

A regular meeting of the City Council of the City of Newburgh was held on Monday, July 11, 2022 at 7:00 PM in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

Moment of Silence / Momento de Silencio

Mayor Harvey asked for a Moment of Silence followed by the Pledge of Allegiance.

Pledge of Allegiance / Juramento a la Alianza

Roll Call / Lista de Asistencia

Present: Mayor Harvey, Presiding; Councilmember Grice, Councilmember Martinez, Councilmember Monteverde, Councilmember Shakur, Councilmember Sklarz, Councilmember Sofokles - 7

COMMUNICATIONS

Approval of the minutes from the City Council meeting of June 13, 2022 / Aprobacion del Acta de la Reunion General del Consejo del 13 de junio de 2022

Councilman Shakur moved and Councilwoman Sofokles seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Carried

City Manager Update / Gerente de la Ciudad Pone al Dia a la Audiencia de los Planes de Cada Departamento



City Manager's Update

Newburgh City Council Meeting

Monday, July 11, 2022

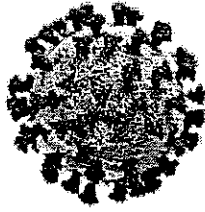


Novel Coronavirus (COVID-19)

For more information

Hotline: 1-888-364-3065

www.health.ny.gov/diseases/communicable/coronavirus



Testing data as of: 7/7/2022 2 PM
Testing data last updated on: 7/8/2022



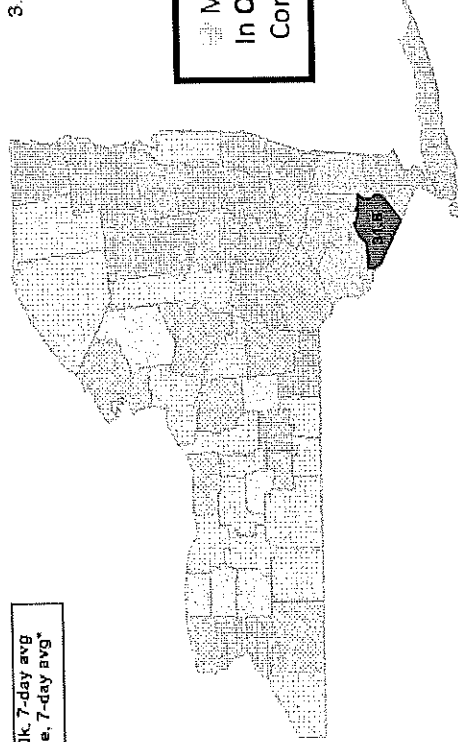
New York State Department of Health COVID-19 Tracker

Click County to
See Detail
Click Again for
Statewide

Positive Tests by County

● Cases per 100k, 7-day avg
○ Test % Positive, 7-day avg*

3.6 47.5



Medium
In Orange County, New York,
Community level is Medium

Statewide

Tested Positive (7/07)
7,689

Total Results Received
(7/07)
78,726

Tested Positive
(Cumulative)
5,614,267

Total Results Received
(Cumulative)
114,295,187

Tested Positive by Sex
(Cumulative)

Female 52.2% Male 46.1% Unknown 1.7%

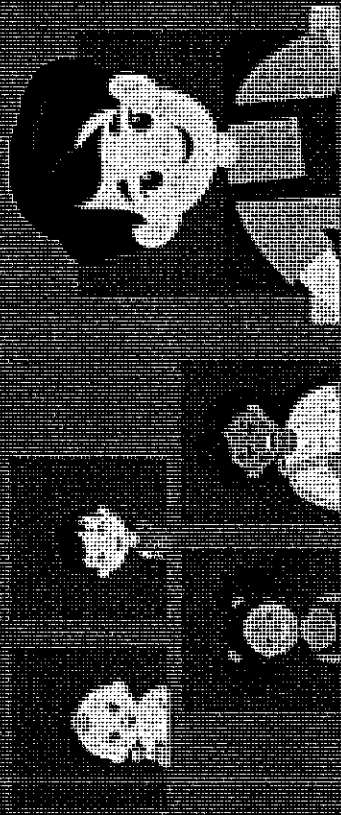
Onondaga
Ontario
Orange
Orleans
Oswego
Otsego
Putnam
Queens
Rensselaer
Richmond
Rockland
Saratoga
Schenectady
Schuyler
Seneca
St. Lawrence
Steuben
Suffolk
Sullivan
Tioga
Tompkins
Ulster
Warren
Washington
Wayne
Westchester
Wyoming
Yates

County Testing Details: Orange (7/7)

Tested Positive (Prior Day)	Total Results Received (Prior Day)	Cases per 100k (Prior day)	Test % Positive (Prior Day)*	Tested Positive (Cumulative)	Total Results Received (Cumulative)
128	1,490	33.5	7.6%	117,975	1,756,537

COVID-19 VACCINE UPDATE

NYSDOH shares CDC's recommendation that all children down to 6 months of age, including children who have already had COVID-19, should get vaccinated as soon as possible.



my.gov/MaxForKids



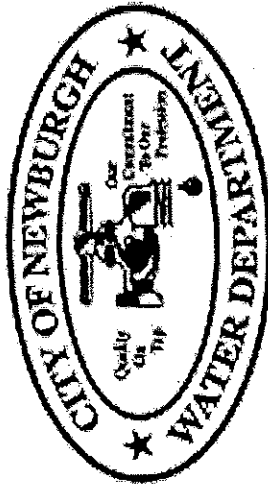
COVID-19 VACCINE UPDATE

Due to federal regulation, pharmacies are only able to vaccinate children 3 years and older. If you are scheduling a vaccine appointment at a pharmacy for your child three years and older, you may need an authorization code from your pediatrician to validate their age.

Make sure the provider is administering the vaccine to children under five years of age.



[Visit vaccines.gov](https://visit.vaccines.gov)



44

Applications received

10

Lines replaced

26

Applications approved

8

Applications pending code violations

\$90,025 spent

of the allocated 1 million dollars

LEAD SERVICE LINE REPLACEMENT PROGRAM

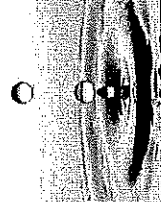
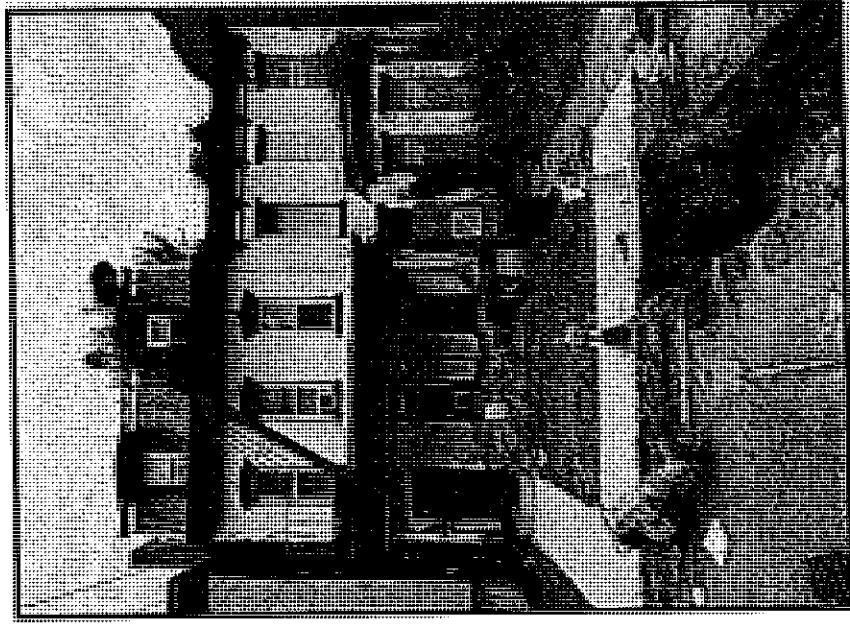
UPDATE

**Get Help Replacing Your
Lead Water Service Lines**

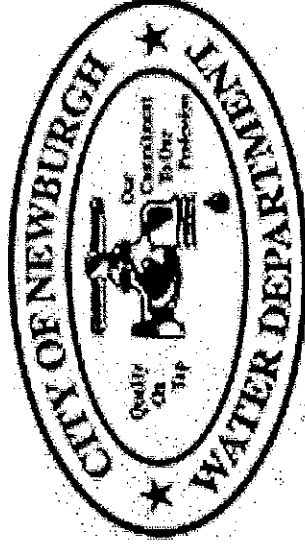
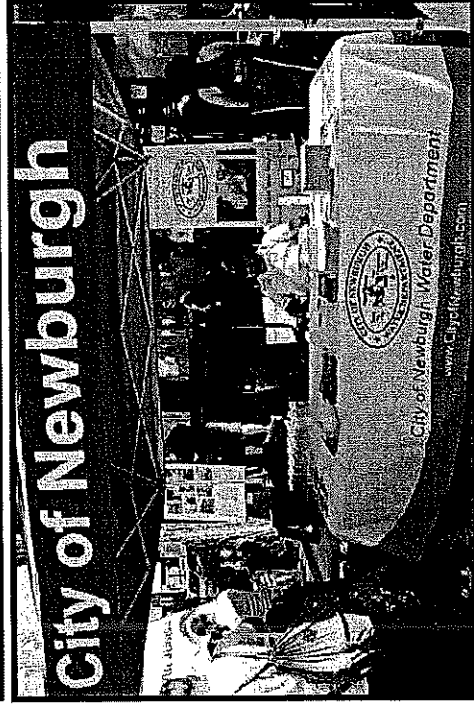
**APPLICATION AVAILABLE
IN SPANISH!**

CALL: 845-565-3356

Programa de Sustitución de Líneas de
Servicio de Plomo.

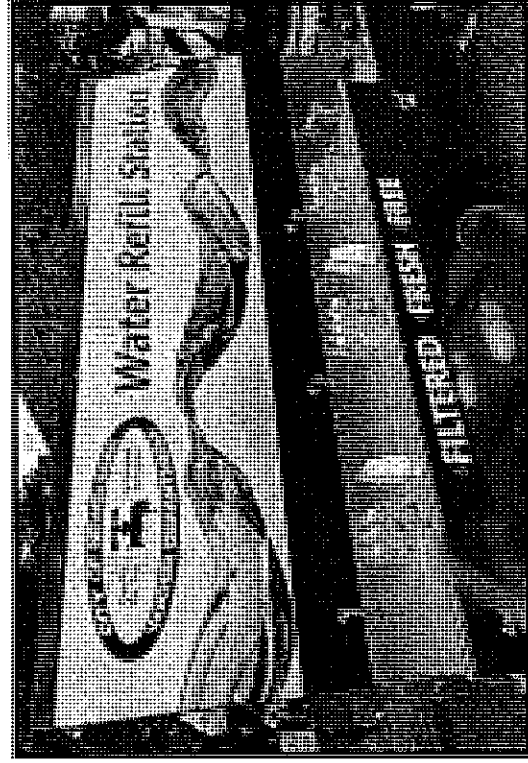


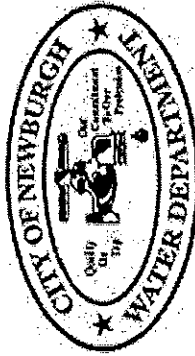
WATER TRAILER HIGHLIGHTS



PURIFICATION DIVISION

- Barber Appreciation Event Mid Broadway Lot
- Juneteenth Event in Downing Park
- NFA Senior Picnic
- Police Community Relations Boards
 - Jump into June Event Tyrone Crabb Memorial Park
- Newburgh Police Pop Up BBQ





PONDS & RESERVOIRS

FRANK MASTERSON'S PARK OPENS

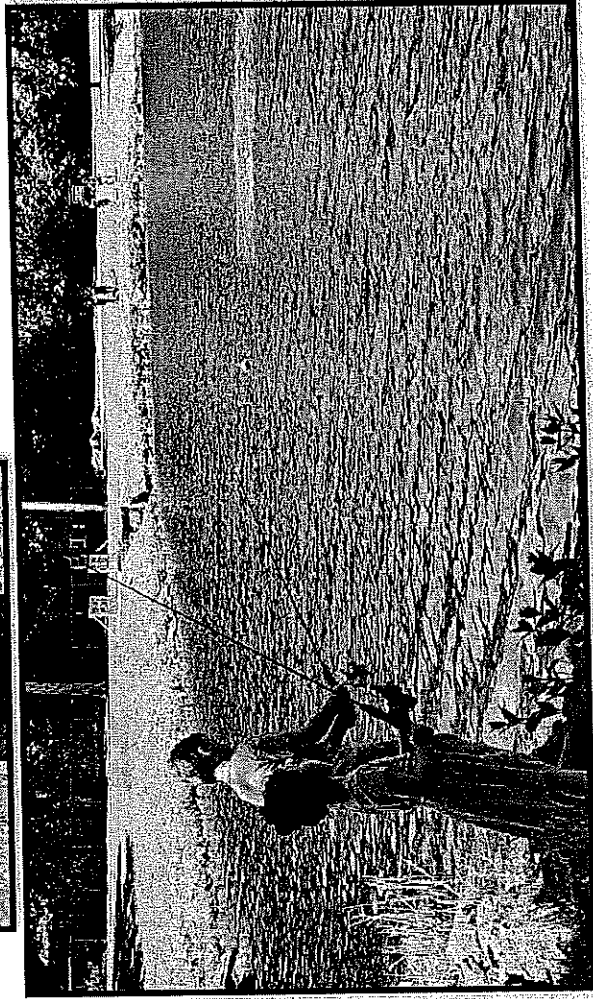
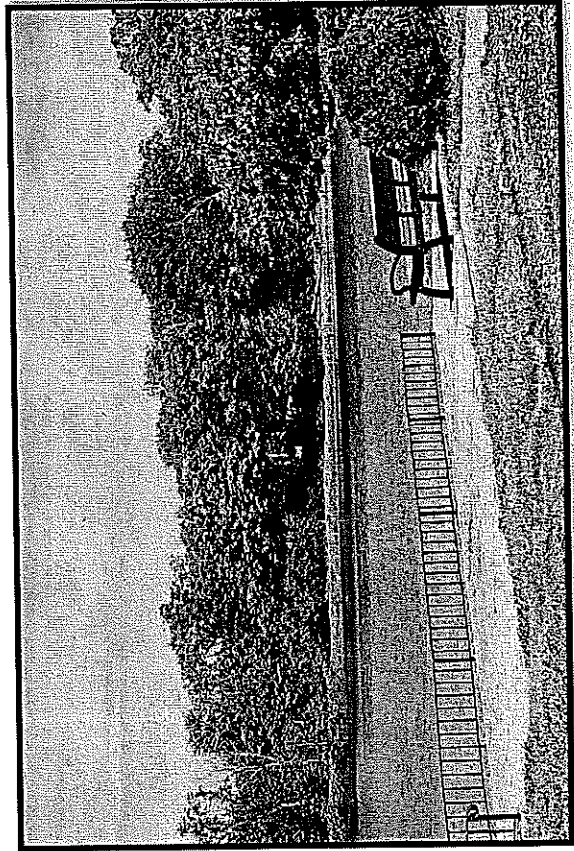
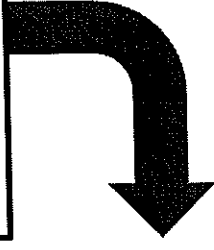
JUNE 18

7:00 AM TO 3:00 PM
MONDAY-FRIDAY

7:00 AM TO 6:00 PM
SATURDAY & SUNDAY



CATCH AND
RELEASE FISHING
FROM SHORE ONLY!



NOTICE TO RESIDENTIAL AND SMALL BUSINESS WATER CUSTOMERS

MORATORIUM ON UTILITY SHUTOFFS
EXPIRED JUNE 30, 2022
RE-LEVY PROCEDURES BEGIN NOVEMBER 1, 2022

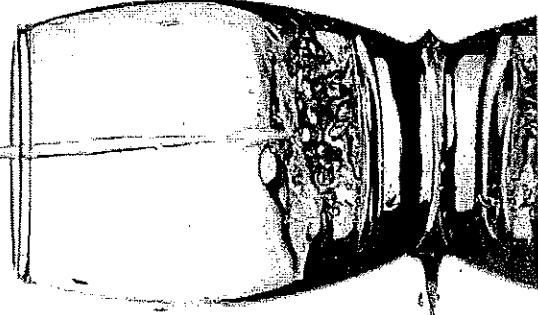
**Get Help Paying Overdue
Water and Sewer Bills**

**CALL 833-690-0208
TO REQUEST AN
APPLICATION**



LIHWAP
Low Income Household
Water Assistance Program

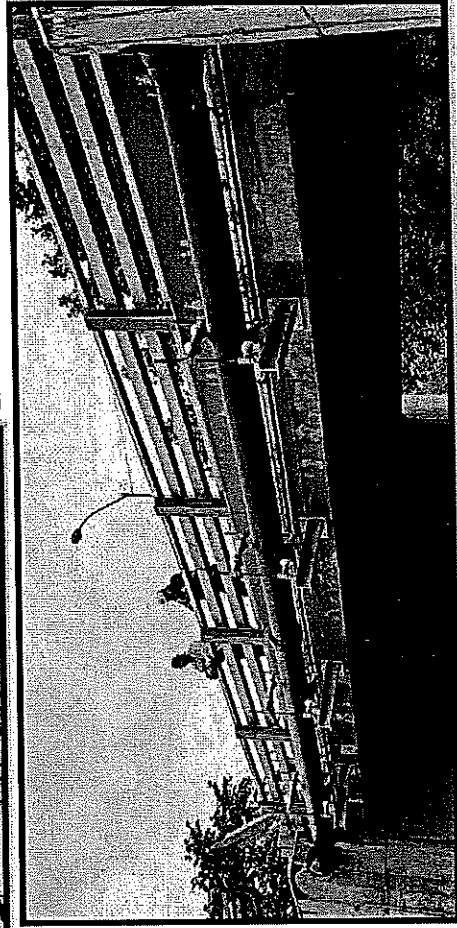
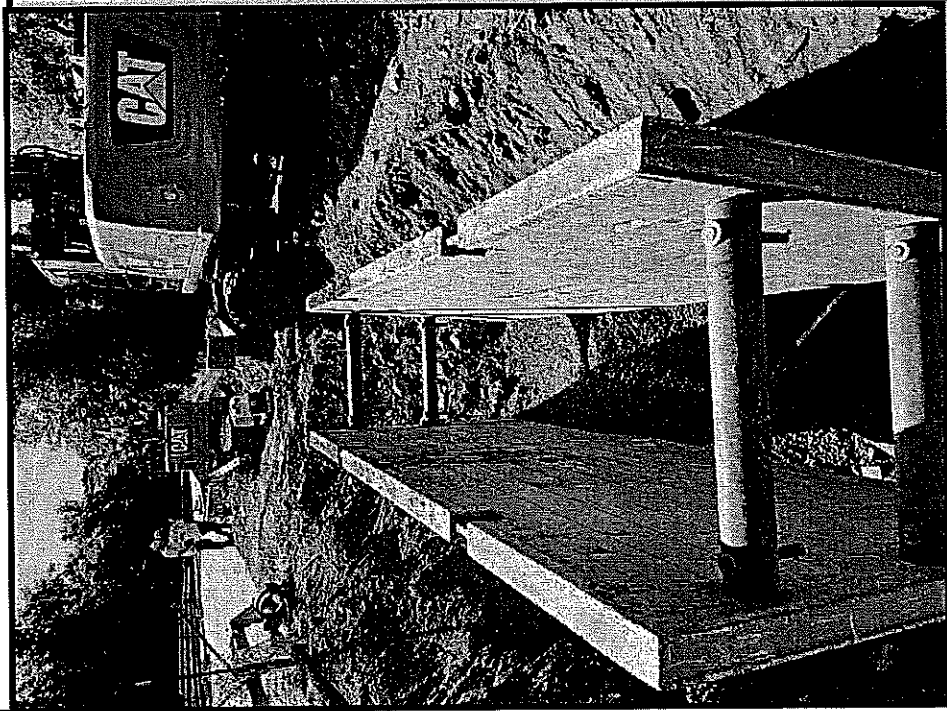
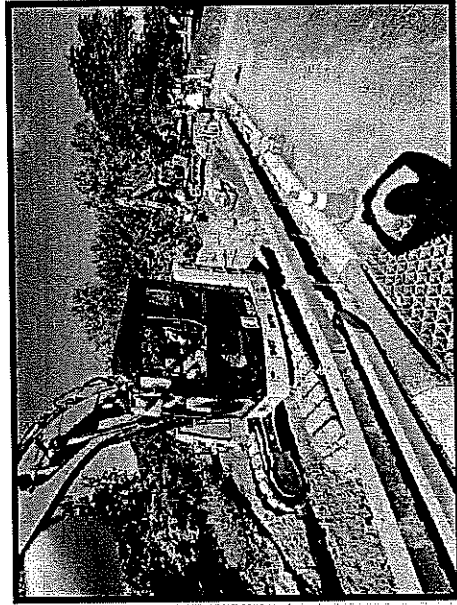
A Program of the Office of Temporary and Disability Assistance

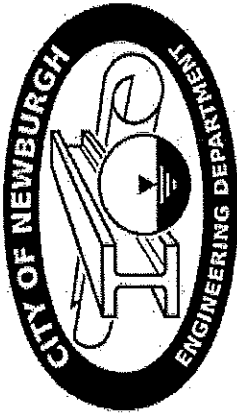


INSTALLATION OF WATER MAIN ON THE LAKE DRIVE BRIDGE

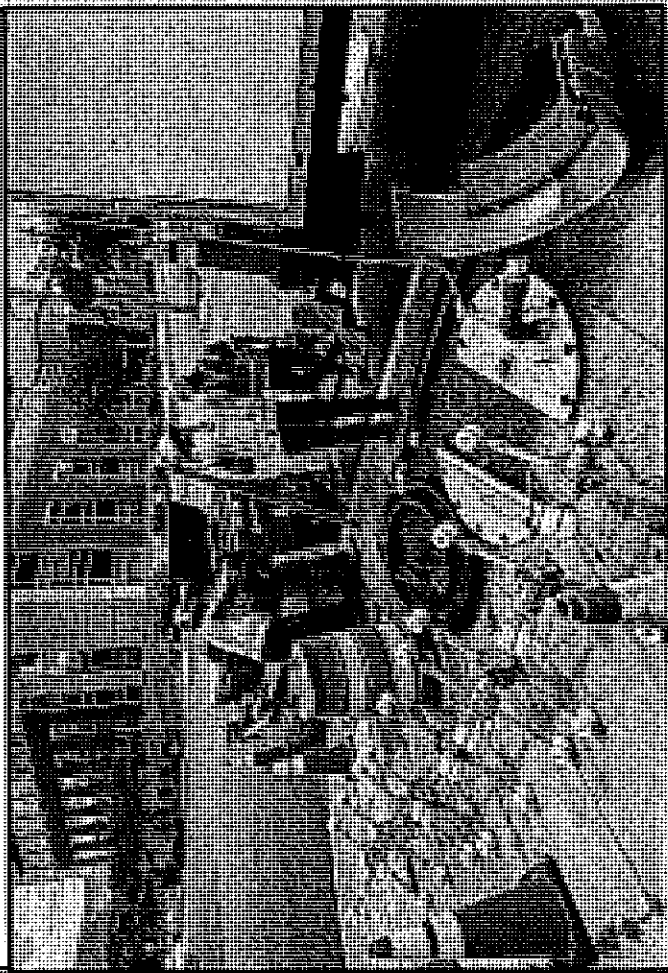


Federal aid grant
reimbursed **80%**
of project costs

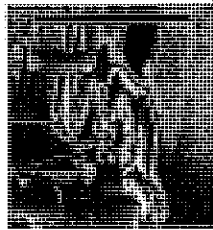




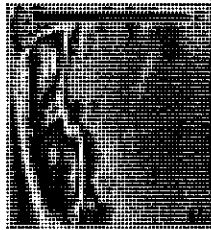
DOWNING POND OUTLET AND THIRD STREET STORMSEWER LTCP PROJECT



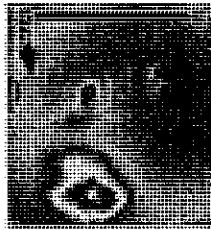
155 WEST STREET ROOF EVALUATION



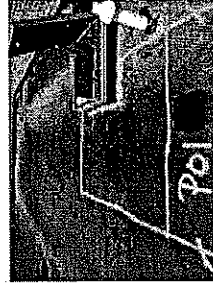
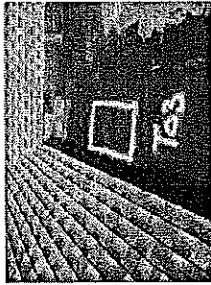
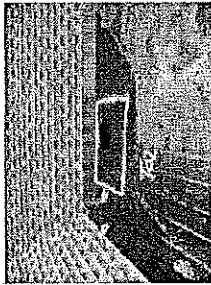
Thermogram T-01



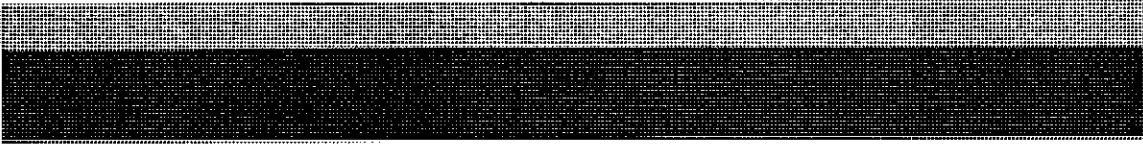
Thermogram T-02



Thermogram T-03



NOTE:
PO1 - NO THERMOGRAM DUE TO
PONDING WATER





City of Newburgh Recreation
Summer Family Fun Days 2022
June 27th, 2022 to August 5th, 2022

WET SLIDES

SUMMER FUN

NEW OUTDOOR CENTER

• Not a Drop-off Center

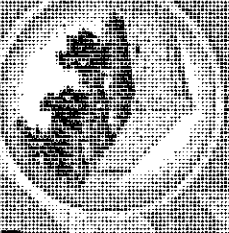
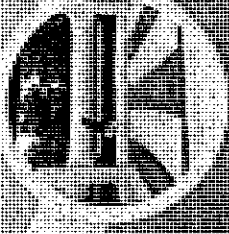
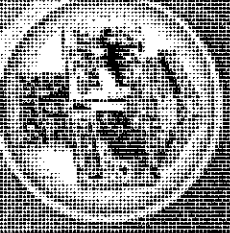
FREE • Children must be accompanied by parents.

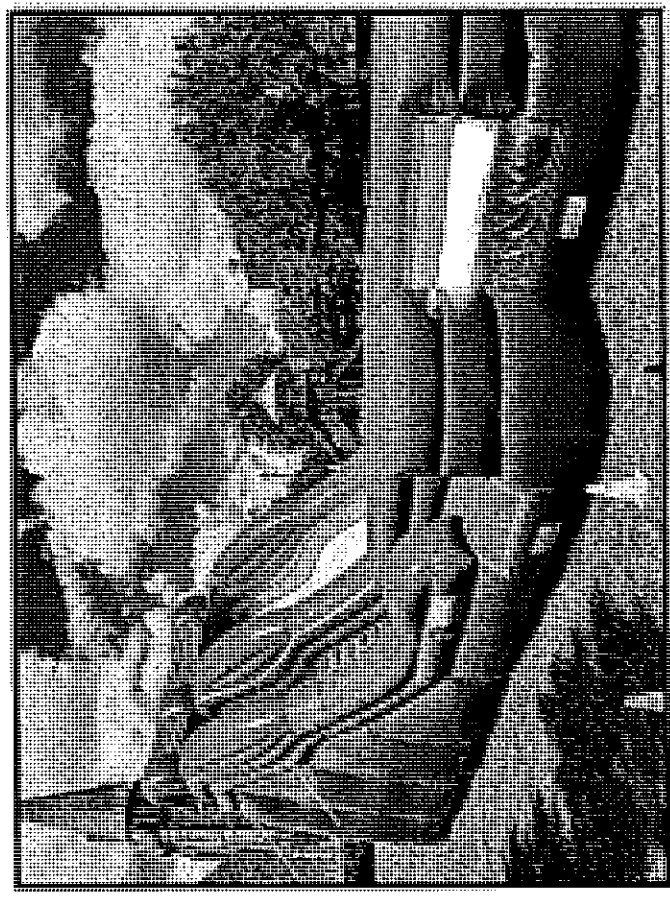
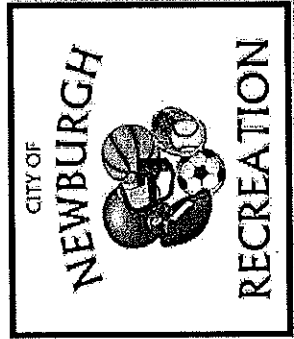
Monday 9am to 5pm
Wednesday 9am to 5pm (wet slides)
Friday 9am to 5pm

FREE

FREE

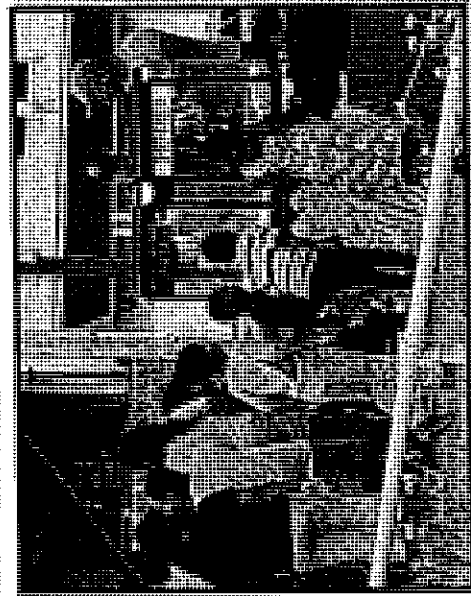
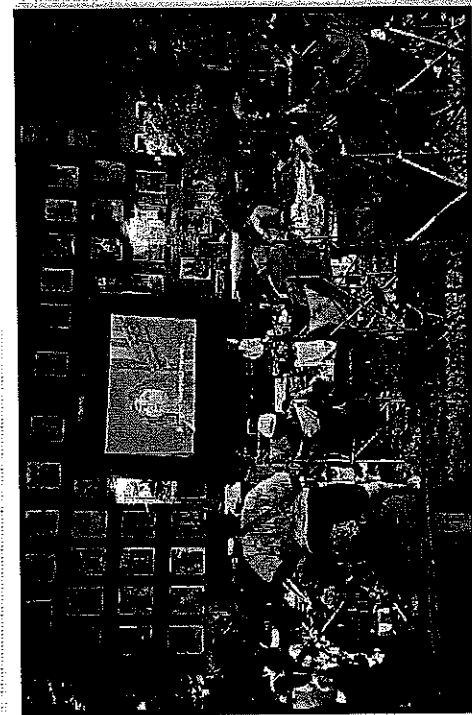
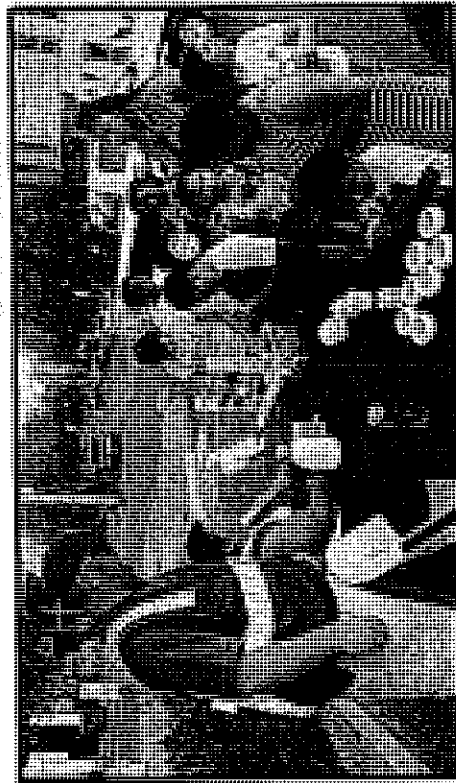
FAMILY GAMES
and more!





The City of Newburgh and Safe Harbors of the Hudson present:
Free Summer Movies
on Safe Harbors Green

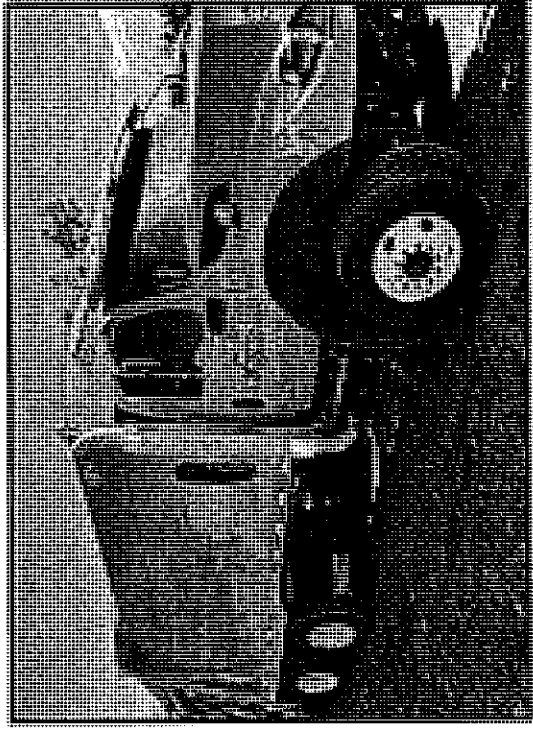
Thursdays
at sundown
8:30 p.m.



