



City of Newburgh Council Work Session
*Sesion de trabajo del Concejal de la
Ciudad de Newburgh*

May 5, 2022
6:00 PM

Executive Session/ Sesión Ejecutiva

1. Proposed, pending or current litigation
Litigación propuesta, pendiente o actual
2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation
El historial médico, financiero, de crédito o de empleo de una persona o corporación en particular, o asuntos que conduzcan al nombramiento, empleo, promoción, descenso, disciplina, suspensión, despido o remoción de una persona o corporación en particular

Council Meeting Presentations

3. First Quarter Comptroller Update
Actualización del Contralor del primer trimestre

Engineering/Ingeniería

4. PIN# 8761.40 Walsh Road Bridge Replacement Construction Agreement with CSX Transportation Inc.
Resolution authorizing the City Manager to execute an agreement with CSX Transportation, Inc. for construction engineering and inspection services related to the replacement of the Walsh Road Bridge

Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo con CSX Transportation, Inc. para los servicios de ingeniería de construcción e inspección relacionados con el reemplazo del puente de Walsh Road
5. Allocation of \$1,500,000 ARPA Funding to the LTCP Floatables Control/High Rate Disinfection Facility Project
Resolution authorizing and allocating \$1,500,000.00 of American Rescue Plan Act of 2021 funding to the Floatables Control and High Rate Disinfection Facility Project as part of the City of Newburgh Long Term Control Plan

Resolución que autoriza y asigna \$1,500,000.00 de la Ley de Rescate

Americano de 2021 al Proyecto del Centro de Control y Desinfección de Alta Tasa como parte del Plan de Control a Largo Plazo de la Ciudad de Newburgh

6. Resolution of Support for Riverkeeper

Resolution endorsing the application of Riverkeeper for a New York State Department of Environmental Conservation Round 35 Hudson River Estuary Tributary Restoration and Resiliency Program grant for reconnaissance activities for dam removal feasibility on Furnace Brook and Quassaick Creek

Resolución que respalda la solicitud de Riverkeeper de una subvención de la Ronda 35 del Departamento de Conservación Ambiental del Estado de Nueva York para el Programa de Restauración y Resiliencia del Estuario del Río Hudson para las actividades de reconocimiento de viabilidad para la eliminación de represa en Furnace Brook y Quassaick Creek

Finance/Finanza

7. Personnel Book Amendment - Executive Office

Resolution amending the 2022 Personnel Analysis Book to delete one Executive Assistant to the City Manager position and add one Chief of Staff position in the Executive Office

Resolución que enmienda el Libro de Análisis del Personal 2022 para borrar un puesto de Asistente Ejecutivo del Gerente de la Ciudad y añadir un puesto de Jefe de Personal en la Oficina Ejecutiva

8. Amend 2022 Personnel Budget to Reflect Restructuring of Finance Department

Resolution amending the 2022 Personnel Analysis Book to delete two Senior Account Clerk positions and add one Junior Accountant position and one Account Clerk position in the Finance Department

Resolución que enmienda el Libro de Análisis del Personal 2022 para borrar dos puestos de Empleado Contable Superior y añadir un puesto de Empleado de Cuentas Menor y un puesto de Empleado de Cuentas en el Departamento de Finanza

9. 2021 M Fund Budget Adjustment

Resolution amending Resolution No: 282-2020, the 2021 Budget for the City of Newburgh, New York for 2021 year end self-insurance fund adjustment

Resolución que enmienda Resolución No: 282-2020, el presupuesto 2021 de la Ciudad de Newburgh, Nueva York para el ajuste del fondo de seguro de sí mismo de fin de año 2021

Planning and Economic Development/Planificación y Desarrollo Económico

10. 34 Allison Avenue - Satisfactions of Mortgage

Resolution authorizing the City Manager to execute Satisfactions of Mortgage in connection with the premises located at 34 Allison Avenue (Section 15, Block 4, Lot 6)

Resolución que autoriza al Gerente de la Ciudad a ejecutar Satisfacciones de Hipoteca en relación con el local ubicado en 34 Allison Avenue (Sección 15, Bloque 4, Lote 6)

11. 60 William Street - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to the City of Newburgh Industrial Development Agency to the premises known as 60 William Street (Section 38, Block 3, Lot 32)

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y del derecho de reingreso de una escritura emitida a favor de la Agencia de Desarrollo Industrial de la Ciudad de Newburgh para el local conocido como 60 William Street (Sección 38, Bloque 3, Lote 32)

12. 248 First Street - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to George Blake to the premises known as 248 First Street (Section 22, Block 5, Lot 27)

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y del derecho de reingreso de una escritura emitida a favor de George Blake para el local conocido como 248 First Street (Sección 22, Bloque 5, Lote 27)

13. License Agreement with Strongroom for Use and Access to 134 Grand Street (The Dutch Reformed Church)

Resolution authorizing the City Manager to enter into a license agreement with Strongroom to allow use and access to the Dutch Reformed Church located at 134 Grand Street (Section 19, Block 1, Lot 25) for an artwork display

Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de licencia con Strongroom para permitir el uso y el acceso a la Iglesia Reformada Holandesa ubicada en el 134 Grand Street (Sección 19, Bloque 1, Lote 25) para una exhibición de obras de arte

14. Letter of Support for Proposed E-Bike Project for NYSERDA Clean Neighborhoods Challenge

Resolution supporting the application of ICF, Inc. and its partners for a NYSERDA Clean Neighborhoods Challenge Program Grant for an e-bike

library program in the City of Newburgh

Resolución apoyando la solicitud de ICF, Inc. y sus socios para una subvención del programa de reto de barrios limpios de NYSERDA para un programa de biblioteca de bicicletas electrónicas en la Ciudad de Newburgh

Grants/Contracts/Agreements / Becas /Contratos/Convenios

15. 2023 Highway Safety Grant

Resolution authorizing the City Manager to apply for and accept if awarded a New York State Governor's Traffic Safety Committee 2023 Highway Safety Program Grant in an amount not to exceed \$20,000.00 with no City match required

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una subvención del Comité de Seguridad Vial del Gobernador del Estado de Nueva York para el Programa de Seguridad Vial 2023 en una cantidad que no excede \$20,000.00, el cual no requiere que la Ciudad iguale los fondos

Ordinances/ Decretos

16. Ordinance amending Chapter 190 of the City of Newburgh Code of Ordinances

Ordinance amending Chapter 190, Article XIII entitled "Responsibilities of Owners and Occupants" of the Code of Ordinances of the City of Newburgh increasing the penalties for violations

Ordenanza que enmienda el Capítulo 190, Artículo XIII titulado "Responsabilidades de los Propietarios y Ocupantes" del Código de Ordenanzas de la Ciudad de Newburgh aumentando las sanciones por violaciones

17. Ordinance amending Chapter 249 of the City of Newburgh Code of Ordinances

Ordinance amending Chapter 249, Sidewalk Cafes, of the Code of Ordinances of the City of Newburgh to establish a time period for Sidewalk Cafe Permits

Ordenanza que enmienda el Capítulo 249, Restaurantes en las Aceras, del Código de Ordenanzas de la Ciudad de Newburgh para establecer un período de tiempo para los permisos de Restaurantes en las Aceras

RESOLUTION NO.: _____ - 2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH CSX TRANSPORTATION, INC.
FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
RELATED TO THE REPLACEMENT OF THE WALSH ROAD BRIDGE**

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

WHEREAS, by Resolution No. 143-2017 of June 12, 2017, the City Council approved and agreed to advance the Project by making a commitment of 100% of the non-federal share of costs of preliminary engineering and right-of-way incidental work by approving a Master Federal Aid Local Project Agreement with the New York State Department of Transportation; and

WHEREAS, by Resolution No. 212-2017 of August 14, 2017, Resolution No. 258-2021 of November 8, 2021 and Resolution No. 82-2022 of April 11, 2022, the City Council authorized approved agreements with WSP USA, Inc. for design, preliminary engineering, right-of-way and construction management services for Project; and

WHEREAS, by Resolution No. 104-2019 of May 13, 2019, the City Council approved a Preliminary Engineering Agreement with CSX Transportation, Inc. for review and assessment of design and plans for the Project; and

WHEREAS, CSX Transportation, Inc. requires a Construction Agreement to provide preliminary engineering, flagging, construction engineering and inspection services during the construction of the Project at an initial cost of \$194,606.00 which funding shall be derived from an existing Federal Aid Local Agreement with a reimbursement amount of 80% with a required 20% local match and the local match and the balance of any remaining funding obligations shall be derived from the 2016 BAN and the OCTC TIP Reserve Fund; and

WHEREAS, the City of Newburgh finds that authorizing the City Manager to execute a Construction Agreement with CSX Transportation, Inc. is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that the Interim City Manager be and he is hereby authorized to execute a Construction Agreement with CSX Transportation, Inc. for preliminary engineering, flagging, construction engineering and inspection services during the construction of the Bridge Replacement of Walsh Road over Quassaick Creek (BIN 2223620) in the City of Newburgh, Orange County, PIN 8761.40.



April 20, 2022

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

SUBJECT: NY0735; Newburgh, Orange County, New York; Replacement of Walsh Road Bridge over Quassaick Creek adjacent to CSXT; 263588Y; Northern Zone, River Subdivision; QRW-17.25
Unexecuted Construction Agreement Transmittal

Dear Mr. Morris

Reference is made to the WSP e-mail dated February 14, 2022 providing proposed construction schedule information for the subject project. In order to be reimbursed for its costs to support the project during construction, CSXT requires a Construction Agreement to be fully executed between the City of Newburgh and CSXT. Two (2) original Agreements are enclosed. The railroad Force Account Estimate covering an allowance for Protective Services and Construction Engineering/Inspection is included in the agreement.

Please arrange for each original to be executed and return both along with a copy of the necessary advance payment to Bergmann at the following address:

Six Tower Bridge
181 Washington Street, Suite 430
Conshohocken, PA 19428

Per Section 4.3 of the Agreement, City of Newburgh shall provide advance payment in the amount of \$194,606. These funds are to cover the anticipated project costs for Protective Services and Construction Engineering/Inspection. Please be advised that the advance payment is not a fee, but a deposit held in an account against which actual CSXT costs are assessed. If the actual costs are less than the deposit, a refund will be returned, and if the actual costs are more than the deposit, an additional deposit will be requested.

The advance payment should be made payable to "CSX Transportation" and sent with attached Payment Submission Form directly to CSXT at the following address:

P.O. Box 530192
Atlanta, GA 30353-0192

Please note that no work may begin on, over, or adjacent to the CSXT right-of-way, or that could potentially impact CSXT operations, until the following have occurred:

- A fully executed Construction Agreement is in place with the appropriate parties
- The advance payment has been received by CSXT
- The Outside Party provides to this office written notice to proceed with railroad force account work
- The contractor's insurance has been approved in writing by CSXT



- The necessary construction submissions have been submitted by the Outside Party with no exceptions taken by CSXT or its representative
- A pre-construction meeting has been held with CSXT and/or its representatives
- Railroad track protection of a form determined by CSXT is in-place and understood by all parties
- The contractor signs Schedule I of the Construction Agreement

Please do not hesitate to contact Kevin Lewandowski or me at (610) 834-4080 with any questions regarding the above matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erin Goglia'.

FOR Erin Goglia, PE
Project Manager – CSXT GEC

CC: BA file 11310.01
Derek Mihaly, Project Manager – CSXT Public Projects

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CONSTRUCTION AGREEMENT

This Construction Agreement (“**Agreement**”) is made as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and CITY OF NEWBURGH a body corporate and political subdivision of the State of New York (“**Agency**”).

EXPLANATORY STATEMENT

1. Agency has proposed to construct, or to cause to be constructed, replacement of Walsh Road Bridge over Quassaick Creek adjacent to CSXT, Newburgh, Orange County, New York, Mile Post QRW-17.25, Northern Zone, River Sub-Division (the “**Project**”).
2. Agency has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including Agency), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. Agency acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other Agency contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of Agency or its contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
4. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. **Project Plans and Specifications**

- 1.1 **Preparation and Approval.** Pursuant to Exhibit A of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at Agency’s sole cost and expense, by Agency or CSXT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of Agency shall be subject, at CSXT’s election, to the review and approval of CSXT. Such plans, specifications and drawings, as prepared or approved by CSXT, are referred to as the “**Plans**”, and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and

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approved by CSXT as of the date of this Agreement are set forth in Exhibit B to this Agreement.

1.2 Effect of CSXT Approval or Preparation of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance with such Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans.

