this Stipulation and Order of Settlement.

Dated: May ___, 2021

GOLDMAN ATTORNEYS PLLC

By: _____

Paul J. Goldman, Esq.
Erika C. Browne, Esq.
Attorneys for Respondents
Town of New Windsor
255 Washington Avenue Extension, Suite 108
Albany, New York 12205
(518) 431-0941

Dated: May ___, 2021

GARIGLIANO LAW OFFICES, LLP

By: _____

Walter F. Garigliano, Esq.
Attorneys for Petitioner
City of Newburgh/Water Supply
449 Broadway, PO Drawer 1069
Monticello, New York 12701
(845) 796-1010

Dated: May ___, 2021

SHAW, PERELSON, MAY & LAMBERT, LLP

By: _____

Elizabeth A. Ledkovsky, Esq.
Attorneys for Respondent-Intervenor
Newburgh Enlarged City School District
115 Stevens Avenue
Valhalla, New York 10595
(914) 741-9870

RESOLUTION NO.: 122 - 2021

OF

MAY 10, 2021

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PAYMENT
OF CLAIM WITH ALLER NOTHING BINS, LLC IN THE AMOUNT OF \$14,064.82**

WHEREAS, Aller Nothing Bins, LLC. 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 Fourteen Thousand Sixty-Four and 82/100 Dollars (\$14,064.82) in exchange for a release to resolve all claims among them; 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 Aller Nothing Bins, LLC in the total amount of Fourteen Thousand Sixty-Four and 82/100 Dollars (\$14,064.82) 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.