**UPCOMING
MOVIE**

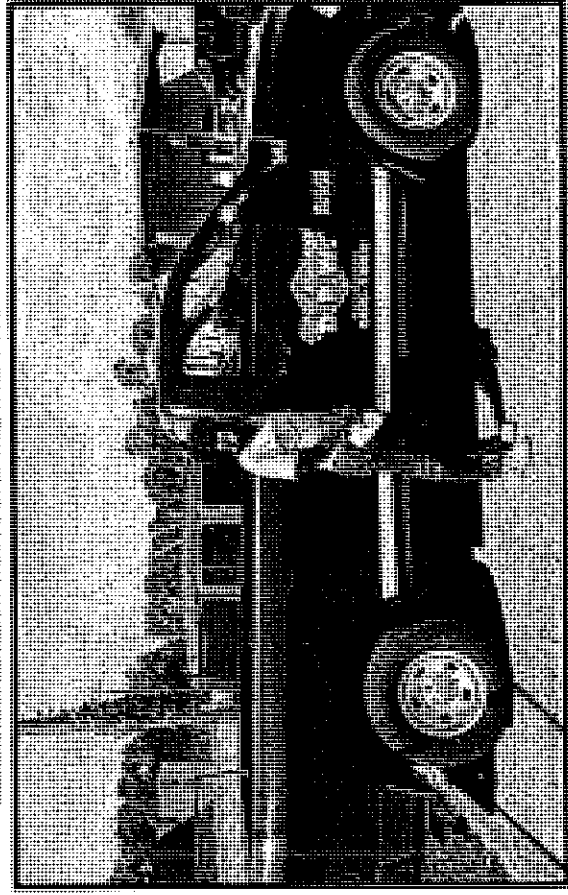


July 14



SANITATION TOTALS FOR THE MONTH OF JUNE

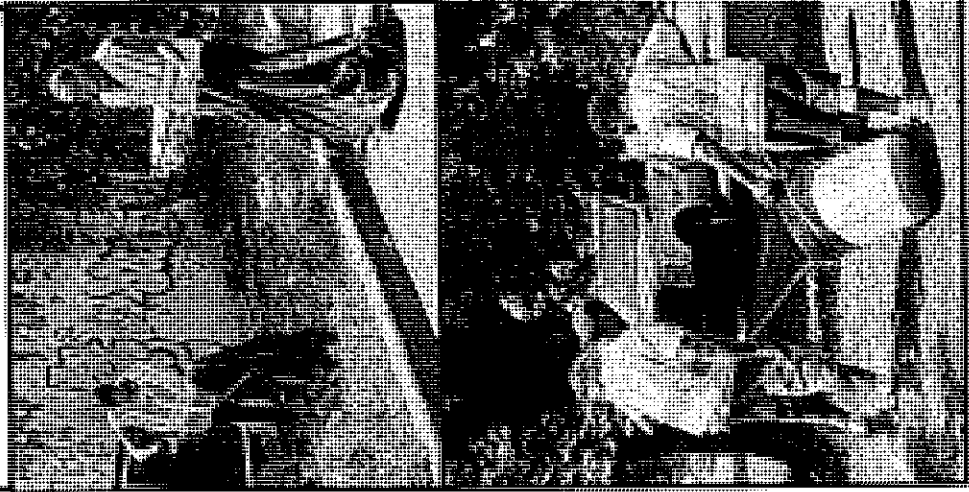
- 999 tons of solid waste
- 94 tons of recyclable material



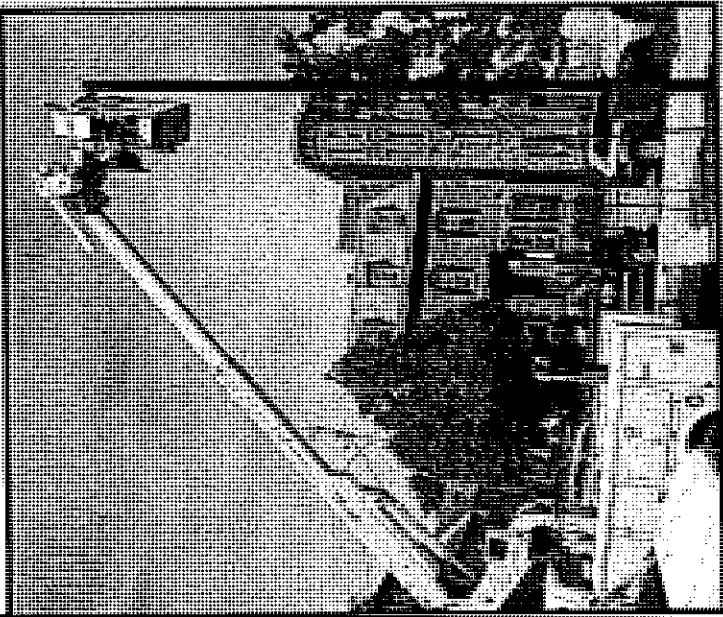
SANITATION ENFORCEMENT TOTALS FOR JUNE

- 123 Warning letters written
- 69 Violation letters issued
- 44 Warning letters were complied with

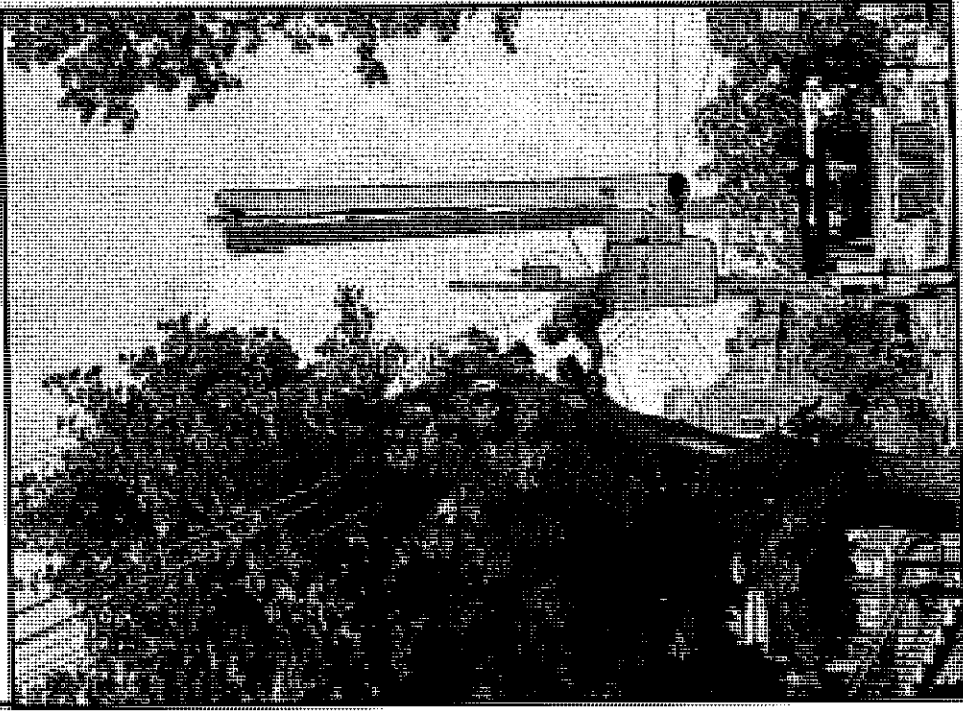
**START UP OF CLEAN
SWEEP INITIATIVE
PROGRAM**



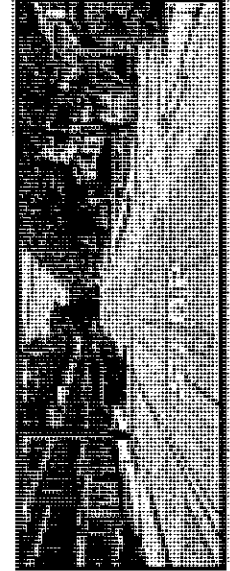
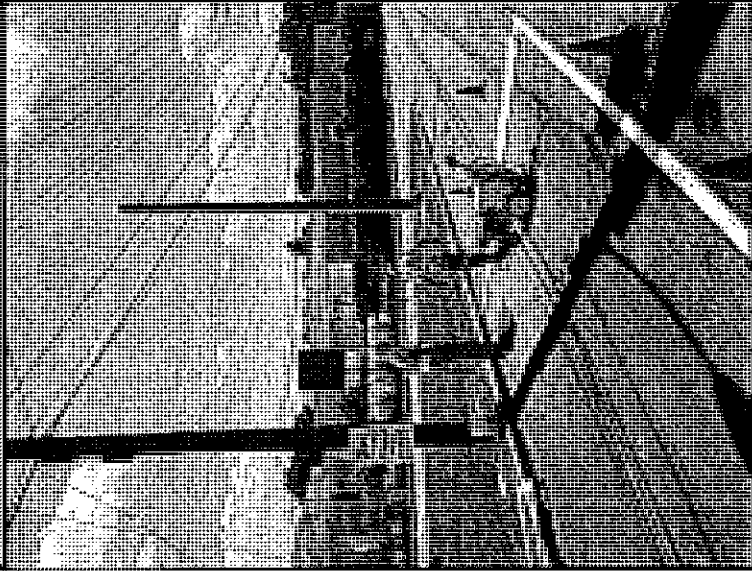
**NEW LIGHTING IN THE POLICE
DEPARTMENT AND FIRE
DEPARTMENT PARKING LOT**



**TRIMMING TREES FOR I.T.
CAMERA PROJECT**



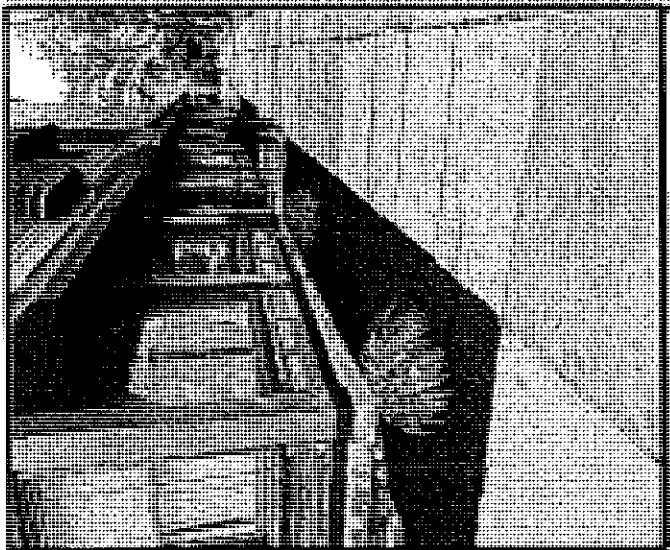
LINE PAINTING AND STOP
BAR PAINTING



MAINTENANCE OF CITY
OWNED BUILDINGS



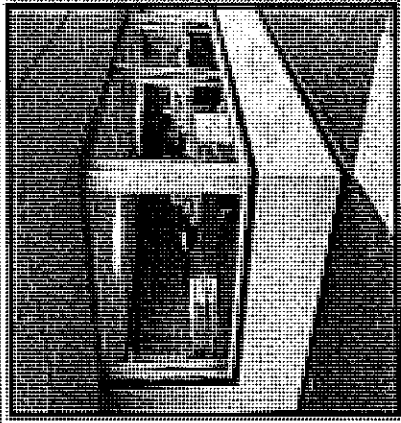
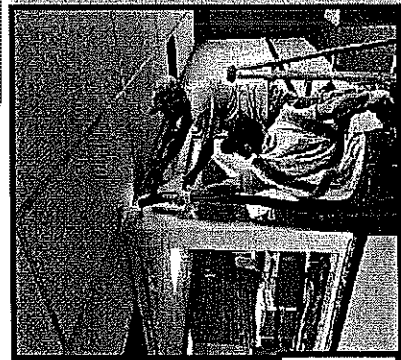
123 Grand Street

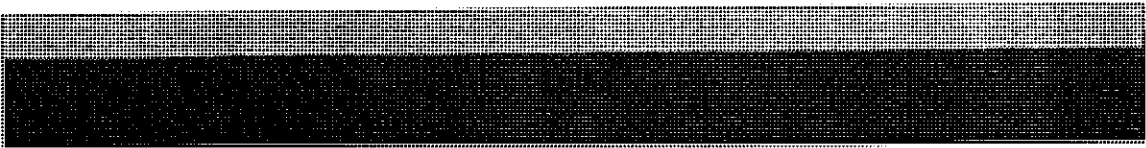


83 Broadway

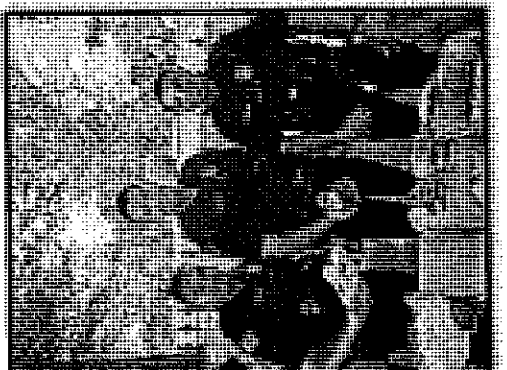
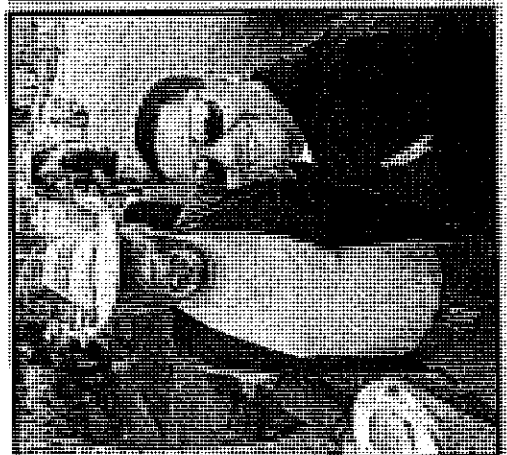
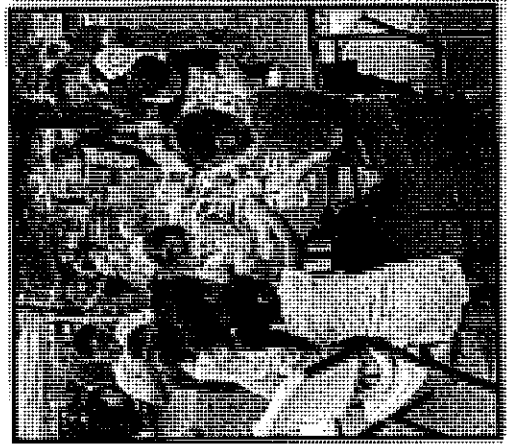
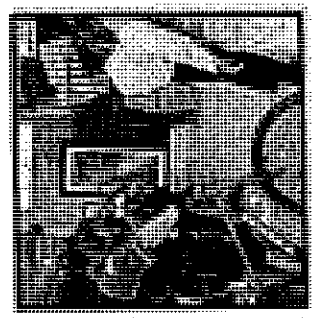


Police Department
Offices

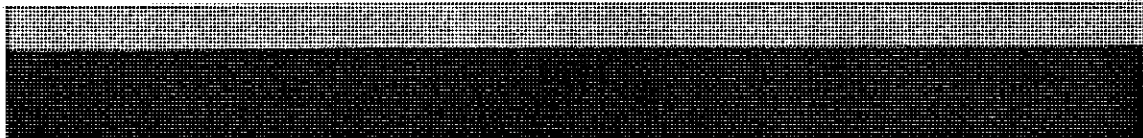




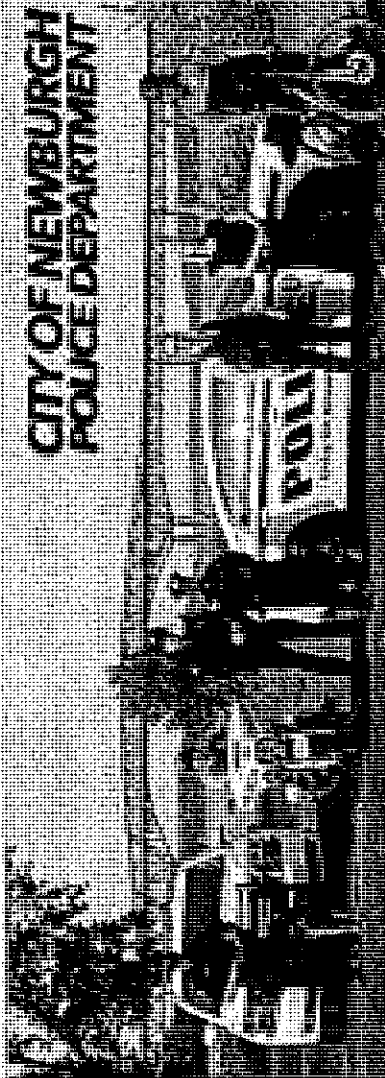
**POLICE DEPARTMENT
IMPROVING COMMUNITY RELATIONS**



POP-UP BBQ'S



**CITY OF NEWBURGH
POLICE DEPARTMENT**



BE THE CHANGE!

**POLICE OFFICER EXAM
&
POLICE OFFICER
SPANISH SPEAKING EXAM**

**TEST DATE:
SEPTEMBER 17TH, 2022**

**FILING PERIOD:
JULY 12TH - AUGUST 12TH,
2022**

**STARTING SALARY: \$45,846
EXCELLENT BENEFITS**



 **CITY OF NEWBURGH
POLICE DEPARTMENT**

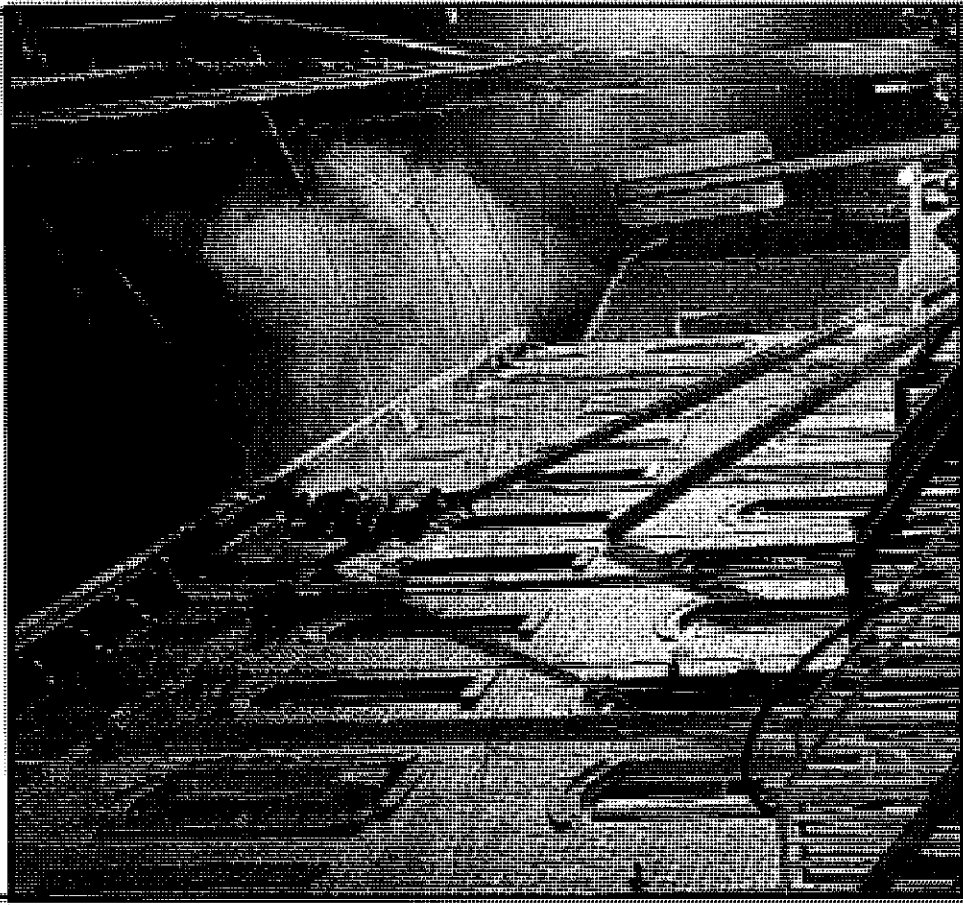
RECRUITMENT OPEN HOUSE

- Opportunity to meet our officers, ask questions and obtain information about the job.
- Apply on the spot to join our team!
(fee required)

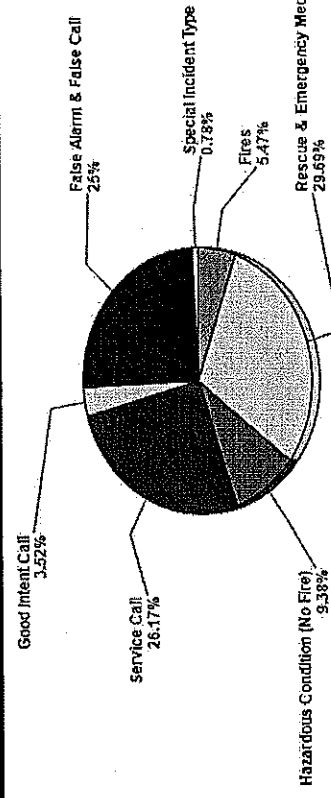
Saturday, July 16, 2022
Newburgh Activity Center
401 Washington Street
Newburgh, NY
10am - 1pm



FIRE AT 68 LANDER STREET



Reporting Period Breakdown June 1 to June 30





Cooking Fire Safety

What you should know about fire safety while cooking.

The kitchen is the leading area in the home where fires occur. The following are a few simple and easy things you can do to minimize the chances of one starting in your kitchen.

1. To Prevent a Cooking Fire in Your Kitchen

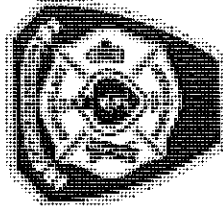
- Never leave cooking unattended.
- Wear short or close fitting sleeves. Loose clothing can catch fire.
- Watch children closely. When old enough, teach them to cook safely.
- Clean cooking surfaces to prevent food and grease build-up.
- Keep curtains, towels, pot holders and other flammable items away from stove surfaces.
- Turn pan handles inward to prevent food spills.
- Don't overload electrical outlets. You might cause an electrical fire by plugging too many appliances into the same outlet.
- Replace any cracked or frayed cords on appliances.

2. To Put Out a Cooking Fire in Your Kitchen

- Slide a pan lid over flames to smother a grease or oil fire, then turn off the heat and leave the lid in place until the pan cools. Never carry the pan outside.
- Keep fire oven door shut and turn off the heat to smother an oven or broiler fire.
- For a microwave fire, keep the door closed and unplug the microwave. Call the fire department and make sure to have the oven serviced before you use it again.
- Keep a fire extinguisher in the kitchen. Make sure you have a multipurpose ABC rated extinguisher and know how to use it.
- For any fires that do not go out quickly, evacuate the area and call the fire department immediately.

3. Burn Injuries

- If clothing catches on fire, "Stop, Drop and Roll" - Do not run, this only fans the flames. Stop where you are, drop to the ground and roll over and over to smother the flames. Cover your face with your hands to protect it as well as to shield your throat and lungs from burns. If someone else's clothes are on fire, push them to the ground and roll them over and over, or smother the flames with a blanket, a rug or a coat.
- Cool a burn with running water.
- If someone gets burned, run cool water over the burn for 5 to 10 minutes. This will prevent continued burning and relieve some of the pain.
- If the burn is blistered, see a doctor as soon as possible. Burns may be worse than they seem at first.
- If the burn is charred, involves the face, or is larger than 5% of the body, call 911.



Home is where the heart is. Don't Let Your World Go Up in Smoke.



Fire is fast! In less than 30 seconds a small flame can turn into a major fire. Smoke and toxic gases from a home fire kill more people than flames. Every home needs fire protection and a plan for escape.

Smoke Alarms

Working smoke alarms give you early warning if there is a fire. Make sure your home is protected. Do this today.

- ☐ Install smoke alarms on every level of your home.
- ☐ Place smoke alarms inside and outside of all the sleeping areas.
- ☐ Make sure all of your smoke alarms work. Test them each month.
- ☐ Replace smoke alarms that are 10 years old or older.

Children

Children under the age of four are at a higher risk of home fire injury and death than older children. Plan for this.

- ☐ Teach all children what the smoke alarm sounds like.
- ☐ Be aware that children may sleep through the sound of the smoke alarm.
- ☐ Practice your escape plan with children.
- ☐ Teach older children how to get outside if there is a fire.

Escape Plan

You may have less than three minutes to escape a home fire. Every second counts. Make a plan. Talk with your family about what to do if there is a fire. Practice your escape plan.

- ☐ Know two ways out of every room.
- ☐ A closed door can stop the spread of gas, heat and smoke.
- ☐ Have a meeting place outside your home.
- ☐ Know how to call 9-1-1 from outside to report a fire.
- ☐ Practice your escape plan with everyone who lives in your home at least twice a year.



Did you buy a home with installed fire sprinklers? Learn how this fire safety system saves lives and protects your property and valuables. <http://homefiresprinkler.org>



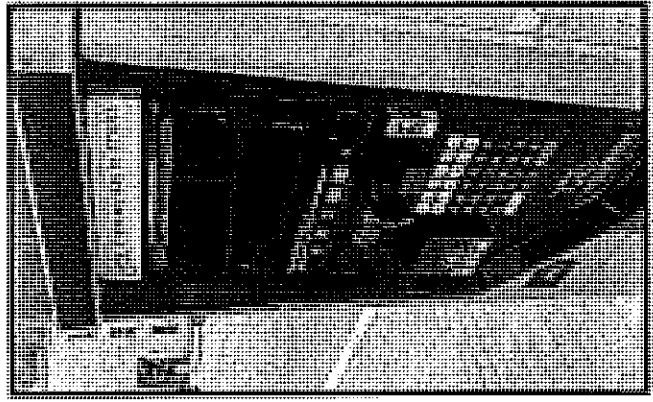
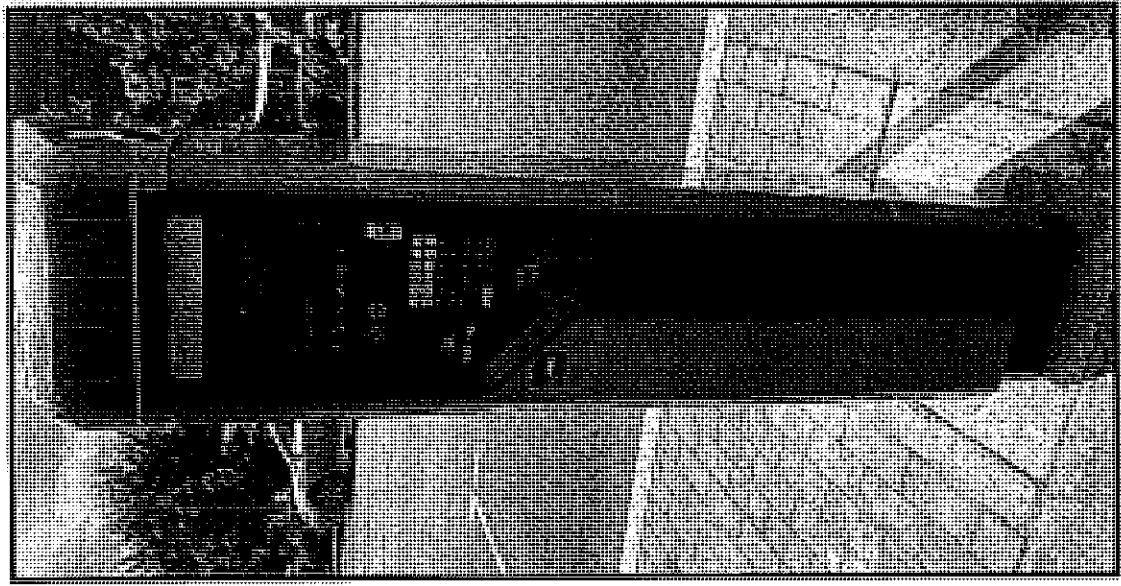
U.S. Fire
Administration

Learn more about fire prevention
www.usfa.fema.gov



PARKING METER REPLACEMENT AND EXPANSION

- Meters installed at various locations
- Pay using Credit/Debit Card or Smartphone
- Tentative launch date this summer
- Option to extend or prepay parking session





Online Information Session
PFAS Exposure Assessment (EA) Findings
 Residents who signed up for the PFAS Exposure Assessment (EA) will receive a letter in the mail with their results. This session will provide an opportunity for residents to ask questions and learn more about the findings. The session will be held on Tuesday, July 12, 2022, from 6:00 PM to 7:00 PM. Registration is required. Space is limited. Register at <https://bit.ly/OrangeCountyEASmailMtg>.

TUESDAY
JULY 12, 2022 | 6:00 PM
 If possible, please join online for the session. The presentation will include information about the findings, the assessment process, and the next steps. The session will be held on Tuesday, July 12, 2022, from 6:00 PM to 7:00 PM. Registration is required. Space is limited. Register at <https://bit.ly/OrangeCountyEASmailMtg>.
 A free catered buffet dinner will be served to residents who attend the session. The dinner will be served from 5:30 PM to 7:00 PM. Registration is required. Space is limited. Register at <https://bit.ly/OrangeCountyEASmailMtg>.

How Orange County is conducting the assessment and the findings. Residents who signed up for the assessment will receive a letter in the mail with their results. This session will provide an opportunity for residents to ask questions and learn more about the findings. The session will be held on Tuesday, July 12, 2022, from 6:00 PM to 7:00 PM. Registration is required. Space is limited. Register at <https://bit.ly/OrangeCountyEASmailMtg>.

Why Attend?

- Learn about the exposure assessment 7 key findings
- Hear about recommendations for your community
- Ask questions and talk to the researchers
- Get information to share with your community

For General Information about PFAS

Visit www.atsdr.cdc.gov/pfas
 email pfas@cdc.gov or call 1-800-CDC-INFO



Have More Questions?

ATSDR staff will also host small, in-person and online meetings to answer questions.

In Person
 Newburgh Free Library
 124 Grand Street, Newburgh, NY 12550
 July 13th, from 12-2pm and 3-5pm
 July 14th, from 12-2pm and 3-5pm
Online
 July 18th, from 11am-12pm

Those interested in participating are encouraged to sign up here:
<https://bit.ly/OrangeCountyEASmailMtg>



Online Information Session
Hallazgos de la Evaluación a la Exposición a PFAS
 Los residentes que se registraron para la Evaluación a la Exposición a PFAS recibirán una carta en el correo con sus resultados. Esta sesión les dará la oportunidad de hacer preguntas y aprender más sobre los hallazgos. La sesión se llevará a cabo el martes 12 de julio de 2022, de las 6:00 p.m. a las 7:00 p.m. Se requiere registro. El espacio es limitado. Regístrese en <https://bit.ly/OrangeCountyEASmailMtg>.
 Se servirá una cena buffet gratuita para los residentes que asistan a la sesión. La cena se servirá de las 5:30 p.m. a las 7:00 p.m. Se requiere registro. El espacio es limitado. Regístrese en <https://bit.ly/OrangeCountyEASmailMtg>.

¿Cuándo?
12 de julio del 2022 | 6:00 p.m.
 Si es posible, por favor únase en línea para la presentación. La presentación incluirá información sobre los hallazgos, el proceso de evaluación y los próximos pasos. La sesión se llevará a cabo el martes 12 de julio de 2022, de las 6:00 p.m. a las 7:00 p.m. Se requiere registro. El espacio es limitado. Regístrese en <https://bit.ly/OrangeCountyEASmailMtg>.
 Se servirá una cena buffet gratuita para los residentes que asistan a la sesión. La cena se servirá de las 5:30 p.m. a las 7:00 p.m. Se requiere registro. El espacio es limitado. Regístrese en <https://bit.ly/OrangeCountyEASmailMtg>.

¿Cómo se está realizando la evaluación y los hallazgos? Los residentes que se registraron para la evaluación recibirán una carta en el correo con sus resultados. Esta sesión les dará la oportunidad de hacer preguntas y aprender más sobre los hallazgos. La sesión se llevará a cabo el martes 12 de julio de 2022, de las 6:00 p.m. a las 7:00 p.m. Se requiere registro. El espacio es limitado. Regístrese en <https://bit.ly/OrangeCountyEASmailMtg>.



¿Por qué asistir? Así podrás:

- Conocer los 7 hallazgos y recomendaciones clave de la evaluación a la exposición a PFAS
- Escuchar las recomendaciones para su comunidad
- Hacer preguntas y hablar con los investigadores
- Obtener información para compartir con tu comunidad

Para Información General sobre PFAS:

Visita: www.atsdr.cdc.gov/pfas o escríbanos a pfas@cdc.gov o llame al 1-800-CDC-INFO



¿Tienes más preguntas?

Personal de la ATSDR estará organizando pequeñas reuniones en persona, y en línea, para responder preguntas.

En persona:
 Ubicación: Newburgh Free Library
 125 Grand Street, Newburgh, NY 12550
 13 de julio, de 12-2pm y de 3-5pm
 14 de julio, de 12-2pm y de 3-5pm
En línea (vía internet)
 18 de julio, de 11am - 12pm

Aquellos interesados en participar pueden registrarse aquí:
<https://bit.ly/OrangeCountyEASmailMtg>

BOARD & COMMISSION VACANCY REMINDERS

Apply to
Serve on the



CITIZENS ADVISORY COMMITTEE

SEVEN MEMBERS

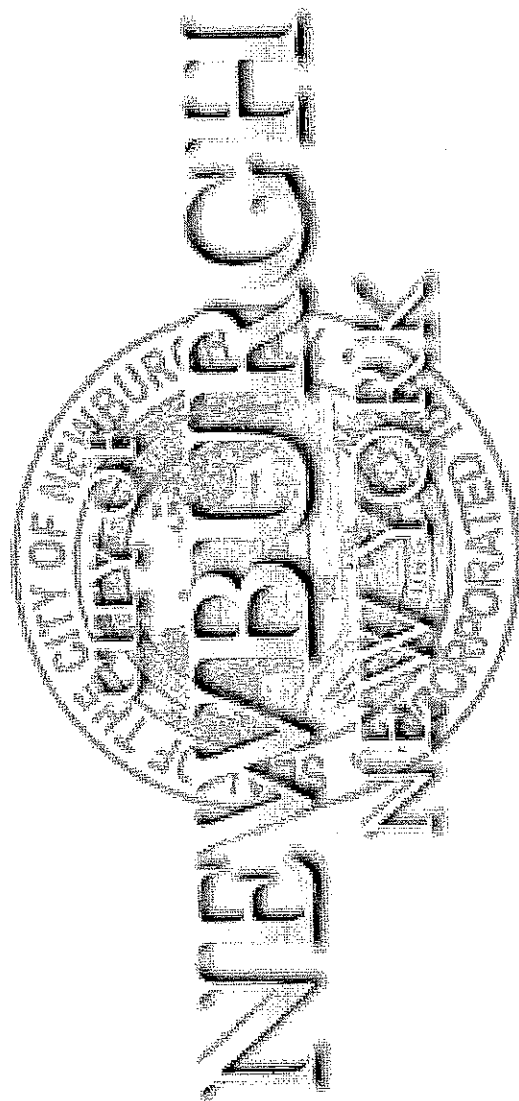
- 1 from each Ward
- 3 residents At-Large

APPLY ONLINE ON THE CITY WEBSITE
OR SUBMIT A COMPLETED APPLICATION
AT CITY HALL, 88 BROADWAY



CITY OF NEWBURGH SEEKS

MEMBER FOR BOARD OF ELECTRICAL EXAMINERS



PRESENTATIONS

Local Law authorizing Videoconferencing for City of Newburgh Public Bodies

Mayor Harvey called for a public hearing that was advertised for this meeting to receive public comment on a Local Law adding Section 20-1.2 entitled "Videoconferencing" to Chapter 20 of the Code of Ordinances of the City of Newburgh.

Jewel Martin, Homeless, said that when far away or at home she can't see their reactions. She understood it during COVID or when there is an emergency but they are public figures so they should be present.

Michelle Basch, City of Newburgh asked for an explanation on what this is about.

Michelle Kelson, Corporation Counsel explained that this local law was introduced at the June Council meeting and Work Session where the resolution scheduling this Public Hearing was adopted by Council. As some may know, in the new State Budget for 2022-2023, there was an amendment made to the Public Officers Law Section that provides for the Open Meetings Law. It provides a new subsection that authorizes public bodies to meet by videoconferencing under certain circumstances. The easiest way to explain it is to compare the type of hybrid meetings that the City Council has currently been holding where some members are present and some are seen through videoconferencing and the members of the public can attend in the Chamber in person or participate over the videoconferencing platform. Prior to the COVID Pandemic, videoconferencing was authorized under the Open Meetings Law only where members of the public could attend where the meeting was being held in person or where the members of Board was located and videoconferencing. During the Pandemic it became clear that it was not appropriate for health related reasons to have the public attend a meeting where a member of that public body might be exposed to or suffering the effects of COVID. The Legislature created a new section of the Public Officers Law that allows videoconferencing under specialized circumstances which are enumerated in the Local Law which include health emergencies, sickness, death in the immediate family and work related issues that may prevent a member of the public body from attending a meeting in person. In order to access this particular provision of videoconferencing, a quorum of the public body must meet in person so for the City Council, four members must always be present in person to hold a meeting and then up to three members could videoconference if they meet the emergency criteria set forth in the Local Law. That criteria was published in the Agenda at the Work Session and Council Meetings last month as well as the Work Session this month and for tonight's meeting. Those individual members of the public body who are attending by videoconferencing have to be seen and heard by the members of the public and the public has to be able to see and participate in the meeting. It is very similar to how we have been holding hybrid meetings now while the State of New York is still under an Executive Order COVID State of Emergency but if and when that expires and is not further extended, all public bodies in the State of New York will be able to pass their own Local Law to enact this videoconferencing provision for their local governing bodies subject to the Open Meetings Law. This Local Law will apply to the City Council, Land Use Boards and any other City public body that is subject to the Open Meetings Law. In order to enact a Local Law, the governing body must hold a public hearing, which we are doing tonight,

and then the Council can adopt it and it will go into effect when the Executive Orders signed by Governor Hochul expire and are not further extended.

This particular provision of the Open Meetings Law has a sunset provision that will expire sometime in 2024 if it is not extended by the Legislature.

Sertaira Boyd, Prospect Street said that she is for this because it sets the tone of transparency and accountability. If it is something that will elevate our community with knowledge, then it is just a matter of everyone saying yes and waiting for the Governor.

There being no one else wishing to speak this public hearing was closed.

COMMENTS FROM THE PUBLIC REGARDING AGENDA AND GENERAL MATTERS OF CITY BUSINESS

Mayor Harvey asked City Manager, Todd Venning to speak in regard to the horrific situation with the fire at 68 Lander Street.

City Manager, Todd Venning said specifically relating to the fire at 68 Lander Street that he met with the Fire Chief the day after the fire took place and they reviewed the police and fire reports together and determined that there were a number of circumstances that happened all together which resulted in the outcome that we had. There was a delayed 911 call, which caused the fire to spread rapidly before our guys arrived on the scene. Our Fire Department arrived on the scene within one minute of the fire starting and within one minute, the fire was apparently so robust that a male had jumped from the third story window upon arrival. We later learned that by that same time the staircase that was serving as the only exit, if you exclude windows, to the third floor occupants had burned away before our men arrived. There was an incident with a good Samaritan who lived next door, who was also a New York City Firefighter, who attempted a rescue before our Firefighters arrived on the scene and that staircase and exit was already burned away. One of the occupants apparently added water to a grease fire, which caused the fire to grow more deadly. There was also inability for the Ladder Truck to assist with the rescue from the third story window due to wires in the way. Also, other issues including when one of the occupants escaped, the door was left open which caused the fire to spread more rapidly and there was a trailer parked on one of the streets that was blocking the Engine. This information is contained in the Fire and Police Reports and it is also based on his discussions with the Fire Chief so there were multiple things that happened at this fire that typically don't occur in one incident which resulted in the loss of life. In his conversations with public safety and going through the files, it was expressed to him that so many different things went wrong so it would be difficult to suggest that there was anything the Fire Department could have done to prevent this. He added for the people who are here for South Street that we are here today to take down your concerns and he will be meeting with the Commissioner and have discussions with the Council to modify that plan appropriately. Lastly, he hopes he answered any question regarding parking in his Update.

Mayor Harvey said to please be respectful. Please hold the vulgarity and curse words, which they are already hearing he believes from our Firefighters, and if it continues, they

will be escorted out of the building. Please be professional and respectful.

Jemika Hall, Marc's Friends Support Group said she started this program because her seventeen year old was killed by senseless gun violence. We got sponsored by the City for our Event and she is thankful for everyone who was on board that got them approved and the Event went well. Everything they do is to raise funds but this Event was not a fundraiser. We sold t-shirts and vendor spaces to help pay for the Event and several Council members gave money towards it but this is a new Organization and we were not clear on what we were supposed to do. We found out that certain things needed to be turned in ahead of time so we had to scramble to get things done. She feels that the ball was dropped on this and she is not mad at anyone because the Event still turned out ok but it was not advertised on the City of Newburgh's Website Page. Two Police Officers showed up for the Event but there was a lot of miscommunication. Luckily, Officer Peterson was there as we are trying to build relationships in the community and with the kids but there was not enough police there and she cannot prevent or deter crime. When smaller organizations plan an Event please stop expecting them to know the routine. When she spoke with the Comptroller she was told how things are done but you just held an Event last June and it was a beautiful Event but everything covered in that Event we were told was not covered in ours. Also, someone made it seem like her Event was a fundraiser to raise money off of the City which is not true. We were raising money to have the Event and to make it nice for the people. The food and everything was free and everyone could participate but t-shirts were sold to anyone who wanted to help raise funds for the Event.

Mariah, Vice President of Marc's Friends Support Group said that she has known Councilmembers Shakur, Grice and Mayor Harvey since she was young and she learned from them how to be proactive, attentive, relentless and resilient with process. It's hard to look up to them when the Council as a unit can't come out to support certain events. She is requesting more presence from the Council because that's our expectation. It's hard for us to preach to the kids to vote for you when you are not setting an example. That Event was everything the City needed and more but the ball was dropped by the City.

Ahmad, City of Newburgh, Vice President of Melanin Unchained which is a local nonprofit based here in Newburgh, New York said he wanted to show his support for Marc's Friends Support Group so he was also there that Sunday helping out. There was a lot of miscommunication so he tried to help make the Event go as well as it possibly could. He told the Council that people vote for them to be on these seats and as public servants, it is their job to do public service so we should see them as a unit at particular events. Especially events like this one where we are trying to raise awareness about gun violence and bullying. We want to build relationships with our Council, Police and Firefighters because we want this City to thrive so he hopes that in the future we can keep working on that.

Sue Young, Design by Sue, 128 Liberty Street said that she is here again to complain about Liberty Street. She is totally opposed to the parking meters on Liberty and Grand Street because that area has never had meters and they should not have them now. Once again, maybe she missed it, but she didn't know this was happening when all of a sudden a kiosk shows up in front of her business. She lives there and works there and last year she complained about the construction that stopped our businesses. At that time, she and the other businesses were promised that they would look into some kind of relief for their loss of income but nothing ever came of that. Now you are asking our customers to pay a fee to park and to try to figure out that kiosk which many are not going to understand. Please

reconsider this pay for parking on Liberty and Grand because what is going to happen is that a number of people will double park and it's already a dangerous block. As a resident, it's going to cost her thirty dollars a week to park on her own street in front of her own home in her security system area. She needs to know that her car and her daughter's car is safe and she can't afford another thirty dollars a week to park her cars on the street. Discounts were mentioned for business owners for their customers but we are already overpaying in taxes. Her trash bill is four times more than anyone else because she has a commercial front and she is zoned for two residents upstairs so she is already paying through the nose on taxes and she doesn't need to pay more for people to come into her businesses. Why do we have to increase the parking meters? On Broadway and the Waterfront it's fine because those people are coming from outside of the City but the people who support her are City of Newburgh residents so don't tax them additionally. Please reconsider the parking meters in that east end section. Do not do that to us.

Carla Johnson, 52 S. Miller Street said that putting parking meters there is useless because the roads are terrible so fix the roads before charging for parking. In regard to housing, she has noticed a lot of people being evicted illegally. Mr. Jackson at Newburgh Section 8 should get in touch with Code Compliance because many landlords are not living up to their contracts. How can landlords evict tenants when they are on Social Services or Section 8 and they are being rented without rental licenses. Isn't that against the law somewhere? They are evicting people and raising the rents so nobody can afford to live in this City anymore. We would like to stay here and not have live somewhere else. She gave a shout out to the Fire Department.

Sertaira Boyd, City of Newburgh said that as a PCRAM member she wanted to thank everyone involved with the process of the Jump Into June Event and they would like to make this an annual event. As a resident, she noted that she is the Captain of her block and they implemented what the Council asked them to do. They have had some meetings and she gave the Council a letter tonight regarding a Petition they will receive asking for a One Way on Prospect Street from Gidney to Third. There was an accident there today and on July 6th so they are having accidents almost once a week now. We also want No Parking at the corners because of blind spots and ridges so that when people are texting and flying down the street the cars won't get sideswiped. In this letter, we are asking for a One Way starting from Gidney and Prospect to Third. We are taking back our block. This is not a hard demand and it will alleviate many issues. We had a had accident today on Broadway so we are trying to make our block safe.