1.3 Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

2.1 CSXT Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, CSXT shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. Agency agrees that CSXT shall provide all services that CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.

2.2 Agency Work. Agency shall perform, or cause to be performed, all work as set forth by Exhibit A, at Agency's sole cost and expense.

2.3 Conduct of Work. CSXT shall commence its work under this Agreement following: (i) delivery to CSXT of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by CSXT or on CSXT property shall conclude no later than December 31, 2024, unless the parties mutually agree to extend such date.

3. Special Provisions. Agency shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the "Special Provisions"). To the extent that Agency performs

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Project work itself, Agency shall be deemed a Contractor for purposes of this Agreement. Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4. Cost of Project and Reimbursement Procedures

4.1 Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Project, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to CSXT's consultants and subcontractors, and (6) CSXT labor in connection with the Project, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, "**Reimbursable Expenses**"). Reimbursable Expenses shall also include expenses incurred by CSXT prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.

4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the "**Estimate**", as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further work on the Project, unless and until Agency provides such approval and confirmation. Furthermore, the Agency acknowledges and understands that any estimated cost to construct the project shall only be good for a limited period of time and that any delays to move to construction, if CSXT agrees to such construction, shall result in increased costs.

4.3 Payment Terms.

4.3.1 Agency shall pay CSXT for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the "Payment Schedule", as revised pursuant to Section 4.2). CSXT agrees to submit invoices to Agency for such amounts and Agency shall remit payment to CSXT at the later of thirty (30) days following delivery of each such invoice to Agency or, the payment date (if any) set forth in the Payment Schedule.

4.3.2 Following completion of the Project, CSXT shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. Agency shall pay to CSXT the amount by which Reimbursable Expenses exceed total payments as shown by the

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final invoice, within thirty (30) days following delivery of such invoice to Agency. In the event that the payments received by CSXT from Agency exceed the Reimbursable Expenses, CSXT shall remit such excess to Agency.

4.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

4.3.4 All invoices from CSXT shall be delivered to Agency in accordance with Section 16 of this Agreement. All payments by Agency to CSXT shall be made by certified check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

CSX Transportation, Inc.
P.O. Box 530192
Atlanta, GA 30353-0192

4.4 Effect of Termination. Agency's obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement for any reason.

5. Appropriations Agency represents to CSXT that: (i) Agency has appropriated funds sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such appropriations.

6. Easements and Licenses

6.1 Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

6.2 Temporary Construction Licenses. Insofar as it has the right to do so, CSXT hereby grants Agency a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT.

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- 6.3 Temporary Construction Easements. CSXT may grant without warranty to Agency, if required, a temporary non-exclusive easement for access to the extent necessary for the project on terms and conditions and at a price acceptable to the parties.
- 6.4 Maintenance Agreement. Contemporaneous with the execution of this Agreement, CSXT and Agency have executed that certain Maintenance Agreement providing for Agency's ongoing use, maintenance, repair, renewal and removal of the Project.
- 6.5 Permanent Easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to Agency, easements for the use and maintenance (in accordance with the provisions of the Maintenance Agreement described in 6.4) of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions and at a price acceptable to both parties. Upon request by CSXT, Agency shall furnish to CSXT descriptions and plat plans for the easements.
7. Permits At its sole cost and expense, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.
8. Termination
- 8.1 By Agency. For any reason, Agency may, as its sole remedy, terminate this Agreement by delivery of notice to CSXT. Agency shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or Work on the Project by either party.
- 8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to Agency in the event Agency or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to Agency.
- 8.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. Agency shall reimburse CSXT pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning CSXT's property to its former condition, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses

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incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 4.

9. Insurance. In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Neither Agency nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.

10. Ownership and Maintenance

10.1 By Agency. Agency shall own, maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans. In the event Agency fails to do so after reasonable notice from CSXT (no more than thirty (30) days, unless an emergency condition exists or is imminent in the opinion of CSXT, that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense. Upon the cessation of use of the Project by Agency, Agency shall remove the structure and restore CSXT's property to its original condition, at Agency's sole cost and expense, to CSXT's satisfaction.

10.2 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project, without the prior approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require.

11. Indemnification

- 11.1 Generally. To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage

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required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

- 11.2 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 11.3 "CSXT Affiliates". For the purpose of this Section 11, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.
- 11.4 Notice of Incidents. Agency and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. Independent Contractor The parties agree that neither Agency nor its Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Agency or Agency's Contractors, or the construction practices, procedures, and professional judgment employed by Agency or its Contractor to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of CSXT to prohibit Agency or its Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
13. "Entire Agreement" This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
14. Waiver If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

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15. Assignment CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption of CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligation under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior consent, which consent may be withheld for any reason.
16. Notices All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT:	CSX Transportation, Inc. 500 Water Street, J-301 Jacksonville, Florida 32202 Attention: Director Project Management – Public Projects
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If to Agency:	City of Newburgh 83 Broadway Newburgh, New York 12550 Attention: Jason C. Morris, P.E – City Engineer
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17. Severability The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.
18. Applicable Law This Agreement shall be governed by the laws of the State of New York exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval, Florida.

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BY SIGNING THIS AGREEMENT, I certify that there have been no changes made to the content of this Agreement since its approval by the CSXT Legal Department on **November 5, 2021**.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

CITY OF NEWBURGH

By: _____

Name: _____

Title: _____

CSX TRANSPORTATION, INC.

By: _____

Name: Tony C. Bellamy

Title: Director Project Management - Public Projects

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EXHIBIT A
ALLOCATION OF WORK

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

- A. Agency shall let by contract to its Contractors:
 - 1. Means and access to construct replacement of Walsh Road Bridge over Quassaick Creek adjacent to CSXT.
- B. CSXT shall perform or cause to be performed:
 - 1. Preliminary engineering services.
 - 2. Flagging services and other protective services and devices as may be necessary.
 - 3. Construction engineering and inspection to protect the interests of CSXT.

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EXHIBIT B

PLANS AND SPECIFICATIONS

Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications and drawings have been submitted by Agency to CSXT for its review and approval:

SHEET	DESCRIPTION	PREPARER	DATE
1 to 33	Final Plans	WSP USA	02/2021
4 of 33	General Notes - 1	WSP USA	10/2021
Pages 113 & 114	NYSDOT Standard Specifications	NYSDOT	01/2021
1 to 230	Proposal Book	City of Newburgh	02/17/2021

EXHIBIT C

CSXT SPECIAL PROVISIONS

DEFINITIONS:

As used in these Special Provisions, all capitalized terms shall have the meanings ascribed to them by the Agreement, and the following terms shall have the meanings ascribed to them below:

“CSXT” shall mean CSX Transportation, Inc., its successors and assigns.

“CSXT Representative” shall mean the authorized representative of CSX Transportation, Inc.

“Agreement” shall mean the Agreement between CSXT and Agency dated as of _____, as amended from time to time.

“Agency” shall mean the City of Newburgh.

“Agency Representative” shall mean the authorized representative of City of Newburgh.

“Contractor” shall have the meaning ascribed to such term by the Agreement.

“Work” shall mean the Project as described in the Agreement.

I. AUTHORITY OF CSXT ENGINEER

The CSXT Representative shall have final authority in all matters affecting the safe maintenance of CSXT operations and CSXT property, and his or her approval shall be obtained by the Agency or its Contractor for methods of construction to avoid interference with CSXT operations and CSXT property and all other matters contemplated by the Agreement and these Special Provisions.

II. INTERFERENCE WITH CSXT OPERATIONS

- A. Agency or its Contractor shall arrange and conduct its work so that there will be no interference with CSXT operations, including train, signal, telephone and telegraphic services, or damage to CSXT’s property, or to poles, wires, and other facilities of tenants on CSXT’s Property or right-of-way. Agency or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or CSXT Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the CSXT Representative for approval, but such approval shall not relieve Agency or its Contractor from liability in connection with such Work.

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- B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or CSXT's property, Agency or its Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT may, at the expense of Agency or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.
- III. NOTICE OF STARTING WORK. Agency or its Contractor shall not commence any work on CSXT Property or rights-of-way until it has complied with the following conditions:
- A. Notify CSXT in writing of the date that it intends to commence Work on the Project. Such notice must be received by CSXT at least ten business days in advance of the date Agency or its Contractor proposes to begin Work on CSXT property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
 - B. Obtain authorization from the CSXT Representative to begin Work on CSXT property, such authorization to include an outline of specific conditions with which it must comply.
 - C. Obtain from CSXT the names, addresses and telephone numbers of CSXT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.
- IV. WORK FOR THE BENEFIT OF THE CONTRACTOR
- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CSXT property that are considered necessary to the Work are anticipated or shown on the Plans. If any such changes are, or become, necessary in the opinion of CSXT or Agency, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either CSXT or Agency, but must be approved by both CSXT and Agency. Agency or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CSXT.
 - B. Should Agency or Contractor desire any changes in addition to the above, then it shall make separate arrangements with CSXT for such changes to be accomplished at the Agency or Contractor's expense.

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V. HAUL ACROSS RAILROAD

- A. If Agency or Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the Agency or Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein Agency or Contractor agrees to bear all costs and liabilities related to such access.
- B. Agency and Contractor shall not cross CSXT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

VI. COOPERATION AND DELAYS

- A. Agency or Contractor shall arrange a schedule with CSXT for accomplishing stage construction involving work by CSXT. In arranging its schedule, Agency or Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. Agency or Contractor may not charge any costs or submit any claims against CSXT for hindrance or delay caused by railroad traffic; work done by CSXT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.
- C. Agency and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- D. Agency and Contractor understand and agree that CSXT does not assume any responsibility for work performed by others in connection the Project. Agency and Contractor further understand and agree that they shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by Agency or Contractor on account of operations by others.

VII. STORAGE OF MATERIALS AND EQUIPMENT

Agency and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless Agency or Contractor has received CSXT Representative's prior written permission. Agency and Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require Agency or Contractor to move, such material and equipment at Agency's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left

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parked near the tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

VIII. CONSTRUCTION PROCEDURES

A. General

1. Construction work on CSXT property shall be subject to CSXT's inspection and approval.
2. Construction work on CSXT property shall be in accord with CSXT's written outline of specific conditions and with these Special Provisions.
3. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which Agency and Contractor shall be required to obtain from CSXT, and in accord with any other instructions furnished by CSXT or CSXT's Representative.

B. Blasting

1. Agency or Contractor shall obtain CSXT Representative's and Agency Representative's prior written approval for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, Agency or Contractor must comply with the following:
 - a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of Agency or Contractor.
 - b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
 - c. No blasting shall be done without the presence of an authorized representative of CSXT. At least 10 days' advance notice to CSXT Representative is required to arrange for the presence of an authorized CSXT representative and any flagging that CSXT may require.
 - d. Agency or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at Agency's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Agency's expense) any track misalignment or other damage to CSXT's property resulting from the blasting, as directed by CSXT Representative, without delay to trains. If Agency's or Contractor's actions result

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in delay of any trains, including Amtrak passenger trains, Agency shall bear the entire cost thereof.

- e. Agency and Contractor shall not store explosives on CSXT property.

2. CSXT Representative will:

- a. Determine the approximate location of trains and advise Agency or Contractor of the approximate amount of time available for the blasting operation and clean-up.
- b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.

IX. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

Agency or Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. Agency or Contractor shall provide erosion control measures during construction and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to Agency's or Contractor's operations shall be performed at Agency's expense.

X. FLAGGING / INSPECTION SERVICE

- A. CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever Agency or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.
- B. Agency shall reimburse CSXT directly for all costs of flagging that is required on account of construction within CSXT property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- C. Agency or Contractor shall give a minimum of 10 days' advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a flagging job for bid, it may take up to 90-days to obtain this

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service, and CSXT shall not be liable for the cost of delays attributable to obtaining such service.

- D. CSXT shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of CSXT Representative, such inspection may be necessary. Agency shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve Agency or Contractor from liability for its Work.
- E. CSXT shall render invoices for, and Agency shall pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by Agency using the new rates. Agency and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XI. UTILITY FACILITIES ON CSXT PROPERTY

Agency shall arrange, upon approval from CSXT, to have any utility facilities on or over CSXT Property changed as may be necessary to provide clearances for the proposed trackage.

XII. CLEAN-UP

Agency or Contractor, upon completion of the Project, shall remove from CSXT's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to Agency or Contractor. Agency or Contractor, upon completion of the Project, shall leave CSXT Property in neat condition, satisfactory to CSXT Representative.

XIII. FAILURE TO COMPLY

If Agency or Contractor violate or fail to comply with any of the requirements of these Special Provisions, (a) CSXT may require Agency and/or Contractor to vacate CSXT Property; and (b) CSXT may withhold monies due Agency and/or Contractor; (c) CSXT may require Agency to withhold monies due Contractor; and (d) CSXT may cure such failure and the Agency shall reimburse CSXT for the cost of curing such failure.

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EXHIBIT D

INITIAL ESTIMATE
ATTACHED

ESTIMATE SUBJECT TO REVISION AFTER: 4/7/2023

DOT NO.: 263588Y

CITY: Newburgh

COUNTY: Orange

STATE: NY

DESCRIPTION: Replacement of Walsh Road Bridge over Quassaick Creek adjacent to CSXT

ZONE: Northern

SUB-DIV: River

MILE POST: QRW-17.25

AGENCY PROJECT NUMBER:

PRELIMINARY ENGINEERING:

212	Contracted & Administrative Engineering Services	\$	-
	Subtotal	\$	-

CONSTRUCTION ENGINEERING/INSPECTION:

212	Contracted & Administrative Engineering Services	\$	168,800
	Subtotal	\$	168,800

FLAGGING SERVICE: (Contract Labor)

70	Labor (Conductor-Flagman)	Days @	\$ 350.00	\$	-
50	Labor (Foreman/Inspector)	5	Days @	\$ 504.00	\$ 2,520
70	Additive	187.00%	(Transportation Department)	\$	-
50	Additive	222.00%	(Engineering Department)	\$	5,594
	Subtotal			\$	8,114

SIGNAL & COMMUNICATIONS WORK:

\$	-
----	---

TRACK WORK:

\$	-
----	---

PROJECT SUBTOTAL:

\$	176,914
----	----------------

900	<u>CONTINGENCIES:</u>	10.00%	\$	17,691
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PROJECT TOTAL:

*****	\$	194,606
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CURRENT AUTHORIZED BUDGET:

*****	\$	-
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TOTAL SUPPLEMENT REQUESTED:

*****	\$	194,606
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DIVISION OF COST:

Agency	<u>100.00%</u>	\$	194,606
Railroad		\$	-

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: Bergmann

Approved by: **DSM** CSXT Public Project Group

DATE: 04/07/22 REVISED:

DATE: 04/15/22

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EXHIBIT E

PAYMENT SCHEDULE

Advance Payment in Full

Upon execution and delivery of notice to proceed with the Project, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within 30 days following delivery of such invoice to Agency.

EXHIBIT F

INSURANCE REQUIREMENTS

I. Insurance Policies:

Agency and Contractor, if and to the extent that either is performing work on or about CSXT's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CG 24 17 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSXT and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
 - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. CSX Transportation must be the named insured on the Railroad Protective Insurance Policy.
 - c. Name and Address of Contractor and Agency must appear on the Declarations page.
 - d. Description of operations must appear on the Declarations page and must match the Project description.

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e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.

f. Authorized endorsements may include:

(i). Broad Form Nuclear Exclusion - IL 00 21

- (ii) 30-day Advance Notice of Non-renewal or cancellation
- (iii) Required State Cancellation Endorsement
- (iv) Quick Reference or Index - CL/IL 240

g. Authorized endorsements may not include:

- (i) A Pollution Exclusion Endorsement except CG 28 31
- (ii) A Punitive or Exemplary Damages Exclusion
- (iii) A "Common Policy Conditions" Endorsement
- (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
- (v) Policies that contain any type of deductible

5. All insurance companies must be A. M. Best rated A- and Class VII or better.

6. The CSX OP number or CSX contract number, as applicable, must appear on each Declarations page and/or certificates of insurance.

7. Such additional or different insurance as CSXT may require.

II. Additional Terms

1. Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

2.

Insurance Department
CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, FL 32202

OR

insurancedocuments@csx.com

2. Neither Agency nor Contractor may begin work on the Project until it has received CSXT's written approval of the required insurance.

SCHEDULE I

CONTRACTOR'S ACCEPTANCE

To and for the benefit of CSX Transportation, Inc. ("CSXT") and to induce CSXT to permit Contractor on or about CSXT's property for the purposes of performing work in accordance with the Agreement dated _____, 20____, between City of Newburgh and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibits C and F to the Agreement, and Sections 3, 9 and 11 of the Agreement.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____

RESOLUTION NO.: _____ - 2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING AND ALLOCATING \$1,500,000.00 OF
AMERICAN RESCUE PLAN ACT OF 2021 FUNDING TO
THE FLOATABLES CONTROL AND
HIGH RATE DISINFECTION FACILITY PROJECT
AS PART OF THE CITY OF NEWBURGH LONG TERM CONTROL PLAN**

WHEREAS, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act of 2021 (ARPA) which includes Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds), providing federal payments to all state, local, tribal, and territorial governments in the United States that recipients may use, among other approved uses, to make necessary investments in water and sewer infrastructure; and

WHEREAS, the City of Newburgh proposes to allocate \$1,500,000.00 of ARPA funds received to planning, final design and construction phases of the Floatables Control and High Rate Disinfection Facility Project as part of the City of Newburgh Long Term Control Plan; and

WHEREAS, the City Council finds that authorizing and allocating \$1,500,000.00 of ARPA funds to support the completion of the Floatables Control and High Rate Disinfection Facility Project as part of the City's Long Term Control Plan is in the best interests of the health, safety and welfare of the residents 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 allocate \$1,500,000.00 of American Rescue Plan Act of 2021 funds to the Floatables Control and High Rate Disinfection Facility Project as part of the City of Newburgh Long Term Control Plan; and that the City Manager is authorized to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary administer the Floatables Control and High Rate Disinfection Facility Project funded thereby.

RESOLUTION NO.: 269 - 2021

OF

NOVEMBER 22, 2021

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND ENTER INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH ARCADIS OF NEW YORK INC. FOR THE FLOATABLES CONTROL AND DISINFECTION FACILITY AND WATER POLLUTION CONTROL PLANT INFLUENT SEWER PROJECT AS PART THE COMBINED SEWER OVERFLOW LONG TERM CONTROL PLAN IN THE AMOUNT OF \$1,025,000.00

WHEREAS, by Resolution No. 219-2011 of October 24, 2011, the City Council of the City of Newburgh, New York authorized the City Manager to execute an Order on Consent with the New York State Department of Environmental Conservation ("NYS DEC") to resolve violations at the Wastewater Treatment Plant and for the development of the CSO Long Term Control Plan ("LTCP"); and

WHEREAS, by Resolution No. 303-2015 of November 23, 2015, the City Council of the City of Newburgh authorized the City Manager to execute a Modification Order on Consent approving a Schedule of Compliance for Phase I through V of the LTCP; and

WHEREAS, by Resolution No. 189-2019 of August 12, 2019, the City Council approved an agreement with Arcadis of New York, Inc. for professional services to complete the planning and preliminary engineering for the LTCP Phase II, III, and IV projects including as basis of design report for the Floatables Control and Disinfection Facility Project; and

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for professional engineering services to complete the design and preparation of bid documents for the Floatables Control and Disinfection Facility and Water Pollution Control Plant Influent Sewer Project; and

WHEREAS, the funding for the cost of said services in the amount of \$1,025,000.00 shall be derived from an existing grant and loan from the New York State Environmental Facilities Corporation under project CWSRF#C3-7332-11-00, HG1.8197.0200.8174.2017, ARPA Funds and future WIIA & WQIP Grant program funds, if awarded; and

WHEREAS, this Council determines that accepting the proposal and executing a contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute an agreement with Arcadis of New York, Inc. for professional services to complete the design and preparation of bid documents for the Floatables Control and Disinfection Facility and Water Pollution Control Plant Influent Sewer Project, with other provisions as Corporation Counsel may require, in an amount not to exceed \$1,025,000.00.

I, Lorena Vitak, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held Nov. 22, 2021 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 23 day of Nov, 2021

Lorena Vitak
City Clerk

ARP Funded Projects											
Updated: April 25, 2022											
Wastewater Projects											
Project Title	Project Priority	Project Status	Scope of Work	Location	Estimated Cost	Existing Funding (Y/N)	Grant Funding Applied For (Y/N)	Earmark Funding Applied For (Y/N)	ARP Funds Potentially Requested (Y/N)	Resolution Adopted (Y/N) (Date & Amount)	Description
North Interceptor Sewer	1	Under Construction	Sewer Interceptor reconstruction and realignment. Repaving of the roadways along the project's corridor.	City core area immediately west of the City's waterfront. City's hillside that was subject to Urban Renewal. Project limits are from Nicoll Street to south side of the City.	\$27,000,000	No	Yes CFA 2021 WQIP	Yes	Yes, depending on status of Earmark and WQIP request. \$2,000,000	Yes March 28, 2022 \$2,000,000	Economic Benefits: CSO and capacity improvements will ensure the viability of mixed-use revitalization efforts for this critical area in Newburgh City core. This includes vacant land between Golden St. and Water St. There will also be a decrease in required sewer maintenance costs for this difficult area. This project reduces problematic sewer service interruptions for the Ferry Crossing Condominium Complex. Repaving will provide greater vehicular access to this underserved area and will support improvements to the City's waterfront as well as public access to the Hudson River. Environmental Benefit and Sustainability: Decreased combined sewer overflows to the Hudson River Estuary. Compliance with the City's Long Term CSO Control Plan Consent Order.
High Rate Disinfection Facility	2	Planning Phase in process	Construct new high-rate disinfection facility at the City's Wastewater Treatment Plant	City of Newburgh Wastewater Treatment Plant (2 Renwick Street)	\$16,700,000	No	Yes CFA 2021 WQIP	No	Yes, depending on status of Earmark request. \$1,500,000	**Pending** May 5, 2022 \$1,500,000	Economic Benefits: Project would reduce untreated combined sewage overflows to the Hudson River thereby increasing viability of the river, increasing tourism opportunities and the desire to visit the City's waterfront. Environmental Benefit and Sustainability: Decreased combined sewer overflows to the Hudson River Estuary. Compliance with the City's Long Term CSO Control Plan Consent Order. Quicker return of the Hudson River to swimmable status after a CSO event.
North Street Sewer Separation between Fullerton Avenue and Robinson Avenue (9W)	3	Planning Phase in process	Separation of combined sewers along North Street in accordance with the Long Term Control CSO Plan	North Street, between Fullerton Avenue and Robinson Avenue (9W)	3,000,000 (TBD during Planning Phase)	No	No	No	Yes \$500,000	Yes April 11, 2022 \$500,000	Economic Benefits: Project would reduce untreated combined sewage overflows to the Hudson River thereby increasing viability of the river, increasing tourism opportunities and the desire to visit the City's waterfront. Environmental Benefit and Sustainability: Decreased combined sewer overflows to the Hudson River Estuary. Compliance with the City's Long Term CSO Control Plan Consent Order. Quicker return of the Hudson River to swimmable status after a CSO event.
Crescent Avenue Sewage Pump Station Reconstruction	4	Final Design in process	Reconstruction of the Crescent Avenue Sewage Pump Station and backup generator installation	Crescent Avenue & Plank Road	\$1,700,000	No	No	No	Yes \$1,700,000		Economic Benefits: Decreased maintenance and repair costs. Decreased staff time necessary to maintain the pump station. Eliminate the need to rent and deploy portable generators during power outages. Environmental Benefit and Sustainability: Decreased sewer overflows due to equipment failure. Decreased energy consumption resulting in reduced greenhouse gas emissions
Front Street Sewage Pump Station Reconstruction	5	None	Reconstruction of the Front Street sewage pump station and generator installation	Front Street & Carpenter Street	\$1,000,000	No	No	No	No		Economic Benefits: Decreased maintenance and repair costs. Decreased staff time necessary to maintain the pump station. Eliminate the need to rent and deploy portable generators during power outages. Environmental Benefit and Sustainability: Decreased sewer overflows due to equipment failure. Decreased energy consumption resulting in reduced greenhouse gas emissions
Walsh Road Sewage Pump Station Reconstruction	6	None	Reconstruction of the Walsh Road sewage pump station and generator installation	Walsh Road	\$1,500,000	No	No	No	No		Economic Benefits: Decreased maintenance and repair costs. Decreased staff time necessary to maintain the pump station. Eliminate the need to rent and deploy portable generators during power outages. Environmental Benefit and Sustainability: Decreased sewer overflows due to equipment failure. Decreased energy consumption resulting in reduced greenhouse gas emissions
Lake Street Sewage Pump Station Reconstruction	7	None	Rehabilitation of the Lake Street sewage pump station and generator installation	Lake Street	\$1,000,000	No	No	No	No		Economic Benefits: Decreased maintenance and repair costs. Decreased staff time necessary to maintain the pump station. Eliminate the need to rent and deploy portable generators during power outages. Environmental Benefit and Sustainability: Decreased sewer overflows due to equipment failure. Decreased energy consumption resulting in reduced greenhouse gas emissions
Scobie Drive Sewage Pump Station Improvements	8	None	New submersible pumps, backup generator and I&I reduction	Scobie Drive	\$800,000	No	No	No	No		Economic Benefits: Decreased maintenance and repair costs. Decreased staff time necessary to maintain the pump station. Eliminate the need to rent and deploy portable generators during power outages. Environmental Benefit and Sustainability: Decreased sewer overflows due to equipment failure. Decreased energy consumption resulting in reduced greenhouse gas emissions
Water Treatment Plant Effluent Sewer Rehabilitation	9	None	Rehabilitate existing 12 inch cast iron sewer main from Water Treatment Plant to West Trunk Sewer. Relocate sewer away from failing stone bridge over the Quassaick Creek.	493 Little Britain Road to Cerone Place	\$5,000,000	No	No	No	No		Economic Benefits: Rehabilitation of the existing sewer serving the Water Treatment Plant will allow for longer backwash times and more efficient water treatment plant operations. Environmental Benefit and Sustainability: Decreased inflow and infiltration associated with a 12 inch cast iron sewer main from the 1800's. Reduced risk of failure by removing sewer main from existing deficient bridge structure over the Quassaick Creek.
Bay View Terrace & Henry Avenue Sewer Reconstruction	10	None	Reconstruct existing deficient sewers along Bay View Terrace & Henry Avenue. Reconstruct ADA curb ramps and pave streets in	Bay View Terrace from Henry Avenue to Liberty Street, and Henry Avenue from Bay View Terrace to Liberty Street	\$4,000,000	No	No	No	No		Economic Benefits: Rehabilitation of the existing deficient sewer main which currently requires ongoing maintenance by the City and leads to backups in residential buildings. New sewer will eliminate these problems. Environmental Benefit and Sustainability: Decreased inflow and infiltration associated with deficient sewer main. Reduced risk of failure reducing sewer overflows.
					\$61,700,000						