Rufus Monk, City of Newburgh thanked everyone for sponsoring his program and thanked the Council for all of the hard work they have been doing.

James Benedict, Texas, said he is here because his mother was involved in the fire at 68 Lander Street. Why were there only seven Firefighters on the scene? Why would that be allowed? There was a manpower issue. Why only seven? He was born and raised here and it makes him feel disgusted that this was allowed to happen to his mother. He thanked the firefighters for what they were able to do for his family.

Justin Benedict said he was residing at 68 Lander Street. It was a tragic situation and he is not holding anyone responsible but please listen to what the Fire Department has to say and take it in to consideration. They did their best and he appreciates everything they did.

He told the Council that they would want the Fire Department to do the best they could for them in that circumstance. He lost his mother and he could have lost his life if not for the Firefighters so please take what they have to say into consideration.

Nick Bedetti, New Windsor, President of the City of Newburgh Firefighters Union said that in January when the idea of reducing our daily staffing minimum from ten to seven came up we told the City that it was bad idea. This Union provided several studies from organizations specifically addressing the importance of manpower in the fire service. At January's Council meeting, we begged you to reconsider the staffing change that came from the City Manager. We asked all of you, several times, to come to the Fire Department to see what we do. We told you that a staffing change would increase property loss and possibly a life and exactly six months to the day of this change our worst fears became a reality. At approximately 10:48 on June 15th I was working on Truck One and we were dispatched to a kitchen fire at 68 Lander Street. With heavy fire throughout the building and water coming from the west end of the City four minutes away there was no way to gain access to the reported victim trapped on the third floor. If our staffing levels were at ten, Engine One at our Grand Street Firehouse would have been staffed and on scene in one minute with water that we needed possibly giving us the opportunity to make our way to the third floor and that trapped victim. This isn't the movies. This isn't Chicago Fire. We can't just run into a building filled with smoke and fire. There are strategies and tactics to everything we do in order to have a successful outcome. The City of Poughkeepsie is similar in size and demographics and their Fire Department's daily staffing is thirteen with three pumpers and two ladder trucks. In Newburgh, we have one pumper and one ladder truck with seven. In the fire service, you can't do more with less. You only do less with less. This department is struggling in every aspect of public safety and it's not fair to the wonderful citizens of this City and it's not fair to your employees. These guys have to deal with this for the rest of their lives so tonight I demand you instruct the City Manager to reinstate our ten man minimum giving us Engine One back. Give us the tools and give us the personnel to do our job effectively.

Tim Dexter, 364 Ann Street (comments attached)

I am here to speak in front of the council, yet again, to express my dissatisfaction with the cuts to the daily staffing of the fire department which saw the minimum drop from ten to seven.

On January 10th I spoke before this council about how the staffing cuts were dangerous and how it reduces our ability to fight fires. I told you that these levels will make us choose being able to rescue or putting the fire out because we no longer can do both. And guess what happened?

On June 15th, Newburgh Firefighters responded to a reported structure fire on Lander St. In this scenario, before city refused to regularly crew Engine 1, there would have been one ladder for rescue and one firefighting, hose-carrying engine on scene within one minute. Instead, it played out like this:

An undermanned crew of three from the single ladder truck— which carries NO WATER as its role is for rescue— scrambled, in a blazing fire, to attempt to rescue a victim trapped on the top floor as well as treat a victim who had jumped from the same place. The crew tried a ground ladder but were unable to reach the victim because the out-of-control fire was simply burning too hot and too fast. During the four minutes the ladder crew waited for Engine 3 to arrive from the west end, the fire grew exponentially. They anxiously waited four minutes without ANY water, without ANY WAY to stop the fire from spreading. The second engine to arrive on scene, which came from Stewart Airport, took 16 minutes. The second engine from Newburgh took 26 minutes as its crew had to be recalled from home, in the middle of the night.

If Engine 1 was in service, they would have arrived at the same time as the Ladder and would have begun suppressing the fire with water! The second Engine then would have been there in four minutes. Rapid application of water on the seat of the fire is what makes all the difference.

With 21 years of experience in fire service, it is my professional opinion that if Engine 1 was in service on June 15th that fire would have not had the opportunity to grow in size or to such intensity, nor would it have spread to the neighboring buildings. It would not have gotten to the third floor or ravaged the second floor. The quick application of water would have allowed the Ladder crew to enter the third floor and extricate the victim. I cannot wrap my head around why the city manager, who has no firefighting experience refuses to listen to and trust our

professional firefighting experience. I do not understand how the mayor, who has no firefighting experience, assures the public that layoffs, staffing shortages, and browning out Engine 1 are not to blame for the tragic turn this fire took.

But you don't have to take my word for it, because— according to the mayor— men lie, women lie, but the numbers don't lie, so let's look at some numbers: In the first six months of this year alone there have been 26 building fires; that's 1 per week. There have been seven multiple alarm fires compared to eight in all of 2021. There were 55 times when we were called to an emergency but were delayed because we have already committed our resources to another call. We've had to hire Engine 1 back 42 times which meant the city was without fire protection until it was staffed, and as we see from this fire, staffing it can take nearly a half hour. In the fire world, that is an eternity.

The city budgeted \$1.36 million for overtime but, to date, has only spent roughly \$368k leaving nearly one million dollars left in the budget to staff Engine 1 for the rest of the year.

Unfortunately, what's more likely to happen is the city manager will ignore our pleas yet again, keep the shifts understaffed, cross his fingers that another tragic fire doesn't occur, and then pat himself on the back next year when he shows how successful he was cutting the overtime budget within the fire department. But is it really a success if people die? Or are injured? Or their property is needlessly destroyed?

At a previous meeting Mayor Harvey suggested shutting down a company but said, "if it's too much of a risk, and it defies the public trust, then we decide that we are not going to go with that." I'm here to tell you this fire was a prime example that it is too much of a risk and it does indeed defy the public trust, so I call on you to restore staffing levels and prevent another tragedy like this from happening again.

(July 5th, 2018, council work session is where the mayor said that)

Re: Meeting minutes from 7/11/22

Vitek, Lorene <LVitek@cityofnewburgh-ny.gov>

Tue 7/12/2022 9:19 AM

To: tdexter@dexterdevelopment.com <tdexter@dexterdevelopment.com>

Received - Thanks Timothy.

From: tdexter@dexterdevelopment.com <tdexter@dexterdevelopment.com>

Sent: Monday, July 11, 2022 9:35 PM

To: Vitek, Lorene <LVitek@cityofnewburgh-ny.gov>

Subject: Meeting minutes from 7/11/22

Lorene,

Attached is a copy of my speech that I read at tonight's council meeting. If you would be so kind as to add this to the minutes so that it is a public record.

Thanks

Timothy Dexter

Scott Miles, Beacon Street offered his condolences to the sons of the woman who died. No one deserves to die like that all because the City wants to save money that it can afford to spend. He hopes that the DA sees through this. He told the City of Newburgh residents who are living in complexes that if they have a fire like that at night then someone is in trouble. *"Back in January when I spoke I told you guys that if there was a death it would be an unjustifiable homicide. That's why none of you can justify it"*. He told the City residents to speak to their local representative and have the City Manager sit down with our Chief to work out something that works for everyone. He told the Council that they all have blood on their hands.

Mayor Harvey told Mr. Miles that he crossed a line and he was escorted out of the meeting.

Jewel Martin, Homeless, said someone commented that they want the Police and Fire Departments to support them but she doesn't see residents coming out in behalf of them unless it's a situation like this. She had support from the Police Department today because someone was threatening her life. She came to the Council and told them that she was homeless and she didn't feel safe. Stop this.

A City of Newburgh resident, 78 Lander Street said that he was home enjoying a beautiful night last month when he heard screams of distress. He went outside to see people trapped and smoke coming out of the building. He is a Firefighter in New York City and many people don't understand the process of what it takes unless you are in those shoes. When he goes into a burning building, he has a troop behind him in New York City and with that manpower he knows he can go further and deeper to insure people could get out safe or have a better chance to survive. He came to the City of Newburgh because this City has a lot of great potential but it could do better. He is not here to point fingers only to speak facts. As a resident and a victim, because he is now displaced, he is blessed to have had the Firefighters come but not everyone on that block was blessed and the reason why is numbers. We have to try to do better and increase manpower. Without people behind you, you cannot do your job.

Dante Davis, 34 Liberty Street said he is a homeowner and he feels that he should not be subjected to being barricaded in his home. There are barricades in front of his house that he pays taxes for which he feels is injustice. They say they are doing this for the small businesses but they are blocking parking spots so people can't even get into the businesses and his wife shouldn't have to park two blocks away from their house. If the block is unsafe, why would she have to park two blocks away and then walk home? That has to be moved immediately and you need to do more for the community. They don't have anything to do with what everyone else is doing so they shouldn't be blocked.

Inta Smith, 202 Lander Street, said she was a victim of a scam in 2016 by someone from the Church at 241 Liberty Street for stealing donations and not spending the funds on the homeless community. She was homeless a few times and was in an abusive relationship but now she is doing well and wants to donate to the homeless whenever she can.

Richard Fracasse, City of Newburgh said there needs to be a special investigation to find out what went wrong. There is no sense in us trying to kill each other but if we don't sit

together and resolve this someone else is going to die and it may be a fireman. When they go into a building, the truck pulls up with one guy in the truck, one manning the pump and one man takes a hose into a burning building by himself. Would you do that? Sometimes you have to spend the money and no one feels good about what happened. The decisions that were made here resulted in what happened in that house. There are two sides to the story so we have to sit down together or someone else is going to die. That woman burned to death in that house crying for help.

Gabrielle Burton Hill, 76 Leroy Place, told the family of Miss Debra that her words fail in comparison to what they have suffered. She offered her sincere condolences. *"People may forget what you say and people may forget what you do but people will never forget how you make them feel."* Regarding the police perimeter at the corner of Liberty, South and Gidney, that was a horrible feeling. When it first happened, people pulled up to their favorite store or pizzeria to see crime scene tape all over the place. Since then the tape has been removed but the gentleman who spoke about the parking is correct because there should have been more communication with the community. No one should have to walk that far to get to their home and businesses shouldn't have to have their customers walk from around the corner or several blocks away. There should have been room for people to park. We can do better and she is sure that we will.

Pastor McLymore, 136 First Street, Life Restoration Church came to say thank you to the Fire Department because there was an accident on First and Chamber which they responded to quickly. Some street signs were knocked down too, including the one the City dedicated to the Church, but George Garrison and Maurice Williams fixed it right away so he wanted to thank them for that also. There is a lot of graffiti on the Church which he reported it so if we could watch out for that it would be appreciated. We are trying to renovate our buildings and they are destroying them. Lastly, cars are speeding on Fowler Avenue and he knows that Mr. Sklarz is already on that but he is afraid that someone is going to get hurt.

Asia Jones, Lander Street said in regard to the barricade on South and Liberty that she uses the laundromat there and there is no parking. The barricades need to be removed because people are parking around the corner on South Street or Chamber Street to do laundry but she doesn't want to do that. She wants to park in front of the laundromat so she can go do her laundry. A Petition was started to have the barricade removed and they have three hundred and forty two signatures.

Matt Gaiton, 23 Gardner Street said that in 2022 the City budgeted 1.36 million dollars for overtime but to date has only spent roughly \$368,000.00 leaving nearly one million dollars in the budget to staff Engine One for the rest of the year. What is more likely to happen is that the City Manager will ignore our pleas yet again, keep the shifts understaffed, cross his fingers that another tragic fire doesn't occur and then pat himself on the back next year when he shows how successful he was with cutting the overtime budget within the Fire Department. Is it really a success if people die, are injured or if their property is needlessly destroyed? At a previous meeting Mayor Harvey suggested shutting down a company and said if it's too much of a risk and it defies the public trust then we are not going to go with that. This fire was a prime example that it's too much of a risk and does indeed defy the public trust. He called on the Council to restore the staffing levels and prevent another tragedy like this from happening again.

Alberto Gilman, Cornwall, asked about parking meters along the River Road corridor. Are there going to be classes to educate people on managing these systems? Will parking meters be extended all the way up to the west end? Will rates for the meters be released or clarified? He understands there are two types of systems and would like clarification on which system there is.

Courtney Allen, 358 N. Montgomery Street said that the barricades on Liberty Street and South Street are stopping business over there and it's very hard to find parking now. On the parking meters, she is not sure how they are going to affect the residents in that area because it's a residential neighborhood. She agrees with it on Broadway and down at the Waterfront but having residents pay on their block is not right. Tempers and emotions are high right now and she understands that no one wants to have the finger pointed at them but when people are emotional in their jobs we have to be a bit more tolerant. For someone to be escorted out in that manner did not sit well with her. She understands the emotions are running high and they have to make hard decisions but we also have to be human.

Corey Allen, City of Newburgh wanted to speak about the barricades and said he is seeing a pattern here. When everyone runs for Office, we are a majority and the most consistent voting base of all. When those barricades went up on Liberty Street to the Black community it looked predatory, discriminatory and like it was planned to make us uncomfortable. Black people have an uneasy history with the Police so putting them around us is not helpful to us. This is hindering our businesses and he doesn't understand how this could have been seen as a good decision. You are supposed to represent our best interests so until you put yourself in our shoes come talk to us first.

Michelle Basch, business owner and resident said that she does not have an issue with the parking meters on Liberty Street but she would like to know how it works. They are saying that businesses can get a lower rate for their customers but what is it and how does it work. Also, the residents living on that block should be able to apply for a pass for the meter because they live there at least during the night and if they have a business then during business hours. It is good on Broadway because people park there and stay there all the time without paying the meters. She has seen the police presence on Liberty Street talking with people and trying to create an understanding and a conversation with people in the area. Lastly, she understand budgets and when you have buckets for different items and only use one third of what's in that bucket in half a year then you probably won't use it so next year you have to reduce that bucket. Are we trying to reduce the spending for the overtime? If that is the goal then she doesn't understand it because we are playing with safety.

Thomas Dodd, 250 Grand Street offered his condolences to the family who lost a family member and he feels like the Council will be working with the Fire Department to find a solution. His organization helped a family, an employee, buy a home and it was difficult to refurbish but it was an opportunity that a minority family now owns a home, which is a complete game changer for them. They recently had to pull bullets out of their daughter's car and have their grandson sleep at the back of the house because there is violence. He thinks the Council is willing to talk to and hear the community so there can be some fine-tuning done with this system. He thanked the Police Department for what they are doing. It's been a difficult time on many levels but he feels they are listening to the community.

Vernon Smith, 162 Johnson Street, said that he has been a resident of the City of Newburgh since 1970 and he has never seen barricades in this City ever. What is the expected outcome of it all? It looks like they are trying to threaten the people and make them feel uncomfortable. You have to question yourself, are you breaking the law?

Elizabeth Lebron, 284 Liberty Street said that her worst encounter with the Police was when they knocked on her door to tell her that her brother had been shot and that he was in the ICU in critical condition. He had walked into a restaurant during a robbery so they handed his belongings to her in a brown paper bag. She hopes that no one ever has to experience this. When she first heard about the mobile unit she thought it was a terrible thing but did some research. She looked at the pros and cons and it doesn't solve the crime for good but it does disrupt drug traffic. Many people are coming here to buy drugs from outside of Newburgh so this is crime prevention. Street closings are a temporary stopgap so we as residents have to figure out a way to work with the City on how to implement this so they don't feel like they are under attack. Perhaps use this to engage the community in a different way, which is what they are doing now. She noted that her brother survived and he is an active seventy-five year old who joined her and Mayor Harvey this year to clean the streets of Newburgh.

There being no further comments this portion of the meeting was closed.

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA AND GENERAL MATTERS OF CITY BUSINESS

Councilmember Grice thanked everyone for coming out tonight and he offered his condolences to the family who lost a loved one. He noted that he and Councilmember Sofokles will be doing a Love Your Block on Lutheran Street to take care of that area. There are a lot of outsiders coming in to that area so we will be there. He is a third generation City resident and he is everywhere so if you haven't seen him somewhere then just invite him. He is on South Street so there are some adjustments we can make there. The Police Department can go wherever they need to do their work but there are some adjustments we can make and it's really going to take all of us. We have to keep in mind that there are other things that cause the crime that we should be trying to tackle such as housing, jobs and mental health care. On the parking meters, there might be some adjustments that we need to make but he supports them. On the fire, there is a lot of misinformation and lack of information. He has a good relationship with Chief Spinelli and they talk often so he appreciates his collaboration. Staffing and overtime is in the Contract and they are in negotiations now, but we don't get involved in the Contract. There is a Chain of Command so please follow that and if you work with us we are able to help more. The name-calling and bashing does not work with him so let's approach this in a more collaborative way.

Councilmember Martinez also offered her sincere condolences to the family of Debra Benedict. In regard to housing, if anyone is facing eviction please remember that the City of Newburgh passed Good Cause so please call Legal Services of the Hudson Valley at (845)569-9110 or the Hudson Valley Justice Center at (914)308-3490. If you believe that

you are being wrongfully evicted, please call them. For affordable housing the Council has been working on looking for developments. Regarding the parking meters, she spoke with Miss Young and other business owners as well as Ramona who is the Councilmember for Liberty Street and she would like to gather resources for small businesses and perhaps introduce a small business tour in each Ward. She would work with her colleagues and present whatever resources are available to them. She is in support of small business as they suffered greatly during COVID so the discussion on parking meters will continue with updates to follow. With remarks about needles being found, please remember that Councilmember Grice was working on a NARCAN Training which will be on July 25th. On the Mobile Police Station, Liberty Street is in her Ward so she spoke with several groups in Ward One about this and yes nobody can deny that there is a history of police brutality and mistrust between the African-American community and the Police, however, with the barriers the intention was never to make anyone feel unsafe but that was not the outcome. She is hearing that people were made uncomfortable so she had a conversation with the Commissioner about changing where the barriers were. The complaints she was hearing were not about the Police but about no parking. People did not like the crime scene tape so we changed it. She told everyone that she is here for them and she will always put them first so the parking will be changed and they will be following up with the Commissioner.

Councilmember Monteverde thanked everyone who spoke tonight. She also offered her condolences to the Benedict family and said she is glad to see Justin here and out of the Hospital. This is very difficult because a life was lost. Being here on this side of the table and hearing the concerns as a Councilmember she was focused on bringing down the overtime in the Budget which we managed to do looking closely at Police and Fire. When looking at the Budget from the past several years if we had continued with the overtime in both of these departments it would not be sustainable for the taxpayers and City residents so we did what we thought was best at the time to make sure services were still in place and we didn't raise taxes. She is open to looking at this again but we have to do what is right for the entire City. Budget hearings are coming up in September so please come, as they are open to the public. If anyone has a suggestion, she would love to hear it once every department has presented their Budget. On the Liberty Street barricades, she was in on the meetings where people were concerned about the crime and shootings that were going on. She spoke with some of the residents and businesses in that area who were happy to see this because they felt it was making them safer. We can certainly discuss the barricades and scale it down. She thanked everyone again for coming out and said that they always want to hear their thoughts on what is going on in the City.

Councilmember Shakur reached out to the family and said he is down there every day. This is a tragedy but people aren't talking about the conditions of these buildings beforehand with no fire escapes or extinguishers. When he was first elected Newburgh was eighty percent Black and Hispanic but the Fire Department was over seventy percent White and didn't even live here. The only time they come to these meetings is when they are here for their jobs. They don't come here when our kids die or about the housing but they have the nerve to say they feel about this tragedy. They don't care about this community. He added that he was against the barricades because they did it on Juneteenth, which disrespected our community and our ancestors. There are things we have to do in our community, however, to make sure this violence is stopped because our kids are dying and we are the ones going to the funerals and living here every day. They

are not here because of that woman dying or they would live in this community if they cared about it and then maybe they could respond faster. He wants to make a resolution that if any apartment over three floors doesn't have a fire escape then they need a rope ladder and fire extinguishers but don't come here talking about the death of this woman like you care.

Don't put barricades in our community and bring the State Police here like you care because that's not going to stop the drugs in our community. You have to understand what's going on and fight for everything not just the barricades and your jobs. *"Fight for this City. If you are a resident of this City then fight for your City"*.

Councilmember Sklarz told the Benedict family that he can't imagine what they are going through and he is sorry for their loss. It is important to remember that this was a staffing relocation not a staff reduction that occurred back in January. In the past, overtime spending was built into daily coverage and the City and its taxpayers simply cannot sustain overtime that consistently exceeds its budgeted amount. There are ways the Fire Department staffing could have contested the City's decision such as filing a grievance, filing an improper practice charge with PERB or filing a lawsuit but instead they took it to the Media, which he said is not working. They are resolved to trying to control the spending of overtime because it's out of control. He has been on the Council since 2019 and this isn't working because we are talking at each other and not with each other. He knows that they are involved in contract negotiations right now so we really need to sit down and come to something that we can agree to on both sides.

Councilmember Sofokles offered her condolences to the family. Everything Councilmember Sklarz said she agrees with one hundred percent except for the fact that we are not the ones who sit down and negotiate. It is not our job. We are legislators so we vote on different laws. The City Manager, Police Chief and Fire Chief are in charge of staffing and controlling these things and the Unions. She remembers that several years ago the Fire Department did Code Violations which she thought was a great thing but that is not in their Contract anymore. On the parking meters, she told Susan Young that she understands what she is talking about so we are going to have to work on something for the people who live there. She is all for the parking meters on Broadway and at the Waterfront because we need the revenue for the City which doesn't have a large tax base. On the barricades, she remembers fifteen years ago when Pops Paradise was there and there was a Police Substation next to it. Harvey Burger and the laundromat had a group called Brave New Focus which made that neighborhood safe but it's not safe anymore. There has to be a solution so we have to respect what the Police Department is trying to do. It may interfere with people's lives temporarily but think about what it will be in the long run and what it was ten to fifteen years ago. You have to appreciate what they are trying to do and if it doesn't work then maybe they will have to change it.

Mayor Harvey offered his condolences to the Benedict family and told Justin he is glad he made it here tonight for the meeting. As the City Manager mentioned, there were multiple reasons for the human atrocity that took place at 68 Lander Street. The key word here is compromise and coming to a meeting of the minds. The leader of the local Union and Fire Department, Nick, knows this is a contract year and that they are in negotiations and he knows that the Mayor and the City Council are not part of those negotiations. For a Lieutenant to be at a fire where there is a woman in the window screaming for her life to say on video that this is the Mayor's fault is disrespectful, uncalled for and unprofessional. That will not get this Union anywhere to negotiating a fair and equitable Contract. When

we looked at the top fifty earners in the Fire Department in 2021, number one was \$216,000.00, which was paid to a Captain in the Fire Department. The highest paid Captain at the highest level in the City of Newburgh earns \$87,000.00 but that Captain in 2021 earned \$216,800.00. The second highest in 2021 was a Firefighter and the highest paid Firefighter in the City of Newburgh earns \$72,000.00 but that Firefighter took home \$176,000.00. Men lie, women lie, numbers don't lie. That person made \$104,000.00 in overtime when the median income in the City of Newburgh is \$35,000.00. When you look at the top earning Firefighters for 2021, they are well into the high six figure salaries. There has to be a happy medium and a compromise because there is no way the City of Newburgh can sustain that level of overtime and put it on the taxpayers who live here. He added that Public safety is our number one priority so we need compromise and because they are in Contract negotiations the City Manager has offered to increase the staffing if they are saying this was a manpower issue. If the Union for the Fire Department will allow the City Manager to hire part-time Firefighters and or Volunteers because we know that six of our Firefighters are volunteers in Vails Gate including the President of this Union. Many of our Firefighters volunteer in the Towns of New Windsor, Vails Gate, Cronomer Valley, Cornwall and other Fire Departments outside of the City of Newburgh. They volunteer in those Towns but we pay them for fire service in the City of Newburgh and that is a fact. There are multiple Firefighters in our City that get paid and are trained for our City who volunteer in other Towns. We are here to help as a Council because we do believe that we want to increase the staffing but the leadership in that Union has to be willing to make compromises with our City Manager so we can hire more Firefighters especially if they would allow us to hire part-time or volunteer Firefighters. He has five hundred signatures from single mothers in this City who are willing to let their eighteen to twenty-five year old sons be volunteer Firefighters in the City of Newburgh with the opportunity to become Firefighters full-time.

There being no further comments this portion of the meeting was closed.

CITY MANAGER'S REPORT

Resolution No. 157 - 2022 - Proposal with ARCADIS Construction Inspection North Interceptor Sewer Project

Councilman Grice moved and Giselle Martinez seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 158 - 2022 - 123 Grand Street UST Removal Change Order No. 1 Papitto Construction

Councilman Shakur moved and Giselle Martinez seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 159 - 2022 - 123 Grand Street UST Removal Change Order No. 2 Papitto Construction

Councilwoman Sofokles moved and Councilman Grice seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 160 - 2022 - Proposal with Gerard Associates Professional Services 123 Grand Street Boiler Replacement Project

Giselle Martinez moved and Councilman Shakur seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 161 - 2022 - PIN#8761.57 Lake Street Bridge (Route 32) Change Order No.1 with McNamee Construction

Councilman Shakur moved and Councilman Grice seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 162 - 2022 - RAFTELIS Agreement Stormwater User Fee Study Extension of Time

Councilwoman Sofokles moved and Councilman Shakur seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 163 - 2022 - Amended Bond Resolution North Interceptor Sewer LTCP Project

Councilman Sklarz moved and Councilman Shakur seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 164 - 2022 - Downing Pond Outlet and Third Street Stormsewer LTCP Project - Change Order No. 3G TAM Enterprises

Councilwoman Sofokles moved and Councilman Grice seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 165 - 2022 - Agreement with ARCADIS for Construction Inspection North Water Street Sewer Separation LTCP Project

Councilman Shakur moved and Councilwoman Sofokles seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 166 - 2022 - Contract with ClearGov, Inc.

Councilman Shakur moved and Councilman Grice seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7
Adopted

Resolution No. 167 - 2022 - Amend 2022 Personnel Budget of Finance Department

Councilwoman Sofokles moved and Councilman Sklarz seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 168 - 2022 - Water Fund Emergency Contingency Budget transfer

Councilwoman Sofokles moved and Councilman Shakur seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 169 - 2022 - 42 William Street - Release of Restrictive Covenants

Councilwoman Sofokles moved and Councilman Grice seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 170 - 2022 - 42 William Street - Satisfaction of Mortgage

Councilwoman Sofokles moved and Councilman Shakur seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 171 - 2022 - 246 Liberty Street, et al - Satisfaction of Mortgage

Councilwoman Sofokles moved and Councilman Grice seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 172 - 2022 - 842 Broadway - Site Development Agreement

Councilman Sklarz moved and Councilwoman Sofokles seconded.

Ayes: Grice, Martinez, Monteverde, Sklarz, Sofokles, Harvey - 6

Nays: Shakur-1

Adopted

Resolution No. 173 - 2022 - 35 Oak Street - Release of Restrictive Covenants

Councilwoman Sofokles moved and Councilman Shakur seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 174 - 2022 - Agreement with Best Resources Center, Inc for Youth Coordinator Consulting under the NPS AACR Grant Project

Councilwoman Sofokles moved and Councilman Grice seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 175 - 2022 - Subrecipient Agreement to Choice Films for a Film and Television Training Program for Youth and Young Adult Residents of the City of Newburgh

Councilmember Shakur wants to make sure that the young people in our community are aware of this. Every time these jobs come here it seems like our community falls through the cracks.

Mayor Harvey said there was a situation a little over a year ago where the Mayor was

accused of participating in a gangster rap video. We did a Press Conference in front of Blacc Vanilla on South Street and we had several men from the community and the Council speaking to these young men that were in the Rap Video on South Street hack in April, 2021 to make them aware of this opportunity. Some of our kids from the community were involved but we would like to see more so we need to get the word out so our young people can take advantage of this so they can earn and learn at the same time.

Councilman Sklarz moved and Councilwoman Sofokles seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 176 - 2022 - Apply for and Accept if Awarded a Homes and Community Renewal New York Main Street Grant of Behalf of Genesis Global Holdings

Giselle Martinez moved and Councilman Grice seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 177 - 2022 - Axon Entp. Body Worn Cameras

Mayor Harvey thanked the City Manager, Commissioner and Police team. They did an amazing job presenting on what this could mean for the City. He had some time to look at the numbers and the data and he is impressed that it will give the City cost savings and they will also be responsible for repairing things immediately with no additional cost to the City. One of the things we've learned about this Program is that it protects the public and the Officers because stories grow legs and get exaggerated. If we can make this a more efficient Program then it protects everyone.

Councilwoman Sofokles moved and Councilman Sklarz seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 178 - 2022 - Donation of New Podium to Police Dept.

Councilwoman Sofokles moved and Councilman Sklarz seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 179 - 2022 - SEDAC - policy and procedure

Councilman Grice moved and Councilwoman Sofokles seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 180 - 2022 - To Authorize the Settlement of Litigation Regarding the Foreclosure of Tax Liens in Rem for 2018 of 76 Robinson Avenue

Councilwoman Sofokles moved and Councilwoman Monteverde seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

Resolution No. 181 - 2022 - Authorizing a Payment of Claim with Progressive Specialty Insurance Company

Councilman Shakur moved and Councilwoman Sofokles seconded.

Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Sofokles, Harvey - 7

Adopted

NEW BUSINESS

Councilmember Grice said he spoke with Planning & Development about having an organization to help our residents with RFP's because some of them might not understand the full process so he would like to put a pause on RFP's until we can get that in. Also for food vendors to work with us to figure out places they can be other than Broadway. Lastly, he has been working with Chief Spinelli and wanted to give him a special shout out.

There being no further old business to discuss this portion of the meeting was closed.

OLD BUSINESS

Councilmember Shakur said that the City Council has been sponsoring different events and groups this year with no set policy so we need a policy put in place moving forward on what we can do, what they do and how the process works. This is our first time doing this so we need to know how this sponsorship works. Let's put together a process.

Mayor Harvey told Councilmember Shakur that they can discuss it at the next Work Session. The police barrier issues on South Street also needs to be discussed. If there is a way to modify the program and possibly remove them then we need to discuss that. He, himself, the Councilmembers, the Chief and Officers spent five to six hours walking up and down Liberty and South up to Clinton and Gidney talking to the residents about what was coming weeks before it happened. Councilmember Martinez was our lead person because this is her Ward and the way the Council looked at this was that it was a way to improve Police and community relationships. We didn't think there would be any issue with the African American community but he understands what people are saying so it's worth a serious discussion on how we can modify and make compromises so we can continue the Police and community relationships. We have heard the voices of the people so it is important to have a compromise on that.

Councilmember Grice said one of the things as a Council that we don't do well is our old business and new business but this is when we talk. Do we have to wait until the next Council session to make some changes there?

City Manager, Todd Venning said that he and the Commissioner are meeting tomorrow on some modifications. As several people have mentioned, many modifications have already been made so with today's comments we will meet tomorrow to make some modifications and we will let the Council know what those are to make sure we have everyone's approval on that.

Councilmember Martinez said she is the Ward representative for Ward One and she had received several calls and emails from neighbors on Liberty Street with concerns about what they felt were illegal drug sales and safety concerns for the children. She went on a ride-a-long with Councilmembers Shakur, Grice and the Commissioner one night and saw what they thought was an open drug deal so her thing is that she wants to be tough on crime and she wants people to be safe. It's a hard line to walk because we obviously don't want people to feel over policed but we also have to tackle gun violence and drug abuse. She understands that marijuana is legalized so she doesn't care if people are on their front stoop smoking, listening to music and having a good time because they live there and that is their right. What she has a problem with is people lacing drugs with fentanyl and killing people because we have a large opioid crisis in this County, which is why we need NARCAN training because we want to prevent this. She does believe we need certain alternatives for policing because there is a burden on our Police Department as they are doing things that are not in their job description. They are doing things that should be done by a Caseworker or Mental Health worker. She supports our Police Departments efforts to building communications with our residents but many people are afraid. If there was any type of police brutality or negative interaction, then go to PCRAB because she will support anything that has to do with protecting our residents. She pointed out, however, that our Commissioner and Chief have been very active in the community, specifically in Ward One. They have been trying their best to talk with residents and get to know them so the intention when we did the walkthrough for the Mobile Police Station was not to make anyone uncomfortable but to better the relationships. There is a difference between intention and outcome. Our intentions were not to harm anyone or make anyone feel like they were being threatened but she is hearing that they did feel hurt and threatened. They are going to sit down with the Commissioner, move forward and see about making some changes. She and Councilmember Grice spoke with the businesses and they talked about how this was going to affect them so the first thing the Commissioner did was remove the two barriers in front of the businesses and now we are being told that's not enough so let's sit back down and remove the other barriers that are making people feel concerned. That is what communication is about. She doesn't like false narratives of people thinking that they wake up every day trying to harass the residents because that is not what they are here for. We are here to better those relationships. We are taking the steps to reduce those responsibilities on our Police Officers so they can focus on their job. They can't prevent the crime but they are there to try to help our community. We want to lower gun violence and reduce the drug abuse, which we can do by providing people with resources so we are trying to increase housing to help people stay in Newburgh and bring them jobs. These are long-term goals to reduce the crime statistics and we are going to bring changes forward so please don't spread any misinformation on Social Media.

Councilmember Shakur added that if anyone in this City knows the relationship he has had with this Police Department, he has been working the hardest to build relationships. As a father who lost a child to the Police, he is working the hardest to make sure this doesn't happen to anyone else. This all started with a couple of phone calls but South Street has been begging forever for police protection. We want service and protection not occupation because there are barriers there that are not doing anything but disrupting the businesses there. If you want to stop drugs then put a Patrolman there. What we witnessed that night was six people on South Street and one of them was reaching into a car but he was probably handing someone some Weed or something because a drug transaction is when their kids come here to buy drugs and pull off. A drug addict doesn't sit around in the car.

What could have been happening when we pulled up in an SUV with tinted windows is that they thought someone was coming to harm them so they could have been reaching for something else. Know the streets that you are trying to protect because I have been on those streets forever. They did it on Juneteenth, which disrespected our community and our ancestors.

There being no further old business to discuss this portion of the meeting was closed.

FURTHER COMMENTS FROM THE COUNCIL

Councilmember Grice said they notice who comes to the meetings and who stays and he is always out in the community. He is working with Team Newburgh on the NARCON training for July 25th and we can have thirty people so you do have to register ahead of time. We are going to give each Councilmember a red box to work with community members to put their needles in. We all know there are problems but what are the solutions? Every Saturday from 12:00 to 3:00 at Masterson Lake there is a Fishing Program for the children. He wanted to repeat some of the things he said to the Fire Department. Please work with your Fire Chief because he is a smart man and he knows what he is doing. We do have some good plans and he encouraged the Fire Chief to also work with the City Manager. We can do this together but we need to stop with some of the rhetoric. Let's sit down to figure this out and let cooler heads prevail.

Councilmember Martinez said the phone number to call for fire victims is 1-800-831-0927 for the American Red Cross. She and Councilmember Grice have been speaking with John Vale from the American Red Cross and what they would like to plan is some community events where we provide residents nylon ladders, fire extinguishers and fire escape plans for people who are living in buildings that don't have sprinklers or fire escapes. We don't want to waste time and we want to provide some of these resources as soon as we can. On the Mobile Police Station, she asked the Commissioner to provide some of the data to increase transparency. He has been working with us to provide that data as well as areas he is targeting and the results.

Councilmember Monteverde said it has been a long and intense night but she is glad that we heard from the community and that they shared their thoughts with us. She mentioned that the Budget hearings are coming up so if you want to know more about that the schedule it will be posted on the website. She asked about the schedule for the Clean Sweep Program. How many times during the week is that happening?

George Garrison, Public Works Superintendent said it is every day Monday through Friday and it is throughout the whole City.

Councilmember Monteverde continued that she was looking at the old parking meter presentation from 2021 and the maps are there but they are not very clear about where exactly everything is going to happen. When this starts, she hopes we can give the community plenty of time to adjust to it because it will be a major change and the businesses have a lot of questions on how this is going to work. She used the passport and downloaded it on her phone, which was very easy, but some people are challenged with apps and phones so she hopes there will be clear instructions on how to do it. Perhaps

some sort of training so people can understand. This will bring in revenue that will help our City. On Thursday, the 14th they will be doing a walk through with the PFAS group from the Albany Health Department and anyone interested is welcome to join.

Councilmember Shakur thanked everyone for coming because he likes to hear community participation on how to fix our community. We are working every day and we might argue but we look at the information and vote how we feel. He is looking for solutions not accusations because he is tired of going to our children's funerals and people losing their homes. We are all fighting about the same things so if you love this City then let's fix it. We need to talk to each other not at each other. Two of his brothers were Firemen so he wants this to be the best Fire Department in the Valley and the best City in the Valley but we can't do it by arguing and the decisions we make now will affect the future of our children. If you care about this City, please come out because he wants to hear your sides and then we can come to the middle.

Councilmember Sklarz wished everyone a good night.

Councilmember Sofokles said it has been an interesting evening. Her Ward has different issues than some of the others as hers are mostly quality of life issues but she has a person on every street who she consults with regularly to find out what is going on in their neighborhoods. You have to communicate with the residents of the City and she appreciates Councilmember Martinez comments because she seems to have her hands on the pulse of everything that is going on in her Ward. She added that they are working on the Youngblood street naming and will try to get it on for the next Agenda.

Mayor Harvey thanked everyone and the Firefighters for coming out tonight showing unity because our Fire Department is the best. These men are experts at what they do and they have well trained staff with a rapid response team. They are part of our public safety and our Police and Fire Departments are second to none. He said he supports both departments and thinks that compromise is the key so we have to find a happy medium. If manpower is a problem, they are sensitive to that and we have to speak to the Union. He supports Unions and thinks that the leadership has to meet the negotiation team, the City Manager and the Labor Counsel halfway to figure this out. By no means is it expected or tolerated for any personnel to go to the Media and speak about the Mayor, the City Council or the Executive Staff and then expect that negotiations are going to go well or change. You cannot attract bees with vinegar. You cannot go to a fire where there is a screaming woman in the window and say this is the Mayor's fault in front of multiple people when you know that the Mayor is not on the negotiation team and doesn't deal with personnel matters. For a Lieutenant to say this is the Mayor's fault while someone is screaming for their life is unacceptable and it's been duly noted. In addition to that, the Police Department has been cutting down on overtime at the City Manager's request but you do not see the Police Department every time there is a shooting or a murder saying that it's the Mayor's and the City Council's fault. When we see people criticizing the Police Department no one is talking about the shootings on Lander Street when Black lives are supposed to matter. Nobody is talking about that seventeen year old boy who is in Westchester and was on our basketball team who is being told that he may never walk again. Nobody came before this Council and said anything about those shootings on Lander Street, which is a rock throw away from South and Liberty. He waited patiently for someone to come here with a pledge to police their own blocks and communities like the

Black Panther Movement did. Nobody came here and talked about those Black lives that are supposed to matter on Lander Street when that young seventeen year old got shot in his back. He wished everyone a good night.

ADJOURNMENT

There being no further business to come before the Council the meeting adjourned at 10:20 p.m.

**LORENE VITEK
CITY CLERK**

RESOLUTION NO.: 157 - 2022

OF

JULY 11, 2022

**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 NORTH INTERCEPTOR SEWER REPLACEMENT PROJECT OF PHASE III
OF THE COMBINED SEWER OVERFLOW LONG TERM CONTROL PLAN
IN AN AMOUNT NOT TO EXCEED \$2,280,000.00**

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 a Consent Order 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 Long Term Control Plan ("LTCP"); and

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

WHEREAS, by Resolution No. 189-2019 of August 12, 2019, the City Council authorized the City Manager to accept a letter proposal and execute a professional engineering services agreement with Arcadis of New York, Inc. to complete the planning and preliminary engineering for projects included as part of Phase II, III, and IV of the LTCP in an amount not to exceed \$880,000.00; and

WHEREAS, by Resolution No. 113-2020 of May 28, 2020, the City Council authorized the City Manager to accept a letter proposal and execute a professional engineering services agreement with Arcadis of New York, Inc. to complete the design and bid documents for Phase II and III projects of the Long Term Control Plan for the City's Combined Sewer Collection System, including the North Interceptor Improvements Project, in an amount not to exceed \$542,500.00; and

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for construction management and inspection professional engineering services for the North Interceptor Improvements Project; and

WHEREAS, funding for the cost of the services in an amount not to exceed \$2,280,000.00 will be derived from a New York State Department of Environmental Conservation Water Quality Improvements Program grant, Federal earmark grant, New York State Environmental Facilities Corporation Water Infrastructure Improvement Act grant, 2022 BAN funds and an existing grant

and loan from the New York State Environmental Facilities Corporation under project CWSRF#C3-7332-11-01; 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 a professional engineering services agreement with Arcadis of New York, Inc. for construction management and inspection services for the North Interceptor Improvements Project as part of Phase III of the Long Term Control Plan for the City's Combined Sewer Collection System, with other provisions as Corporation Counsel may require, in an amount not to exceed \$2,280,000.00.



Jason Morris, PE
Commissioner of Public Works & City Engineer
City of Newburgh
83 Broadway
Newburgh, New York 12550

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

Date: June 10, 2022
Subject: Proposal for Construction Phase Services
North Interceptor Sewer Replacement

Dear Mr. Morris,

Arcadis of New York, Inc. is pleased to present the City of Newburgh with this proposal for construction phase engineering services for City's important North Interceptor Sewer Replacement Project. For this size of a project, we plan to have a full-time resident engineer with tunneling and sewer construction experience at the project fulltime working out of the field office provided by the contractor. We have included various subconsultants in Minority and Women Owned Business Enterprises (MWBE) to provide a good faith effort to meet funding requirements. Arcadis included a specialty geotechnical subconsultant for monitoring of the tunnelling work as this a significant portion of the project and presents unique risks.

Scope of Services

Task 10 – Construction Administration

Arcadis will perform construction contract administration services based on a single-prime construction contract with an expected duration of 18 months. Arcadis will provide in-house project management to direct and coordinate services to be provided by Arcadis, such as scheduling site visits, quality review of deliverables, communications with City staff, budget management and invoicing.

Arcadis will schedule and attend, in conjunction with the City, the pre-construction conference to discuss general and specific requirements of the Contract Documents. Develop an agenda and create and distribute minutes for this meeting.

Arcadis will review the Contractor's pre-construction submittals including, but not limited to, lists of subcontractors, schedules, schedule of values, and submittal log. Arcadis will review Contractor's submittals during construction; including shop drawings, material and equipment samples, and vendor O&M manuals to determine whether such submittals are in accordance with the Contract Documents. Arcadis will indicate what changes, if any, are necessary for each submittal and review necessary re-submittals until such point as submittals are in conformance with the Contract Documents. Arcadis has included up to two re-submittals in this scope of work. Arcadis will maintain a submittal log describing the current status of Contractors' submittals, as well as maintain records of vendor warranties and one set of approved shop drawings to be turned over to the City at the completion of construction.

Arcadis will review the Contractor's construction progress schedule and provide comments to the Contractor and the City. Arcadis will review and make recommendations to the City for the approval of payment requests. Recommendations for payment will be based on the Contractor's progress to date, and shop drawing and

Mr. Jason Morris, PE
City of Newburgh
June 10, 2022

equipment procurement status. We will prepare and support the City in the negotiation of change orders and in the review of requests for time extensions and of claims, in accordance with the Contract between the City and the Contractor. Preparation of change orders shall include necessary drawing and specification modifications. Arcadis will prepare quarterly M/WBE and EEO reports to be sent to the New York State Environmental Facilities Corporation (NYS EFC) as required for NYS Clean Water State Revolving funding.

Task 11 – Resident Engineer

A Resident Engineer will be on-site full-time throughout an estimated 18 months of fulltime active construction (a total of 3,600 hours has been included for 18 months, with an additional 300 hours for Senior Resident Engineer as needed). Tasks will include the following:

- Assist the City with project coordination as well as notification to and relations with City residents impacted by the work, utility owners, CSX and NYS DOT.
- Provide general inspection services for the work.
- Keep a weekly log, including information on work completed by the Contractor, problems encountered and other relevant information.
- Be available for and log site visits by representatives of the New York State DOT, NYS EFC, and other regulatory agencies.
- Maintain a photo log of the work and verify the correct spare parts are delivered to the City.
- Interpret Contract Documents in the field and discuss field issues with the Contractor.
- Assist in resolving issues that do not require a written RFI or field change request to be submitted by the Contractor.
- Expedite engineering decisions required by the City.
- Maintain working drawings.
- Coordinate construction inspection subcontractors.

Task 12 – Construction Inspection

Arcadis will provide full time inspection services on behalf of the City to assist the Resident Engineer. Arcadis will partner with a M/WBE firm to provide up to 3,400 hours of construction observation by a construction field representative. While inspecting the Work on site, the construction field representative will:

- Observe material and equipment delivered to the site prior to installation;
- Inform the Contractor when the Work being performed does not meet the requirements of the Contract Documents;
- Verify that deficiencies in the Work are corrected and properly documented, and;
- Prepare a daily log summarizing the day's observations. The daily log will include the date, weather conditions, construction Work in progress, size of the work force, equipment utilized, and condition of the Work.

Arcadis will subcontract with a specialty geotechnical firm to monitor the construction of the tunnel and record data pertaining to the drilling operations. The specialty geotechnical subcontractor will be onsite for a total of 130 days based on the schedule provided by the Contractor.

Task 13 Field Resolutions

Arcadis will review, log, and respond to Requests for Information (RFIs), Requests for Field Changes, and Field Changes that are submitted in writing by the Contractor. We will prepare written responses for requests and

Mr. Jason Morris, PE
City of Newburgh
June 10, 2022

prepare supplementary drawings that may be necessary for the interpretation and clarification of the Contract Documents.

Task 14 – Progress Meetings

Attend up to 36 bi-weekly progress meetings with the City, the Contractor and other stakeholders. Arcadis will develop agendas and create and distribute minutes for each progress meetings. Meetings will include a discussion of the work completed in the prior two weeks, the progress anticipated for the upcoming two weeks, the status of RFI's, change orders, and shop drawings. Progress meetings will be attended in person by our Resident Engineer and virtually by our Project Manager and Project Engineer.

Task 15 – Site Visits

Arcadis will make a site periodically by technical staff to observe the progress of the Work. Arcadis will participate in an inspection with the City to determine if the work is substantially complete and assist in determining if the work has been completed in general accordance with the Contract Documents. We will prepare a list of incomplete items (punch list) and obtain a schedule for their completion from the Contractor. Upon receiving written notice from the Contractor that the Work is complete, and a final inspection requested, Arcadis will conduct a final inspection to determine if the completed Work is acceptable.

Task 16 – Construction Closeout

Arcadis will assist the City with document collection for closeout of the project in compliance with requirements of NYS EFC and the other sources of funding for this project. Create as built drawings based upon the Contractor field mark-ups. The CADD drawing files will be submitted to the City electronically, along with 2 hard copies.

Compensation

Arcadis will complete the scope of services presented herein for a total not to exceed fee of \$2,280,000. The City will be charged for actual time and expense costs incurred. If acceptable, this scope of work will be billed in accordance with our standard rate schedule for hours worked plus other direct costs markup of 5 percent.

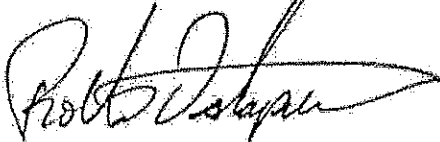
Task	Compensation
Task 10 – Construction Administration	\$273,000
Task 11 – Resident Engineer	\$898,000
Task 12 – Construction Observation	\$745,000
Task 13 – Field Resolutions	\$221,000
Task 13 – Progress Meetings	\$68,000
Task 14 – Site Visits	\$55,000
Task 15 – Construction Closeout	\$20,000
Total Not to Exceed Fee:	\$2,280,000

Mr. Jason Morris, PE
City of Newburgh
June 10, 2022

Arcadis is familiar with NYS EFC requirements to make good faith efforts to obtain the services of M/WBE subcontractors, and to that end we are proposing to use a WBE subcontractor for construction inspection to achieve a goal of 20% utilization. It is estimated for the scope of services described herein, that the total M/WBE utilization will be approximately \$480,000 or 21%.

Arcadis looks forward to continuing to support the City to improve its critical infrastructure. If you have any questions, please do not hesitate to contact me at (518) 250-7300 so that I may be of further assistance. We again thank the City for this opportunity.

Sincerely,
Arcadis of New York, Inc.



Robert E. Ostapczuk, PE
Vice President

Email: robert.ostapczuk@arcadis.com
Direct Line: 518.250.7305
Mobile: 518.810.6872

CC. D. Loewenstein, PE Arcadis
A. Brooks, PE Arcadis

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

RESOLUTION NO.: 158 - 2022

OF

JULY 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
CHANGE ORDER NO. 1 WITH PAPITTO CONSTRUCTION COMPANY, INC.
FOR THE REMOVAL OF AN UNDERGROUND PETROLEUM STORAGE TANK
AT CITY OWNED PROPERTY LOCATED AT 125-129 GRAND STREET**

WHEREAS, by Resolution No. 4-2022 of January 10, 2022, the City Council of the City of Newburgh awarded a bid for the removal of an underground petroleum storage tank at City owned property located at 125-129 Grand Street to Papitto Construction Company, Inc. in the amount of \$89,650.00; and

WHEREAS, the additional quantity increase for imported clean fill added \$19,758.90 to the contract which requires a change order to the contract; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to execute Change Order No. 1 with Papitto Construction Company, Inc. adding \$19,758.90 to the contract increasing the total contract amount to \$109,408.90 for the removal of an underground petroleum storage tank at City owned property located at 125-129 Grand Street.

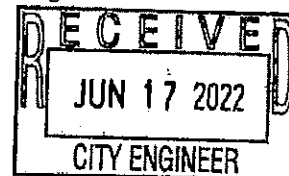
Papitto Construction Co., Inc.

Transmittal

Attention: Tom Jenkins	Date: 6/15/2022	Job No.: 21-016
To: City of Newburgh; Engineering Office City Hall 85 Broadway Newburgh, NY 12550		Tel.: (845) 569-7459
Regarding: 125 Grand Street; UST Removal And Disposal		

We are sending you: ☒ Attached ☐ Under separate cover via _____ the following items

- | | | | |
|---|--|--------------------------------------|---|
| ☐ Shop drawings | ☒ Prints | ☐ Plans | ☐ Samples |
| ☐ Copy of letter | ☒ Change Order | ☐ Other _____ | ☐ Specifications |



Qty.	Date	No.	Description
2 Orig.			Change Order No. 1

These are transmitted as checked below:

- | | | |
|--|---|---|
| ☐ For approval | ☐ Approved as submitted | ☐ Resubmit _____ copies for approval |
| ☒ For your use | ☐ Approved as noted | ☐ Submit _____ copies for distribution |
| ☒ As requested | ☐ Returned for corrections | ☐ Return _____ corrected prints |
| ☐ For review/comment | ☐ Rejected | |
| ☐ For bids due _____ | | ☐ Prints returned after loan to us |

Remarks

Copy to

Signed

Reno Caldarella

Papitto Construction Co., Inc.
867 Fair Street
Carmel, NY 10512

Tel: (845)878-2550
Fax: (845)878-2555
Email: reno@papittoconstruction.com

Papitto Construction Co., Inc.

867 Fair Street
Carmel, New York 10512-3012
Tel (845)878-2550
Fax (845)878-2555

CONSTRUCTION CHANGE ORDER NO. 1

PROJECT NAME	UST REMOVAL AND DISPOSAL		
LOCATION OF WORK	125 - 129 GRAND ST., NEWBURGH, NY		
PROJECT MANAGER		CLIENT	CITY OF NEWBURGH
REQUESTING PARTY		DATE OF REQUEST	6/2/2022

CHANGE REQUEST OVERVIEW

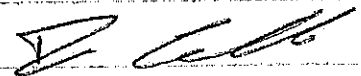
DESCRIPTION OF CHANGES NEEDED	FURNISH AND INSTALL CLEAN FILL INTO EXCAVATION.
REASON FOR CHANGE	ADDITIONAL FILL WAS REQUIRED DUE TO THE UNSUITABILITY OF THE EXISTING FILL.
SUPPORT & JUSTIFICATION DOCUMENTS	List all attached documents which support the requested change, and justify any increased cost and time. SUMMARY SHEET TABULATION SHEET DELIVERY TICKETS
SPECIFICATIONS	
ADDITIONAL INFORMATION	

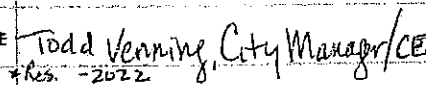
CHANGE IN CONTRACT PRICE

ORIGINAL PRICE	89,650.00
NET CHANGES OF PREVIOUS CHANGE ORDERS	0.00
NET INCREASE / DECREASE C.O. NO. 1	19,758.90
TOTAL CONTRACT PRICE WITH APPROVED CHANGES	109,408.90

CHANGE IN CONTRACT TIMES

ORIGINAL TIMES	60 WORK DAYS
NET CHANGES OF PREVIOUS CHANGE ORDERS IN DAYS	0 DAYS
NET INCREASE / DECREASE C.O. NO. 1	0 DAYS
TOTAL CONTRACT TIME WITH APPROVED CHANGES	60 WORK DAYS

ACCEPTED BY SIGNATURE	
NAME & TITLE	RENO CALDERELLA, P.M.
DATE	6/14/2022

APPROVED BY SIGNATURE	
NAME & TITLE	Todd Vanning, City Manager/CEO Res. 2022
DATE	

UST Removal And Disposal
125 Grand Street
Newburgh, NY

**CO No. 1 Additional Clean Imported Fill
Unit Price Method**

Material

<i>Qty.</i>	<i>Unit</i>	<i>Description</i>	<i>Unit Price</i>	<i>Extended Price</i>
282.27	Ton	Clean Imported Fill	70.00	\$ 19,758.90
Total Cost				\$ 19,758.90

Clean Imported Fill

Date	Qty. (ton)	Ticket No.
5/19/2022	23.45	395188
5/19/2022	24.61	395189
5/19/2022	25.27	395208
5/19/2022	26.15	395210
5/19/2022	24.04	395215
5/19/2022	25.40	395221
5/19/2022	23.09	395231
5/19/2022	24.41	395240
5/24/2022	25.52	395629
5/24/2022	25.44	395651
5/24/2022	24.63	395662
5/24/2022	24.92	395676
5/24/2022	24.98	395678
5/24/2022	24.98	395691
5/24/2022	25.47	395699
5/24/2022	24.91	395713
	-10.00	<i>Paid Under Contract Unit Price</i>
	-105.00	<i>Volume of 15,000-Gallon UST</i> <i>(5cy/1,000 x 15,000 x 1.4tn/cy)</i>

282.27 Tons Total



Fishkill Aggregate



Date : 5/19/2022 Time: 6:38:48AM
Location : Fishkill Aggregate
Customer : 1540 - PAPITTO CONSTRUCTION, INC.
Order : NEWBURGH - 125 GRAND ST NEWBURGH

Cust Job:

P.O. :

Product : GABSTONE - Gabbion Stone,620.02

23.45 Ton

Carrier :NTO - Noto Trucking

Vehicle : 96420MM - 96420MM

ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY

JEFF-(914)447-1279

Ticket No.:

395188

	Pounds	Tons	Metric
Gross	78340	39.17	35.53
Tare	31440 *	15.72 *	14.26 *
Net	46900	23.45	21.27

* P. T.

Ordered	0.00
Received	23.45
Remaining	-23.45
Today:	23.45 Loads: 1

Weighmaster: Christina Martins 606570



Fishkill Aggregate



Date : 5/19/2022 Time: 6:41:29AM
Location : Fishkill Aggregate
Customer : 1540 - PAPITTO CONSTRUCTION, INC.
Order : NEWBURGH - 125 GRAND ST NEWBURGH

Cust Job:

P.O. :

Product : GABSTONE - Gabbion Stone,620.02

24.61 Ton

Carrier :NTO - Noto Trucking

Vehicle : 38123PC - 38123PC

ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY

JEFF-(914)447-1279

Ticket No.:

395189

	Pounds	Tons	Metric
Gross	77880	38.94	35.33
Tare	28660 *	14.33 *	13.00 *
Net	49220	24.61	22.33

* P. T.

Ordered	0.00
Received	48.06
Remaining	-48.06
Today:	48.06 Loads: 2

Weighmaster: Christina Martins 606570



Fishkill Aggregate



Date : 5/19/2022 Time: 7:48:53AM
Location : **Fishkill Aggregate**
Customer : 1540 - PAPITTO CONSTRUCTION, INC.
Order : NEWBURGH - 125 GRAND ST NEWBURGH
Cust Job:
P.O. :
Product : GABSTONE - Gabbion Stone,620.02

25.27 Ton

Carrier :NTO - Noto Trucking
Vehicle : 96420MM - 96420MM
ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
JEFF-(914)447-1279

Ticket No.:

395208

	Pounds	Tons	Metric
Gross	81980	40.99	37.19
Tare	31440 *	15.72 *	14.26 *
Net	50540	25.27	22.92

* P. T.

Ordered	0.00
Received	73.33
Remaining	-73.33
Today:	73.33 Loads: 3

Weighmaster: Christina Martins 606570



Fishkill Aggregate



Date : 5/19/2022 Time: 7:53:20AM
Location : **Fishkill Aggregate**
Customer : 1540 - PAPITTO CONSTRUCTION, INC.
Order : NEWBURGH - 125 GRAND ST NEWBURGH
Cust Job:
P.O. :
Product : GABSTONE - Gabbion Stone,620.02

26.15 Ton

Carrier :NTO - Noto Trucking
Vehicle : 38123PC - 38123PC
ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
JEFF-(914)447-1279

Ticket No.:

395210

	Pounds	Tons	Metric
Gross	80960	40.48	36.72
Tare	28660 *	14.33 *	13.00 *
Net	52300	26.15	23.72

* P. T.

Ordered	0.00
Received	99.48
Remaining	-99.48
Today:	99.48 Loads: 4

Weighmaster: Christina Martins 606570



Fishkill Aggregate



Date : 5/19/2022 Time: 8:41:55AM
 Location : Fishkill Aggregate
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

24.04 Ton

Carrier : NTO - Noto Trucking
 Vehicle : 96420MM - 96420MM
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

*1/2 HR wait
 For testing*

Ticket No.:

395215

	Pounds	Tons	Metric
Gross	79520	39.76	36.07
Tare	31440 *	15.72 *	14.26 *
Net	48080	24.04	21.81

* P. T.

Ordered	1,000.00
Received	24.04
Remaining	975.96
Today:	24.04 Loads: 1

Weighmaster: Christina Martins 606570



Fishkill Aggregate



Date : 5/19/2022 Time: 8:59:46AM
 Location : Fishkill Aggregate
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

25.40 Ton

Carrier : NTO - Noto Trucking
 Vehicle : 38123PC - 38123PC
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Ticket No.:

395221

	Pounds	Tons	Metric
Gross	79460	39.73	36.04
Tare	28660 *	14.33 *	13.00 *
Net	50800	25.40	23.04

* P. T.

Ordered	1,000.00
Received	49.44
Remaining	950.56
Today:	49.44 Loads: 2

Weighmaster: Christina Martins 606570



Fishkill Aggregate

Ticket No.:

395231



Date : 5/19/2022 Time: 9:51:35AM
Location : **Fishkill Aggregate**
Customer : 1540 - PAPITTO CONSTRUCTION, INC.
Order : NEWBURGH - 125 GRAND ST NEWBURGH
Cust Job:
P.O. :
Product : ITEM4 - Item 4 Type 1 304.11

23.09 Ton

Carrier :NTO - Noto Trucking
Vehicle : 96420MM - 96420MM
ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
JEFF-(914)447-1279

	<u>Pounds</u>	<u>Tons</u>	<u>Metric</u>
Gross	77620	38.81	35.21
Tare	31440 *	15.72 *	14.26 *
Net	46180	23.09	20.95

* P. T.

Ordered	1,000.00	
Received	72.53	
Remaining	927.47	
Today:	72.53	Loads: 3

Weighmaster: Christina Martins 606570



Fishkill Aggregate

Ticket No.:

395240



Date : 5/19/2022 Time: 10:52:48AM
Location : **Fishkill Aggregate**
Customer : 1540 - PAPITTO CONSTRUCTION, INC.
Order : NEWBURGH - 125 GRAND ST NEWBURGH
Cust Job:
P.O. :
Product : ITEM4 - Item 4 Type 1 304.11

24.41 Ton

Carrier :NTO - Noto Trucking
Vehicle : 96420MM - 96420MM
ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
JEFF-(914)447-1279

	<u>Pounds</u>	<u>Tons</u>	<u>Metric</u>
Gross	80260	40.13	36.41
Tare	31440 *	15.72 *	14.26 *
Net	48820	24.41	22.14

* P. T.

Ordered	1,000.00	
Received	118.83	
Remaining	881.17	
Today:	118.83	Loads: 5

Weighmaster: Christina Martins 606570



Fishkill Aggregate



Ticket No.:

395629

Date : 5/24/2022 Time: 6:26:03AM
 Location : Fishkill Aggregate
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

25.52 Ton

	<u>Pounds</u>	<u>Tons</u>	<u>Metric</u>
Gross	79700	39.85	36.15
Tare	28660 *	14.33 *	13.00 *
Net	51040	25.52	23.15

* P. T.

Ordered	1,000.00
Received	144.35
Remaining	855.65
Today:	25.52 Loads: 1

Carrier :NTO - Noto Trucking
 Vehicle : 38123PC - 38123PC
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Weighmaster: Taylor Brown 606046



Fishkill Aggregate



Ticket No.:

395651

Date : 5/24/2022 Time: 7:43:51AM
 Location : Fishkill Aggregate
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

25.44 Ton

	<u>Pounds</u>	<u>Tons</u>	<u>Metric</u>
Gross	79540	39.77	36.08
Tare	28660 *	14.33 *	13.00 *
Net	50880	25.44	23.08

* P. T.

Ordered	1,000.00
Received	169.79
Remaining	830.21
Today:	50.96 Loads: 2

Carrier :NTO - Noto Trucking
 Vehicle : 38123PC - 38123PC
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Weighmaster: Taylor Brown 606046



Fishkill Aggregate



Date : 5/24/2022 Time: 8:37:31AM
 Location : Fishkill Aggregate
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

24.63 Ton

Carrier : NTO - Noto Trucking
 Vehicle : 38123PC - 38123PC
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Ticket No.: 395662

	Pounds	Tons	Metric
Gross	77920	38.96	35.34
Tare	28660 *	14.33 *	13.00 *
Net	49260	24.63	22.34

* P. T.

Ordered	1,000.00	
Received	194.42	
Remaining	805.58	
Today:	75.59	Loads: 3

Weighmaster: Taylor Brown 606046



Fishkill Aggregate



Date : 5/24/2022 Time: 9:35:53AM
 Location : Fishkill Aggregate
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

24.92 Ton

Carrier : LYONS - Harold Lyon Trucking
 Vehicle : 68597NB - 68597NB
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Ticket No.: 395676

	Pounds	Tons	Metric
Gross	77760	38.88	35.27
Tare	27920 *	13.96 *	12.66 *
Net	49840	24.92	22.61

* P. T.

Ordered	1,000.00	
Received	219.34	
Remaining	780.66	
Today:	100.51	Loads: 4

Weighmaster: Taylor Brown 606046



Fishkill Aggregate

Ticket No.: **395678**

Date: 5/24/2022 Time: 9:41:27AM
Location: **Fishkill Aggregate**
Customer: 1540 - PAPITTO CONSTRUCTION, INC.
Order: NEWBURGH - 125 GRAND ST NEWBURGH
Cust Job:

P.O.:

Product: ITEM4 - Item 4 Type 1 304.11

24.98 Ton

Carrier: NTO - Noto Trucking
Vehicle: 38123PC - 38123PC
ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
JEFF-(914)447-1279

	<u>Pounds</u>	<u>Tons</u>	<u>Metric</u>
Gross	78620	39.31	35.66
Tare	28660 *	14.33 *	13.00 *
Net	49960	24.98	22.66

* P. T.

Ordered	1,000.00
Received	244.32
Remaining	755.68
Today:	125.49 Loads: 5

Weighmaster: Taylor Brown 606046



Fishkill Aggregate

Ticket No.: **395691**

Date: 5/24/2022 Time: 10:33:51AM
Location: **Fishkill Aggregate**
Customer: 1540 - PAPITTO CONSTRUCTION, INC.
Order: NEWBURGH - 125 GRAND ST NEWBURGH
Cust Job:

P.O.:

Product: ITEM4 - Item 4 Type 1 304.11

24.98 Ton

Carrier: LYONS - Harold Lyon Trucking
Vehicle: 68597NB - 68597NB
ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
JEFF-(914)447-1279

	<u>Pounds</u>	<u>Tons</u>	<u>Metric</u>
Gross	77880	38.94	35.33
Tare	27920 *	13.96 *	12.66 *
Net	49960	24.98	22.66

* P. T.

Ordered	1,000.00
Received	269.30
Remaining	730.70
Today:	150.47 Loads: 6

Weighmaster: Taylor Brown 606046



Fishkill Aggregate



Date : 5/24/2022 Time: 11:00:49AM
 Location : **Fishkill Aggregate**
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

25.47 Ton

Carrier :NTO - Noto Trucking
 Vehicle : 38123PC - 38123PC
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Ticket No.: **395699**

	Pounds	Tons	Metric
Gross	79600	39.80	36.11
Tare	28660 *	14.33 *	13.00 *
Net	50940	25.47	23.11

* P. T.

Ordered	1,000.00
Received	294.77
Remaining	705.23
Today:	175.94 Loads: 7

Weighmaster: Taylor Brown 606046



Fishkill Aggregate



Date : 5/24/2022 Time: 12:15:41PM
 Location : **Fishkill Aggregate**
 Customer : 1540 - PAPITTO CONSTRUCTION, INC.
 Order : NEWBURGH - 125 GRAND ST NEWBURGH
 Cust Job:
 P.O. :
 Product : ITEM4 - Item 4 Type 1 304.11

24.91 Ton

Carrier :NTO - Noto Trucking
 Vehicle : 38123PC - 38123PC
 ENTRANCE TO DUMP IS ON 3RD BETWEEN GRAND & LIBERTY
 JEFF-(914)447-1279

Ticket No.: **395713**

	Pounds	Tons	Metric
Gross	78480	39.24	35.60
Tare	28660 *	14.33 *	13.00 *
Net	49820	24.91	22.60

* P. T.

Ordered	1,000.00
Received	319.68
Remaining	680.32
Today:	200.85 Loads: 8

Weighmaster: Taylor Brown 606046

RESOLUTION NO.: 159 - 2022

OF

JULY 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
CHANGE ORDER NO. 2 WITH PAPITTO CONSTRUCTION COMPANY, INC.
FOR THE REMOVAL OF AN UNDERGROUND PETROLEUM STORAGE TANK
AT CITY OWNED PROPERTY LOCATED AT 125-129 GRAND STREET**

WHEREAS, by Resolution No. 4-2022 of January 10, 2022, the City Council of the City of Newburgh awarded a bid for the removal of an underground petroleum storage tank at City owned property located at 125-129 Grand Street to Papitto Construction Company, Inc. in the amount of \$89,650.00; and

WHEREAS, the additional quantity increase for contaminated soil removal added \$2,191.20 to the contract which requires a change order to the contract; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to execute Change Order No. 2 with Papitto Construction Company, Inc. adding \$2,191.20 to the contract increasing the total contract amount to \$111,600.10 for the removal of an underground petroleum storage tank at City owned property located at 125-129 Grand Street.

Papitto Construction Co., Inc.

867 Fair Street
Carmel, New York 10512-3012
Tel (845)878-2550
Fax (845)878-2555

CONSTRUCTION CHANGE ORDER NO. 2

PROJECT NAME	USE REMOVAL AND DISPOSAL		
LOCATION OF WORK	125-129 GRAND ST.; NEWBURGH, NY		
PROJECT MANAGER		CLIENT	CITY OF NEWBURGH
REQUESTING PARTY		DATE OF REQUEST	6/23/2022

CHANGE REQUEST OVERVIEW

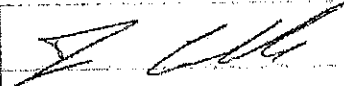
DESCRIPTION OF CHANGES NEEDED	ADDITIONAL QUANTITY FOR PAYMENT FOR PETROLEUM CONTAMINATED SOIL.
REASON FOR CHANGE	THE LINE ITEM FOR PETROLEUM CONT. SOIL WAS ONLY 10 TN. BUT THERE WAS 19.13 TONS OF PETROLEUM CONT. SOIL REMOVED.
SUPPORT & JUSTIFICATION DOCUMENTS	List all attached documents which support the requested change, and justify any increased cost and time. SUMMARY SHEET TABULATION SHEET DISPOSAL TICKET
SPECIFICATIONS	
ADDITIONAL INFORMATION	

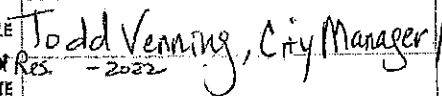
CHANGE IN CONTRACT PRICE

ORIGINAL PRICE	89,650.00
NET CHANGES OF PREVIOUS CHANGE ORDERS	19,758.90
NET INCREASE / DECREASE C.O. NO. 2	2,191.20
TOTAL CONTRACT PRICE WITH APPROVED CHANGES	111,600.10

CHANGE IN CONTRACT TIMES

ORIGINAL TIMES	60 WORK DAYS
NET CHANGES OF PREVIOUS CHANGE ORDERS IN DAYS	0 DAYS
NET INCREASE / DECREASE C.O. NO. 2	0 DAYS
TOTAL CONTRACT TIME WITH APPROVED CHANGES	60 WORK DAYS

ACCEPTED BY SIGNATURE	
NAME & TITLE	RENO CARDARELLA, P.M.
DATE	6/24/2022

APPROVED BY SIGNATURE	
NAME & TITLE	Todd Venning, City Manager / CEO
DATE	6/23/2022

UST Removal And Disposal
125 Grand Street
Newburgh, NY

CO No. 2 **Contaminated Soil Removed Exceeded Unit Price Line Item Quantity**
Unit Price Method

Material

<i>Qty.</i>	<i>Unit</i>	<i>Description</i>	<i>Unit Price</i>	<i>Extended Price</i>
9.13	Ton	Contaminated Soil	240.00	\$ 2,191.20

Total Cost **\$ 2,191.20**

Contaminated Soil Disposal

Date	Qty. (ton)	Ticket No.
6/15/2022	19.13	2826783
	-10.00	<i>Paid Under Contract Unit Price</i>

9.13 Ton Balance

Clean Earth of Carteret
24 Middlesex Ave
Carteret, NJ 07008
Ph: Fax:

Ticket:2826783

Date	Time	Scale
In:06/15/2022	12:45:13	CEC
Out:06/15/2022	12:45:13	CEC

	Lbs.	Tns
Manifest:2151251	Gross: 74,360	37.18
Vehicle:07Leggio11	Tare: 36,100	18.05
Decal:	Net: 38,260	19.13

Customer:Papitto Construction Co.
Generator:City of Newburgh
Address:83 Broadway, 4th Floor
NEWBURGH, NY 12550

Carrier:
Profile #:223073922
Job:City of Newburgh/125 Grand
Street
Address:125 Grand Street
NEWBURGH, NY 12550

Material

Recyclable soil/rock/material

Comment:

Driver

Facility	Clean Earth of Carteret
Barry Gibson	31509

RESOLUTION NO.: 160 - 2022

OF

JULY 11, 2022

A RESOLUTION ACCEPTING A PROPOSAL AND AUTHORIZING
THE CITY MANAGER TO EXECUTE A CONTRACT WITH
GERARD ASSOCIATES CONSULTING ENGINEERS, P.C. FOR
CONSTRUCTION MANAGEMENT PROFESSIONAL ENGINEERING SERVICES FOR
THE BOILER REPLACEMENT AND CONVERSION TO NATURAL GAS
AT 123-125 GRAND STREET IN AN AMOUNT NOT TO EXCEED \$5,500.00

WHEREAS, the City of Newburgh solicited, received and evaluated proposals for professional engineering services for the Boiler Replacement and Conversion to Natural Gas Project at 123-125 Grand Street (the "Project"); and

WHEREAS, by Resolution No. 126-2021 of May 24, 2021, the City Council authorized the City Manager to accept a proposal and execute a contract with Gerard Associates Consulting Engineers, P.C., for professional engineering services for the Project in an amount not to exceed \$40,260.00; and

WHEREAS, the City has received a proposal from Gerard Associates Consulting Engineers, P.C. for construction administration and management professional engineering services for the Project; and

WHEREAS, the cost of such services shall not exceed \$5,500.00 and the funds shall be derived from 2020 BAN under budget line H1.1120.0208.2020; and

WHEREAS, this Council has reviewed the proposal and finds that authorizing a contract to perform said professional engineering services is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to accept a proposal and execute a contract with Gerard Associates Consulting Engineers, P.C., for construction management professional engineering services for the Boiler Replacement and Conversion to Natural Gas Project at 123-125 Grand Street in an amount not to exceed \$5,500.00.



May 12, 2022

Chad M. Wade, RLA, Assistant City Engineer
Zakia R. Alam, Junior Civil Engineer
City of Newburgh
Office of the Engineer
83 Broadway
Newburgh, NY 12550

Re: Boiler Replacement at 123 Grand Street
Gerard Associates Project No. 21023

Gerard Associates is pleased to provide this proposal for Construction Administration (CA) of field service at 123 Grand Street, Newburgh, NY. CA services are an addition to our contract, City of Newburgh P.O. 28588.

We will provide services based on our hourly Rate Schedule (attached) with a not-to-exceed cost \$5,500.00.

If this proposal is acceptable, please sign and return a copy to us.

Thank you for the opportunity to be of service.

 05/13/22
John Trombino, P.E. Date

Chad M. Wade Date
Office of the Engineer,
City of Newburgh

Enclosure

223 MAIN STREET
GOSHEN, NY 10924
(845) 291-1272

info@GerardAssociates.com



2022 RATE SCHEDULE

Hourly Rates

Principal Engineer	\$ 185.00
Senior Engineer	\$ 155.00
Staff Engineer	\$ 125.00
CAD Technician	\$ 90.00
Administrative Support	\$ 70.00

Reimbursable Expenses

Travel	\$ 0.585/mile, plus tolls
Printing	
Paper Drawing Prints	\$ 0.35/square foot
8.5" x 11" BW Copies	\$ 0.10/sheet

Rates are subject to change upon notice by the Engineer

RESOLUTION NO.: 161 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
CHANGE ORDER NO. 1 WITH MCNAMEE CONSTRUCTION CORPORATION
FOR A TIME EXTENSION TO THE CONSTRUCTION CONTRACT IN
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE (LAKE STREET BRIDGE)
REHABILITATION PROJECT (PIN# 8761.57/BIN# 2022260)

WHEREAS, by Resolution No. 162-2021 of July 12, 2021, the City Council of the City of Newburgh awarded a bid for the construction of the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260) to McNamee Construction Corporation in an amount not to exceed \$1,678,560.00; and

WHEREAS, increased deterioration of the existing bridge required a design change to the tunnel liner which delayed the construction contract work until the tunnel liner is installed to stabilize the bridge and requires a change order for an extension of time from August 1, 2022 to December 9, 2022 to the complete the contract; the same being in the best interests of the City of Newburgh; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to execute Change Order No. 1 with McNamee Construction Corporation for contract completion extension from August 1, 2022 to December 9, 2022 in the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260).



HVEA Engineers

Change Order Details

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation

Description	Lake Street/Route 32 over Quassaick Creek bridge rehabilitation. Project will rehabilitate the existing bridge that carries Lake Street (Route 32) over the Quassaick Creek located in the City of Newburgh, Orange County, BIN 2022260.		
Prime Contractor	McNamee Construction Corp 154 Route 202, PO Box 182 Lincolndale, NY 10540		
Change Order	1		
Status	Pending		
Date Created	06/16/2022		
Type	Time Extension		
Summary	Extend Completion Date to 09 Dec 2022		
Change Order Description	The project was designed based on a 2014 survey of the existing bridge arch. The contractor performed the field survey of the bridge arch as required and found that the bridge arch further deteriorated and the liner plate shown in the plans would not fit. A new tunnel liner design was initiated based on the current survey. Since the majority of the contract work can not be completed until the tunnel liner is installed to stabilize the bridge, this has resulted in a delay to the project.		
Awarded Project Amount	\$1,678,560.00		
Authorized Project Amount	\$1,678,560.00		
Change Order Amount	\$0.00		
Revised Project Amount	\$1,678,560.00		

Time Limit Changes

Type	Original Deadline	Current Deadline	Pending Extension	Pending Deadline
Completion Date	08/01/2022	08/01/2022	130.0 Days	12/09/2022
Contract Completion Date				
Reason: Increased deterioration of the existing bridge required a design change to the tunnel liner resulting in a delay.				
1 time limit				

Attachments

Document	Name	Description	Submission Date
CONR_250_Revised.pdf	CONR 250 Revised.pdf	Contractor request for time extension	06/17/2022 08:36 AM EDT
Lake_St_-_Update_3_-_Remaining_Work.pdf	Lake St - Update #3 - Remaining Work.pdf	Progress schedule update with new tunnel liner design.	06/17/2022 08:37 AM EDT
2 attachments			

(Sponsor) Certificate of Recommended Order on Contract

PIN 8761.57 LD040218 City of Newburgh Purchase Order No.: 29491

Contractor Name: McNamee Construction Corporation

Change Order No. _____

I, Peter Teliska, PE, hereby certify that I am the officially designated project manager of the subject project, that the adjustments here within and the material incorporated under the subject contract as stated in this Change Order No. _____ are necessary, and to the best of my knowledge and belief, the said information is correct and in strict compliance with the terms of the said contract.

I further certify that the records from which this order on contract was developed and any other record required by statute, rule or regulation of the New York State Department of Transportation or the Federal Government or prescribed in the contract have been established and will be filed in the Consultant's Office, in accordance with the terms of the contract.

1665

Peter Teliska, PE, HVEA Engineers, Resident Engineer

Date

Jason C. Morris, PE

Date

City Engineer

Project Manager, City of Newburgh, Sponsor

Change Order Details:

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation

APPLICATION FOR EXTENSION OF COMPLETION DATE

Contract No.: LD040218 Contract Description: Route 32 TAP: Lake Street Bridge Rehab
Contractor Name: McNamee Construction Corp.

The contract identified above provides for completion of the work by the contract completion date. In accordance with the provisions of Article 4 of said contract, the undersigned Contractor hereby makes application for an extension of the date of completion of said contract to 12/9/2022.