ARP Funded Projects

Updated: April 25, 2022

Drinking Water Projects

PROJECT TITLE	PROJECT PRIORITY	DESIGN STATUS	SCOPE OF WORK	LOCATION	ESTIMATED COST	EXISTING FUNDING (Y/N)	GRANT FUNDING APPLIED FOR (Y/N)	EARMARK FUNDING APPLIED FOR (Y/N)	ARP FUNDS POTENTIALLY REQUESTED (Y/N)	RESOLUTION ADOPTED (Y/N) (DATE & AMOUNT)	DESCRIPTION
Silver Stream Dam (Brown's Pond) Spillway Reconstruction	1	Final design	Repair/Reconstruction of a concrete overflow spillway, access bridge, and repairs to a low-level drain headwall on a Class-C High Hazard Dam.	Silver Stream Dam (Brown's Pond) Class-C High Hazard Dam	\$2,250,000	No	No	No	Yes \$2,250,000		Economic Benefit: Stabilization of the dam that impounds the drinking water source of the City of Newburgh, and the backup/emergency supply for the Town of New Windsor. Environmental Benefit and Sustainability: The project supports the Stability of a Class-C High Hazard Dam, mitigating its potential threat, critical downstream infrastructure, nature, human life and property.
Brown's Pond Raw Water Pump House Generator Installation	2	Awarded Construction	Site improvements including the installation of a permanent diesel generator at the Brown's Pond Raw Water Pump House to serve as a source of backup power during critical electrical grid failures. All the city's water is pumped through this critical infrastructure facility.	Brown's Pond Reservoir	\$500,000	No	No	No	Yes \$500,000	Yes April 25, 2022 \$500,000	Economic Benefit: The project secures the viability of the City's drinking water system, regardless of the water source. Eliminates the ongoing expensive rented, complicated, undersized portable generator system currently in place with a permanent, efficient and properly sized system that will be owned by the City. Environmental Benefit and Sustainability: A proper generator installation will allow efficient, uninterrupted supply of raw drinking water during times of power failure. New system will have a registered petroleum bulk storage tank with proper secondary containment and alarms to prevent contamination.
Lead Service Line Replacement Program	3	Program established but funds depleted	Reimburse City residents for lead service line replacement costs (Estimated 2,000 remaining lead service lines at \$10,000 per line replacement)	City-wide	\$20,000,000	No	Yes, NY State Various Programs	No	Yes \$1,000,000	Yes March 14, 2022 \$1,000,000	Economic Benefit: The project will reimburse property owners for the cost of replacing their lead service lines. This will directly reduce economic burdens to tax/rate payers. Environmental Benefit and Sustainability: Lead service line replacement will increase the quality of drinking water and eliminate the health impacts associated with lead in the drinking water.
City-Wide Smart Water Meter Installation	4	Project scope & budget determined	Replace all water meters in the City with new smart water meters.	City-wide	\$2,700,000	No	Yes, CFA 2021 GIGP	No	Yes GIGP grant request requires a 50% match. \$1,400,000		Economic Benefit: The project will deploy smart water meter technology to all users on the City's drinking water system. System will alert both individual users and the City of excessive consumption to avoid costly high water bills resulting from plumbing leaks. Will also reduce water consumption correlating to reduce operating costs for the City's Water Department. Meters will have remote read capability to reduce staff time currently necessary to drive through the City to obtain meter readings. Environmental Benefit and Sustainability: New smart meter technology will quickly alert both users and the City to excessive consumption to avoid unnecessary water withdrawals from reservoirs. Reduced consumption will also lower the City's energy consumption necessary to pump and filter finished water, leading to reduced greenhouse gas emissions.
Silver Stream Dam (Brown's Pond) Gatehouse Renovation	5	Project scope determined	Renovate the existing gatehouse on the Silver Stream Dam (Brown's Pond) to replace roof, floor, windows, bridge, low level drain valve with electric actuator, new electric service to gatehouse and gravity drain piping to Brown's Pond Pumphouse.	Silver Stream Dam (Brown's Pond) Class-C High Hazard Dam	\$4,500,000	No	No	No	No		Economic Benefit: The project will renovate an existing deficient low level drain gatehouse on a High-Hazard Class-C Dam constructed in 1922. Renovation will ensure continued dam safety compliance and will also provide for significantly reduced costs of water withdrawal from Brown's Pond by eliminating the need for costly diesel generators and floating barge pumps. Project will also provide for the conservation of water and maximize the storage within Brown's Pond reducing the City's demand on the Catskill Aqueduct. Environmental Benefit and Sustainability: Gatehouse renovation will ensure the continued stability and safety of a Class-C High Hazard Dam. New low level drain piping will allow the City to withdraw water from Brown's Pond without the need for diesel generators and pumps thereby eliminating greenhouse gases and energy consumption. More efficient means of water withdrawal will lead to more water storage within the reservoir and within Silver Stream providing for ecosystem benefits to the surrounding environment.
					\$29,950,000				\$5,150,000	\$1,500,000	

RESOLUTION NO.: _____ - 2022

OF

MAY 9, 2022

**A RESOLUTION ENDORSING THE APPLICATION OF RIVERKEEPER FOR A
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ROUND 35 HUDSON RIVER ESTUARY TRIBUTARY RESTORATION AND
RESILIENCY PROGRAM GRANT FOR RECONNAISSANCE ACTIVITIES FOR DAM
REMOVAL FEASIBILITY ON FURNACE BROOK AND QUASSAICK CREEK**

WHEREAS, in 2020 Riverkeeper removed a 5-foot-high, 75-foot-wide dam on Furnace Brook in Westchester County and a 106-year old, 7-foot-high, 100-foot-long dam on Quassaick Creek in Orange County, restoring over two miles of critical habitat for river herring and American eel; and

WHEREAS, Riverkeeper is continuing to restore free flowing waters in both tributaries having designed plans for removal of the next barrier on Furnace Brook, which will be removed by Westchester County, and has an agreement to remove the 4th barrier on Quassaick Creek, with the 3rd barrier being removed by the City of Newburgh; and

WHEREAS, Riverkeeper is applying to the New York State Department of Environmental Conservation for a project grant under Round 35 of the Hudson River Estuary Tributary Restoration and Resiliency Program involving the Quassaick Creek, a site located partially within the territorial jurisdiction of the City of Newburgh, for additional work of removing dams upstream that no longer serve any functional purpose and continue to contribute to the decline of fish and other imperiled aquatic life; and

WHEREAS, Riverkeeper's dam removal activities propose to mitigate effects of climate change by reducing the impacts from impounded water that may occur during intense rain events; and

WHEREAS, like Riverkeeper, the City of Newburgh is committed to removing the upstream dams, and fully supports Riverkeeper's efforts to reverse the effects of climate change, protect the City's watershed, and for dam removal across the Hudson River Estuary and in the Quassaick Creek by building community support and investigating high priority dams whose removal would provide the highest biological and ecological benefit to the river's aquatic species and habitat - particularly river herring and eel;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby supports and endorses the application of Riverkeeper for a grant under the Round 35 Hudson River Estuary Program Tributary Restoration and Resiliency program for reconnaissance activities for dam removal feasibility on Furnace Brook and Quassaick Creek.

[LETTERHEAD]

[DATE]

Susan Pepe
Grants Coordinator, Hudson River Estuary Program
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3506

Re: Riverkeeper proposal for dam removal reconnaissance

Dear Ms. Pepe,

I am writing in support of Riverkeeper's proposal to engage in reconnaissance activities for dam removal feasibility on Furnace Brook and Quassaick Creek in the Hudson River Estuary.

We believe that removing obsolete dams that no longer serve human infrastructure is critical to restoring biodiversity and the abundance of life in the Hudson. More specifically, removing these dams will help restore certain species of migratory fish that are in serious decline, such as river herring and American eel. Riverkeeper has been playing an extremely valuable role in this regard with their habitat restoration and dam removal efforts in the Hudson Valley since 2016. In addition, we have seen that blue crab, and potadromous species have been observed upstream of the site of former dams.

In 2020, Riverkeeper removed a 5-foot-high, 75-foot-wide dam on Furnace Brook in Westchester County and a 106-year old, 7-foot-high, 100-foot-long dam on Quassaick Creek in Orange County, restoring over two miles of critical habitat for river herring and American eel. Riverkeeper is continuing to restore free flowing waters in both tributaries, having designed plans for removal of the next barrier on Furnace Brook (which will be removed by Westchester County) and has an agreement to remove the 4th barrier on Quassaick Creek (the 3rd barrier is being removed by the City of Newburgh). Each waterway has several more dams upstream that continue to block fish and other imperiled aquatic life and Riverkeeper is committed to removing them, one dam at a time.

We fully support Riverkeeper's efforts to continue making the case for dam removal across the Hudson River Estuary and in these two waterways in particular by building community support and investigating high priority dams whose removal would provide the highest biological and ecological benefit to the river's aquatic species and habitat - particularly river herring and eel.

[INSERT ANY RELEVANT INFO ABOUT YOUR ORG AND RELATIONSHIP TO RIVERKEEPER]

If you have any questions, please feel free to contact me at [NUMBER/ EMAIL].

Sincerely,

[SIGNATURE]

[NAME]
[TITLE]

RESOLUTION NO.: _____-2022

OF

MAY 9, 2022

**A RESOLUTION AMENDING THE 2022 PERSONNEL ANALYSIS BOOK
TO DELETE ONE EXECUTIVE ASSISTANT TO THE CITY MANAGER POSITION AND
ADD ONE CHIEF OF STAFF POSITION IN THE EXECUTIVE OFFICE**

WHEREAS, the City Manager proposes to delete one Executive Assistant to the City Manager position and add one Chief of Staff position to improve the efficiency of the Executive Office; and

WHEREAS, the change in the job titles of such positions requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2022;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2022 be amended to delete one Executive Assistant to the City Manager position and add one Chief of Staff position in the Executive Office.

NEWBURGH CIVIL SERVICE COMMISSION

RESOLUTION NO. 2022-2

A Resolution to amend the Appendices of the City of Newburgh Civil Service Commission Local Rules and Regulations.