Pursuant to Article 4 of said contract - "No extension beyond the date of completion fixed by the terms of this contract shall be effective until approved in writing by the State. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the work, ..."

In consideration for granting an extension of the contract completion date as requested herein, the undersigned Contractor hereby acknowledges and agrees to the following terms and conditions:

1. As set forth in the Standard Specifications; for each calendar day, or any portion thereof, that any work remains uncompleted after the contract completion date specified in the contract agreement, Liquidated Damages and/or Engineering Charges from the contract completion date to the final date of completion of the work will be assessed against the Contractor. Engineering Charges include all appropriate engineering and inspection expenses incurred by the State, its consultants and inspection agencies, and by railroad companies. Engineering Charges will be assessed in cases where the work has been unduly delayed by the Contractor because of unwarranted reasons, inefficient operation, or for any other reason for which the Department determines the Contractor to be responsible.
2. Approval of this Application for Extension of Completion Date, without a charge for engineering and inspection service, shall not obligate the State, in any manner whatsoever, to liability in any claim for damages for delay which may be made against the State in connection with the aforesaid contract, and such approval is granted solely for the purpose of completing the work and expediting contract payments.

It is understood that, if this extension of completion date is approved, the Commissioner of Transportation does not waive or release any claim the Department may have against the Contractor whether it be for actual or liquidated damages for any reason whatsoever.

Work Remaining:

In light of discovering required design changes early in the project,
all contract work is still remaining.

Reason for Request:

Due to engineering and design changes, McNamee is requesting a time
extension to 12/09/2022

By:



Signature

6/3/2022

Date

President

Title

RESOLUTION NO.: 162 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONTRACT EXTENSION
WITH RAFTELIS FINANCIAL CONSULTANTS, INC.
FOR A STORMWATER USER FEE PLANNING STUDY

WHEREAS, The Phase II Stormwater Program of the New York State Department of Environmental Conservation ("NYSDEC") requires the City of Newburgh, as an operator of Municipal Separate Storm Sewer Systems ("MS4s"), to prepare and implement a Stormwater Management Plan, which the City prepared and finalized in September 2016 addressing six program elements designed to reduce the discharge of pollutants to the maximum extent practicable; and

WHEREAS, by Resolution Nos. 219-2011 of October 24, 2011 and 303-2015 of November 23, 2015, the City Council approved a Consent Order with the NYSDEC to resolve violations at the Wastewater Treatment Plant and develop a Long Term Control Plan to address combined sewer overflows and the implementation of green stormwater infrastructure to reduce runoff and combined sewer overflows with a program cost of approximately \$39 million over 15 years; and

WHEREAS, by Resolution No. 126-2020 of June 8, 2020, the City Council authorized the City Manager to accept a proposal and execute a contract with Raftelis Financial Consultants, Inc. for professional financial services for a stormwater user fee planning study at a cost of \$68,860.00; and

WHEREAS, at the request of the City, Raftelis Financial Consultants, Inc. suspended the project timeline; and

WHEREAS, the City is ready to resume the stormwater user fee planning study activities which requires an extension to the contract with Raftelis Financial Consultants, Inc.; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract extension with Raftelis Financial Consultants, Inc. for professional financial services for a stormwater user fee planning study with a new completion date of December 31, 2022.



June 22, 2022

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

Subject: Stormwater User Fee Planning Study Extension

Dear Mr. Morris:

Raftelis Financial Consultants, Inc. ("Raftelis") began the City of Newburgh ("City") Stormwater User Fee Planning Study ("Study"), in mid-2020. Since the Study kickoff we have initiated several project tasks, however, the project timeline for the core of the work was paused at the request of the City.

Our initial contract dated June 19, 2020 extended for a period of one year (through June of 2021). We would like to request an extension to complete the balance of the work. With the City now ready to proceed, we would estimate that extending the timeline to December 31, 2022 should be sufficient to complete all tasks and deliver our final report. Raftelis will continue to work diligently on next steps to attempt to deliver the Study results well in advance of this extended date if possible.

If the City agrees with the requested extension, please sign below and return a signed copy to Raftelis. Please feel free to contact me directly at your convenience if you have any questions about this request or the status of the Study.

Sincerely,

John M. Mastracchio, CFA
Vice President

6/22/2022
Date

City Signature #1

Date

Print Name #1:

Print Title #1:

City Signature #2

Date

Print Name #2:

Print Title #2:

40 British American Boulevard
Latham, NY 12110
www.raftelis.com

RESOLUTION NO. 163 - 2022

OF

JULY 11, 2022

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED JULY 11, 2022, AMENDING THE BOND RESOLUTION ADOPTED NOVEMBER 8, 2021 RELATING TO THE CITY'S WASTEWATER TREATMENT PLANT AND THE DEVELOPMENT OF A CSO LONG TERM CONTROL PLAN

Recitals

WHEREAS, on November 8, 2021, the City Council of the City of Newburgh (the "City"), in Orange County, New York, duly authorized the issuance of bonds in the aggregate principal amount of not to exceed \$32,310,000 to finance Phases III and IV of the CSO Long Term Control Plan consisting of the North Interceptor Improvements Project, as described in the "Preliminary Engineering Report Addendum" prepared by Arcadis of New York, Inc., dated May, 2021 and on file in the office of the City Clerk (the "Phase III Project") and the Floatables Control and Disinfection Facility Engineering Report prepared by Arcadis of New York, Inc., dated May 2021, revised July 23, 2021 and on file in the office of the City Clerk (the "Phase IV Project" and collectively referred to hereinafter as the "Phase III and Phase IV Projects");

WHEREAS, by resolution No. 189-2021 adopted on August 9, 2021, the City Council determined that the Phase III and Phase IV Projects constitute "Type II" actions pursuant to the provisions of the New York State Environmental Quality Review Act and the regulations promulgated thereunder and contained within 6 NYCRR Part 617 (collectively, "SEQRA") and that no further review for SEQRA purposes is required;

WHEREAS, due to an increase in the cost of the Phase III Project, the City Council must increase the appropriation for such project from \$15,600,000 to \$31,394,650 and amend the bond resolution adopted on November 8, 2021, to increase the not to exceed amount of bonds authorized for the Phase III Project from \$15,600,000 to \$31,394,650;

WHEREAS, the City expects to receive grants and/or other funds totaling \$26,655,000 from the United States of America, the State of New York and/or other sources to pay a like portion of the estimated cost of the Phase III Project;

WHEREAS, the City is currently paying the planning and design costs of the Phase IV Project from another bond authorization and funds made available to the City pursuant to the American Rescue Plan Act of 2021; and

WHEREAS, the City has determined to eliminate financing for said Phase IV Project from this amending bond resolution and upon the completion of the planning and design of the Phase IV Project, the City Council expects to adopt a separate bond resolution to authorize financing for said Phase IV project.

Now, therefore, be it

RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN ORANGE COUNTY, NEW YORK (by the favorable vote of not less than two-thirds of all members of said City Council) AS FOLLOWS:

Section A. The bond resolution of said City duly adopted by the City Council of the City on November 8, 2021, entitled:

“BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK,
ADOPTED NOVEMBER 8, 2021, AUTHORIZING FINANCING FOR
THE LONG TERM CONTROL PLAN PHASE III NORTH
INTERCEPTOR IMPROVEMENTS PROJECT AND PHASE IV

WASTEWATER TREATMENT PLANT DISINFECTION PROJECT IN THE CITY, STATING THE ESTIMATED TOTAL COST THEREOF IS \$32,310,000, APPROPRIATING SAID AMOUNT THEREFOR AND AUTHORIZING THE ISSUANCE OF \$32,310,000 BONDS TO FINANCE OF SAID APPROPRIATION AND THE APPLICATION OF ANY GRANT FUNDS RECEIVED OR EXPECTED TO BE RECEIVED FROM THE STATE OF NEW YORK TO BE EXPENDED TOWARDS THE COST OF SAID OBJECT OR PURPOSE OR REDEMPTION OF THE CITY'S OBLIGATIONS ISSUED THEREFOR, OR TO BE BUDGETED AS AN OFFSET TO THE TAXES FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS,"

is hereby amended to read as follows:

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED NOVEMBER 8, 2021 AND AMENDED ON JULY 11, 2022, AUTHORIZING FINANCING FOR THE LONG TERM CONTROL PLAN PHASE III NORTH INTERCEPTOR IMPROVEMENTS PROJECT, STATING THE ESTIMATED TOTAL COST THEREOF IS \$31,394,650, APPROPRIATING SAID AMOUNT THEREFOR AND AUTHORIZING THE ISSUANCE OF \$31,394,650 BONDS TO FINANCE OF SAID APPROPRIATION AND THE APPLICATION OF ANY GRANT OR OTHER FUNDS RECEIVED OR EXPECTED TO BE RECEIVED FROM THE UNITED STATES OF AMERICA, STATE OF NEW YORK OR FROM ANY OTHER SOURCE TO BE EXPENDED TOWARDS THE COST OF SAID OBJECT OR PURPOSE OR REDEMPTION OF THE CITY'S OBLIGATIONS ISSUED THEREFOR, OR TO BE BUDGETED AS AN OFFSET TO THE TAXES FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS

Recitals

WHEREAS, the City of Newburgh is subject to an Order on Consent with the New York State Department of Environmental Conservation to resolve violations at the Wastewater Treatment Plant and for the development of the CSO Long Term Control Plan ("LTCP");

WHEREAS, pursuant to a Modification Order on Consent approving a Schedule of Compliance for Phases I through V of the LTCP, the City is undertaking Phases III and IV of the LTCP consisting of the North Interceptor Improvements Project, as described in the "Preliminary Engineering Report Addendum" prepared by Arcadis of New York, Inc. dated May, 2021 and on file in the office of the City Clerk (the "Phase III Project") and the Floatables Control and Disinfection Facility Engineering Report prepared by Arcadis of New York, Inc. dated May 2021, revised July 23, 2021 and on file in the office of the City Clerk (the "Phase IV Project" and collectively referred to hereinafter as the "Phase III and Phase IV Projects");

WHEREAS, by resolution No. 189-2021 adopted on August 9, 2021, the City Council determined that the Phase III and Phase IV Projects constitute "Type II" actions pursuant to the provisions of the New York State Environmental Quality Review Act and the regulations promulgated thereunder and contained within 6 NYCRR Part 617 (collectively, "SEQRA") and that no further review for SEQRA purposes is required;

WHEREAS, due to an increase in the cost of the Phase III Project, the City Council must increase the appropriation for such project from \$15,600,000 to \$31,394,650 and amend the bond resolution adopted on November 8, 2021, to increase the not to exceed amount of bonds authorized for the Phase III Project from \$15,600,000 to \$31,394,650;

WHEREAS, the City expects to receive grants and/or other funds totaling \$26,655,000 from the United States of America, the State of New York and/or other sources to pay a like portion of the estimated cost of the Phase III Project;

WHEREAS, the City is currently paying the planning and design costs of the Phase IV Project from another bond authorization and funds made available to the City pursuant to the American Rescue Plan Act of 2021;

WHEREAS, the City has determined to eliminate financing for said Phase IV Project from this amending bond resolution and upon the completion of the planning and design of the Phase IV Project, the City Council expects to adopt a separate bond resolution to authorize financing for said Phase IV project.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN THE COUNTY OF ORANGE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said City Council) AS FOLLOWS:

Section 1. The City of Newburgh, in the County of Orange, New York (herein called the "City"), is hereby authorized to finance the cost of the Phase III Project (as defined in the recitals hereof). The estimated maximum cost of the Phase III Project, including preliminary costs and costs incidental thereto and to the financing thereof, is \$31,394,650 and said amount is hereby appropriated for such purpose. The plan of financing includes the issuance of bonds in the principal amount of not to exceed \$31,394,650 bonds of the City and any bond anticipation notes issued in anticipation of the sale of such bonds to finance said appropriation, the levy and collection of taxes on all the taxable real property in the City to pay the principal of and interest

on said bonds and notes, and application of any grant monies received or expected to be received by the City from the United States of America, the State of New York, including the Environmental Facilities Corporation ("EFC") or from any other source to be expended towards the cost of the project thereof or redemption of the bonds or notes issued therefor or to be budgeted as an offset to the taxes to be levied and collected for the payment of such principal and interest.

Section 2. Bonds of the City in the principal amount of \$31,394,650 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called "Law"), to finance said appropriation.

Section 3. The period of probable usefulness of the specific object or purpose for which said \$31,394,650 bonds herein authorized are to be issued, within the limitations of Section 11.00 a. 4 of the Law, is forty (40) years.

Section 4. The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the City for expenditures made after the effective date of this resolution for the purpose or purposes for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

Section 5. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City. The faith and credit

of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Director of Finance, the chief fiscal officer of the City. Further, in connection with bonds and bond anticipation notes issued under the authority of Section 2 hereof, the power to contract with and sell bonds and bond anticipation notes to EFC pursuant to Section 169.00 of the Law and to approve the terms, form and content of such bonds and bond anticipation notes, consistent with the provisions of the Law, is hereby delegated to the Director of Finance. The Director of Finance is hereby further authorized to execute, on behalf of the City, a project financing and loan agreement, and any other agreements with EFC, including amendments thereto, and including any instruments (or amendments thereto) in the effectuation thereof, in order to effect the financing or refinancing of

the specific object or purpose described in Section 1 hereof, or a portion thereof, by a serial bond, and, or a bond anticipation note issue in the event of the sale of same to EFC.

Section 7. Pursuant to the provisions of section 16 of Chapter 223 of the New York Laws of 2010, the City is authorized to include in this resolution the following pledge and agreement of the State of New York (herein called the "State") contained in said Section 16:

"The state does hereby pledge to and agree with the holders of any bonds, notes or other obligations issued by the city during the effective period of this act and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the city to fulfill the terms of any agreements made with such holders pursuant to this act, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations until such bonds, notes or other obligations together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged."

Section 8. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution or a summary hereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- (c) such obligations are authorized in violation of the provisions of the constitution.

Section 9. This Bond Resolution shall take effect immediately, and the City Clerk is hereby authorized and directed to publish the foregoing resolution, in summary, together with a Notice attached in substantially the form prescribed by §81.00 of the Law in "*The Sentinel*," "*The Mid Hudson Times*," and "*The Hudson Valley Press*," three newspapers each having a general circulation in the City and hereby designated the official newspapers of said City for such publication.

Section B. The amendment of the bond resolution set forth in Section A of this resolution, shall in no way affect the validity of the liabilities incurred, obligations issued, or action taken pursuant to said bond resolution, and all such liabilities incurred, obligations issued, or action taken shall be deemed to have been incurred, issued or taken pursuant to said bond resolution, as so amended.

The resolution was declared adopted.

RESOLUTION NO.: 164 - 2022

OF

JULY 11, 2022

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 3G TO
THE CONSTRUCTION CONTRACT WITH TAM ENTERPRISES, INC. FOR
THE DOWNING POND AND THIRD STREET STORM SEWER PROJECT**

WHEREAS, by Resolution No. 218-2021 of September 27, 2021, the City Council of the City of Newburgh, New York awarded a bid to TAM Enterprises, Inc. in the amount of \$3,100,000.00 for the construction of the Downing Pond Drain Outlet and Third Street Storm Sewer Project; and

WHEREAS, additional lead service line replacements for 7 residences on Third Street and Johnson Streets added \$117,000.00 to the contract price increasing the contract amount to \$3,217,00.00; and

WHEREAS, TAM Enterprises, Inc. has submitted Change Order No. 3G with funding for the change order derived from F.8396.0448; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to execute Change Order No. 3G with the TAM Enterprises, Inc. in the amount of \$117,00.00 in the Downing Pond Drain Outlet and Third Street Storm Sewer Project.

Change Order No. 3G

Date of Issuance: June 30, 2022	Effective Date: July <u> </u> , 2022
Owner: City of Newburgh	Owner's Contract No.: 11.21
Contractor: TAM Enterprises Inc	Contractor's Project No.:
Engineer: Arcadis of New York, Inc	Engineer's Project No.: 30055884
Project: New Drain Outlet at Downing Park and Third Street Storm Sewer	Contract Name: General Construction

The Contract is modified as follows upon execution of this Change Order:

Description:

Add new contingency allowance item "Lead Water Service Line Replacement" to the contract and \$117,000.00 added to the item for lead water service line replacement for a total of seven residences on Third Street and Johnston Street (253 Third St, 259 Third St, 261, Third St, 275 Third St, 287 Third St, 98 Johnston, and 100 Johnston).

Attachments: *Change Proposals*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>3,100,000.00</u>	Original Contract Times: Substantial Completion: <u>300</u> Ready for Final Payment: <u>330</u> days
Increase from previously approved Change Orders No. <u>1</u> : \$ <u>0.00</u>	Increase from previously approved Change Orders No. <u>1</u> : Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price prior to this Change Order: \$ <u>3,100,000.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>300</u> Ready for Final Payment: <u>330</u> days
Increase of this Change Order: \$ <u>117,000.00</u>	Increase of this Change Order: Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price incorporating this Change Order: \$ <u>3,217,000.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>300</u> Ready for Final Payment: <u>330</u> days

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: <u>Project Manager</u>	Title: <u>City Engineer</u>	Title: <u>Project Manager</u>
Date: <u>June 30, 2022</u>	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

RESOLUTION NO.: 165 - 2022

OF

JULY 11, 2022

**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 PHASE II OF
THE COMBINED SEWER OVERFLOW LONG TERM CONTROL PLAN FOR
THE SEPARATION OF SEWERS ON WATER STREET FROM
CARPENTER AVENUE TO MONTGOMERY STREET
IN AN AMOUNT NOT TO EXCEED \$380,000.00**

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 a Consent Order with the New York State Department of Environmental Conservation to resolve violations at the Wastewater Treatment Plant and for the development of the Long Term Control Plan ("LTCP"); and

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

WHEREAS, by Resolution No. 189-2019 of August 12, 2019, the City Council authorized the City Manager to accept a letter proposal and execute a professional engineering services agreement with Arcadis of New York, Inc. to complete the planning and preliminary engineering for projects included as part of Phase II, III, and IV of the LTCP in an amount not to exceed \$880,000.00; and

WHEREAS, by Resolution No. 296-2020 of December 14, 2020, the City Council authorized the City Manager to accept a letter proposal and execute a contract for additional professional engineering services with Arcadis of New York, Inc. to complete the design and bid documents for the Separation of Combined Sewers on Water Street from Carpenter Avenue to Montgomery Street Project included as part of Phase II of the CSO LTCP in an amount not to exceed \$295,000.00; and

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for construction management and inspection professional engineering services for the Separation of Combined Sewers on Water Street from Carpenter Avenue to Montgomery Street Project included as part of Phase II of the CSO LTCP with funding for the cost of the services an amount not to exceed \$380,000.00 to be derived from an existing grant and loan from the New York State Environmental Facilities Corporation under project CWSRF#C3-7332-11-00; 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 a professional engineering services agreement with Arcadis of New York, Inc. for construction management and inspection services in the Separation of Combined Sewers on Water Street from Carpenter Avenue to Montgomery Street Project included as part of Phase II of the CSO LTCP in an amount not to exceed \$380,000.00.



Jason Morris, PE
Commissioner of Public Works & City Engineer
City of Newburgh
83 Broadway
Newburgh, New York 12550

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

Date: June 27, 2022

Our Ref: 30129146

Subject: Proposal for Construction Phase Services
North / Water Street Sewer Separation

Dear Mr. Morris,

Arcadis of New York, Inc. is pleased to present the City of Newburgh with this proposal for construction phase engineering services for City's North / Water Street Sewer Separation Project. We have included a woman owned business subconsultant to provide construction inspection services to provide a good faith effort to meet funding requirements.

Scope of Services

Task 10 – Construction Administration

Arcadis will perform construction contract administration services based on a single-prime construction contract with an expected duration of 10 months. Arcadis will provide in-house project management to direct and coordinate services to be provided by Arcadis, such as scheduling site visits, quality review of deliverables, communications with City staff, budget management and invoicing.

Arcadis will schedule and attend, in conjunction with the City, the pre-construction conference to discuss general and specific requirements of the Contract Documents. Develop an agenda and create and distribute minutes for this meeting.

Arcadis will review the Contractor's pre-construction submittals including, but not limited to, lists of subcontractors, schedules, schedule of values, and submittal log. Arcadis will review Contractor's submittals during construction; including shop drawings, material and equipment samples, and vendor O&M manuals to determine whether such submittals are in accordance with the Contract Documents. Arcadis will indicate what changes, if any, are necessary for each submittal and review necessary re-submittals until such point as submittals are in conformance with the Contract Documents. Arcadis has included up to two re-submittals in this scope of work. Arcadis will maintain a submittal log describing the current status of Contractors' submittals, as well as maintain records of vendor warranties and one set of approved shop drawings to be turned over to the City at the completion of construction.

Arcadis will review the Contractor's construction progress schedule and provide comments to the Contractor and the City. Arcadis will review and make recommendations to the City for the approval of payment requests. Recommendations for payment will be based on the Contractor's progress to date, and shop drawing and equipment procurement status.

Mr. Jason Morris, PE
City of Newburgh
June 27, 2022

We will prepare and support the City in the negotiation of change orders and in the review of requests for time extensions and of claims, in accordance with the Contract between the City and the Contractor. Preparation of change orders shall include necessary drawing and specification modifications.

Arcadis will prepare quarterly M/WBE and EEO reports to be sent to the New York State Environmental Facilities Corporation (NYS EFC) as required for NYS Clean Water State Revolving funding.

Task 11 – Field Resolutions

Arcadis will review, log, and respond to Requests for Information (RFIs), Requests for Field Changes, and Field Changes that are submitted in writing by the Contractor. We will prepare written responses for requests and prepare supplementary drawings that may be necessary for the interpretation and clarification of the Contract Documents.

Task 12 – Construction Progress Meetings

Attend up to 18 bi-weekly progress meetings with the City, the Contractor and other stakeholders. Arcadis will develop agendas and create and distribute minutes for each progress meetings. Meetings will include a discussion of the work completed in the prior two weeks, the progress anticipated for the upcoming two weeks, the status of RFI's, change orders, and shop drawings. Progress meetings will be attended in person by our Resident Engineer and virtually by our Project Manager and Project Engineer.

Task 13 – Site Visits

Arcadis will make a site periodically by technical staff to observe the progress of the Work. Arcadis will participate in an inspection with the City to determine if the work is substantially complete and assist in determining if the work has been completed in general accordance with the Contract Documents. We will prepare a list of incomplete items (punch list) and obtain a schedule for their completion from the Contractor. Upon receiving written notice from the Contractor that the Work is complete, and a final inspection requested, Arcadis will conduct a final inspection to determine if the completed Work is acceptable.

Task 14 – Construction Inspection

Arcadis will provide full time inspection services on behalf of the City to assist the Resident Engineer. Arcadis will partner with a M/WBE firm to provide up to 1,600 hours of construction observation by a construction field representative. While inspecting the Work on site, the construction field representative will:

- Observe material and equipment delivered to the site prior to installation;
- Inform the Contractor when the Work being performed does not meet the requirements of the Contract Documents;
- Verify that deficiencies in the Work are corrected and properly documented, and;
- Prepare a daily log summarizing the day's observations. The daily log will include the date, weather conditions, construction Work in progress, size of the work force, equipment utilized, and condition of the Work.

Task 15 – Construction Closeout

Arcadis will assist the City with document collection for closeout of the project in compliance with requirements of NYS EFC and the other sources of funding for this project. Create as built drawings based upon the Contractor field mark-ups. The CADD drawing files will be submitted to the City electronically, along with 2 hard copies.

Mr. Jason Morris, PE
City of Newburgh
June 27, 2022

Schedule and Fee

Arcadis will complete the scope of services presented herein for a total not to exceed fee of \$380,000. The City will only be charged for actual time and expense costs incurred. If acceptable, this scope of work will be billed in accordance with the attached rates schedule for hours worked plus other direct costs markup of 10 percent. Arcadis proposes amending the current Engineering Agreement for the Reconstruction of Broadway and Separation of Sewers on Water Street Sewer Separation, to add the scope of services presented herein.

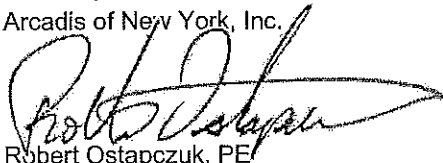
Task	Compensation
Task 10 – Construction Administration	\$61,000
Task 11 – Field Resolutions	\$30,000
Task 12 – Construction Progress Meetings	\$31,000
Task 13 – Site Visits	\$25,000
Task 14 – Construction Inspection	\$220,000
Task 15 – Construction Closeout	\$13,000
Total Not to Exceed Fee: \$380,000	

Arcadis is familiar with NYS EFC requirements to make good faith efforts to obtain the services of M/WBE subcontractors, and to that end we are proposing to use a WBE subcontractor for construction inspection to achieve a goal of 20% utilization. It is estimated for the scope of services described herein, that the total M/WBE utilization will be approximately \$200,000 or 50%.

Arcadis looks forward to continuing to support the City to improve its critical infrastructure. If you have any questions, please do not hesitate to contact me at (518) 250-7300 so that I may be of further assistance. We again thank the City for this opportunity.

Sincerely,

Arcadis of New York, Inc.



Robert Ostapczuk, PE
Vice President

Email: robert.ostpaczuk@arcadis.com
Direct Line: 518.250.7305
Mobile: 518.810.6872

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

Rate Sheet

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

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

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

In-house services not subject to handling costs are:

Transportation:

Current IRS mileage reimbursement rate

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

RESOLUTION NO.: 166 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE A CONTRACT WITH CLEARGOV, INC.
FOR BUDGETING AND AUDIT SOFTWARE SERVICES

WHEREAS, the City of Newburgh requires software services for a variety of municipal budgeting and audit needs; and

WHEREAS, ClearGov, Inc. has submitted an agreement to provide municipal budgeting and audit software services to the City of Newburgh; and

WHEREAS, this Council has reviewed the attached agreement and has determined that executing same under the terms and conditions set forth therein is in the best interests of the City of Newburgh; and

WHEREAS, funding for such project shall be derived from H1.1670.0205.2020, Other Equipment; and

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 a contract with ClearGov, Inc. to provide municipal budgeting and audit software services to the City of Newburgh.



ClearGov®

2 Mill & Main; Suite 630; Maynard, MA 01754

Service Order

Created by	Rob Battaglia
Contact Phone	631-747-3253
Contact Email	rbattaglia@cleargov.com

Order Date	Jun 13, 2022
Order valid if signed by	Jul 31, 2022

Customer Information					
Customer	City of Newburgh	Contact	Todd Venning	Billing Contact	Janice Gaston
Address	83 Broadway	Title	City Manager	Title	City Comptroller
City, St, Zip	Newburgh, NY 12550	Email	tvenning@cityofnewburgh-ny.gov	Email	jgaston@cityofnewburgh-ny.gov
Phone	845-569-7319			PO # (if any)	

To be clear, you will be billed as follows...

Billing Date(s)	Amount(s)	Notes
Aug 1, 2022	\$7,200.00	One Time Setup Fee
Aug 1, 2022	\$15,166.67	5 Month Pro-Rata Subscription Fee
Jan 1, 2023	\$36,400.00	Annual Subscription Fee

Additional subscription years and/or renewals will be billed annually in accordance with pricing and terms set forth herein.

ClearGov will provide your Services according to this schedule...

Period	Start Date	End Date	Description
Setup	Aug 1, 2022	Aug 1, 2022	ClearGov Setup Services
Pro-Rata	Aug 1, 2022	Dec 31, 2022	ClearGov Subscription Services
Initial	Jan 1, 2023	Dec 31, 2025	ClearGov Subscription Services

The Services you will receive and the Fees for those Services are...

Set up Services		Tier/Rate	Service Fees
ClearGov Setup: Includes activation, onboarding and training for ClearGov solutions.		Tier 3	\$ 12,000.00
ClearGov Setup Bundle Discount: Discount for bundled solutions.		Tier 3	\$ (4,800.00)
Total ClearGov Setup Service Fee - Billed ONE-TIME			\$ 7,200.00
Subscription Services		Tier	Service Fees
ClearGov Operational Budgeting - Civic Edition		Tier 3	\$ 17,650.00
ClearGov Personnel Budgeting - Civic Edition		Tier 3	\$ 16,800.00
ClearGov Capital Budgeting - Civic Edition		Tier 3	\$ 11,500.00
ClearGov Digital Budget Book - Civic Edition		Tier 3	\$ 10,500.00
ClearGov Transparency - Civic Edition		Tier 3	\$ 9,650.00
ClearGov Budget Cycle Management Bundle Discount: Discount for bundled solutions.		Tier 3	\$ (29,700.00)
Total ClearGov Subscription Service Fee - Billed ANNUALLY IN ADVANCE			\$ 36,400.00
Billing Terms and Conditions			
Valid Until	Jul 31, 2022	Pricing set forth herein is valid only if ClearGov Service Order is executed on or before this date.	
Payment	Net 30	All invoices are due Net 30 days from the date of invoice.	
Rate Increase	3% per annum	After the Initial Service Period, the Annual Subscription Service Fee shall automatically increase by this amount.	

Customer Upgrades (ClearGov internal use only)

This Service Order is a Customer Upgrade	No	If Yes: Original Service Order Date	
--	----	-------------------------------------	--

General Terms & Conditions

Customer Satisfaction Guarantee	During the first thirty (30) days of the Service, Customer shall have the option to terminate the Service, by providing written notice. In the event that Customer exercises this customer satisfaction guarantee option, such termination shall become effective immediately and Customer shall be eligible for a full refund of the applicable Service Fees.
Statement of Work	ClearGov and Customer mutually agree to the ClearGov Service activation and onboarding process set forth in the attached Statement of Work.
Taxes	The Service Fees and Billing amounts set forth above in this ClearGov Service Order DO NOT include applicable taxes. In accordance with the laws of the applicable state, in the event that sales, use or other taxes apply to this transaction, ClearGov shall include such taxes on applicable invoices and Customer is solely responsible for such taxes, unless documentation is provided to ClearGov demonstrating Customer's exemption from such taxes.
Term & Termination	Subject to the termination rights and obligations set forth in the ClearGov Service Agreement, this ClearGov Service Order commences upon the Order Date set forth herein and shall continue until the completion of the Service Period(s) for the Service(s) set forth herein. Each Service shall commence upon the Start Date set forth herein and shall continue until the completion of the applicable Service Period.
Cancellation Option	This ClearGov Service Order is subject to the approval of the Newburgh City Council (the "Board") as set forth herein. In the event that the Board does not approve this Service Order at its July 11, 2022 meeting, Customer shall have the option to terminate this Service Order immediately by providing written notice. In the event that Customer exercises this option, Customer shall have no payment.
Appropriations	Customer shall have the option to terminate this ClearGov Service Order in advance of any annual renewal in the event that the applicable appropriating body does not appropriate funds for such upcoming renewal period.
Agreement	This ClearGov Service Order shall become binding upon execution by both Parties. The signature below affirms your commitment to pay for the Service(s) ordered in accordance with the terms set forth in this ClearGov Service Order and also acknowledges that you have read and agree to the terms and conditions set forth in the attached ClearGov Service Agreement. This Service Order incorporates by reference the terms of such ClearGov Service Agreement.

Customer	
Signature	
Name	
Title	

ClearGov, Inc.	
Signature	
Name	Bryan A. Burdick
Title	President

Please e-mail signed Service Order to Orders@ClearGov.com or Fax to (774) 759-3045

Statement of Work

This Statement of Work outlines the roles and responsibilities by both ClearGov and Customer required for the activation and onboarding of the ClearGov Service. ClearGov will begin this onboarding process upon execution of this Service Order. All onboarding services and communications will be provided through remote methods - email, phone and web conferencing.

ClearGov Responsibilities

- ClearGov will activate ClearGov Service subscription(s) as of the applicable Start Date(s). ClearGov will create the initial Admin User account, and the Customer Admin User will be responsible for creating additional User accounts.
- ClearGov will assign a Client Success Manager (CSM) responsible for managing the activation and onboarding process. ClearGov CSM will coordinate with other ClearGov resources, as necessary.
- ClearGov CSM will provide a Kickoff Call schedule to Customer's Primary Contact - to be scheduled within two weeks after the Service Order has been executed.
- ClearGov will provide Customer with financial data requirements and instructions, based on the ClearGov Service subscription(s). If necessary, ClearGov will set up a Data Discovery call to assist with such requirements/instructions.
- ClearGov will review financial data files and confirm that data is complete, or request additional information, if necessary. Once complete financial data files have been received, ClearGov will format the data, upload it to the ClearGov platform and complete an initial mapping of the data.
- After initial mapping, ClearGov will schedule a Data Review call with a ClearGov Data Onboarding Consultant (DOC), who will present how the data was mapped, ask for feedback and get answers to open questions. Depending upon Customer feedback and the complexity of data mapping requests, there may be additional follow up calls or emails required to complete the data onboarding process.
- ClearGov will make Customer aware of all training, learning and support options. ClearGov recommends all Users attend training sessions and/or read Support Center articles before using the ClearGov Service to ensure a quick ramp and success. As needed, ClearGov will design and deliver one customized remote training session for Admins and one for End Users - via video conference - and these sessions will be recorded for future reference.
- ClearGov will make commercially reasonable efforts to complete the onboarding process in a timely fashion, provided Customer submits financial data files and responds to review and approval requests by ClearGov in a similarly timely fashion. Any delay by Customer in meeting these deliverable requirements may result in a delayed data onboarding process. Any such delay shall not affect or change the Service Period(s) as set forth in the applicable Service Order.

Customer Responsibilities

- Customer's Primary Contact will coordinate the necessary personnel to attend Kickoff Call within two weeks after the Service Order has been executed. If Customer needs to change the date/time of the Kickoff Call, the Primary Contact will notify the ClearGov CSM at least one business day in advance.
- Customer will provide requested financial data files (revenue, expense, chart of accounts, etc.) to ClearGov in accordance with the requirements provided by ClearGov.
- Customer's Primary Contact will coordinate the necessary personnel to attend the Data Review call. It is recommended that all stakeholders with input on how data should be mapped should attend. Based on the Data Review call and any subsequent internal review, Customer shall provide a detailed list of requested changes in a timely manner, and Customer will approve the final data mapping, once completed to Customer's satisfaction.
- Customer shall be solely responsible for inputting applicable text narrative, custom graphics, performance metrics, capital requests and personnel data and other such information for budget books, projects, dashboards, etc.

This ClearGov Service Agreement (the "**Agreement**") is made and entered into by and between ClearGov, Inc. ("**ClearGov**"), a Delaware corporation with its principal offices at 2 Mill & Main; Suite 630, Maynard, MA 01754 and **Customer** (as defined in the applicable ClearGov Service Order) (each a "**Party**" and collectively the "**Parties**"). This Agreement governs the terms and conditions under which Customer may utilize the ClearGov Service as set forth herein and as specified in one or more applicable ClearGov Service Order(s) executed by Customer in connection herewith and incorporated herein (the "**ClearGov Service Order(s)**").

WHEREAS ClearGov owns and operates the ClearGov Service, a Web-based SaaS solution that includes a variety of ClearGov Apps and provides various features and functionality via such ClearGov Apps; and

WHEREAS Customer wishes to utilize the ClearGov Service in order to convey fiscal budget, key metrics and other information to the public as well as to leverage the functionality of such ClearGov Apps;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ClearGov and Customer hereby agree as follows:

1) **Definitions.** Capitalized terms used in this Agreement, and not otherwise defined herein, shall have the following meanings:

- 1.1) "**Account**" means a registered user access point for the ClearGov Service.
- 1.2) "**ClearGov API**" means an application programming interface that provides access to specified content and functionality within certain ClearGov Apps.
- 1.3) "**ClearGov Apps**" means collectively all of the Web applications hosted by ClearGov and available via the ClearGov Service, including but not limited to:
 - a) Capital Budgeting: An application that enables capital requests, budgeting and planning and the public display of capital project pages.
 - b) Digital Budget Book: An application that enables the development and public delivery of an online, digital budget presentation.
 - c) Operational Budgeting: An application that enables fiscal budgeting, forecasting and benchmarking.
 - d) Personnel Budgeting: An application that enables that personnel budgeting and planning.
 - e) Transparency: An application that enables the development and public delivery of fiscal budget information, transparency widgets, limited project pages and departmental dashboards.All features, functionality, reports, etc. for each ClearGov App are included as material elements of the applicable ClearGov App. ClearGov may modify, combine, add or delete ClearGov Apps from the ClearGov Service from time to time at its sole discretion, provided that in the event that ClearGov terminates or deletes any ClearGov App to which Customer is actively subscribing, ClearGov shall provide a pro-rata refund for applicable portion of the Subscription Service Fee for the remainder of the then current Service Period.
- 1.4) "**ClearGov Data**" means any aggregated and normalized key metrics and benchmarking data collected by ClearGov for the delivery of the ClearGov Service.
- 1.5) "**ClearGov Service**" means the complete set ClearGov software and related materials including but not limited to the ClearGov Apps, ClearGov Data, ClearGov Web Site, the Documentation and the Software.
"**ClearGov Web Site**" means the Web site owned and

operated by ClearGov and made available at the following URL: <http://www.ClearGov.com> and/or any successor site(s).

- 1.6) "**Customer Budget Book .PDF**" means one or more .PDF files of Customer's annual budget book created by Customer using the ClearGov Apps.
- 1.7) "**Customer Data**" means any data provided to ClearGov by or on behalf of Customer or any data entered or uploaded into the ClearGov Service by or on behalf of Customer, including Sensitive Data entered or provided by Customer. Customer Data specifically excludes ClearGov Data as well as any anonymized, customized, modified or derivative works related to the Customer Data.
- 1.8) "**Customer State**" means the state, commonwealth or territory in which the Customer is located.
- 1.9) "**Customer Web Site**" means any Web site owned and operated by Customer.
- 1.10) "**Documentation**" means any accompanying proprietary documentation made available to Customer by ClearGov for use with the ClearGov Service, including any documentation available online or otherwise.
- 1.11) "**Sensitive Data**" means any Customer Data that may reasonably be deemed sensitive and/or private in nature, including but not limited to personal wage garnishments, individual healthcare-related expenses, data protected by HIPAA, etc.
- 1.12) "**Software**" means the source code and/or other code which are material elements of the ClearGov Apps and ClearGov Service.

2) **Service Usage & Licenses.**

- 2.1) Account Password and Security. Customer shall protect its passwords and take full responsibility for Customer's own, as well as any third-party, use of the Customer Account(s). Customer is solely responsible for any and all activities that occur under such Customer Account(s), except for any activities performed by ClearGov as set forth herein. Customer agrees to notify ClearGov immediately upon learning of any unauthorized use of a Customer Account or any other breach of security. From time to time, ClearGov's support staff may log in to the Customer Account in order to maintain or improve service, including providing Customer assistance with technical or billing issues. Customer hereby acknowledges and consents to such access.
- 2.2) ClearGov License. Subject to the terms and conditions of this Agreement and as specifically set forth in the applicable ClearGov Service Order(s), ClearGov grants Customer a limited, revocable, non-exclusive, non-transferable, non-distributable, worldwide license to utilize the ClearGov Service for the following functionality:
 - a) Content Delivery. Customer may integrate, link and publish applicable public-facing content from the applicable ClearGov Apps within one or more Customer Web Site(s);
 - b) Application Access. Customer may access the ClearGov Apps via Customer's Account to utilize the functionality provided within such ClearGov Apps; and
 - c) API Access. Customer may access the ClearGov API to distribute and display public-facing content from the ClearGov Apps within one or more Customer Web Site(s).

3) **Term and Termination.**

- 3.1) Term. The duration of this Agreement shall be defined in accordance with the Term set forth in all applicable Service Order(s). The Term shall commence upon the Start Date set forth in the first ClearGov Service Order executed between the Parties and shall continue in full force and effect until the

termination or expiration of the ClearGov Service Order annexed hereto and made a part hereof (the "**Term**"). Any addition or extensions of the Term must be agreed to, in writing, pursuant to a separate contract or agreement.

3.2) **Termination.** This Agreement and/or any applicable ClearGov Service Order may be terminated as follows:

- a) Either Party may terminate this Agreement if the other Party fails to cure a material breach of the Agreement within fifteen (15) days after receipt of written notice thereof.
- b) Either Party may terminate this Agreement if the other Party is involved in insolvency proceedings, receivership, bankruptcy, or assignment for the benefit of creditors.

3.3) **Obligations.** Upon expiration or termination of this Agreement:

- a) Each Party shall promptly return to the other all of the Confidential Information of the other Party in its possession or control;
- b) Customer shall cease use of the ClearGov Service and shall remove all links from the Customer Site(s) to any content provided by the ClearGov Apps, provided that Customer may continue to provide access to any Customer Budget Book .PDF(s). Customer shall be solely responsible for hosting and delivering such Customer Budget Book .PDF(s) as well as any ongoing costs for doing so; and
- c) Any outstanding fees shall become immediately due and payable, and termination of this Agreement shall not relieve Customer from its obligation to pay to ClearGov any such fees.

3.4) **Survival.** Sections 3.3, 3.4 and 4 through 8 inclusive shall survive any termination or expiration of this Agreement.

4) Fees and Billing.

- 4.1) **Fees.** Customer shall pay the Fees in accordance with the terms set forth in the applicable ClearGov Service Order.
- 4.2) **Interest and Collections.** Customer will be charged \$50 for payments by checks that are returned due to insufficient funds. Any late payments will accrue interest equal to one and one-half percent (1.5%) per month, or the maximum amount allowable under law, whichever is less, compounded monthly. ClearGov shall be entitled to recover all reasonable costs of collection (including agency fees, attorneys' fees, in-house counsel costs, expenses and costs) incurred in attempting to collect payment from Customer.
- 4.3) **Taxes.** Customer is solely responsible for all applicable sales, use and other taxes and similar charges based on or arising from this Agreement or any ClearGov Service Order. In the event that Customer is exempt from sales tax, Customer will provide ClearGov with a tax-exempt certificate upon request.

5) Intellectual Property.

- 5.1) **General.** Both Parties may only use the other Party's intellectual property as expressly set forth herein. Nothing in this Agreement shall be construed in any manner to affect or modify either Party's ownership rights in any preexisting or future works, trademarks, copyrights or technologies developed or created by either Party, including without limitation, their respective proprietary software used in connection with the development and provision of their respective Web sites, databases, systems, products and/or services. Unless specifically agreed by the Parties in writing, all intellectual property, including without limitation information that could become the subject of a patent, copyright or trade secret, developed by a Party in the context of performing its obligations under this Agreement shall be exclusively owned by that Party and the other Party shall

cooperate with any reasonable requests to execute documents confirming such ownership.

5.2) **Data Ownership and License.**

- a) Customer represents and warrants that it has obtained all data subjects' consent or otherwise has the full legal right necessary to provide the Customer Data to ClearGov for ClearGov's use as contemplated by this Agreement. Customer acknowledges that ClearGov shall have no legal liability for its use and/or the display of the Customer Data as contemplated by this Agreement.
- b) Customer represents and warrants that Customer shall not provide or enter Sensitive Data to be displayed in any publicly available element of the ClearGov Service. To the extent that Customer enters or uploads any Sensitive Data into the ClearGov Service, Customer shall assume full responsibility for the disclosure of such Sensitive Data. ClearGov is under no obligation to review and/or verify whether or not Customer Data includes Sensitive Data.
- c) Customer Data shall remain the property of Customer, and Customer hereby grants ClearGov a limited, perpetual, irrevocable and royalty-free right to use, copy, modify, and display the Customer Data within any ClearGov App(s) and for the purpose of providing the ClearGov Service.

- 5.3) **Proprietary Rights Notice.** The ClearGov Service and all intellectual property rights in the ClearGov Service are, and shall remain, the property of ClearGov. All rights in and to the ClearGov Service not expressly granted to Customer in this Agreement are hereby expressly reserved and retained by ClearGov without restriction, including, without limitation, ClearGov's right to sole ownership of the ClearGov API, ClearGov Apps, ClearGov Data, ClearGov Web Site, Documentation and Software. Without limiting the generality of the foregoing, Customer agrees not to (and to not allow any third party to): (a) sublicense, distribute, or use the ClearGov Service outside of the scope of the license granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the ClearGov Service or otherwise attempt to discover any source code or trade secrets related to the ClearGov Service; (c) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the ClearGov Service for any purpose without the express written consent of ClearGov; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyrights or other proprietary rights associated with ClearGov other than in the name of ClearGov; or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the ClearGov Service. If the use of the ClearGov Service is being purchased by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the Government's rights in the ClearGov Service, including its rights to use, modify, reproduce, release, perform, display or disclose any elements of the ClearGov Service, will be subject in all respects to the commercial license rights and restrictions provided in this Agreement.

6) Representations, Warranties, Indemnification and Liability.

- 6.1) **By ClearGov.** ClearGov represents and warrants that: (i) the ClearGov Service shall be provided in accordance with, and shall not violate applicable laws, rules or regulations; and (ii)

by using the ClearGov Service, Customer will not violate or in any way infringe upon the personal or proprietary rights of any third party, (iii) the ClearGov Service does not contain any virus, worm, Trojan horse, time bomb or similar contaminating or destructive feature; and (iv) ClearGov holds all necessary rights to permit the use of the ClearGov Service and all components thereof provided to Customer under this Agreement.

- 6.2) By Both. ClearGov and Customer both represent and warrant that (i) each has full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement is a legal, valid and binding obligation, enforceable against each Party in accordance with its terms; and (iii) entering into this Agreement will not knowingly violate any laws, regulations or third-party contracts.
- 6.3) Indemnification by ClearGov. At ClearGov's cost, ClearGov agrees to indemnify, hold harmless and defend Customer against any cost, loss or expense (including attorney's fees) resulting from any claims by third parties for loss, damage or injury arising out of or relating to (i) ClearGov's breach of any term, condition, representation or warranty of this Agreement, (ii) ClearGov's violation of any third party rights in connection with the ClearGov Service or (iii) ClearGov's violations of applicable laws, rules or regulations in connection with the ClearGov Service. In such a case, Customer will provide ClearGov with written notice of such claim, suit or action. Customer shall cooperate as fully as reasonably required in the defense of any claim. Customer reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by ClearGov. Notwithstanding the foregoing, unless the settlement involves no cost, loss or continuing liability to Customer, ClearGov shall not settle any claim, action or demand without the written consent of Customer, such consent not to be unreasonably withheld.
- 6.4) Limited Warranty. ClearGov warrants that the ClearGov Service will be delivered in a professional and workmanlike manner and substantially in accordance with the statement of work set forth in the applicable ClearGov Service Order. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, INCLUDING ANY APPLICABLE CLEARGOV SERVICE ORDER, CLEARGOV MAKES NO ADDITIONAL WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, GUARANTEES, REPRESENTATIONS, PROMISES, STATEMENTS, ESTIMATES, CONDITIONS, OR OTHER INDUCEMENTS.
- 6.5) Limitation of Liability. WITH THE EXCEPTION OF CLAIMS THAT ARISE UNDER SECTION 6.3, ABOVE, NEITHER CLEARGOV NOR CUSTOMER WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOLLOWING SENTENCE. BOTH PARTIES' TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE CUMULATIVE

FEES PAID BY CUSTOMER TO CLEARGOV IN THE PRECEDING TWELVE (12) MONTHS. THE FOREGOING SHALL NOT LIMIT A PARTY'S (A) PAYMENT OBLIGATIONS UNDER THE AGREEMENT; (B) LIABILITY FOR INDEMNIFICATION OBLIGATIONS UNDER SECTION 6.3; (C) LIABILITY FOR ANY BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7; OR (D) LIABILITY FOR ITS INFRINGEMENT OR MISAPPROPRIATION OF ANY PROPRIETARY RIGHTS OF THE OTHER PARTY. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS EXCLUDING OR LIMITING A PARTY'S LIABILITY FOR FRAUD OR ITS LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE.

- 6.6) Essential Element. The provisions of this Section 6 are an essential element of the benefit of the consideration reflected in this Agreement.

7) Confidentiality.

- 7.1) Subject to any applicable open public records laws in the Customer State, each Party will keep the specific terms of this Agreement confidential, including the contents of the schedules and exhibits, and not disclose any portion of them to any third party (other than to its attorneys, accountants, advisors and potential investors who are bound to keep such information confidential) without the other Party's prior written consent, except as required by law, including but not limited to open public record laws.
- 7.2) In addition, in connection with the negotiation and performance of this Agreement, a Party (the "**Receiving Party**") may receive information from the other Party (the "**Disclosing Party**") which is confidential or proprietary in nature, including without limitation information about a Party's products, systems and services ("**Confidential Information**"). The Receiving Party agrees that, during the term of this Agreement and for a period of three (3) years thereafter, it will keep the Confidential Information in strictest confidence and protect such Confidential Information by similar security measures as it takes to protect its own Confidential Information of a similar nature, but in no event shall the Receiving Party take less than reasonable care with the Confidential Information of the Disclosing Party. The Receiving Party also agrees that it will not use any Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.
- 7.3) The term "**Confidential Information**" shall not include information which A) is or becomes generally available to the public without breach of this Agreement, B) is in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, C) becomes available from a third party not in breach of any obligations of confidentiality, D) is independently developed by the Receiving Party, or E) is required to be disclosed by the Receiving Party pursuant to law, rule, regulation, subpoena or court order, including but not limited to open public record laws.
- 7.4) The Parties recognize that the disclosure or use of a Disclosing Party's Confidential Information by the Receiving Party in violation of the provisions of this Section 7 may cause irreparable injury to the Disclosing Party; therefore, in the event either Party breaches the provisions of this Section 7, the other Party, in addition to any other remedies it may have, shall be entitled to seek preliminary and permanent injunctive relief without the necessity of posting a bond.

8) Miscellaneous.

- 8.1) General. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to

the maximum extent permissible so as to implement the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect. A waiver of any default is not a waiver of any subsequent default. The relationship between ClearGov and Customer is one of independent contractors, not partnership, joint venture or agency. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. The Software is controlled by U.S. Export Regulations, and it may not be exported to or used by embargoed countries or individuals.

- 8.2) Entire Agreement. This Agreement and the accompanying ClearGov Service Order(s), together, constitute a valid and binding agreement between the Parties and are intended to be the Parties' complete, integrated expression of the terms of their agreement with respect to the ClearGov Service, and any prior agreements or understandings with respect to such subject matter are superseded hereby and fully merged herein.
- 8.3) Assignment. Neither Party will assign this Agreement in whole or in part to any third party without the prior written consent of the other Party; provided, however, either Party may assign this Agreement without such consent to any subsidiary or parent company of such Party or to any successor by way of any merger, consolidation or other corporate reorganization of such Party or sale of all or substantially all of the assets of such Party or to an entity that assumes, by sale, license or otherwise, the business activities that are the subject of this Agreement, provided that such subsidiary or parent company or successor assumes or is otherwise fully bound by all of the obligations of the assigning Party under this Agreement.
- 8.4) Marketing Materials. Customer agrees that ClearGov may utilize Customer's name solely to identify it as a ClearGov Customer on the ClearGov Web site, in client lists and other marketing materials. Any other uses of Customer's name and/or logo (other than as included in the content and/or other items furnished to ClearGov by Customer) shall require Customer's prior written consent.
- 8.5) Insurance. ClearGov shall maintain commercial general liability insurance, cybersecurity insurance, professional liability insurance and auto liability insurance in amounts that are consistent with industry standards. ClearGov shall maintain Worker's Compensation insurance as required by law.
- 8.6) No Boycott of Israel. ClearGov hereby certifies that ClearGov is not currently engaged in and shall not, for the duration of the Term of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.
- 8.7) Jurisdiction. This Agreement shall be governed by the applicable laws in the Customer State, without regard to conflict of laws rules. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the Customer State before a panel of three arbitrators. Such arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on an award, if any, may be entered in any court having jurisdiction. This clause shall not preclude parties from

seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

- 8.8) Force Majeure. If the performance of this Agreement or any obligations hereunder is prevented or interfered with by reason of fire or other casualty or accident, strikes or labor disputes, war or other violence, any law, proclamation, regulation, or requirement of any government agency, or any other act or condition beyond the reasonable control of a Party hereto, that Party upon giving prompt notice to the other Party shall be excused from such performance during such occurrence.
- 8.9) Notices. All notices, requests, or other communications between the Parties that are required or permitted hereunder will be in writing and will be given by: (a) delivery in person or by prepaid courier service with a nationally recognized courier company, (b) delivery by registered or certified mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) email to the address and/or fax number set forth in the applicable ClearGov Service Order. A Party may change the street or email address or fax number to which notice is to be sent by giving written notice of such change. Notices will be deemed given when received as evidenced by verification from the courier company, the mail or email receipt or fax confirmation.
- 8.10) Titles & Subtitles. The titles and subtitles in this Agreement are used for convenience only and are not to be considered in construing it.

RESOLUTION NO.: 167-2022

OF

JULY 11, 2022

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

WHEREAS, the Director of Finance proposes to delete one Senior Account Clerk position and add 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 one Senior Account Clerk position and add one Account Clerk position in the Finance Department.



City of Newburgh City Comptroller's Office

City Hall – 83 Broadway
Newburgh, New York 12550

Janice Gaston, City Comptroller
jgaston@cityofnewburgh-ny.gov

Tel. (845) 569-7319
Fax (845) 569-7490

Date: June 13, 2022

From: Janice Gaston, City Comptroller

To: Torrance Harvey, Mayor
City Council

Re: To Amend the 2022 Personnel Budget of the Finance Department

Overview:

In light of a full-time employee- (Senior Account Clerk) retiring and the forthcoming budget season the department plans to restructure as follows:

- a) Deleting 1 Senior Account Clerk Position
- b) Add an Account Clerk

This request can be linked to a substantial change in savings to the city as displayed below.

Summary:

Historical Salary Information	
Job Title and Grade: Senior Account Clerk (CSEA)- Grade 15-6	
2021	
\$62,888.30	
Historical Salary Information	
Job Title and Grade: Account Clerk (CSEA)- Grade 3-1	
2021	
\$35,966.00	
Difference (Savings):	\$26,922.30
Notes: Base Salary of Senior Account Clerk (CSEA)- Grade 15-6 is \$54,040. Difference is due to overtime	

*New positions are subject to approval by Civil Service Commission and City Council

RESOLUTION NO.: 168 - 2022

OF

JULY 11, 2022

RESOLUTION AMENDING RESOLUTION NO: 283-2021, THE 2022 BUDGET FOR
THE CITY OF NEWBURGH, NEW YORK TO TRANSFER \$36,958.40
FROM WATER FUND CONTINGENCY TO
WATER FUND PURIFICATION - OTHER SERVICES
TO FUND EMERGENCY CHEMICAL SPILL SERVICES

WHEREAS, an amendment to the 2022 Budget is necessary to fund expenses related to the emergency containment and disposal services related to a chemical spill at the City of Newburgh Water Treatment Facility on February 1, 2022; 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, New York that Resolution No.: 283-2021, the 2022 Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
F.0000.1990.0000.000	Water Contingency	<u>\$36,958.40</u>	
F. 8330.0448.0000	Purification - Other Services		<u>\$36,958.40</u>
	TOTAL:	\$36,958.40	\$36,958.40



Remit to:
Miller Environmental Group, Inc.
538 Edwards Avenue
Calverton, NY 11933
Phone: (631) 369-4900
FAX: (631) 369-4996

Invoice

Bill to:
City of Newburgh Water Department
493 Little Britain Road
Newburgh NY 12550
United States

Job Site:
493 Little Britain Rd
Newburgh NY 12550
United States

Services provided by: MEG Hudson Valley Operations Center. Questions please call us 845-569-1200.

Invoice #:	10042629	Date:	4/8/2022
PO#:		Terms:	Net 30
Job:	NY03220052	Due Date:	5/8/2022

Service Date	Description	Quantity	Units	Rate	Amount
	2/1/22 ER Fluoride spill				
2/1/2022	Project Manager (ST)	3	Hour	\$169.00	\$507.00
2/1/2022	Project Manager (OT)	1	Hour	\$253.50	\$253.50
2/1/2022	Supervisor (ST)	2	Hour	\$147.00	\$294.00
2/1/2022	Supervisor (ST)	3.5	Hour	\$242.55	\$848.93
2/1/2022	Supervisor (OT)	1	Hour	\$220.50	\$220.50
2/1/2022	Licensed CDL Class A Driver (ST)	3.5	Hour	\$189.75	\$664.13
2/1/2022	Licensed CDL Class A Driver (ST)	2	Hour	\$115.00	\$230.00
2/1/2022	Licensed CDL Class A Driver (OT)	1	Hour	\$172.50	\$172.50
2/1/2022	Haz Mat Technician (ST)	2	Hour	\$85.00	\$170.00
2/1/2022	Haz Mat Technician (ST)	3.5	Hour	\$140.25	\$490.88
2/1/2022	Haz Mat Technician (OT)	1	Hour	\$127.50	\$127.50
2/1/2022	Haz Mat Technician (ST)	2	Hour	\$85.00	\$170.00
2/1/2022	Haz Mat Technician (ST)	3.5	Hour	\$140.25	\$490.88
2/1/2022	Haz Mat Technician (OT)	1	Hour	\$127.50	\$127.50
2/1/2022	Haz Mat Technician (ST)	2	Hour	\$85.00	\$170.00
2/1/2022	Haz Mat Technician (ST)	3.5	Hour	\$140.25	\$490.88
2/1/2022	Haz Mat Technician (OT)	1	Hour	\$127.50	\$127.50
2/1/2022	Haz Mat Technician (ST)	2	Hour	\$85.00	\$170.00
2/1/2022	Haz Mat Technician (ST)	3.5	Hour	\$140.25	\$490.88
2/1/2022	Haz Mat Technician (OT)	1	Hour	\$127.50	\$127.50
3/1/2022	Subtotal - Labor				\$6,344.08
2/1/2022	Response Truck	6.5	Hour	\$74.00	\$481.00
2/1/2022	Utility Trucks/Sedans	1	Day	\$204.00	\$204.00
2/1/2022	Vacuum Trailer and Tractor	6.5	Hour	\$147.00	\$955.50
2/1/2022	20' Box Truck	6.5	Hour	\$62.00	\$403.00
2/1/2022	Subtotal - Equipment				\$2,043.50
2/1/2022	Fuel Surcharge			31%	\$633.49

Past due invoices may be subject to 18% per annum interest charge.
Effective September 1, 2021, the Insurance Risk, Security, and Training/
Compliance (IST) fee will change to 9%. Questions? Contact
AR@millerenvironmental.com

Page 1 of 2



Remit to:
Miller Environmental Group, Inc.
538 Edwards Avenue
Calverton, NY 11933
Phone: (631) 369-4900
FAX: (631) 369-4996

Invoice

Service Date	Description	Quantity	Units	Rate	Amount
2/1/2022	Subtotal - Equipment				\$2,676.99
2/1/2022	Level C - Protective Clothing and Respirator	3	Day	\$284.00	\$852.00
2/1/2022	Level D - Protective Clothing	4	Day	\$65.00	\$260.00
2/1/2022	Confined Space Entry / Rescue Equipment	1	Day	\$769.00	\$769.00
2/1/2022	Soda Ash (50 lbs) / Citric Acid	1	Each	\$262.00	\$262.00
2/1/2022	PH Paper	1	Roll	\$60.00	\$60.00
2/1/2022	Subtotal - Materials				\$2,203.00
	2/11/22 Transportation & Disposal				
2/11/2022	Licensed CDL Class A Driver (ST)	8	Hour	\$115.00	\$920.00
2/11/2022	Licensed CDL Class A Driver (OT)	5.5	Hour	\$172.50	\$948.75
2/11/2022	Subtotal - Labor				\$1,868.75
2/11/2022	Vacuum Trailer and Tractor	13.5	Hour	\$147.00	\$1,984.50
2/11/2022	Subtotal - Equipment				\$1,984.50
2/11/2022	Fuel Surcharge			31%	\$615.20
2/11/2022	Level D - Protective Clothing	1	Day	\$65.00	\$65.00
2/11/2022	Insurance, Security & Training	1		\$3,021.65	\$3,021.65
	US ecology invoice 784459 (cost + 30%)				\$18,179.23
Subtotal					\$36,958.40
Tax (%)					\$0.00
Total					\$36,958.40
Amount Paid					\$0.00
Amount Due					\$36,958.40

Past due invoices may be subject to 18% per annum interest charge.
Effective September 1, 2021, the Insurance Risk, Security, and Training/
Compliance (IST) fee will change to 9%. Questions? Contact
AR@millerenv.com

RESOLUTION NO.: 169-2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO MANNY G. PEREIRA TO THE PREMISES KNOWN AS
42 WILLIAM STREET (SECTION 38, BLOCK 2, LOT 34)

WHEREAS, on June 16, 1992, the City of Newburgh conveyed property located at 42 William Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 38, Block 2, Lot 34, to Manny G. Pereira; and

WHEREAS, the attorney for the current owner, Tammy Lynn Berube (f/k/a Tammy Lynn Pereira), 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, and 4 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 42 William Street, Section 38, Block 2, Lot 34 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, and 4 in a deed dated June 16, 1992, from THE CITY OF NEWBURGH to MANNY G. PEREIRA, recorded in the Orange County Clerk's Office on June 19, 1992, in Liber 3619 of Deeds at Page 79 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.: 170 - 2022

OF

JULY 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
SATISFACTION OF MORTGAGE IN CONNECTION WITH A MORTGAGE
ISSUED TO MANNY G. PEREIRA & TAMMY LYNN PEREIRA FOR THE PREMISES
LOCATED AT 42 WILLIAM STREET (SECTION 38, BLOCK 2, LOT 34)**

WHEREAS, the Newburgh Community Development Agency ("NCDA") issued a mortgage to Manny G. Pereira and Tammy Lynn Pereira in the principal sum of \$15,000.00 for premises located at 42 William Street (Section 38, Block 2, Lot 34), dated November 4, 1993, and recorded in the Orange County Clerk's Office on March 21, 1994, in Liber 5050, Page 201; and

WHEREAS, the City of Newburgh is the successor in interest to the NCDA; and

WHEREAS, this Council has determined that issuing and executing a Satisfaction of Mortgage, a copy of which is annexed hereto, is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute the attached Satisfaction in connection with a mortgage issued to Manny G. Pereira and Tammy Lynn Pereira for 42 William Street.

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT

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

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

MORTGAGE bearing the date of November 4, 1993, made by Manny G. Pereira and Tammy Lynn Pereira to the Newburgh Community Development Agency, given to secure payment of the principal sum of \$15,000.00, and duly recorded in the office of the Orange County Clerk's Office on March 21, 1994, in Liber 5050, Page 201; and

which mortgage has not been further assigned of record.

Dated: July ____, 2022

CITY OF NEWBURGH

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

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

On the ____ day of July, 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 person upon behalf of which the individual acted, executed the instrument.

Notary Public

RECORD & RETURN TO:

PRINT OR TYPE IN BLACK INK ONLY

MANNY G. PEREIRA & TAMMY LYNN PEREIRA

TO

NEWBURGH COMMUNITY DEVELOPMENT AGENCY

42 William Street

SECTION 38 BLOCK 2 LOT 34

RECORD AND RETURN TO:
(Name and Address)

NEWBURGH COMMUNITY DEVELOPMENT AGENCY
CITY HALL, 83 BROADWAY
NEWBURGH, NEW YORK 12550

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH
RECORDED INSTRUMENT ONLY.

DO NOT WRITE BELOW THIS LINE

CONTROL NO. 31239 DATE 11-11-93 AFFIDAVIT FILED 19

INSTRUMENT TYPE: DEED MORTGAGE SATISFACTION ASSIGNMENT OTHER

BG20 Blooming Grove
CH22 Chester
CO24 Cornwall
CR28 Crawford
DP28 Deepark
GO30 Goshen
GR32 Greenville
HA34 Hamptonburgh
HI38 Highlands
MK38 Minerva
ME40 Monroe
MY42 Montgomery
MH44 Mount Hope
NT48 Newburgh (T)
NW48 New Windsor
TU60 Tuxedo
WL52 Walkkill
WK54 Warwick
WA66 Wawayanda
WO68 Woodbury
MN08 Middletown
NC11 Newburgh
PJ13 Port Jervis
9999 Hold

SERIAL NO. CK-12536

Mortgage Amount \$ 15,000

Exempt Yes No

3-B Cooking Units. Yes No

Received Tax on above Mortgage

Base \$

MTA \$

Spec. Add. \$

TOTAL \$

MARION S. MURPHY,
Orange County Clerk

By:

ORANGE COUNTY CLERK'S OFFICE S.S.

Recorded on MAR 21 1994

at 12:01 O'Clock M.

In Liber/Film 5050 Mtg.

at page 201 and explained.

John P. Macchi
County Clerk

CHECK CASH CHARGE

MORTGAGE TAX \$ 12

TRANSFER TAX \$

RECORD FEE \$ 12

REPORT FORMS \$

CERT. COPIES \$

RECEIVED

\$
REAL ESTATE
TRANSFER TAX
ORANGE COUNTY

LIBER 5050 PAGE 201

ORG 03/21/94 12:01:05 12611 17.00
***** EDUCATION FUND: 5.00 *****
MORTGAGE CNTL NO: 3639 .00 *
***** SERIAL NUMBER: CK012536 *****

THIS BOND AND MORTGAGE, made the 4th day of November, nineteen hundred and ninety-three.

BETWEEN MANNY G. PEREIRA AND TAMMY LYNN PEREIRA, both residing at Box 2574, Glenville, New York 12325, as joint tenants with a right of survivorship

herein referred to as the mortgagor,

and NEWBURGH COMMUNITY DEVELOPMENT AGENCY, an urban renewal agency organized and existing under the laws of the State of New York with its principal office for the transaction of business located at 83 Broadway, Newburgh, New York, 12550

herein referred to as the mortgagee,

WITNESSETH, that the mortgagor, does hereby acknowledge himself to be indebted to the mortgagee in the sum of FIFTEEN THOUSAND AND 00/100----- (\$ 15,000.00) Dollars

lawful money of the United States, which the mortgagor does hereby agree and bind himself to repay to the mortgagee WITNESSETH, to secure the payment of an indebtedness in the sum of \$15,000, at 0% per centum lawful money of the United States to be paid \$83.33 (thirty 30 days) after completion of project and a like sum of \$83.33 on the 1st day of each and every month thereafter for 179 months, when the entire balance of principal remaining due thereon shall become due and payable.

This mortgage will only be subordinate to bank financing.

to secure the payment of which the mortgagor hereby mortgages to the mortgagee, ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, Orange County, New York, bounded and described as follows:

BEGINNING on the west side of William Street between Washington and Parmenter Streets, 28 feet front and 75 feet deep, bounded on the north by lands now or formerly of Mrs. F. Livingston and C.A. Shields, on the west by lands now or formerly of A. Boyd; on the south by lands now or formerly of L.Y. Wiggins, and on the east by William Street.

BEING known and designated as No. 42 William Street.

BEING the same premises described in a certain deed dated May 6, 1993 from Manny G. Pereira to Manny G. Pereira and Tammy Lynn Pereira and recorded in the Orange County Clerk's Office on May 7, 1993 in Liber 3809 of Deeds at Page 1.

TOGETHER with all right, title and interest, if any, of the mortgagor of, in and to any streets and roads abutting the above-described premises to the center lines thereof.

TOGETHER with all fixtures and articles of personal property now or hereafter attached to, or contained in and used in connection with, said premises, including but not limited to all apparatus, machinery, plumbing, heating, lighting and cooking fixtures, fittings, gas ranges, bathroom and kitchen cabinets, ice boxes, refrigerators, food freezers, air-conditioning fixtures and units, pumps, awnings, shades, screens, storm shades, awnings, plants and shrubbery.

TOGETHER with any and all awards heretofore and hereafter made to the present and all subsequent owners of the mortgaged premises by any governmental or other lawful authorities for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for any changes of grade of streets, which said awards are hereby assigned to the holder of this bond and mortgage, who is hereby authorized to collect and receive the proceeds of any such awards from such authorities and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amount owing on account of this bond and mortgage, notwithstanding the fact that the amount owing hereon may not then be due and payable; and the said mortgagor hereby covenants and agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to the holder of this bond and mortgage, free, clear and discharged of any and all encumbrances of any kind or nature whatsoever.

AND the mortgagor covenants with the mortgagees as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagees; that he will assign and deliver the policies to the mortgagees; and that he will reimburse the mortgagees for any premiums paid for insurance made by the mortgagees on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagees.
4. That the whole of said principal sum and interest shall become due at the option of the mortgagees after default in the payment of any installment of principal or of interest for twenty days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagees for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the bond and mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided.
5. That the holder of this bond and mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagees may pay the same.
7. That the mortgagor within six days upon request in person or within fifteen days upon request by mail will furnish a written statement duly acknowledged of the amount due on this bond and mortgage and whether any offsets or defenses exist against the mortgage debt.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
11. That fire insurance policies which are required by paragraph No. 2 above shall contain the usual extended coverage endorsement; in addition thereto the mortgagor, within thirty days after notice and demand will keep the buildings on the premises insured against loss by other insurable hazards for the benefit of the mortgagees, as may reasonably be required by the mortgagees; that he will assign and deliver the policies to the mortgagees; and that he will reimburse the mortgagees for any premiums paid for insurance made by the mortgagees on the mortgagor's default in so insuring or in so assigning and delivering the policies. The provisions of subdivision 4, of Section 254 of the Real Property Law, with reference to the construction of the fire insurance clause, shall govern the construction of this clause as far as applicable.
12. That in case of a sale, said premises, or so much thereof as may be affected by this bond and mortgage, may be sold in one parcel.
13. That in the event of any default in the performance of any of the taxes, covenants or agreements herein contained, it is agreed that the then owner of the mortgaged premises, if he is the occupant of said premises or any part thereof, shall immediately surrender possession of the premises so occupied to the holder of this bond and mortgage, and if such occupant is a tenant, he shall remain in possession, the possession shall be as tenant of the holder of this bond and mortgage and the tenant shall, in default thereof, pay rent to the holder of this bond and mortgage a reasonable rental for the space so occupied; and in default thereof, such occupant may be displaced by the usual summary proceedings in case of tenancies and the appointment of a receiver of rents, the provisions herein contained may be enforced by such receiver.

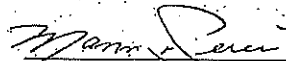
14. That the whole of said principal sum shall become due at the option of the mortgagee after default for thirty days after notice and demand, in the payment of any instalment of any assessment for local improvements heretofore or hereafter laid, which is or may become payable in annual instalments and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such instalment be not due and payable at the time of such notice and demand, or upon the failure to exhibit to the mortgagee, within thirty days after demand, receipts showing payment of all taxes, assessments, water rates, sewer rents and any other charges which may have become a prior lien on the mortgaged premises.
15. That the whole of said principal sum shall become due at the option of the mortgagee, if the buildings on said premises are not maintained in reasonably good repair, or upon the failure of any owner of said premises to comply with the requirement of any governmental department claiming jurisdiction within three months after an order making such requirement has been issued by any such department.
16. That in the event of the passage after the date of this mortgage of any law of the State, of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this bond and mortgage, the holder of this bond and mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the mortgaged premises requiring the payment of the mortgage debt. If such notice be given the said debt shall become due, payable and collectible at the expiration of said thirty days.
17. That the whole of said principal sum shall immediately become due at the option of the mortgagee, if the mortgagor shall assign the rents or any part of the rents of the mortgaged premises without first obtaining the written consent of the mortgagee to such assignment, or upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises.
18. That if any action or proceeding be commenced (except an action to foreclose this bond and mortgage or to collect the debt secured thereby), to which action or proceeding the holder of this bond and mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this bond and mortgage for the expense of any litigation to prosecute or defend the rights and lien created by this bond and mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this bond and mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.
19. That the whole of said principal sum shall immediately become due at the option of the mortgagee upon any default in keeping the buildings on said premises insured as required by paragraph No. 2 or paragraph No. 11 hereof, or if after application by any holder of this bond and mortgage to two or more fire insurance companies lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies, or upon default in complying with the provisions of paragraph No. 11 hereof, or upon default, for five days after notice and demand, either in assigning and delivering to the mortgagee the policies of fire insurance or in reimbursing the mortgagee for premiums paid on such fire insurance as hereinbefore provided in paragraph No. 2 hereof.
20. The mortgagor shall, upon the property being found in violation of any building, housing, plumbing, electrical, fire or other code of the City of Newburgh, immediately pay to the mortgagee the full principal amount of the note.

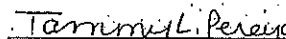
If more than one person joins in the execution of this instrument, and if any of the feminine sex, or if this instrument is executed by a corporation, the relative words herein shall be read as if written in the plural, or in the feminine or neuter gender, as the case may be, and the words "mortgagor" and "mortgagee" where used herein shall be construed to include their and each of their heirs, executors, administrators, successors and assigns.

This bond and mortgage may not be changed orally.

IN WITNESS WHEREOF, this bond and mortgage has been duly executed by the mortgagor.

IN PRESENCE OF:


MANNY G. PEREIRA (U.S.)


TAMMY LYNN PEREIRA (U.S.)

LIBER 5050 PAGE 204

STATE OF NEW YORK
COUNTY OF ORANGE

On the 3rd day of January 19 94
before me came
Manny G. Pereira

to me known to be the individual described in, and who executed
the foregoing instrument, and acknowledged that he executed
the same.

Luiz M. Mahoney

LUZ M. MAHONEY
Commissioner of Deeds
City of Newburgh, NY
Commission Expires Dec 31, 19 94

STATE OF NEW YORK
COUNTY OF

On the _____ day of _____ 19 _____
before me came
to me known, who, being by me duly sworn, did depose and say
that he resides at No. _____

; that he is the

of
the corporation described in and which executed, the foregoing instru-
ment; that he knows the seal of said corporation; that the seal
affixed to said instrument is such corporate seal; that it was so affixed
by order of the Board of
of said corporation; and that he signed his name thereto by
like order.

STATE OF NEW YORK
COUNTY OF Orange

On the 11th day of March 1994
before me came
Tammy Lynn Pereira

to me known to be the individual described in, and who executed
the foregoing instrument, and acknowledged that she executed
the same.

Luiz M. Mahoney

LUZ M. MAHONEY
Commissioner of Deeds
City of Newburgh, NY
Commission Expires Dec 31, 19 94

STATE OF NEW YORK
COUNTY OF

On the _____ day of _____ 19 _____
before me came
the subscribing witness to the foregoing instrument, with whom I
am personally acquainted, who, being by me duly sworn, did depose
and say that he resides at _____

in _____, that he knows

to be the individual described in, and who executed, the foregoing
instrument; that he, said subscribing witness, was present and saw
execute the same; and that he, said witness, at the
same time subscribed _____ name as witness thereto.

LIBER 5050 PAGE 205

MANNY G. PEREIRA & TAMMY LYNN PEREIRA

TO
NEWBURGH COMMUNITY DEVELOPMENT AGENCY

Bond and Mortgage

Dated November 4, 1993, 19_____
Amount \$ 15,000.00
Due _____, 19_____
Int. Payable 0%

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

Record and return to

COMMUNITY DEVELOPMENT
85 Broadway
Newburgh, N.Y. 12550

RESOLUTION NO.: 171 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SATISFACTION OF MORTGAGE IN CONNECTION WITH A MORTGAGE ISSUED TO WKS IV ASSOCIATES, LIMITED PARTNERSHIP FOR THE PREMISES LOCATED AT 246-248 LIBERTY STREET (N/K/A 246 LIBERTY STREET) (SECTION 18, BLOCK 7, LOT 1), 238 LIBERTY STREET (SECTION 18, BLOCK 7, LOT 15), 240 LIBERTY STREET (SECTION 18, BLOCK 7, LOT 16), 109 MONTGOMERY STREET (SECTION 19, BLOCK 1, LOT 18), AND 9-11 CATHERINE STREET (N/K/A 3 CATHERINE STREET) (SECTION 18, BLOCK 7, LOT 3)

WHEREAS, the Newburgh Community Development Agency ("NCDA") issued a mortgage to WKS IV Associates, Limited Partnership (by Drew Kartiganer, President) in the principal sum of \$33,000.00 for premises located at 246-248 Liberty Street (n/k/a 246 Liberty Street) (Section 18, Block 7, Lot 1), 238 Liberty Street (Section 18, Block 7, Lot 15), 240 Liberty Street (Section 18, Block 7, Lot 16), 109 Montgomery Street (Section 19, Block 1, Lot 18), and 9-11 Catherine Street (n/k/a 3 Catherine Street) (Section 18, Block 7, Lot 3) (collectively referred to in this resolution as "Premises") dated November 9, 1999, and recorded in the Orange County Clerk's Office on January 13, 2000, in Liber 7613, Page 134; and

WHEREAS, the City of Newburgh is the successor in interest to the NCDA; and

WHEREAS, this Council has determined that issuing and executing a Satisfaction of Mortgage, a copy of which is annexed hereto, is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute the attached Satisfaction in connection with a mortgage issued to WKS IV Associates, Limited Partnership for the Premises.

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT

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

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

MORTGAGE bearing the date of November 9, 1999, made by WKS IV Associates, Limited Partnership to the Newburgh Community Development Agency, given to secure payment of the principal sum of \$33,000.00, and duly recorded in the office of the Orange County Clerk's Office on January 13, 2000, in Liber 7613, Page 134; and

ASSIGNED to the City of Newburgh by 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, Page 845; and

which mortgage has not been further assigned of record.

Dated: July ____, 2022

CITY OF NEWBURGH

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

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

On the _____ day of July, 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 person upon behalf of which the individual acted, executed the instrument.

Notary Public

RECORD & RETURN TO:

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE
THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE



TYPE NAME(S) OF PARTY(S) TO DOCUMENT: BLACK INK

WKS IV ASSOCIATES, LP c/o
DWELLING GROUP, INC., GP

TO

NEWBURGH COMMUNITY DEVELOPMENT
AGENCY

246 & 248 Liberty St.