At a regular meeting of the Newburgh Civil Service Commission held on April 20, 2022, the following resolution was adopted:

WHEREAS the Newburgh Civil Service Commission deems it necessary to make certain changes to the Appendices of the Newburgh Civil Service Commission Local Rules and Regulations; and

WHEREAS the Newburgh Civil Service Commission has duly advertised and convened and completed a public hearing, on this date, with no public or written comments received, on the proposed changes to the Appendices of the Newburgh Civil Service Commission Local Rules and Regulations;

NOW THEREFORE BE IT RESOLVED that subject to the approval of the New York State Civil Service Commission, the following changes be made to the Appendices of the Newburgh Civil Service Commission Local Rules and Regulations:

Remove: Executive Assistant to the City Manager in Exempt Class

Add: Chief of Staff to Exempt Class

Submission Includes:

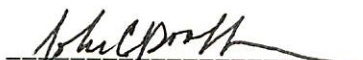
1. Original signed and 2 additional copies of this adopted resolution
2. Notice of Public Hearing
3. Affidavit of Publication of Notice
4. Supporting documentation and information for each requested amendment

Certification of Submission

We attest that this resolution and supporting documents have been reviewed by this office and are complete and accurate. We have determined that the requests for amendments included in this Resolution comply with the standards set forth in state and local law. This office supports this request and has performed all duties and actions required by Civil Service Law and Local Rules and Regulations. This submission is complete and appropriate for consideration by the New York State Civil Service Commission.



Vera M. Best
Chairperson



John C. Powell
Commissioner



Todd Venning
City Manager

Attest: 

Michelle M. Mills, Civil Service Administrator

Date: 4/20/22

RESOLUTION NO.: _____-2022

OF

MAY 9, 2022

**A RESOLUTION AMENDING THE 2022 PERSONNEL ANALYSIS BOOK
TO DELETE TWO SENIOR ACCOUNT CLERK POSITIONS AND
ADD ONE JUNIOR ACCOUNTANT POSITION
AND ONE ACCOUNT CLERK POSITION IN THE FINANCE DEPARTMENT**

WHEREAS, the Director of Finance proposes to delete two Senior Account Clerk positions and add one Junior Accountant position and one Account Clerk position to improve the efficiency of the Finance Department; and

WHEREAS, the change in the job titles of such positions requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2022;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2022 be amended to delete two Senior Account Clerk positions and add one Junior Accountant position and one Account Clerk position in the Finance Department.

RESOLUTION NO.: ____- 2022

OF

MAY 9, 2022

RESOLUTION AMENDING RESOLUTION NO: 282-2020,
THE 2021 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
FOR 2021 YEAR END SELF-INSURANCE FUND ADJUSTMENT

WHEREAS, all 2021 budget lines ending in excess of appropriation can be covered by other 2021 budget lines ending with funds remaining, which requires a budget amendment but no increase in excess of the total annual appropriation; the same being in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that Resolution No.: 282-2020, the 2021 Budget of the City of Newburgh, is hereby amended as follows:

<u>GL Account</u>	<u>Description</u>	<u>Decrease Budget</u>	<u>Increase Budget</u>
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Self-Insurance Fund

Revenue:

M.0000.5111 Appropriated Reserve			\$ 800,000.00
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Expense:

M.1930.0400 Judgement & Claims			\$ 800,000.00
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2021 Year End Council Budget Adjustments

GL Account	Description	Decrease Budget	Increase Budget
Appropriated Reserve - Revenue M.0000.5111			\$ 800,000.00
Judgements & Claims M.1930.0400	Judgements & Claims		\$ 800,000.00
Total Self Insurance Budget Adjustments		<u>\$ -</u>	<u>\$ 1,600,000.00</u>

RESOLUTION NO.: _____ - 2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
SATISFACTIONS OF MORTGAGE IN CONNECTION WITH THE PREMISES
LOCATED AT 34 ALLISON AVENUE (SECTION 15, BLOCK 4, LOT 6)**

WHEREAS, the Newburgh Community Development Agency ("NCDA") issued a first mortgage to Cesar Lujan and Wanda Rivera in the principal sum of \$4,927.00 for the premises located at 34 Allison Avenue (Section 15, Block 4, Lot 6) ("Premises"), dated June 27, 1995, and recorded in the Orange County Clerk's Office on June 29, 1995, in Liber 5444 of Deeds at Page 69; and

WHEREAS, the Newburgh Community Development Agency ("NCDA") issued a second mortgage to Cesar Lujan and Wanda Rivera in the principal sum of \$14,175.00 for the Premises, dated February 7, 1996, and recorded in the Orange County Clerk's Office on July 8, 1996, in Liber 5819 of Deeds at Page 135; and

WHEREAS, City records reflect that both mortgages have been paid in full; and

WHEREAS, this Council has determined that issuing and executing Satisfactions of Mortgage by the City of Newburgh, as successor in interest to the NCDA, 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 mortgages issued by Newburgh Community Development Agency to Cesar Lujan and Wanda Rivera in the principal sums of \$4,927.00 and \$14,175.00, respectively, are hereby satisfied, and the City Manager is hereby authorized to execute the attached Satisfactions in connection with said mortgages.

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT

The City of Newburgh, a municipal corporation with a principal place of business at 83 Broadway, Newburgh, New York 12550, as Successor in Interest to the Newburgh Community Development Agency;

Does hereby consent that the following mortgage be discharged of record:

MORTGAGE bearing the date of June 27, 1995, made by Cesar Lujan and Wanda Rivera to the Newburgh Community Development Agency, given to secure payment of the principal sum of \$4,927.00, and duly recorded in the office of the Orange County Clerk's Office on June 29, 1995, in Liber 5444 of Deeds at Page 69; and said Mortgage being

ASSIGNED by the Newburgh Community Development Agency to the City of Newburgh by an Assignment and Assumption of Mortgage Without Covenant dated November 15, 2010 and duly recorded in the office of the Orange County Clerk's Office on November 22, 2010, in Liber 13085 of Deeds at Page 869; and

which Mortgage has not been further assigned of record.

Dated: May _____, 2022

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: ____-2022

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

On the ____ day of May in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

Notary Public

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT

The City of Newburgh, a municipal corporation with a principal place of business at 83 Broadway, Newburgh, New York 12550, as Successor in Interest to the Newburgh Community Development Agency;

Does hereby consent that the following mortgage be discharged of record:

MORTGAGE bearing the date of February 7, 1996, made by Cesar Lujan and Wanda Rivera to the Newburgh Community Development Agency, given to secure payment of the principal sum of \$14,175.00, and duly recorded in the office of the Orange County Clerk's Office on July 8, 1996, in Liber 5819 of Deeds at Page 135; and said Mortgage being

ASSIGNED by the Newburgh Community Development Agency to the City of Newburgh by an Assignment and Assumption of Mortgage Without Covenant dated November 15, 2010 and duly recorded in the office of the Orange County Clerk's Office on November 22, 2010, in Liber 13085 of Deeds at Page 869; and

which Mortgage has not been further assigned of record.

Dated: May _____, 2022

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: _____-2022

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

On the ____ day of May in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

Notary Public



CITY OF NEWBURGH

OFFICE OF ECONOMIC DEVELOPMENT
NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY
NEWBURGH COMMUNITY DEVELOPMENT AGENCY
1 CORWIN COURT, SUITE #101
NEWBURGH, NY 12550

TEL: (845)569-9400

FAX: (845)569-9700

August 19, 2002

Cesar Lujan
Wanda Rivera
34 Allison Avenue
Newburgh, NY 12550

Re: Satisfaction of Mortgage
34 Allison Avenue
Newburgh, NY
Section 15, Block 4, Lot 6
Amount: \$4,927.00

Dear Mr. Lujan and Ms. Rivera:

Enclosed please find duly executed Satisfaction of Mortgage. Please record with the Orange County Clerk's office at your earliest convenience. It is important that you file this document so the lien that we presently have on your home will be removed from record. There will be a charge if we have to re-issue this document. After recording, put in a secure place for future use.

If you have any questions regarding the above, please do not hesitate to contact our office.

Sincerely,

Robert H. McKenna
Director

RHM/tm

Enclosure

THIS IS A LEGAL INSTRUMENT AND SHOULD BE EXECUTED UNDER SUPERVISION OF AN ATTORNEY.

Know all Men by these Presents,

THAT NEWBURGH COMMUNITY DEVELOPMENT AGENCY, an urban renewal agency organized and existing under the laws of the State of New York and having its principal office for the transaction of business located at 83 Broadway, Newburgh, New York

DOES HEREBY CERTIFY that the following Mortgage IS PAID, and does hereby consent that the same be discharged of record.

Mortgage dated the 27th day of June , 1995 , made by CESAR LUJAN AND WANDA RIVERA to Newburgh Community Development Agency

in the principal sum of \$ 4,927.00 and recorded on the 29th day of June 1995 ,
in Liber 5444 ~~XXXXXX~~ of Mortgages, page 69 , in the office
of the County Clerk of the County of Orange

the seal annexed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

going instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Section 321 of the Real Property Law expressly provides who must execute the certificate of discharge in specific cases and also provides, among other things, that (1) no certificate shall purport to discharge more than one mortgage, (except that mortgages affected by instruments of consolidation, spreader, modification or correction may be included in one certificate if the instruments are set forth in detail in separate paragraphs); (2) if the mortgage has been assigned, in whole or in part, the certificate shall set forth: (a) the date of each assignment in the chain of title of the person or persons signing the certificate, (b) the names of the assignor and assignee, (c) the interest assigned, and (d) if the assignment has been recorded, the book and page where it has been recorded or the serial number of such record, or (e) if the assignment is being recorded simultaneously with the certificate of discharge, the certificate of discharge shall so state, and (f) if the mortgage has not been assigned of record, the certificate shall so state; (3) if the mortgage is held by any fiduciary, including an executor or administrator, the certificate of discharge shall recite the name of the court and the venue of the proceedings in which his appointment was made or in which the order or decree vesting him with such title or authority was entered.

NEWBURGH COMMUNITY DEVELOPMENT
AGENCY

TO

CESAR LUJAN AND WANDA RIVERA

Satisfaction of Mortgage

Dated, August 19, 2002

The land affected by the within instrument
lies in City of Newburgh, Orange County
New York

Reserve this space for use of Recording Office.

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

On the 26th day of August in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT H. MCKENNA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

Hector Rodriguez
Notary

HECTOR RODRIGUEZ
Notary Public State of New York
No. 01RO6060263
Qualified in Ulster County
Commission Expires 6/18/2023



CITY OF NEWBURGH

OFFICE OF ECONOMIC DEVELOPMENT
NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY
NEWBURGH COMMUNITY DEVELOPMENT AGENCY

1 CORWIN COURT, SUITE #101

NEWBURGH, NY 12550

TEL: (845)569-9400

FAX: (845)569-9700

August 23, 2002

Cesar Lujan
Wanda Rivera
34 Allison Avenue
Newburgh, NY 12550

Re: Satisfaction of Mortgage
34 Allison Avenue
Newburgh, NY
Section 15, Block 04, Lot 06
Amount: \$14,175.00

Dear Mr. Lujan and Ms. Rivera:

Enclosed please find duly executed Satisfaction of Mortgage. Please record with the Orange County Clerk's office at your earliest convenience. It is important that you file this document so the lien that we presently have on your home will be removed from record. There will be a charge if we have to re-issue this document. After recording, put in a secure place for future use.

If you have any questions regarding the above, please do not hesitate to contact our office.

Sincerely,

Robert H. McKenna
Director

RHM/tm

Enclosure

THIS IS A LEGAL INSTRUMENT AND SHOULD BE EXECUTED UNDER SUPERVISION OF AN ATTORNEY.

Know all Men by these Presents,

THAT NEWBURGH COMMUNITY DEVELOPMENT AGENCY, an urban renewal agency organized and existing under the laws of the State of New York and having its principal office for the transaction of business located at 83 Broadway, Newburgh, New York

DOES HEREBY CERTIFY that the following Mortgage IS PAID, and does hereby consent that the same be discharged of record.