S/18, B/7, L/1

238 & 240 Liberty St. S/18, B/7 L's/15&16

SECTION _____ BLOCK _____ LOT _____

9 & 11 Catherine St. S/18, B/7, L/3

109 Montgomery St. S/19, B/1, L/18

RECORD AND RETURN TO:
(Name and Address)

NEWBURGH COMMUNITY DEVELOPMENT AGENCY
83 BROADWAY, CITY HALL
NEWBURGH, NEW YORK 12550

THERE IS NO FEE FOR THE RECORDING OF THIS PAGE

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH

RECORDED INSTRUMENT ONLY

DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE: DEED _____ MORTGAGE ☒ SATISFACTION _____ ASSIGNMENT _____ OTHER _____

PROPERTY LOCATION

2009 BLOOMING GROVE (TN)

2001 WASHINGTONVILLE (VLG)

2209 CHESTER (TN)

2201 CHESTER (VLG)

2409 CORNWALL (TN)

2401 CORNWALL (VLG)

2600 CRAWFORD (TN)

2600 DEERPARK (TN)

3009 GOSHEN (TN)

3001 GOSHEN (VLG)

3003 FLORIDA (VLG)

3005 CHESTER (VLG)

3200 GREENVILLE (TN)

3409 HAMPTONBURGH (TN)

3401 MAYBROOK (VLG)

3609 HIGHLANDS (TN)

3801 HIGHLAND FALLS (VLG)

3809 MINISINK (TN)

3801 UNIONVILLE (VLG)

4009 MONROE (TN)

4001 MONROE (VLG)

4003 HARRIMAN (VLG)

4005 KIRYAS JOEL (VLG)

4209 MONTGOMERY (TN)

4201 MAYBROOK (VLG)

4203 MONTGOMERY (VLG)

4205 WALDEN (VLG)

4409 MOUNT HOPE (TN)

4401 OTISVILLE (VLG)

4600 NEWBURGH (TN)

4800 NEW WINDSOR (TN)

5009 TUXEDO (TN)

5001 TUXEDO PARK (VLG)

5200 WALLKILL (TN)

5409 WARWICK (TN)

5401 FLORIDA (VLG)

5403 GREENWOOD LAKE (VLG)

5405 WARWICK (VLG)

5600 WAWAYANDA (TN)

5809 WOODBURY (TN)

5801 HARRIMAN (VLG)

CITIES

0900 MIDDLETOWN

X 1100 NEWBURGH

1300 PORT JERVIS

9999 HOLD

NO. PAGES 11 CROSS REF _____

CERT. COPY _____ AFF. _____

PAYMENT TYPE: CHECK _____

CASH ☒

CHARGE ☒

NO FEE _____

CONSIDERATION \$ _____

TAX EXEMPT _____

MORTGAGE AMT \$ 33,000.00

DATE 11/9/99

MORTGAGE TYPE:

X (A) COMMERCIAL

____ (B) 1 OR 2 FAMILY

____ (C) UNDER \$10,000.

____ (E) EXEMPT

____ (F) 3 TO 6 UNITS

____ (I) NAT.PERSON/CR.UNION

____ (J) NAT.PER-CR.UNI OR 2

____ (K) CONDO

Donna L. Benson

DONNA L. BENSON
Orange County Clerk

RECEIVED FROM: NY Comm. Div.

LIBER 7613 PC 134

LIBER 7613 PAGE 134

ORANGE COUNTY CLERKS OFFICE 2417 MLV
RECORDED/FILED 01/13/2000 10:06:25 AM

FEES 38.00 EDUCATION FUND 5.00

SERIAL NUMBER: C0012615

RAS 165.00 MTA 82.50 SPEC 82.50
MTG CNTL NO 1057 MTAX 330.00

THIS BOND AND MORTGAGE, made the 9th day of November, nineteen hundred and ninety-nine
BETWEEN WKS IV Associates, Limited Partnership c/o Dwelling Group, INC.,
General Partner with its Principal office for the transaction
of business located at 555 Blooming Grove Turnpike, New Windsor
New York 12553

herein referred to as the mortgagor,

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

herein referred to as the mortgagee,

WITNESSETH, that the mortgagor, does hereby acknowledge himself to be indebted to the mortgagee in the sum of
THIRTY THREE THOUSAND AND 00/100----- (\$33,000.00) Dollars
lawful money of the United States, which the mortgagor does hereby agree and bind himself to repay to the mortgagee
and to pay on this instrument from the date hereof, at the rate of 0%
percentum per annum until paid. Both principal and interest on this
instrument are payable in 240 monthly installments, commencing with a
payment of \$137.50 on the 1st day of the second month following project
completion and a like sum of \$137.50 on the 1st day of each month for
the remaining 239 months, at which time the entire balance of principal
due thereon shall due and payable.

to secure the payment of which the mortgagor hereby mortgages to the mortgagee ALL

246 & 248 Liberty Street, Section 18, Block 7, Lot 1 (Parcel 1)
238 & 240 Liberty Street, Section 18, Block 7, Lots 15 & 16 (Parcel 2 & 3)
109 Montgomery Street, Section 19, Block 1, Lot 18 (Parcel 4)
9 & 11 Catherine Street, Section 18, Block 7, lot 3 (Parcel 5)

FOR DESCRIPTIONS: SEE ATTACHED SCHEDULE A WHICH IS MADE A PART
HEREOF.

1687613P 135

TOGETHER with all right, title and interest, if any, of the mortgagor of, in and to any streets and roads abutting the above-described premises to the center lines thereof.

TOGETHER with all fixtures and articles of personal property now or hereafter attached to, or contained in and used in connection with, said premises, including but not limited to all apparatus, machinery, plumbing, heating, lighting and cooking fixtures, fittings, gas ranges, bathroom and kitchen cabinets, ice boxes, refrigerators, food freezers, air-conditioning fixtures and units, pumps, awnings, shades, screens, storm sashes, aerials, plants and shrubbery.

TOGETHER with any and all awards heretofore and hereafter made to the present and all subsequent owners of the mortgaged premises by any governmental or other lawful authorities for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for any changes of grade of streets, which said awards are hereby assigned to the holder of this bond and mortgage, who is hereby authorized to collect and receive the proceeds of any such awards from such authorities and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amount owing on account of this bond and mortgage, notwithstanding the fact that the amount owing hereon may not then be due and payable; and the said mortgagor hereby covenants and agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to the holder of this bond and mortgage, free, clear and discharged of any and all encumbrances of any kind or nature whatsoever.

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any instalment of principal or of interest for twenty days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the bond and mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided.
5. That the holder of this bond and mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.
7. That the mortgagor within six days upon request in person or within fifteen days upon request by mail will furnish a written statement duly acknowledged of the amount due on this bond and mortgage and whether any offsets or defenses exist against the mortgage debt.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
11. That fire insurance policies which are required by paragraph No. 2 above shall contain the usual extended coverage endorsement; in addition thereto the mortgagor, within thirty days after notice and demand will keep the buildings on the premises insured against loss by other insurable hazards for the benefit of the mortgagee, as may reasonably be required by the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring or in so assigning and delivering the policies. The provisions of subdivision 4, of Section 254 of the Real Property Law, with reference to the construction of the fire insurance clause, shall govern the construction of this clause so far as applicable.
12. That in case of a sale, said premises, or so much thereof as may be affected by this bond and mortgage, may be sold in one parcel.
13. That in the event of any default in the performance of any of the terms, covenants or agreements herein contained, it is agreed that the then owner of the mortgaged premises, if he is the occupant of said premises or any part thereof, shall immediately surrender possession of the premises so occupied to the holder of this bond and mortgage, and if such occupant is permitted to remain in possession, the possession shall be as tenant of the holder of this bond and mortgage and such occupant shall, on demand, pay monthly in advance to the holder of this bond and mortgage a reasonable rental for the space so occupied and in default thereof, such occupant may be dispossessed by the usual summary proceedings. In case of foreclosure and the appointment of a receiver of rents, the covenants herein contained may be enforced by such receiver.

10076130 136

SCHEDULE "A"

PARCEL 1

~~PARCEL 2~~

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the State of New York, County of Orange and City of Newburgh, known as 246-248 Liberty Street, in the City of Newburgh and being more accurately described as Section 18, Block 7, Lot 1, on the Official Tax Map of The City of Newburgh.

BEING the same premises conveyed to the Grantor by The City of Newburgh by Deed dated March 31, 1998 and filed in the office of the Orange County Clerk on April 15, 1998 at Liber of Deeds 4763 page 180.

LIBER 7613PC 137

SCHEDULE "A"

Parcel 12

~~PARCEL 1~~

ALL, that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of Orange and State of New York, known as 238 Liberty Street, in the City of Newburgh and being more accurately described as Section 18, Block 7, Lot 15, on the Official Tax Map of the City of Newburgh.

SUBJECT TO all easements, covenants and restrictions of record, except as hereinafter stated.

SUBJECT TO all easements, covenants and restrictions of record and not of record existing in favor of The City of Newburgh prior to the vesting of title to the described premises in the City of Newburgh.

C:\CityPlan\Real Estate\Karrigan\A\Orange & Sale Deed Karrigan.mxd

LIBER 7613PG 138

BEING the same premises which were conveyed to the Grantor by the City of Newburgh by deed dated August 13, 1996 and recorded in the office of the Orange County Clerk on the 5th day of September 1996 at Liber of Deeds 4441 at page 286.

LIBER 7613 PG 139

SCHEDULE "A"

Parcel 3
~~PARCEL 2~~

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the State of New York, County of Orange and City of Newburgh, known as 240 Liberty Street, in the City of Newburgh and being more accurately described as Section 18, Block 7, Lot 16, on the Official Tax Map of the City of Newburgh.

SUBJECT TO all easements, covenants and restrictions of record, except as hereinafter stated.

SUBJECT TO all easements, covenants and restrictions of record and not of record existing in favor of The City of Newburgh prior to the vesting of title to the described premises in The City of Newburgh.

BEING the same premises conveyed to the Grantor by The City of Newburgh by Deed dated the 13th day of August, 1996 and recorded in the office of the Orange County Clerk on the 5th day of September, 1996, at Liber of Deeds 4441 page 286.

LIBER 7613PG 140

SCHEDULE "A"

109 MONTGOMERY STREET - Section 19, Block 1, Lot 18

PARCEL 4

ALL that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, Orange County, New York, being more particularly described as follows:

BEGINNING at a point in the westerly line of Montgomery Street, where said line is intersected by the northerly line of lands now or formerly Asmann, running thence, the following courses:

1. Along lands now or formerly Asmann, N 71° 11' 00" W 140.00' to a point;
2. Still along said lands, N 18° 37' 00" E 27.98' to a point;
3. Along lands now or formerly Jones, running in part along the southerly face of the building on said lands of Jones S 71° 11' 00" E 140.00' to a point in the westerly line of Montgomery Street;
4. Along said line, S 18° 37' 00" W 27.98' to the point or place of BEGINNING.

Containing 3.917 square feet or 0.09 acres of land more or less.

Being the same premises described in a certain deed dated June 23, 1999 from Newburgh Community Development Agency to WKS IV Associates, Limited Partnership and recorded on July 14, 1999 in the Orange County Clerk's Office in Liber 5102 at Page 263.

LIBER 7613 PG 141

SCHEDULE "A"

PARCEL 1 PARCEL 15

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the State of New York, County of Orange and City of Newburgh, known as 9-11 Catherine Street, being more accurately described as Section 18, Block 7, Lot 3, on the Official Map of The City of Newburgh.

BEING the same premises which were conveyed to the Grantor by The City of Newburgh on the 31st day of March, 1998, which Deed was filed in the office of the Orange County Clerk on the 15th day of April, 1998 at Liber of Deeds 4763 page 179.

LIBER 7613/0 142

14. That the whole of said principal sum shall become due at the option of the mortgagee after default for thirty days after notice and demand, in the payment of any instalment of any assessment for local improvements heretofore or hereafter laid, which is or may become payable in annual instalments and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such instalment be not due and payable at the time of such notice and demand, or upon the failure to exhibit to the mortgagee, within thirty days after demand, receipts showing payment of all taxes, assessments, water rates, sewer rents and any other charges which may have become a prior lien on the mortgaged premises.
15. That the whole of said principal sum shall become due at the option of the mortgagee, if the buildings on said premises are not maintained in reasonably good repair, or upon the failure of any owner of said premises to comply with the requirement of any governmental department claiming jurisdiction within three months after an order making such requirement has been issued by any such department.
16. That in the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this bond and mortgage, the holder of this bond and mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the mortgaged premises requiring the payment of the mortgage debt. If such notice be given the said debt shall become due, payable and collectible at the expiration of said thirty days.
17. That the whole of said principal sum shall immediately become due at the option of the mortgagee, if the mortgagor shall assign the rents or any part of the rents of the mortgaged premises without first obtaining the written consent of the mortgagee to such assignment, or upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises.
18. That if any action or proceeding be commenced (except an action to foreclose this bond and mortgage or to collect the debt secured thereby), to which action or proceeding the holder of this bond and mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this bond and mortgage for the expense of any litigation to prosecute or defend the rights and lien created by this bond and mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this bond and mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.
19. That the whole of said principal sum shall immediately become due at the option of the mortgagee upon any default in keeping the buildings on said premises insured as required by paragraph No. 2 or paragraph No. 11 hereof, or if after application by any holder of this bond and mortgage to two or more fire insurance companies lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies, or upon default in complying with the provisions of paragraph No. 11 hereof, or upon default, for five days after notice and demand, either in assigning and delivering to the mortgagee the policies of fire insurance or in reimbursing the mortgagee for premiums paid on such fire insurance as hereinbefore provided in paragraph No. 2 hereof.
20. The mortgagor shall, upon the property being found in violation of any building, housing, plumbing, electrical, fire or other code of the City of Newburgh, immediately pay to mortgagee the full principal amount of note.

If more than one person joins in the execution of this instrument, and if any of the feminine sex, or if this instrument is executed by a corporation, the relative words herein shall be read as if written in the plural, or in the feminine or neuter gender, as the case may be, and the words "mortgagor" and "mortgagee" where used herein shall be construed to include their and each of their heirs, executors, administrators, successors and assigns.

This bond and mortgage may not be changed orally.

IN WITNESS WHEREOF, this bond and mortgage has been duly executed by the mortgagor.

IN PRESENCE OF:

WKS IV ASSOCIATES, Limited Partner
c/o Dwelling Group, INC. General Partner

BY: Drew Kartiganer (L.S.)
Drew Kartiganer, President

LIBR 761386 143

STATE OF NEW YORK
COUNTY OF ORANGE

On the 9th day of November in the year 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Drew Kartiganer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

FRANCES BOCKEMUHL
Notary Public, State of New York
Qualified in Orange County
Reg. # 4995154
Commission Expires April 20, 2000

C:\My Documents\UniformAck.doc

11/9/99 7613PC 144

RESOLUTION NO.: 172 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A SITE DEVELOPMENT AGREEMENT WITH
SHAUL & ELI VAKNIN FOR THE TRANSFER AND
REDEVELOPMENT OF PROPERTY LOCATED AT
842 BROADWAY (SECTION 25, BLOCK 1, LOT 85.1)

WHEREAS, by Resolution Number 62-2021 of March 22, 2021, the City Council of the City of Newburgh authorized an agreement with the Administrator of the New York Environmental Protection and Spill Compensation Fund for the remediation of the property known as 842 Broadway (Section 25, Block 1, Lot 85.1) (the "Property"); and

WHEREAS, in connection with that agreement, the City issued Request For Proposals ("RFP") number 14.22 for the remediation and development of the Property, and received four (4) responses from developers interested in pursuing development projects on the Property; and

WHEREAS, an RFP committee reviewed the responses to the RFP and recommended to City Council that Shaul & Eli Vaknin, or a yet-to-be-formed company owned, controlled, and managed by them be selected to develop the Property; and

WHEREAS, the parties have negotiated a site development agreement for the remediation, transfer, and redevelopment of the Property, which is annexed hereto; and

WHEREAS, this Council finds that the Property is not required for public use and that approving such site development agreement is necessary, appropriate and in the best interests of the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh that the City Manager be and he is hereby authorized to execute on behalf of the City of Newburgh the site development agreement with Shaul & Eli Vaknin, or a yet-to-be-formed company owned, controlled, and managed by them, in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the remediation, transfer, and redevelopment of the property located at 842 Broadway.

SITE DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWBURGH

AND

842 BROADWAY LLC

Commented [K11]: Placeholder name. Need formal name for SDA.

DATED AS OF _____, 2022

Regarding:
842 Broadway, Tax ID 25-1-85.1
City of Newburgh, Orange County, New York

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS
ARTICLE 2	DEVELOPER'S REPRESENTATIONS
ARTICLE 3	CONVEYANCE OF PROPERTY AND ACCEPTABLE TITLE
ARTICLE 4	PURCHASE PRICE; ACCEPTABLE FUNDS
ARTICLE 5	CONDITIONS PRECEDENT
ARTICLE 6	COVENANTS
ARTICLE 7	OBJECTION TO TITLE; FAILURE TO PERFORM
ARTICLE 8	DESTRUCTION, DAMAGE OR CONDEMNATION
ARTICLE 9	SITE CONDITION; INVESTIGATIONS; APPROVALS
ARTICLE 10	CLOSING OBLIGATIONS; APPORTIONMENTS
ARTICLE 11	DEFAULTS AND REMEDIES
ARTICLE 12	MISCELLANEOUS PROVISIONS
SCHEDULE A	PROPERTY DESCRIPTION
SCHEDULE B	PERMITTED ENCUMBRANCES
SCHEDULE C	PROJECT AND DEVELOPMENT DEADLINES
SCHEDULE D	SAMPLE DEED WITH RIGHT OF REVERTER RESTRICTIONS
SCHEDULE E	ADDITIONAL DEVELOPER REPRESENTATIONS

SITE DEVELOPMENT AGREEMENT

SITE DEVELOPMENT AGREEMENT ("Agreement") dated _____, 2022
between the City of Newburgh, a municipality of the State of New York, having a principal office at
City Hall, 83 Broadway, Newburgh, New York 12550 ("Seller" or "City") and
_____, a New York limited liability company having an address at
_____, New York ("Developer").

Commented [KJ2]: Company type

Commented [KJ3]: Address

WITNESSETH:

WHEREAS, by Court Order (Orange County Supreme Court Index Number EF-003873-2021) the City has Temporary Incidents of Ownership to and over the property located at 842 Broadway in the City of Newburgh, more accurately described as Section 25, Block 1, Lot 85.1 on the official tax map of the City of Newburgh, described in Section 3.01 hereof (the "Property"); and

WHEREAS, the City has entered into an agreement with the New York Environmental Protection and Spill Compensation Fund (the "Fund") for the environmental remediation of the sub-surface portion of the Property; and

WHEREAS, pursuant to a request for proposals (RFP No.: 14.22) issued by the City, and based on representations as to qualifications, experience and financial capacity, the Seller selected the Developer to remediate the above-surface portion of the property in accordance with this Agreement; and

WHEREAS, also pursuant to a request for proposals (RFP No.: 14.22) issued by the City, and based on representations as to qualifications, experience and financial capacity, the Seller selected the Developer to develop the property in accordance with this Agreement; and

WHEREAS, the Developer has proposed to acquire the Property from the Seller for the purposes of developing the Property, and Seller desires to convey the Property to the Developer pursuant to the terms set forth in this Agreement; and

NOW THEREFORE, in consideration of mutual covenants herein contained and the payment of the sum of on dollar by the Developer to Seller, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

SECTION 1.01 Definitions. Any terms set forth in this section shall have the meanings ascribed to them for all purposes of this Agreement, unless the context clearly requires otherwise.

"Approvals and Permits" shall mean, collectively, all approvals and permits actually issued from all governmental or administrative agencies or regulatory bodies having jurisdiction for the construction and operation of the redevelopment of the Property, including, without limitation, all site plan approvals, zoning variances, easement and franchise agreements. "Approvals and Permits" shall also mean all applications for building permits, licenses, permits and permissions to construct and maintain all on-site and off-site improvements, curbcuts, roadway, mediate cuts and utility lines and services.

"Architect" shall mean a professional architect, professional engineer, or firm of professional architects or professional engineers licensed and in good standing by the State of New York.

"Business Day" shall mean a day other than i) any Saturday, Sunday, or other day on which banks located in the City of Newburgh are authorized or required to be closed, or ii) any day on which the offices of the City of Newburgh are closed.

"Certificate of Occupancy" shall mean a permanent certificate of occupancy issued by the City of Newburgh Code Compliance Department.

"City" shall mean the City of Newburgh, a municipal corporation of the State of New York having a place of business at 83 Broadway, Newburgh, New York 12550, its successors and/or assigns.

"Claims" shall mean any and all claims (whether in tort, Agreement or otherwise), demands, liabilities, obligations, damages, penalties, costs, charges and expenses, for losses, damage, injury and liability of every kind and nature and however caused, and taxes, including, without limitation, reasonable fees of architects, engineers and attorneys, administrative or judicial actions, suits, orders, liens, notices, notice of violations, investigations, complaints, requests for information, proceedings, or other communication (written or oral), whether criminal or civil.

"Closing Date" shall mean the date of closing of title pursuant to Section 3.03.

"Closing Deadline" shall mean the date which is set forth in Schedule "C" as the closing deadline.

"Completion Deadline" shall mean the date which is set forth in Schedule "C" noted as the "Project Completion Deadline."

"Developer" shall mean [COMPANY NAME], its successors and/or assigns to the extent permitted under Section 12.01 of this Agreement.

Commented [104]: Company name

"Earnest Money" shall mean the amount payable pursuant to Section 4.01(a).

"Force Majeure" shall mean acts of God, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the United States or any civil or military authority in the exercise of its police powers; insurrection, civil disturbances, or riots; or impossibility of procuring materials.

"Governmental Authority" shall mean the United States, State of New York, and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them having jurisdiction over the Property including, but not limited to the United States, the U.S. Environmental Protection Agency, or any state or local environmental protection agency.

"Improvements" shall mean any buildings, structures, or other improvements, now or hereafter constructed or place upon, under or affixed to the Property, including without limitation any fixtures.

"Lending Institution" shall mean any insurance company, bank or trust company, college, university charitable institution or union, pension, profit or retirement fund or trust, governmental agency or fund, real estate investment trust, or other financial or lending institution whose loans on real estate or respect thereto are regulated by state or federal law, and which is not a Related Party to the Developer.

"Liens" shall mean any interest in real or personal property securing an obligation owed to a person, whether such interest is based on the common law, statute or agreement, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, projection, easements, right of way, including but not limited to, mechanics', materialman's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes hereof, a "person" shall be deemed to be the owner of real or personal property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

"Net Proceeds" shall mean so much of the proceeds with respect to which that term is used as remain after payment of all fees for the costs of adjustment and collection, services, expenses, and taxes (including reasonable attorneys' fees) incurred in obtaining such proceeds.

"Person" shall mean an individual, partnership, corporation, trust, unincorporated organization or Government Authority.

"Plans and Specifications" shall mean the plans, drawings and related documents for the Improvements which shall be prepared by Developer's Architect, and shall include a level of detail to the City's satisfaction for submission to the building inspector of the City for purposes of obtaining building permit(s), including but not limited to a site plan that includes a landscaping

plan, a drainage plan, pedestrian and vehicle ingress and egress, a floor plan, mark-outs for water, sewer and utilities, exterior materials, colors and elevations, parking, and signage.

"Project" shall mean completion of the above-ground remediation, followed by construction of a newly-constructed building located on the Property, with no less than 12,000 square feet of commercial space (2 story building at 6,000 square feet per floor) for use(s) permitted in the applicable zones, a landscaped buffer along the entire west side of the property (with exceptions for sidewalks and applicable setbacks), sidewalk improvements in accordance with the City's Streetscape Standards, and advertisement for local hiring.

"Project Lender" shall mean a Lending Institution that is the mortgagee of a Project Mortgage financing construction of the Project.

"Project Mortgage" shall mean one or more mortgages on Developer's interest in the Property and Improvements obtained from a Lending Institution, the proceeds of which are used for the development of the Project including, without limitation, soft costs, hard costs and financing costs related thereto and any refinancing by a Lending Institution.

"Property" shall mean the property described at Section 3.01 to be conveyed pursuant to this Agreement.

"Purchase Price" shall mean the purchase price set forth in Section 4.01.

"Related Party" shall mean, with respect to any Person, any other Person if such other Person controls or is controlled by or under common control with the Person.

"Taxes" shall mean all taxes, assessments, water and sewer rents, rates and charges, vault license fees or rentals, levies license and permit fees and all other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, which shall be charged, levied, laid, assessed, imposed upon, become due and payable out of or in respect of, or become liens upon the whole or any part of the Property or Improvements, together with all interest and penalties, under all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the federal, state, county, school and city governments and of all other Governmental Authorities whatsoever.

"Title Insurer" shall mean such title insurance company as shall be mutually acceptable to the Seller and the Developer for the issuance of the policies of title insurance referred to in Section 3.02.

SECTION 1.02 Interpretation. As used in this Agreement, the masculine shall include the feminine and neuter and vice versa, the singular shall include the plural and the plural shall include the singular, as the context may require. References to sections or subsections herein shall mean the applicable section of subsection of this Agreement, unless the context clearly requires otherwise.

ARTICLE 2
DEVELOPER'S REPRESENTATIONS

SECTION 2.01 Developer's Representations. Developer makes the following representations and warranties to Seller in conjunction with the conveyance of the Property:

- (a) Developer is a [INSERT TYPE OF COMPANY] duly formed and in good standing under the laws of the State of New York; is duly qualified to transact business in the State of New York; and has the requisite corporate power and authority to enter into this Agreement and any other documents required by the Parties to effectuate this Agreement including. The execution, delivery and performance by Developer of such documents does not conflict with or result in a violation of Developer's organizing documents or any judgment, order or decree of any court or arbiter to which Developer is a party or by which it is bound. Such documents are valid and binding obligations of Developer, enforceable in accordance with their terms. There is no suit, action, proceeding or litigation pending or, to the best of Developer's knowledge, threatened, against or affecting the Developer by or before any court, arbitrator, administrative agency or other Governmental Authority which might have material effect on the validity of the transaction contemplated hereby or the ability of the Developer to perform its obligations under this Agreement.
- (b) Developer intends to proceed to seek the Approvals and Permits for the construction of the Project promptly following the execution of this Agreement.
- (c) Developer has the requisite financial capacity and technical expertise and is in all respects capable of constructing the Project prior to the Completion Deadline.
- (d) The Project will be constructed to meet all requirements of Permits and Approvals and applicable requirements of any Governmental Authority having jurisdiction over the Developer, the Property, the Improvements or their use or operation.
- (e) All certificates or statements furnished to the Seller by or on behalf of the Developer in connection with the transaction contemplated hereby are true and complete.

Commented [K15]: Company type

ARTICLE 3
CONVEYANCE OF PROPERTY AND ACCEPTABLE TITLE

SECTION 3.01 Conveyance of Property. Upon satisfaction of the conditions precedent to conveyance set forth in Article 5 of this Agreement, and subject to the further terms of this Agreement, Seller shall convey to Developer and Developer shall purchase, at the price and upon the terms and conditions set forth in this Agreement, the Property in the City of Newburgh, Orange County, the Property, which includes:

- (a) the real property located in Orange County and described in Schedule "A" attached hereto and made part hereof (the "Land");

(b) all right, title and interest currently held by the Seller, if any, in and to any and all strips and gores of land adjacent to or adjoining the Land, and all of the Land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damages to the Land by reason of a change of grade of any street or highway; and

(c) all appurtenances and all the estate and rights currently held by the Seller in and to the Land.

SUBJECT TO the any easements or rights-of-way of record, and rights of reverter reserved herein as further described in Section 11.04.

SECTION 3.02. Title; Permitted Exceptions. Seller shall convey fee simple title to the Property in accordance with the terms of this Agreement, subject only to the following exceptions (collectively referred to as the "Permitted Exceptions"):

- (a) the matters set forth in Schedule "B" attached hereto;
- (b) the City's right of reverter set forth in Section 11.04;
- (c) restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance which have been made available to the Purchaser;
- (d) statutory liens for current taxes, assessments or other governmental charges not yet delinquent; and
- (e) zoning, entitlement and other land use and environmental regulations by the City, provided that such regulations have not been violated.

SECTION 3.03 Closing. Except as otherwise provided in this Agreement, the closing of title pursuant to this Agreement (the "Closing") shall take place at 10:00 a.m. on a specific date determined by the parties, but not later than thirty (30) days from the date that the City takes title to the Property upon completion of its tax foreclosure proceeding, and in no event later than 30 months from the date of this Agreement, at the offices of the Corporation Counsel at City Hall, 83 Broadway, Newburgh, NY, or at such other date or location as may be agreed to by the parties (the actual date of the Closing being herein referred to as the "Closing Date").

ARTICLE 4 PURCHASE PRICE; ACCEPTABLE FUNDS

SECTION 4.01 Purchase Price; Down Payment. The purchase price (the "Purchase Price") to be paid by Developer for the Property shall be \$205,000.00, payable as follows:

- (a) The Developer shall pay to the Seller a down payment of \$1,000.00 (the "Earnest Money") upon the execution of this Agreement, which Earnest Money shall be non-refundable, except to the extent provided in Section 7.02. The Earnest Money shall be applied as a credit toward the Purchase Price at Closing.
- (b) Actually incurred above-ground remediation costs, in an amount no greater than \$175,000.00, credited on a dollar-for-dollar basis toward the Purchase Price at Closing.

- (c) The balance of the Purchase Price shall be paid to the Seller at Closing, but in no event shall the Purchase Price be less than \$5,000.00.

SECTION 4.02 Acceptable Monies. All monies payable under this Agreement, unless otherwise specified in this Agreement shall be paid by:

- (a) Certified checks of the Developer on behalf of the Developer or any person making a purchase money loan to the Developer drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, payable to the order of the Seller; or
- (b) Official bank checks drawn by any such banking institution, payable to the order of the Seller.

ARTICLE 5 CONDITIONS PRECEDENT

SECTION 5.01 Conditions to Developer's Obligation: Right to Terminate. In addition to the conditions otherwise set forth herein, the Developer's obligations to purchase shall be contingent upon the following conditions:

- (a) Prior to conveyance of the Property, the Developer shall have the option to terminate this Agreement, but without the right to receive a refund of the Earnest Money and any costs incurred by Developer in connection with the Project.
- (b) Developer shall be deemed to have waived all contingencies if written notice is not given to Seller on or prior to the Closing Date.

SECTION 5.02 Conditions to Seller's Obligations. In addition to the conditions otherwise set forth herein, Seller's obligations to convey the Property shall be contingent upon the following conditions:

- (a) Developer shall have paid the Purchase Price as provided in Article 3 of this Agreement.
- (b) The Developer shall have obtained all required Approvals and Permits for the Project.
- (c) The Developer shall have complied with all requirement as provided in Article 6 of this Agreement.
- (d) The Developer shall not be in default under this Agreement.

SECTION 5.03 Seller's Right to Terminate. Seller shall have the right to terminate this Agreement by written notice to the Developer, but without any obligation to refund the Earnest Money and any costs incurred by Developer, if all of the conditions precedent to conveyance set forth in Section 5.01 have not been satisfied by the Closing Deadline.

SECTION 5.04 Termination of Agreement. Upon termination by either party pursuant to this Agreement, this Agreement shall be null and void, and no action, claim or demand may be

based on any term or provision of this Agreement, other than Sections 6.03 (Indemnity) and 9.05(e) (Environmental Indemnity).

ARTICLE 6 COVENANTS

SECTION 6.01 Developer's Covenants. In addition to the agreements otherwise set forth herein, Developer makes the following covenants for the benefit of Seller.

(a) Design and Approvals:

- i. Developer will cause to be prepared by its Architect, Plans and Specifications to the Seller's land use boards in sufficient time for review and approval prior to the Closing Deadline.
- ii. Developer's design shall, at a minimum, include all items as defined by the Project.
- iii. Developer will use its best efforts to obtain site plan approvals for the Project at least 60 days prior to the Closing Deadline and obtain Approvals and Permits for the Project at least 30 days prior to the Closing Deadline.

(b) Completion Deadline:

- i. Developer will complete the construction of the Project not later than the Project Completion Deadline.

(c) Construction: In construction of the Project, Developer:

- i. Shall at its own cost and expense obtain all Approvals and Permits;
- ii. Shall comply with all requirements of Governmental Authorities applicable to the construction and installation of the Improvements;
- iii. Shall perform the construction and installation of the Project expeditiously, in compliance with the Plans and Specifications, in a good and workmanlike manner and in accordance with the provisions of this Agreement.
- iv. Shall pay all proper accounts for work done or materials furnished under all Agreements to which it has entered into relating to the construction of the Project.
- v. Shall provide notice and any other information as may be requested Seller with respect to any lien(s) filed against the Property, the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Developer in connection therewith.

SECTION 6.02 Seller's Covenants. Seller covenants that it will comply with the following covenants between the date of this Agreement and the Closing, unless this Agreement is earlier terminated in accordance with its terms:

- (a) The Seller shall not encumber the Property or enter into any lease or other occupancy agreement therefor, without the prior written consent of the Developer.

- (b) The Seller shall allow for Developer or Developer's representatives access to the Property upon reasonable prior notice pursuant to Section 9.05 of this Agreement.
- (c) Seller hereby agrees that it will consent, when reasonably requested by Developer, at Developer's expense, to any application for site plan or other regulatory approval(s) necessary in connection with the contemplated use of the Property for the Project consistent with this Agreement, subject to Section 9.04.

SECTION 6.03 Indemnity. Developer shall at all times indemnify and hold the Seller harmless from and against and all Claims, including reasonable attorneys' fees, which may be imposed upon, incurred by or asserted against the Seller, its officers, employees, and agents (the "Indemnified Parties"), arising during the term of this Agreement upon or about the Property or resulting from, arising out of, or in any way connected with (1) breach of the representations and warranties set forth in Section 2.01, whether prior to or after the Closing; (2) the funding of the costs of the Project; (3) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation, or completion of the Project or any part thereof or the effecting of any work done in or about the Property; (4) any defects, whether latent or patent, in the Improvements; (5) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Improvements or any portion thereof; or (6) any act or omission of Developer or any of its agents, concessionaires, contractors, servants, employees, tenants, or invitees ("Permittees"), including without limitation any failure by Developer to perform or comply with any of the covenants, agreements, terms, conditions or limitations of this Agreement, but excluding liability caused by the negligence or intentional misconduct of the Indemnified Parties. The Developer shall require any of its Permittees who perform construction work on the Property to agree to indemnify the Indemnified Parties and Developer for Claims with respect to the Permittee's scope of work, excluding negligence or willful misconduct of the party to be indemnified. If any action or proceeding is brought against Seller because of any one or more of the Claims, Developer, at its sole cost and expense, upon written notice from Seller, shall defend that action or proceeding by competent counsel acceptable to Seller.

ARTICLE 7 OBJECTION TO TITLE, FAILURE TO PERFORM

SECTION 7.01 Developer to Deliver Title Report. Developer shall cause a copy of an updated title report from the Title Insurer to be forwarded to Seller within sixty (60) days of the date hereof. With the exception of completing tax foreclosure litigation outlined in Orange County Supreme Court Index Number EF-003873-2021, Seller shall not be obligated to remove any defects in or objections to title noted in such title report without regard to whether such defects or objections are disclosed or known to the Parties prior to the Closing Date.

SECTION 7.02 Developer's Right to Terminate. If Seller is unable to complete the tax foreclosure litigation outlined in Orange County Supreme Court Index Number EF-003873-2021 prior to the Closing Deadline, Developer may still elect to accept such title as Seller may be able to cause to be conveyed. However, if Developer shall not so elect, Developer may terminate this Agreement upon thirty (30) days' notice to Seller. In this instance, Seller shall only be obligated to

return the Earnest Money to Developer and no other costs or charges incurred by Developer. Upon such termination, the Agreement shall be null and void and the parties hereto shall be relieved of all further obligations and liability except that the provisions of Section 9.05(e) and Section 6.03 shall survive the closing.

ARTICLE 8 DESTRUCTION, DAMAGE OR CONDEMNATION

SECTION 8.01 General Obligations Law to Control. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this Agreement.

ARTICLE 9 SITE CONDITIONS, INVESTIGATIONS, APPROVALS

SECTION 9.01 As-Is Condition. At Closing, Seller shall convey the Property in "as is" condition. The Seller expressly disclaims any warranties or representations whatsoever. After Closing, any costs related to the Property will be the responsibility of the Developer.

SECTION 9.02 No Representations. No representation, statement or warranty, express or implied, has been made by Seller as to the condition of the Property, or its permitted use under applicable zoning, building, land use and similar laws, ordinances and regulations. Developer assumes all responsibility for compliance with such use regulations, and Seller shall have no liability or responsibility for any defect in the Property or for any limitations upon the use of the Property.

SECTION 9.03 Developer to Obtain Approvals. Developer, at its sole expense, shall take all actions that it reasonably deems necessary to obtain, and shall make and diligently prosecute all applications for Approvals and Permits. Nothing in this Agreement shall be construed as the consent, request, approval, or agreement of Seller, express or implied, by inference or otherwise, to any applications for Approvals and Permits made by Developer to any agency or body of the City, nor any agreement or Agreement to change, amend, modify, or alter any local law, code, or ordinance of the City or any agency or body of the City.

SECTION 9.04 Zoning and Planning Approvals. Developer anticipates that the development of the Project as presently contemplated will not require an amendment to the City of Newburgh zoning code or a use variance. In the event of any proposed modifications by the Developer to its proposed Project, the Developer understands that the granting of such requests is within the discretion of the applicable governmental body and that nothing in this Agreement obligates the City, the Seller, or any other governmental body to provide for such approvals. Any risks associated with obtaining land use board approvals shall be exclusively borne by the Developer. The Project shall conform with all applicable zoning requirements as they may be so amended.

ARTICLE 10
CLOSING OBLIGATIONS; APPORTIONMENTS

SECTION 10.01 Seller's Closing Obligations. At the Closing, Seller shall deliver the following to the Developer:

- (a) A quitclaim deed, including the covenant required by Section 13 of the Lien Law, properly executed and in proper form for recording so as to convey the title required by this Agreement (including without limitation the right of reverter set forth in Section 11.04).
- (b) A non-foreign affidavit, containing such information as shall be required by Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations issued therefor.
- (c) A designation agreement designating the "reporting person" for purposes of completing IRS Form 1099-S
- (d) Possession of the Property in the condition required by this Agreement, subject to the Permitted Exceptions.

SECTION 10.02 Developer's Closing Obligations. At the Closing, Developer shall perform the following:

- (a) Deliver to Seller the Purchase Price payable at Closing, less any credits contemplated in this Agreement.
- (b) Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returned and check in payment of such taxes to be delivered to the appropriate officers promptly after Closing.
- (c) Deliver a designation agreement as the "reporting person" for purposes of completing IRS Form 1099-S.

SECTION 10.03 Apportionments. All real estate taxes, school taxes, and utilities with respect to the Property will be apportioned as of the date of Closing Date. Water and sewer charges and sanitation fees will be paid by the Seller to the Closing Date.

ARTICLE 11
DEFAULTS AND REMEDIES

SECTION 11.01 Remedies on Default.

- (a) Termination of Agreement by Seller. Upon the occurrence of any default under this Agreement by Developer, Seller may, at its option, or any time thereafter, give written notice to Developer specifying the default and stating that this Agreement shall terminate on the date specified in such notice, which shall be not less than fifteen (15) days after the date of such notice. Upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement shall terminate. The termination of this Agreement does not relieve Developer of its liability and obligations under Section 9.05(e) and Section 6.03 of this Agreement, which shall survive. Upon such termination Seller will retain the Earnest

Money as liquidated damages. The termination of this Agreement and the retention of the Earnest Money will be the sole remedy available to Seller for such default by Developer. Developer will not be liable for additional damages or for specific performance.