Mortgage dated the 7th day of February , 19 96 , made by CESAR LUJAN AND WANDA RIVERA to Newburgh Community Development Agency

in the principal sum of \$ 14,175.00 and recorded on the 8th day of July 1996 ,
in Liber 5819 ~~XXXXXX~~ of Mortgages, page 135 , in the office
of the County Clerk of the County of Orange

the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

going instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Section 321 of the Real Property Law expressly provides who must execute the certificate of discharge in specific cases and also provides, among other things, that (1) no certificate shall purport to discharge more than one mortgage, except that mortgages affected by instruments of consolidation, spreader, modification or correction may be included in one certificate if the instruments are set forth in detail in separate paragraphs; (2) if the mortgage has been assigned, in whole or in part, the certificate shall set forth: (a) the date of each assignment in the chain of title of the person or persons signing the certificate, (b) the names of the assignor and assignee, (c) the interest assigned, and (d) if the assignment has been recorded, the book and page where it has been recorded or the serial number of such record, or (e) if the assignment is being recorded simultaneously with the certificate of discharge, the certificate of discharge shall so state, and (f) if the mortgage has not been assigned of record, the certificate shall so state; (3) if the mortgage is held by any fiduciary, including an executor or administrator, the certificate of discharge shall recite the name of the court and the venue of the proceedings in which his appointment was made or in which the order or decree vesting him with such title or authority was entered.

NEWBURGH COMMUNITY DEVELOPMENT
AGENCY

TO

CESAR LUJAN AND WANDA RIVERA

Satisfaction of Mortgage

Dated, August 23, x002002

The land affected by the within instrument
lies in City of Newburgh, Orange County
New York

Reserve this space for use of Recording Office.

STATE OF NEW YORK)

SS.:

COUNTY OF ORANGE)

On the 26th day of August in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT H. MCKENNA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

Hector Rodriguez
Notary

HECTOR RODRIGUEZ
Notary Public State of New York
No. 01RO6060263
Qualified in Ulster County
Commission Expires 6/18/2007

RESOLUTION NO.: _____-2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY
TO THE PREMISES KNOWN AS 60 WILLIAM STREET (SECTION 38, BLOCK 3, LOT 32)**

WHEREAS, on October 6, 1987, the City of Newburgh conveyed property located at 60 William Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 38, Block 3, Lot 32, to the City of Newburgh Industrial Development Agency; and

WHEREAS, the title company for the prospective purchaser has requested a release of the restrictive covenants contained in said deed; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, and 3 of the aforementioned deed.

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

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 60 William Street, Section 38, Block 3, Lot 32 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, and 3 in a deed dated October 6, 1987, from THE CITY OF NEWBURGH to THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY, recorded in the Orange County Clerk's Office on October 19, 1987, in Liber 2816 of Deeds at Page 145 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2022

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: ____-2022

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

On the ____ day of _____ in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: _____-2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO GEORGE BLAKE TO THE PREMISES KNOWN AS
248 FIRST STREET (SECTION 22, BLOCK 5, LOT 27)**

WHEREAS, on November 1, 2000, the City of Newburgh conveyed property located at 248 First Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 22, Block 5, Lot 27, to George Blake; and

WHEREAS, the title company for the prospective purchaser has requested a release of the restrictive covenants contained in said deed; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, 5, and 6 of the aforementioned deed.

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

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 248 First Street, Section 22, Block 5, Lot 27 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, 5, and 6 in a deed dated November 1, 2000, from THE CITY OF NEWBURGH to GEORGE BLAKE, recorded in the Orange County Clerk's Office on November 2, 2000, in Liber 5397 of Deeds at Page 260 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2022

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: ____-2022

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

On the ____ day of _____ in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: _____ - 2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO A LICENSE AGREEMENT WITH STRONGROOM TO ALLOW USE AND
ACCESS TO THE DUTCH REFORMED CHURCH LOCATED AT 134 GRAND STREET
(SECTION 19, BLOCK 1, LOT 25) FOR AN ARTWORK DISPLAY**

WHEREAS, Strongroom, a non-profit organization producing contemporary art installations, has proposed a light and sound installation by artist Liz Nielsen for the exterior of the Dutch Reformed Church, located at 134 Grand Street, more accurately described as Section 19, Block 1, Lot 25 on the official Tax Map of the City of Newburgh, for the public to observe and enjoy; and

WHEREAS, the proposed installation is titled “Force Fields” and will feature laser lights installed at the top of the Dutch Reformed Church, facing down, under direction of a professional lighting designer, in which beams of light will “wrap” the building along the Grand Street side and the front facade, from the top of the columns downward and will be paired with a subtle sound of a faint heartbeat; and

WHEREAS, the proposed art installation requires a license agreement and this Council has determined that entering into a license agreement for this purpose would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Strongroom to allow access to City-owned property known as the Dutch Reformed Church located at 134 Grand Street (Section 19, Block 1, Lot 25) for the purpose of installing and displaying a temporary art exhibit for public viewing.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, dated as of _____, 2022, 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 Dutch Reformed Church located at 134 Grand Street in the City of Newburgh, and more accurately described as Section 19, Block 1, Lot 25 on the official tax map of the City of Newburgh (hereinafter referred to as “the DRC”); and

WHEREAS, the Licensee has requested use of and access to the DRC 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 Dutch Reformed Church, located at 134 Grand Street in the City of Newburgh, and more accurately described as Section 19, Block 1, Lot 25 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 134 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 134 Grand Street (“the DRC”). Use of and access to the DRC is limited to the exterior of the building for the purpose of installing and displaying a temporary art exhibit for public viewing under the conditions as set forth herein:

- a. No access and/or entry to the building interior is permitted with the exception of an electrician retained by Licensee for the sole purpose of installing and removing the electrical wiring between the individual lights comprising the art display and installing a GFCI circuit breaker. Licensee’s electrician shall possess a City master electrician license and obtain a permit for electrical work at Licensee’s sole cost and expense as required by applicable law, rule and regulation. No public access to exterior grounds inside the existing safety fences is permitted.
- b. Licensee will install temporary fencing along the west side of the building along the basement window wells.
- c. Licensee agrees to perform all work hereunder 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.

- d. Licensee acknowledges the historic significance of the DRC and shall perform all work hereunder using the least intrusive methods to install components of the temporary art exhibit consistent with Federal and State historic preservation guidelines. The components of the art exhibit shall be temporary and removable wherever and whenever possible, except for affixing the wood supports which will hold the lighting on the upper façade of the building, provided that no other less intrusive method is feasible.
- e. Licensee will perform regular trash clean-up on the grounds around the DRC and will maintain the lighting, equipment and components of the temporary art exhibit in a safe condition and working order throughout the term of this License Agreement.
- f. Licensee shall give Licensors no less than forty-eight (48) hours advance notice of its commencement of work in, on, or around the DRC.
- g. At the conclusion of the temporary art exhibit, the Licensee and its agents, employees, volunteers, and contractors shall restore the DRC to a clean and orderly state in substantially the same condition as existed prior to the granting of this license.

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. For the purpose of creating and displaying the art 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 DRC under this License Agreement.

Section 6. Term of License. The license or privilege hereby given shall commence on May 29, 2022 and shall expire without further notice to either party to the other at 11:59 pm on September 30, 2022.

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: _____
Todd Venning, City Manager
Per Resolution No.:

STRONGROOM
LICENSEE

By: _____
Kelly Schroer, Founder

Approved as to form:

MICHELLE KELSON
Corporation Counsel

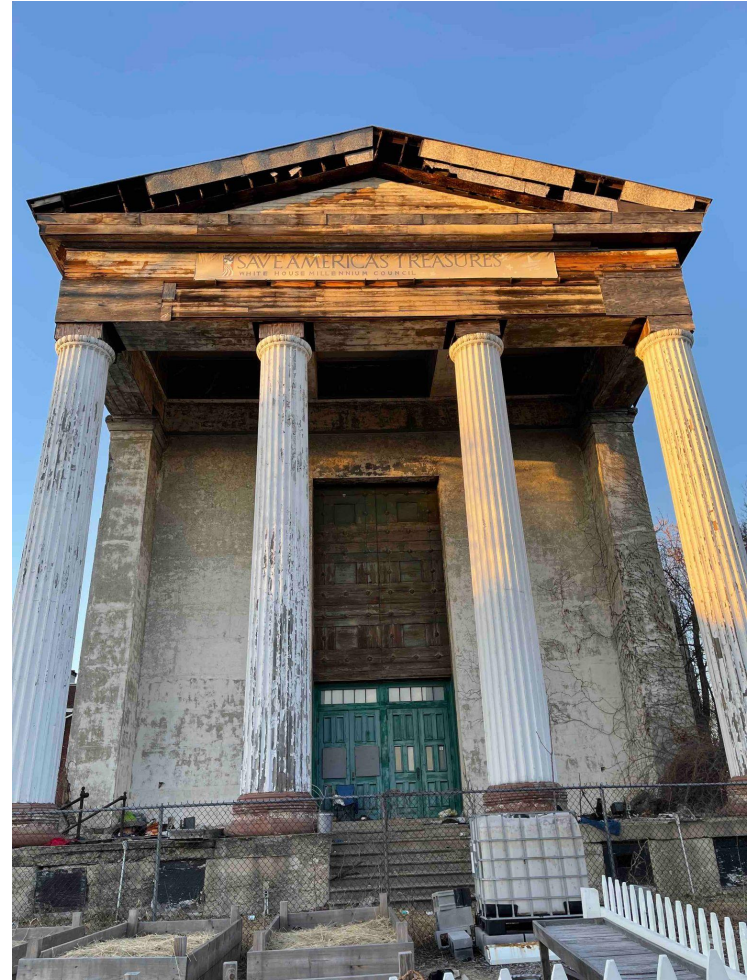
JANICE GASTON
City Comptroller

STRONGROOM

Proposal to The City of Newburgh

Re: STRONGROOM
presentation by artist
Liz Nielsen

**On the Dutch Reformed
Church exterior /
134 Grand Street**



Project Overview

STRONGROOM would like to propose to the City of Newburgh a light and sound installation on the exterior of the Dutch Reformed Church, conceived by locally-based and internationally-recognized artist Liz Nielsen.

The installation will be titled “Force Fields”

Using laser lights installed at the top of the church, facing down, under direction of a professional lighting designer, beams of light will “wrap” the building along the Grand Street side and the front facade, from the top of the columns downward.

The lights will be paired with a subtle sound of a faint heartbeat. The sound will come from speakers that can be either installed and locked inside the building, or concealed on the exterior.

We propose to install the work at the end of May to open in time for the Newburgh Illuminated Festival, and close at the end of September after Newburgh Open Studios.

The installation will be mainly viewable after dusk.

STRONGROOM will insure, fund, and maintain the exhibition for its duration. We request use of the building from the City of Newburgh, and use of an electrical hook up (there appears to be lights at the site so we are hopeful this is possible)

Project Description

This project is a large-scale, high-impact public artwork by artist Liz Nielsen, presented at one of The City of Newburgh's most important historical sites: The Dutch Reformed Church.

Liz Nielsen is an artist based in Newburgh. While her work usually results in photographs, her medium is light. Creating "paintings with light" her 20+ year career has led her to develop unique processes around color theory and light. For her STRONGROOM installation at the Dutch Reformed Church, she will take her experience with light to a new scale, while incorporating the strong spiritual and other-worldly concepts that ground her work.

Titled, "Force Fields," Liz will create a force field of protective energy around the building's exterior by utilizing lights or lasers that "wrap" the exterior of the building. The glowing lights create an imagined sense of space, a barrier between the harmful elements and extended time that has allowed the building to come into its current state - something Liz refers to as "minor architecture." For many years in her artistic practice, Liz has been thinking about "marked energy in space, through architecture, and through the flow of space."

The effect of the force field causes defined energy pathways with the intention to "preserve" the building and protect its energy. The force field can be considered similar to the passing through the surface of water, or perhaps through another time/space/dimension. While expressing an underlying, non-denominational spirituality, the installation also refers to the passage of time, the world changing as the church has stood there, as both witness and participant in its varied uses, deterioration, attempts at revival, and its current state of "limbo."

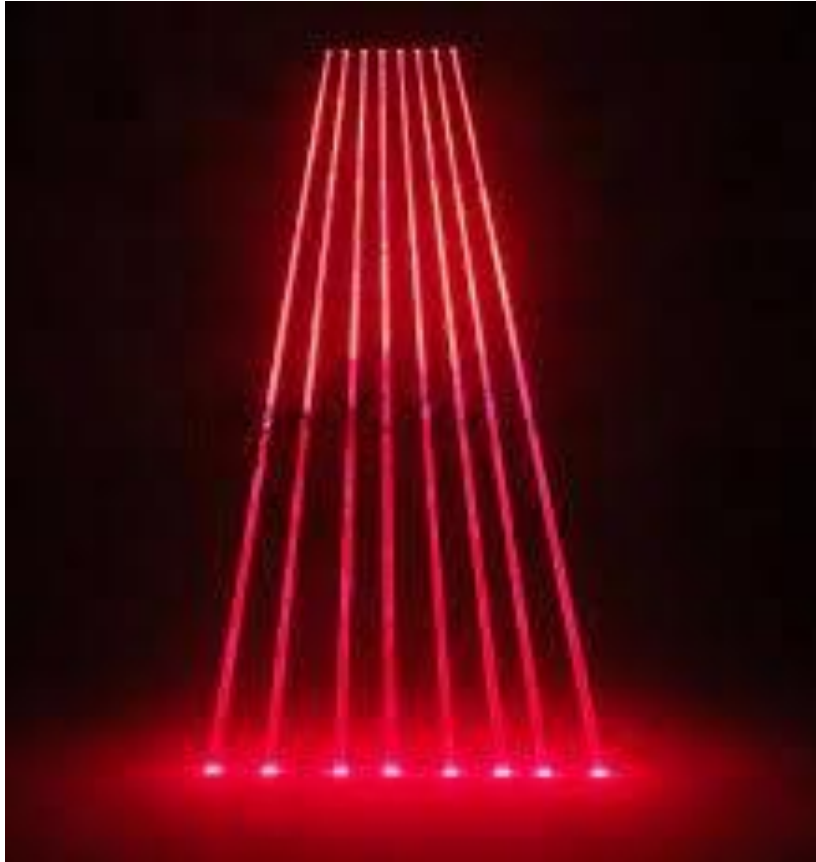
Paired with the lights, will be a subtle sound emanating from the building's interior, which will become more audible as you approach: A faint heartbeat. This poetic gesture further impresses the idea of the building as a spiritual being, with 187 years of life and history, waiting for its next chapter to unfold.

Artist rendering

In actuality the lights will wrap around the Grand St side, NOT as pictured.



Proposed lighting effect



Timeline:

- Installation: May 30th- June 1, 2022
- On view: June 1 - September 30, 2022
- June 4: Newburgh Illuminated Festival
- July 22 - 24: Upstate Art Weekend
- September 24 - 25: Newburgh Open Studios
- De-installation: September 26, 2022
- Installation will be viewable to the public from dusk until dawn

Logistics

- Exhibition and related programming will be funded by STRONGROOM
- STRONGROOM to provide liability insurance
- STRONGROOM will be responsible for installation and de-installation of materials
- We will need to drill wood supports (which hold the lighting) on the upper facade of the building.
(To be installed using a boom lift)
- We will work with a City of Newburgh licenced Electrician to install and remove the electrical wiring between the individual lights, as well as add a GFCI circuit breaker. The electrician will apply for a permit to do so.
- We will ensure the lights are not dangerous for the human eye and post appropriate signage of any potential risk.
- Temporary fencing will be added along the west side of the building along the basement window wells.
- Installation will take 2 days, we are aiming for May 31 and June 1
- De-installation will take 1 day at the end of September

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 public programs to various neighborhoods in Newburgh, utilizing empty and public spaces through temporary site-specific installations by professional artists.

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 a private art consultant, in addition to curating Strongroom projects in Newburgh.

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

Past STRONGROOM projects



Tahir Carl Karmali at 255 Broadway / Firehouse
<https://www.strongroom.us/tahir-carl-karmali>

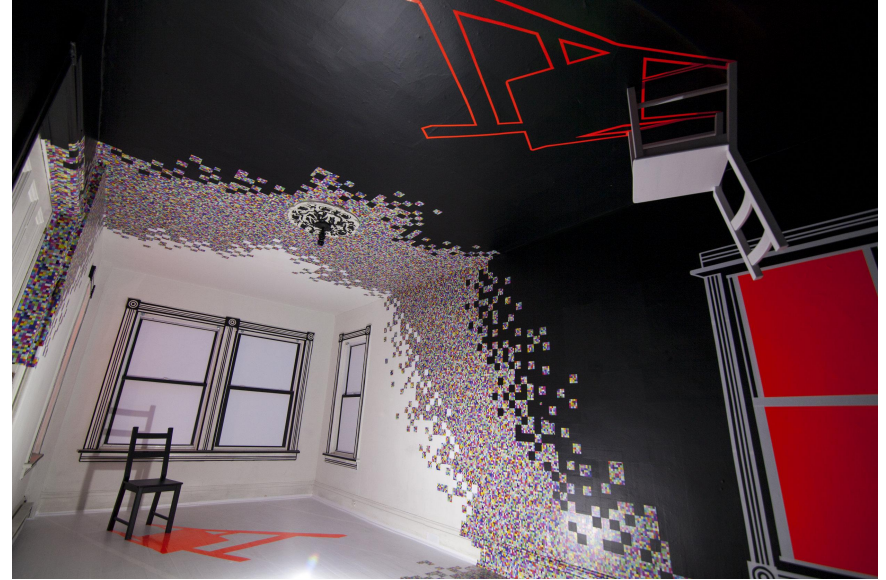


James Clar at 188 Grand Street / Church
<https://www.strongroom.us/clar>

Past STRONGROOM projects



Jennifer Williams at 128 Liberty Street / Public work
<https://www.strongroom.us/williams>



Jessica Angel at 91 Liberty Street / Townhouse
<https://www.strongroom.us/jessica-angel>

Past STRONGROOM projects



Azikiwe Mohammed at 1 Liberty Street / Liberty Street School
<https://www.strongroom.us/azikiwe-mohammed>

Past STRONGROOM projects



Martin Roth at 120 Grand St/ City Club
<https://www.strongroom.us/roth>



Modupeola Fadugba at Boys and Girls Club of Newburgh / empty swimming pool performance by NPAA
<https://www.strongroom.us/modupeola-fadugba>

About Liz Nielsen

Liz Nielsen is a contemporary artist working in light and photo, based in Newburgh, NY.

Her photographs are made without a camera and can also be described as light paintings. She works in the analogue color darkroom exposing light sensitive paper and processing it through traditional photographic chemicals. Each image is unique (her process does not allow for editions) and ranges in size from 100" x 100" to 4" x 5".

Liz has exhibited her work extensively including recent solo exhibitions through her gallery representation in New York, Los Angeles, London and Paris. Her work has been featured at international art fairs such as Paris Photo, Photo London, and Unseen Amsterdam, as well as the Untitled Art Fair in Miami, FL. Nielsen has been reviewed in Artforum, the New Yorker, the Guardian, the London Financial Times, LensCulture, Vogue UK, and FOAM magazine among others.

Liz's concepts focus on her spiritual connection with earth and sky and often incorporate ideas around the big bang theory, the cosmos, and connections between humanity and architecture or landscape. An experienced color theorist, she has developed a unique process in mixing colors through light. As part of the LGBTQ community she has exhibited her work with many other queer artists, as well as supporting and promoting women, non binary and diverse artists through her Newburgh gallery, Elijah Wheat Showroom. In her artistic practice, Liz presents an openness and desire to connect people through big picture concepts that bring us together and are meaningful to all audiences.

Past projects by Liz Nielsen



Past projects by Liz Nielsen



Liz Nielsen in her Newburgh waterfront studio

(Where she also runs Elijah Wheat Showroom Gallery with her wife Carolina Wheat)



Contact

Kelly Schroer
Founder, STRONGROOM
info@strongroom.us
646 894 0453

Thank you for your consideration.

RESOLUTION NO.: _____ - 2022

OF

MAY 9, 2022

**A RESOLUTION SUPPORTING THE APPLICATION OF ICF, INC. AND ITS PARTNERS
FOR A NYSERDA CLEAN NEIGHBORHOODS CHALLENGE PROGRAM GRANT
FOR AN E-BIKE LIBRARY PROGRAM IN THE CITY OF NEWBURGH**

WHEREAS, in January 2022, ICF, Inc., in partnership with Shared Mobility Inc., GObike Buffalo, and other partners was awarded a Phase One NYSERDA Clean Neighborhoods Challenge grant for its Accelerating Clean Communities with E-Bike Systems (ACCESS) Project which integrates e-bikes within 5 underserved communities, including the City of Newburgh, through lending libraries and supporting infrastructure; and

WHEREAS, ICF, Inc.'s Phase I award package includes funding for planning, community partners and in-kind support from technical experts and eligibility for a Phase Two grand prize award for an innovative project that addresses air pollution reduction in underserved communities; and

WHEREAS, ICF, Inc.'s ACCESS Project would bring an affordable, convenient, and sustainable mobility option to Newburgh in the form of an e-bike library and purchase assistance program that would empower low-income and traditionally underserved residents by enhancing access to jobs, educational opportunities, services, healthy food, healthcare, and other community lifelines without the negative externalities such as bike/scooter "litter" on sidewalks that may result from dockless shared micromobility services; and

WHEREAS, ICF, Inc.'s ACCESS Project directly implements the City's 2020 Bicycle Action Plan's recommendations to support formation of an electric bike library program or bikeshare program, as well as to collect data on bicycle traffic to facilitate decision-making and potential grant funding for active mobility projects and supports the City's green initiatives, including its Complete Streets Policy, New York State Climate Smart Communities Pledge, Local Waterfront Revitalization Program, and Sustainable Master Plan; and

WHEREAS, the City of Newburgh finds that supporting the ACCESS Project by working with the ICF team on infrastructure planning and installation of pop-up projects, promoting the program to potential users through our networks, and leveraging existing initiatives to support implementation is in the best interests of the City of Newburgh and its residents and stakeholders;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby supports and endorses the application of ICF, Inc., in partnership with Shared Mobility Inc., GObike Buffalo, and other partners for a Phase Two NYSERDA Clean Neighborhoods Challenge grant for its Accelerating Clean Communities with E-Bike Systems (ACCESS) which integrates e-bikes within 5 underserved communities, including the City of Newburgh, through lending libraries and supporting infrastructure.

<Organizational Logo/Letterhead>

[Date]

New York Clean Transportation Prizes
TransportPrizes@nyserda.ny.gov

RE: City of Newburgh Support of Proposed E-Bike Project for NYSESDA Clean Neighborhoods Challenge

Dear New York Clean Transportation Prizes Team,

Improving electric assist bicycle (e-bike) access and infrastructure represents a significant opportunity to enhance equitable mobility for the City of Newburgh's 28,800+ residents. Over 30% of households have zero vehicles available, and an additional 40% only have just one vehicle. The topography of Newburgh is uniquely suited for e-bikes because steep hills pose a barrier for many potential cyclists, especially for travelling between downtown and the waterfront. The City's compact footprint at 3.8 square miles enables the average cyclist to bike from one end of the city to another in 25 minutes or less.

I am writing in support of the proposed e-bike program led by ICF in partnership with Shared Mobility Inc, GObike Buffalo, and local partner IMPACT, Inc. Through the 511NY Rideshare program, the City began discussions with ICF and other partners in April 2021 on a potential e-bike library program in Newburgh. If awarded by NYSESDA in the Clean Neighborhoods Challenge, this program would bring an affordable, convenient, and sustainable mobility option to Newburgh in the form of e-bikes. The e-bike library and purchase assistance would empower low-income and traditionally underserved residents by enhancing access to jobs, educational opportunities, services, healthy food, healthcare, and other community lifelines. The proposed program model brings these benefits to Newburgh without the negative externalities such as bike/scooter "litter" on sidewalks that can sometimes result from dockless shared micromobility services.

The ICF team's proposed e-bike solution directly implements the City's 2020 Bicycle Action Plan's recommendations to support formation of an electric bike library program or bikeshare program, as well as to collect data on bicycle traffic to facilitate decision-making and potential grant funding for active mobility projects. Additionally, the program supports the City initiatives below:

- The City's adopted Complete Streets policy in April 2019, building on years of groundwork to support economic revitalization such as the Newburgh Complete Streets Project on Broadway;
- The City's commitment to the New York State Climate Smart Communities Pledge (adopted in April 2018), specifically the elements to support a green innovation economy and reduce community energy use;
- The City's Local Waterfront Revitalization Program (adopted in July 2017) to link various public recreation facilities via multi-modal transportation systems;
- The City's Sustainable Master Plan (adopted in 2008), which establishes transportation-focused goals that the roads and streets in the City are safe, efficient, and provide a welcoming environment for pedestrians, bicyclists and handicapped persons, and that there is a regional transportation system that supports a variety of modes of transportation.

The City of Newburgh will support the program by working with the ICF team on infrastructure planning and installation of pop-up projects, promoting the program to potential users through our networks, and leveraging existing initiatives to support implementation. The City of Newburgh will dedicate up to two staff hours per month on the project: one hour to join the program steering committee, and one hour to coordinate with the ICF team on planning, project implementation, and any public-facing communications.

<Organizational Logo/Letterhead>

This time commitment will be concentrated within one year of implementation during the three-year grant period.

The City of Newburgh looks forward to collaborating with the ICF team on this impactful effort. Thank you for your consideration.

Sincerely,

<Signature>

<Name>

<Title>

<Organization>

RESOLUTION NO.: ____ - 2022

OF

MAY 9, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATE
GOVERNOR'S TRAFFIC SAFETY COMMITTEE
2023 HIGHWAY SAFETY PROGRAM GRANT
IN AN AMOUNT NOT TO EXCEED \$20,000.00 WITH NO CITY MATCH REQUIRED**

WHEREAS, the City of Newburgh wishes to apply for a State of New York Governor's Traffic Safety Committee 2023 Highway Safety Program Grant in the amount of \$20,000.00 with no City match required; and

WHEREAS, the Governor's Traffic Safety Committee Highway Safety Program offers grant funding to conduct programs which promote pedestrian and bicycle safety education; and

WHEREAS, if awarded the City of Newburgh Police Department will use the funds to create a bike garden at the Delano-Hitch Recreation Park to conduct bike rodeos where parents and children can learn about bike safety and to purchase helmets, bike racks, promotional materials, paint and other supplies to create the bike garden; and

WHEREAS, this Council has determined that applying for and accepting such grant 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 a New York State Governor's Traffic Safety Committee 2023 Highway Safety Program Grant in the amount of \$20,000.00 with no City match required; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

ORDINANCE NO.: _____ - 2022

OF

MAY 9, 2022

AN ORDINANCE AMENDING CHAPTER 190, ARTICLE XIII ENTITLED
“RESPONSIBILITIES OF OWNERS AND OCCUPANTS” OF THE
CODE OF ORDINANCES OF THE CITY OF NEWBURGH
INCREASING THE PENALTIES FOR VIOLATIONS

BE IT ORDAINED by the City Council of the City of Newburgh, New York that Chapter 190, Article XIII, entitled “Responsibilities of Owners and Occupants” of the Code of Ordinances is amended as follows:

SECTION 1. Article XIII. Responsibilities of Owners and Occupants

§190-116. Penalties for offenses.

- A. Any person who shall violate any of the provisions of this chapter or fail to comply therewith or who shall violate or fail to comply with any order made thereunder shall be punished as provided in § 1-12 for violation of this chapter of the Code of Ordinances of the City of Newburgh by a fine of not less than \$1,000 or by imprisonment for a period not exceeding 15 days, or both such fine and imprisonment.
- B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects. Each day that prohibited conditions exist shall constitute a separate offense.
- C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 2. Severability.

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

~~Strikethrough~~ denotes deletions

Underlining denotes additions

invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Ordinance or part here of is held inapplicable had been specifically exempt therefrom.

SECTION 3. Codification.

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

SECTION 4. Validity

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

SECTION 5. This ordinance shall take effect immediately.

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ORDINANCE NO.: _____ - 2022

OF

MAY 9, 2022

AN ORDINANCE AMENDING CHAPTER 249, SIDEWALK CAFES,
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO ESTABLISH A TIME PERIOD FOR SIDEWALK CAFÉ PERMITS

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 249 of the Code of the City of Newburgh is hereby amended as follows:

SECTION 1. Amendment

§ 249-3. Conditions for issuance of permit.

G. Permits may be issued only during the period from April 1 ~~April 13, 2021~~ to November 30 ~~November 26, 2021~~ and shall be for such duration, within the time provided herein, as the applicant may request.

SECTION 2. Severability.

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

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Chapter 249

SIDEWALK CAFES

GENERAL REFERENCES

Alcoholic beverages — See Ch. 105.

Streets and sidewalks — See Ch. 263.

Fees — See Ch. 163.

Zoning — See Ch. 300.

Street musicians — See Ch. 260.

§ 249-1. Permit required.

Notwithstanding any inconsistent provision contained in Chapter 263, Streets and Sidewalks, sidewalk cafes for the sale to the public of food and beverages, and for no other purpose, shall be permitted, provided that a permit is obtained therefor from the Fire Chief.

§ 249-2. Application for permit. [Amended 6-22-2020 by Ord. No. 7-2020; 10-26-2020 by Ord. No. 9-2020]

Any person, firm or corporation desiring a permit shall make application to the Fire Chief on forms provided therefor. The form shall require a written, signed, and notarized statement of all owner(s) of the property and applicant(s) related to the proposed sidewalk cafe operation that consents to the submission of the application, releases the City of Newburgh and its officers, employees and agents from and against any and all claims, actions, losses, liability or damages of any kind arising out of or resulting from or caused by the license granted pursuant to this chapter, and indemnifies, defends, and holds harmless the City of Newburgh and its employees and agents from the same. The applicant shall also submit a site plan of the proposed area to the Fire Chief.

§ 249-3. Conditions for issuance of permit.

A permit for a sidewalk cafe may only be issued to the owner or the tenant of a building occupied and used for the sale of cooked and prepared food, except fast-food restaurants, in a zoned district permitting such use and abutting the public sidewalk adjacent thereto, provided that the following requirements are met:

- A. The sidewalk abutting the property, from the property line to the curbline, must not be less than 10 feet in width.
- B. The area to be used for the sidewalk cafe must not encroach onto the sidewalk more than 10 feet from the property line abutting the sidewalk and must not extend beyond the extension of the side property lines onto the sidewalk.
- C. No permanent structures may be affixed to the sidewalk area used for the cafe or affixed to the building abutting the area for purposes of the cafe, and the area may be occupied only by chairs, tables, benches, umbrellas, movable railings, and

planters for the convenience of the patrons to be served in such area. Movable railings or planters shall be so arranged as to enclose the dining area, and the sidewalk shall be inconspicuously marked to delineate the approved position of such barriers.

- D. A clear, unoccupied space must be provided, not less than three feet in width, from all entrances of the building abutting the sidewalk to the unoccupied portion of the public sidewalk.
- E. Neither outdoor lighting nor live or mechanical music may be used on or for the cafe area, except that in such cases where streetlighting is insufficient to so illuminate the dining area so that a hazard to those traveling the sidewalk may be created, the Fire Chief shall direct and the applicant shall provide such lighting for nighttime hours as the Fire Chief shall require.
- F. General comprehensive liability insurance naming the applicant and the City of Newburgh, its officers, agents and employees as named insureds must be provided, with limits of \$25,000/\$50,000 for property damage and \$1,000,000/\$2,000,000 for personal injury, effective for the duration of the permit.
- G. Permits may be issued only during the period from April 13, 2021, to November 26, 2021, and shall be for such duration, within the time provided herein, as the applicant may request. **[Amended 4-12-2021 by Ord. No. 3-2021]**
- H. There shall be a minimum clear distance of five feet, exclusive of the area occupied by the sidewalk cafe, free of all obstructions, such as trees, parking meters, utility poles, streetlights, benches, planters, and movable railings in order to allow for adequate and safe pedestrian movement.

§ 249-4. Operating restrictions.

- A. All sidewalk cafes shall cease operations by 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday.
- B. All alcoholic beverages to be served at sidewalk cafes shall be prepared within the existing restaurant and shall only be served to patrons while seated at tables. The drinking of alcoholic beverages by a member of the public while a patron of the sidewalk cafe within the confines of the sidewalk cafe area shall not be construed to be a violation of any local law prohibiting the consumption of alcoholic beverages in a public place or area.¹ The operator of a sidewalk cafe should be in full compliance with the licensing requirements of the State Liquor Authority, as the same may exist, and shall comply with all other laws and regulations concerning the sale of alcoholic beverages in the state. In the event that said sidewalk cafe is not in full compliance with State Liquor Authority laws, rules and regulations concerning the sale of alcoholic beverages, then serving alcoholic beverages in the sidewalk cafe area shall be prohibited.
- C. The restaurant shall not serve food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.

1. Editor's Note: See Ch. 105, Alcoholic Beverages.

- D. Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance which might damage the sidewalk or cause injury to pedestrians.

§ 249-5. Fees and deposits.

- A. The fee for each permit shall be as set forth in Chapter 163, Fees, payable upon the issuance of the permit.
- B. The sum of \$100 shall be deposited, upon the issuance of the permit, to guarantee compliance with the terms of this chapter and the removal of such items as may be placed upon the public sidewalk upon the expiration date of the permit. In the event that the permittee should violate any of the provisions of this chapter, the Fire Chief may terminate the permit, after five days' notice in writing by certified mail, return receipt requested, mailed to the address shown in the application, effective on the date of mailing, with an opportunity to the permittee for a hearing and upon a finding by the Commissioner of such violation, or upon the default of the permittee to appear for the hearing at the time and date specified in such notice.

§ 249-6. City action upon failure to comply.

In the event that the permittee should fail to remove all items placed upon the public sidewalk, upon the expiration of the permit by lapse of time, or for violation of this chapter, the Fire Chief may have such items removed, forfeit the deposit for the cost and charge the permittee for any excess cost above the deposit, together with the cost for storage of such items until removed by the permittee from storage. In the event that the permittee should fail to pay the cost of storage and any excess cost of removal within 90 days after storage, the Fire Chief may sell the items at public auction, reimburse the City for all costs and, if any surplus moneys remain, pay them over to the permittee.

§ 249-7. Additional contents of permit.

The application provided in § 249-2 above shall contain the provisions of §§ 249-5 and 249-6 and shall require the consent of the permittee to its provisions.

§ 249-8. Penalties for offenses.

An offense against the provisions of this chapter shall be punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or both.

§ 249-9. Sidewalk café operations in designated parking areas. [Added 6-22-2020 by Ord. No. 7-2020; amended 10-26-2020 by Ord. No. 9-2020]

- A. An applicant for a sidewalk café permit may apply to extend the sale of food and beverages as authorized in this chapter within certain designated public parking areas on a temporary basis, as provided herein.
- (1) No designated public parking area may be wider than the side property lines. The dimensions of the designated public parking area shall be determined by the Fire Chief, based on safety and traffic considerations near the proposed space.

- (2) The applicant may not place or erect any structures or enclosures that accommodate the storage of accumulated garbage in the designated public parking area or any areas adjacent to it. No application may interfere with any public service facility, including but not limited to, bus stops, lampposts, lighting fixtures, mailboxes, public benches, or telephone booths located on the sidewalk.
- B. The applicant shall comply with all other provisions of this chapter.
- C. In addition to the application and site plan of the proposed area, the applicant shall also provide additional information as required by the Fire Chief or the Police Chief as deemed necessary to protect the safety and welfare of pedestrians and patrons, including but not limited to:
- (1) A map showing the design and location of all structures within the designated public parking area, such as security barriers, planters, landscaping, tables, chairs, and umbrellas;
 - (2) The number of proposed tables;
 - (3) The linear square footage of the proposed space;
 - (4) Compliance with all requirements of the Americans with Disabilities Act;
 - (5) Compliance with COVID-19 social distancing guidance issued by either New York State, including but not limited to any agencies thereof, or the Orange County Department of Health;
 - (6) Sufficient barriers, such as planters or railings, that physically separate patrons from both pedestrian and vehicular traffic;
 - (7) Location of signage indicating that food and/or beverages can only be consumed while seated at a table, bar, counter; proof of submission of compliance with the New York State Food Service Guidelines for Employers and Employees, Interim Guidance for Outdoor and Take Out-Delivery Food Services During the COVID-19 Public Health Emergency, and Interim Guidance for Food Services During the COVID-19 Public Health Emergency.
- D. Upon meeting the requirements of § 249-9C, the Fire Chief shall approve the application. The Fire Chief shall then forward the application to the City Manager, with a copy of the application and the map of the designated parking area. The City Manager is authorized by § 288-3 to suspend parking in the proposed designated parking area up to and including November 30, 2020.
- E. The Fire Chief may deny the application and state the reasons for the denial in a letter to the applicant. The applicant may appeal the denial to the City Manager.
- F. The Fire Chief shall have authority to execute any forms prescribed by the New York State Liquor Authority ("SLA") granting jurisdiction to the SLA to monitor the conduct of the applicant in any sidewalk cafe and designated parking areas.
- G. There shall be no fee for a permit pursuant to this chapter for the year 2021. **[Amended 4-12-2021 by Ord. No. 3-2021]**

- H. This § 249-9, and any authority granted pursuant thereto, shall automatically expire on November 26, 2021, or when terminated earlier by state action. **[Amended 4-12-2021 by Ord. No. 3-2021]**
- I. Any permits previously issued pursuant to Ordinance No. 7-2020 of June 22, 2020, shall be automatically extended and now expire on November 30, 2020.