- (b) Termination by Developer. Upon the occurrence of any default by Seller, Developer may, at its option, at any time thereafter, give written notice to Seller specifying the default and stating that this Agreement shall terminate on the date specified in such notice, which shall not be less than fifteen (15) days after the date of such notice. Upon the date specified in the notice, this Agreement shall terminate. The termination of this Agreement shall not relieve the Developer of its liability and obligations under Section 9.05(e) and Section 6.03 of this Agreement, which shall survive. If Seller defaults under this Agreement, this provision does not preclude Developer from seeking specific performance of this Agreement but Developer shall have no right to seek monetary damages from Seller for Seller's defaults hereunder.

SECTION 11.02 Force Majeure. If Seller or Developer shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by Force Majeure, then performance of that act shall be excused for the period of the delay (but not exceeding ninety (90) days) and the period for the performance of the act shall be extended for a period equivalent to the excusable period of the delay (but not to exceed ninety (90) days), provided the party delayed shall give the other party notice and full particulars of the Force Majeure within a reasonable time after the event occurs. The parties may agree to further time extensions pursuant to this section upon mutual written consent.

SECTION 11.03 Cumulative Rights and Remedies. Each right and remedy under this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or not or hereafter existing at law or in equity or by statute or otherwise, and the exercise by Seller of any one or more of those rights or remedies shall not preclude simultaneous or later exercise by Seller of any or all other rights or remedies Seller may have.

SECTION 14.04 City's Right of Reverter. The Property shall be developed and used solely for the Project in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed, an example of which is described in Schedule "D" attached hereto, will contain provisions stating that, among other things, the Developer is required to rehabilitate any building on the Property for the Project and bring it into compliance with all State, County and Local standards for occupancy within twenty-four (24) months of the date of the deed. Within such twenty-four (24) month time period the Developer must obtain a Certificate of Occupancy for all buildings on the property for the use stated in the definition of the Project in this Agreement. The deed shall require the Developer to schedule an inspection by City officials at or before the end of the twenty-four (24) month period for compliance with the terms of this Agreement. If the Developer has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that

the Property shall not be conveyed to any other person or entity before a Certificate of Occupancy or Certificate of Compliance is issued for such purposes.

ARTICLE 12 MISCELLANEOUS PROVISIONS

SECTION 12.01 Assignment and Subletting. The Developer and Seller agree that the Developer has been selected by the Seller based on unique and specific qualifications relating to the development of the Project. Prior to the Closing Date, the Developer shall not sell, assign, mortgage or transfer any interest in the Property or this Agreement without the prior written consent of the Seller, which shall be at the discretion of the Seller. Notwithstanding, any such assignment, Developer shall remain responsible for the covenants set forth in Article 6. Developer shall be the managing partner or controlling shareholder of any transferee. Any transferee shall have the qualifications and financial responsibility necessary in the determination of the Seller to assure compliance with the obligations of the Developer herein. Any transferee, by instrument in writing satisfactory to the Seller and in recordable form, shall, for itself and its successors and assigns, have assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all conditions and restrictions herein.

SECTION 12.02 Entire Agreement; Amendment. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or termination except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

SECTION 12.03 No Waiver. No waiver by either party hereto of any failure or refusal by the other party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such party to so comply.

SECTION 12.04 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws principles that may apply. The State courts located in New York State, County of Orange, shall have exclusive jurisdiction to adjudicate any disputes arising out of or relating to, this Agreement. Each party hereto consents to the jurisdiction of such court and waives any right it may otherwise have to challenge the appropriateness of the forum for any reason. Arbitration shall not be used to resolve any claims, controversies, or disputes between the parties.

SECTION 12.05 Recording. Either party shall have the right to record, at its own expense, a memorandum of this Agreement.

SECTION 12.06 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

SECTION 12.07 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

SECTION 12.08 Severability. In the event that any of the provisions, or portions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, Seller and Developer shall negotiate an equitable adjustment in the provision of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions, or applications thereof, shall not be affected thereby.

SECTION 12.09 Notices. All notices required or permitted under this Agreement shall be in writing and shall be delivered personally, sent by a nationally recognized reputable overnight delivery service, or sent by U.S. First Class certified mail, postage prepaid, return receipt requested, addressed to the following addresses. Notices shall be deemed effective on the earlier of the date of receipt or three business days after the date of mailing. Any party may change its address for the service of notice to the other parties as provided herein.

Developer as follows:

[Name]
[Address]
[Address]

with a copy to:

[Name]
[Address]
[Address]

Seller as follows:

City of Newburgh
Attn: City Manager
City Hall, 83 Broadway
Newburgh, New York 12550
(845) 569-7301

With a copy to

Office of the Corporation Counsel
City Hall, 83 Broadway
Newburgh, New York 12550
(845) 569-7335

SECTION 12.10 No Broker. The parties warrant and represent to each other that no broker brought about, or participated in, this Agreement or transaction. Seller and Developer shall indemnify and hold one another harmless against all liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising from any claims for brokerage on this transaction.

SECTION 12.11 Project Mortgage. Not applicable.

SECTION 12.12 No Partnership or Joint Venture. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as a to new, specifically defined legal relationship.

SECTION 12.13 Obligations of Governmental Agencies. Notwithstanding any statement or representation to the contrary contained herein or in any of the other implementing agreements, the obligations and agreements of the Seller contained herein and in the other implementing agreements and in any other instrument or document executed in connection therewith and any instrument or document supplemental thereto shall be deemed the obligations and agreements of the Seller, and not of any member, officer, agent or employee of the Seller in its individual capacity, and the members, officers, agents and employees of the Seller shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

SECTION 12.14 Withdrawal of Offer. This Agreement shall be deemed withdrawn unless accepted by Seller and a fully executed counterpart of this Agreement returned to Developer on or before _____ (30 days from City Council approval).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Seller: CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Per Resolution No.: _____-2022

Developer:

By: _____
(Name)

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.

Notary Public

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 _____, 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 her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE "A"
DESCRIPTION OF THE PROPERTY

ALL THAT TRACT OR PARCEL OF LAND, with buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County of Orange and State of New York, known as 842 Broadway, being more accurately described as Section 25, Block 1, Lot 85.1 on the Official Tax Map of The City of Newburgh, further described as follows:

Being the same premises conveyed in a deed from Dennis A. Derry and Martha L. Derry to Dennis A. Derry, dated October 18, 2002 and recorded December 30, 2002 in the Orange County Clerk's Office in Book 6131, Page 129.

DRAFT

SCHEDULE "B"
PERMITTED ENCUMBRANCES

1. Any and all easements for utilities, both public and private, sewers, water lines, streets, and rights-of-way are of record;
2. Such easements, covenants, reservations, encumbrances or restrictions as are of record;
3. All provisions of any zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, and any and all other provisions of municipal ordinances, regulations or public laws;
4. Real estate taxes and assessments that are a lien but not yet due and payable;
5. Any state of facts a survey or personal inspection of the premises would disclose;
6. The rights of reverter described in Section 11.04 of this Agreement.

SCHEDULE "C"
PROJECT AND DEVELOPMENT DEADLINES

1. Within three (3) months of Developer's receipt of a fully-executed Agreement, Developer shall obtain all necessary state and local permits and approvals for the demolition and removal of any existing structure(s) at the Site or portions thereof; the removal and disposal of tires, miscellaneous boats, vehicles and any other above-ground debris from the Site; and the removal of any foundation and concrete slab materials from the Site.
2. Also within three (2) months of Developer's receipt of a fully-executed Agreement, and only after receipt of all necessary state and local permits as contemplated in paragraph 1, above, Developer shall: (a) actually demolish and remove any existing structure(s) at the Site or portions thereof; (b) remove and dispose of tires, miscellaneous boats, vehicles and any other above-ground debris from the Site; (c) remove of any foundation and concrete slab materials from the Site; and (d) comply with any other conditions as may be required as a condition of a demolition permit.
3. To avoid any doubt about Developer's obligations in paragraphs 1 and 2, above, Developer shall remove all above-surface materials from the Property, leaving the property as a vacant piece of land with only a dirt or grass surface.
4. Upon Developer's completion of its obligations in paragraphs 1 and 2, above, Developer shall coordinate an inspection of the premises with the City in order to close any open permits to the Property.
5. Upon closure of any open permits to the Property, the City shall promptly notify the New York State Department of Environmental Conservation ("NYSDEC") to commence the remediation of the sub-surface of the Property.
6. The Parties recognize that the full scope of the remediation of the sub-surface of the Property is currently unknown, and will continue to remain unknown, at least until the NYSDEC commences its remediation activities. The City will make best efforts to notify Developer about the completion of the sub-surface remediation.
7. Upon completion of NYSDEC remediation activities and confirmation of closure of any open spill incident tickets, remediation site tickets, bulk storage tickets and any other type of environmental citations of NYSDEC record for the Property, the City shall promptly make application to the Orange County Supreme Court to complete the tax foreclosure litigation in Orange County Supreme Court Index Number EF-003873-2021 and obtain title to the Property.
8. The parties shall close within 30 days of the City taking title to the property (i.e. the Closing Deadline), in accordance with Section 3.03.

9. Separate from the above, and at any time after Developer's receipt of a fully-executed Agreement, Developer is encouraged, but not required, to make application for site plan approvals to the City's Planning Board, and for area variances to the City's Zoning Board of Appeals if the project so requires.
10. Project Completion Deadline: No longer than twenty-four (24) months from the Closing Date, Developer shall have completed construction of the Project and Developer shall have applied to the Building Inspector and Code Compliance Office of the City of Newburgh for a Certificate of Occupancy.

DRAFT

SCHEDULE "D"
SAMPLE DEED WITH RIGHT OF REVERTER RESTRICTIONS

THIS INDENTURE, made the _____ day of _____, in
the year two thousand nineteen

BETWEEN:

THE CITY OF NEWBURGH, a municipal corporation organized under the laws of the
State of New York and having its principal office at City Hall, 83 Broadway, Newburgh, New York
12550, party of the first part, and

_____, a domestic limited liability company having an address of
_____, party of the second part.

WITNESSETH, that the party of the first part, in consideration of
_____ and 00/100 dollars (\$XXXXXX.00) paid by the party of the second part,
does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors
and assigns of the party of the second part forever;

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon
erected, situate, lying and being in the State of New York, County of Orange and City of Newburgh,
known as 842 Broadway, in the City of Newburgh and being more accurately described as SBL 25-
1-85.1 on the Official Tax Map of The City of Newburgh.

SUBJECT TO all easements, covenants and restrictions of record, except as hereinafter
stated.

SUBJECT TO all easements, covenants and restrictions of record and not of record existing
in favor of The City of Newburgh prior to the vesting of title to the described premises in The City
of Newburgh.

BEING the same premises as indicated in Orange County Supreme Court Index Number
EF-003873-2021, and in a deed from Todd Venning, Director of Finance and Enforcing Officer of
the City of Newburgh, to the City of Newburgh, dated _____, and recorded
in the Orange County Clerk's Office on _____, in Liber _____ of
Deeds at Page _____

TOGETHER with the appurtenances and all the estate and rights of the party of the first
part in and to such premises, TO HAVE AND TO HOLD the premises herein granted unto the
party of the second part forever.

The party of the second part expressly covenants and agrees that:

(1) within twenty-four (24) months after the date of this deed, the party of the second part
shall construct a structure with a minimum of 12,000 square feet (6,000 square feet across 2 floors)
and bring such structure into complete compliance with all State, County and City building,
housing, plumbing, electrical, fire prevention, life safety and health statutes, codes, rules and
regulations and shall obtain, within such time period, a Certificate of Occupancy for any buildings
and structures located on the property;

(2) at or prior to the end of twenty-four (24) months after the date of delivery of this deed, the party of the second part shall schedule with the Building Inspector of the City of Newburgh an inspection of the property described in this deed to determine compliance with the covenant set forth in paragraph (1) above. If the property is found to be in compliance with such covenant, a Certificate of Occupancy shall be issued by the Building Inspector;

(3) prior to the issuance of a Certificate of Occupancy, as provided in the covenant set forth in paragraph (2) above, the party of the second part shall not sell, convey, assign or lease the property described in this deed or any part thereof, except to the party of the first part as provided in paragraph (4) below;

(4) at the end of twenty-four (24) months after the delivery of this deed, if it is determined that the covenants contained in paragraphs (1) and (2) above have not been complied with, the party of the second part shall, within ten (10) business days from the service of a notice pursuant to Section 612 of the Real Property Actions and Proceedings Law of the State of New York, re-convey good and marketable title to the property described in this deed to the party of the first part;

(5) if, at any time after delivery of this deed, it is determined that the covenant contained in paragraph (3) above has not been complied with, the party of the second part and his grantee, assign, or successor in interest shall, within ten (10) business days from the service of a notice pursuant to Section 612 of the Real Property Actions and Proceedings Law of the State of New York, re-convey good and marketable title to the property described in this deed to the party of the first part.

The covenants set forth in the preceding paragraphs shall constitute covenants running with the land and shall without regard to technical classification or designation, legal or otherwise, be to the fullest extent binding for the benefit of, in favor of and enforceable by the party of the first part, its successors and assigns against the party of the second part, his successors and assigns and every successor in interest to the property described in this deed or any part thereof or any interest therein, and any party in possession or occupancy of the property described in this deed or any part thereof.

In the event that subsequent to the conveyance of the property described in this deed the party of the second part shall default in or violate any of its obligations contained in the covenants set forth in this deed, the party of the first part shall have the right to re-enter and take possession of the property described in this deed and to terminate the estate conveyed by this deed to the party of the second part, it being the intent of this provision that the conveyance to the party of the second part shall be made upon a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the party of the second part contrary to the obligations specified in the covenants contained in this deed, the party of the first part, may at its option, declare a termination in favor of the party of the first part, of the title and of all rights and interests in and to the property conveyed by this deed to the party of the second part and any assigns or successors in interest to or in the property shall revert to the party of the first part.

IN WITNESS WHEREOF, the parties have executed this deed the day and year first above written.

IN PRESENCE OF:

THE CITY OF NEWBURGH

BY:

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

NAME OF ENTITY

BY: _____
[NAME]

RECORD & RETURN TO:

Name
Address
Address

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

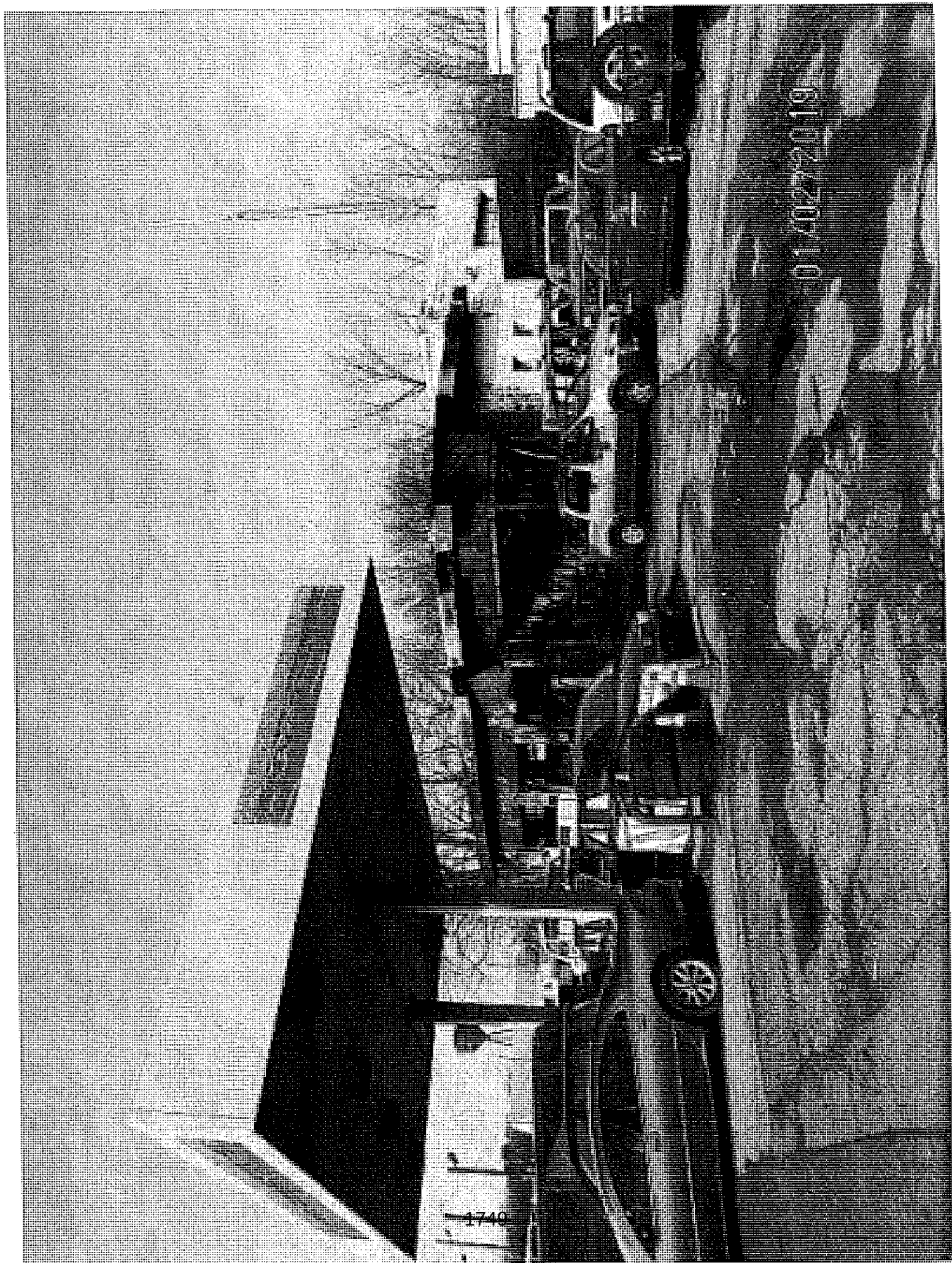
On the ____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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.

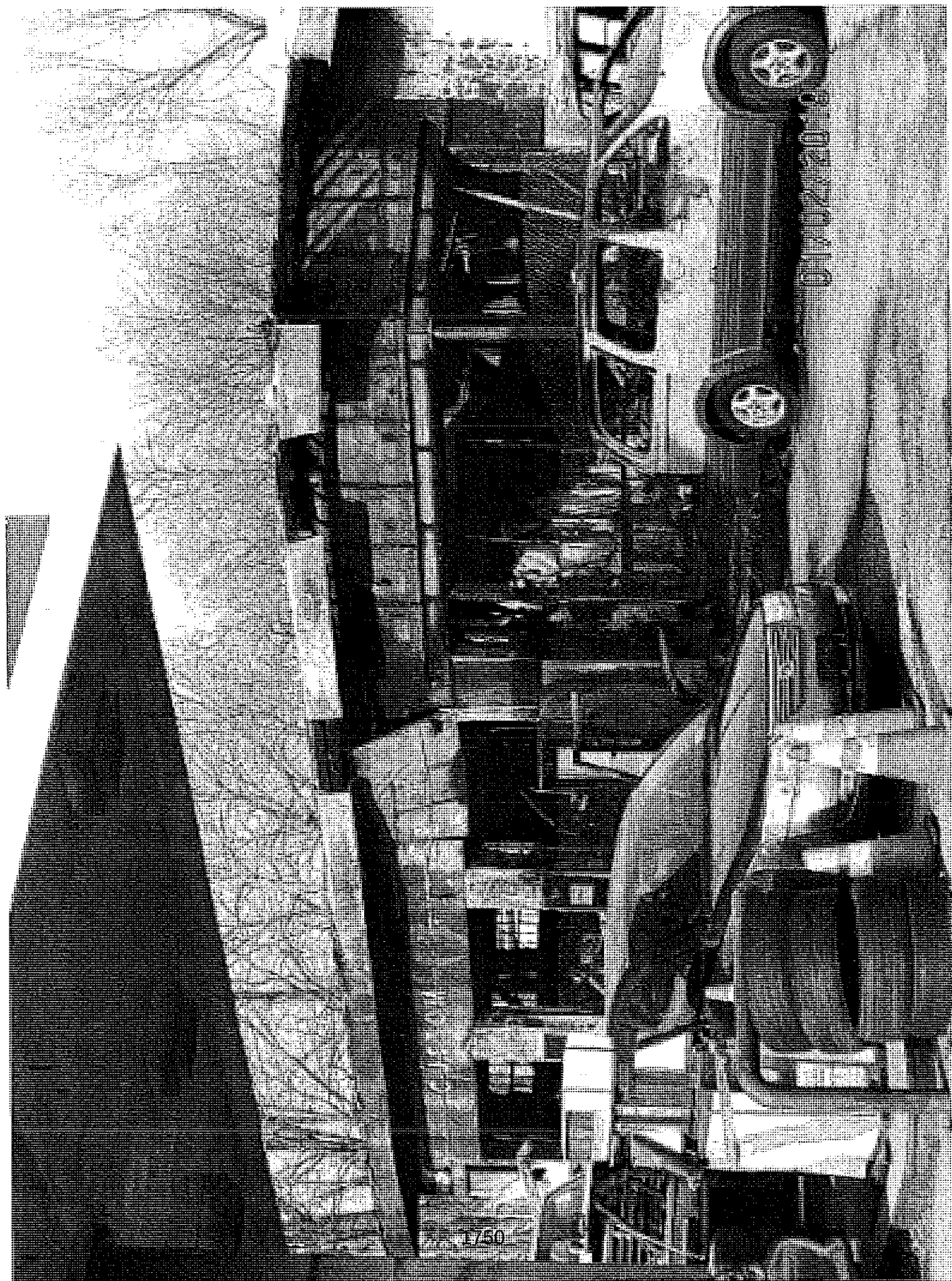
STATE OF NEW YORK)
) ss:
COUNTY OF ORANGE)

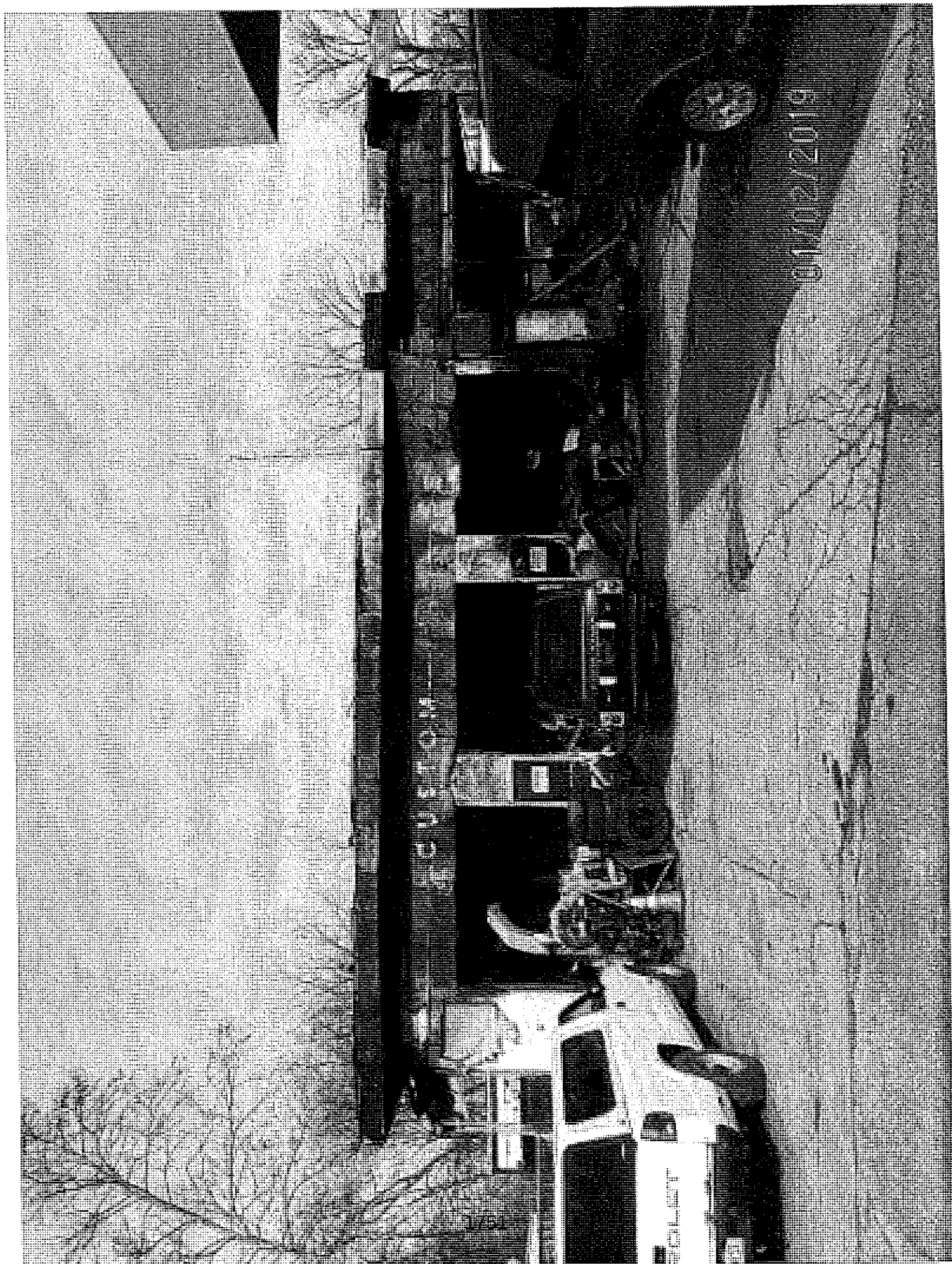
On the ____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged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

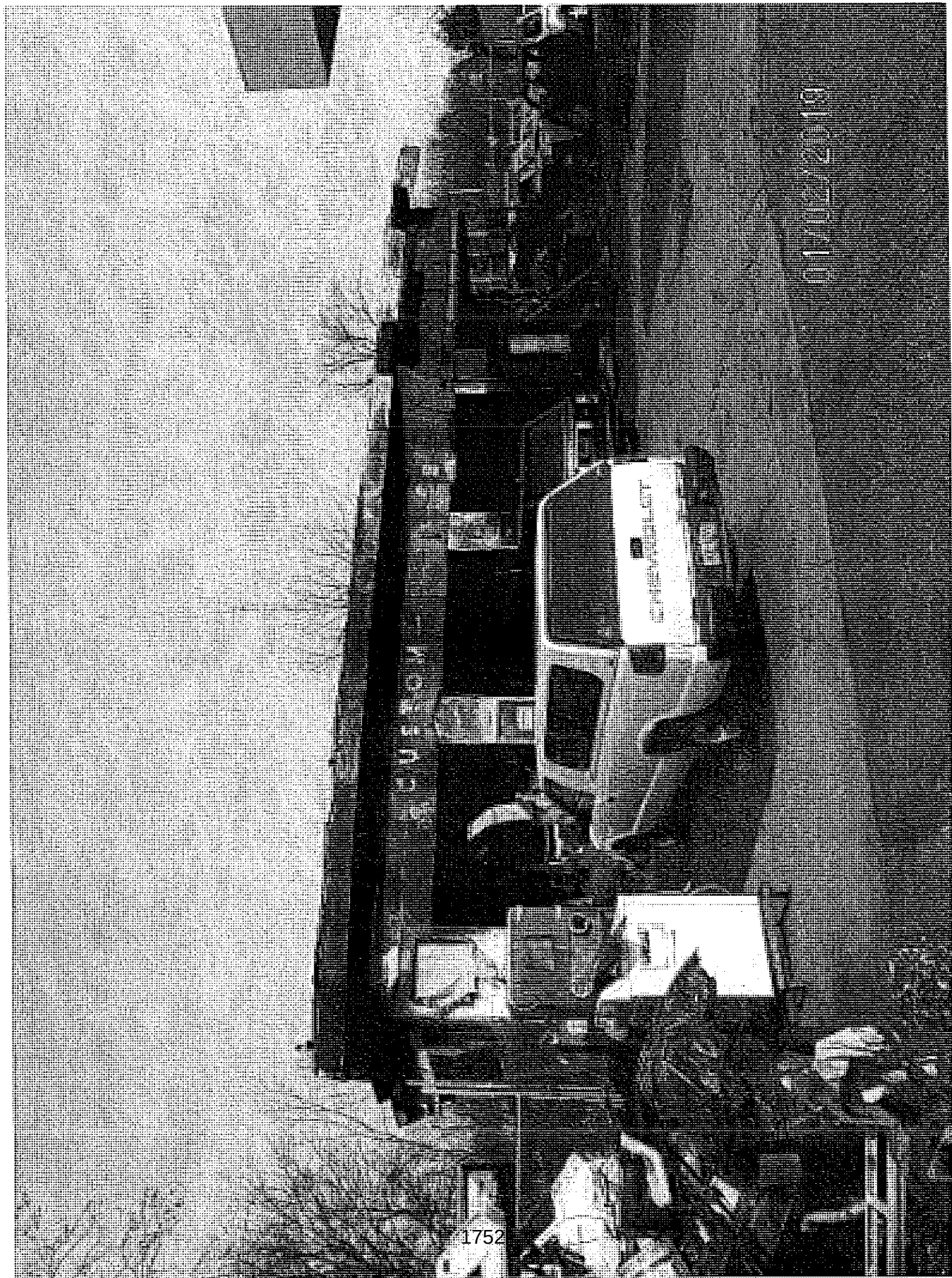
SCHEDULE E
ADDITIONAL DEVELOPER REPRESENTATIONS

1. Developer's is fully familiar with the City's zoning laws and requirements. Developer's plan does not contemplate requests for use variances or area variances, with the exception of area variances for off-street parking.
2. Developer's plan shall include a substantial buffer on the western side of the property that abuts the Quassaick Creek, exclusive of sidewalk and rear yard setback requirements, that incorporates a combination of greenspace, landscaping, patio, walking path, or other non-structural improvements on the Premises.
3. Developer's final plan shall include a certification from Developer and Developer's Architect that its plan complies with both the New York State Energy Code minimum requirements.
4. Developer has received, read, and is fully familiar with the terms and conditions of an Agreement between the New York Environmental Protection and Spill Compensation Fund and the City with respect to the Premises.









RESOLUTION NO.: 173-2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO PEDRO HINOSTROZA TO THE PREMISES KNOWN AS
35 OAK STREET (SECTION 25, BLOCK 2, LOT 5)

WHEREAS, on May 1, 2019, the City of Newburgh conveyed property located at 35 Oak Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 25, Block 2, Lot 5, to Pedro Hinostroza; and

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

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

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 35 Oak Street, Section 25, Block 2, Lot 5 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated May 1, 2019, from THE CITY OF NEWBURGH to PEDRO HINOSTROZA, recorded in the Orange County Clerk's Office on May 28, 2019, in Liber 14571 of Deeds at Page 1636 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.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

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

To: Todd Venning, City Manager

CC: A. Church, Director of Planning and Development

M. Kelson, Corporation Counsel

From: Charlotte Mountain, Code Compliance Supervisor

Date: June 28, 2022

On February 11, 2022 I conducted an inspection at 35 Oak Street for the purpose of releasing the restrictive covenants on the property deed. My findings are:

- There are no open code violations
- No violations were observed during my inspection at the property.
- There are no open permits on the property.
- There is a valid certificate of occupancy on the property dated July 7, 1967.
- The property appears to be owner occupied with no rental units.

Thank you,

Charlotte Mountain



CITY OF NEWBURGH

Office of Code Compliance

123 Grand Street, Newburgh, New York 12550

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

www.cityofnewburgh-ny.gov

Pedro A Hinoskoren certify that I am the owner of record of the property
(Name)

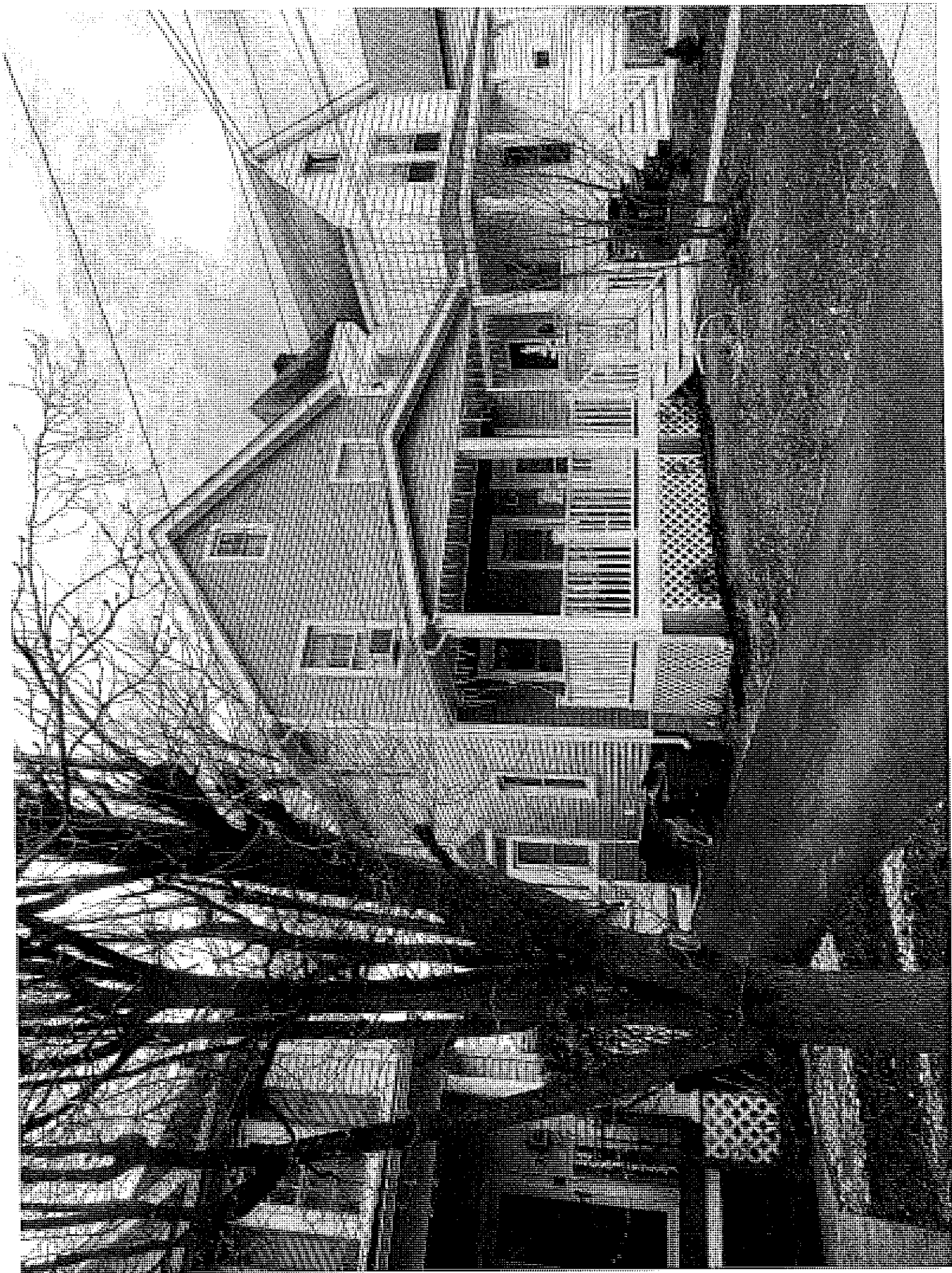
located at 35 Oak St (S-B-L 25-2-5)
(Address of Property)

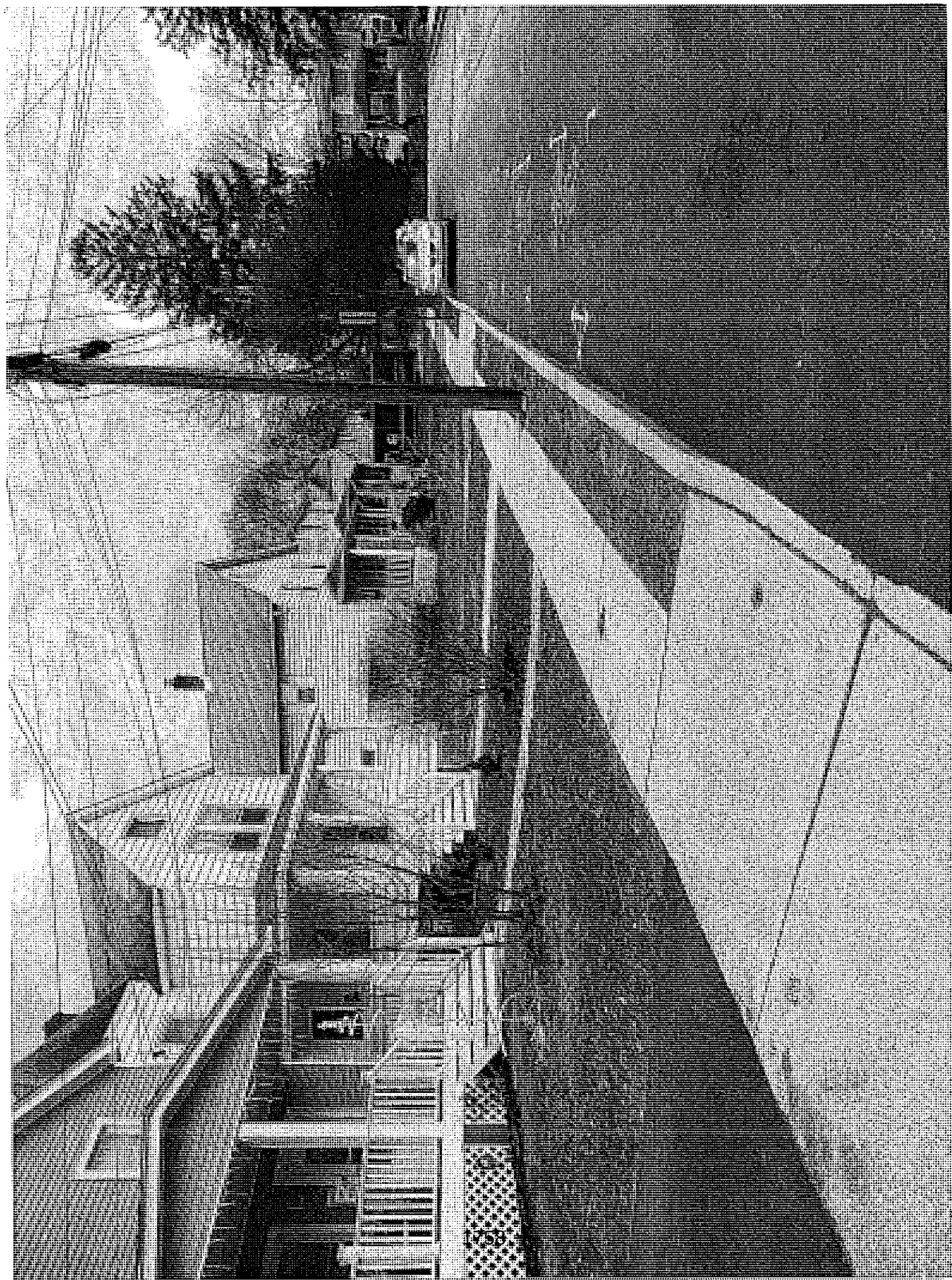
and that this property is owner-occupied with no rental units.

Pedro Hinoskoren
Print Name

Pedro Hinoskoren
Signature

3/31/22
Date





RESOLUTION NO.: 174 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONTRACT WITH BEST RESOURCE CENTER, INC.
TO PROVIDE YOUTH COORDINATION SERVICES IN CONNECTION WITH
THE NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS
PROGRAM GRANT AND ORAL HISTORY PROJECT

WHEREAS, by Resolution No. 303-2020 of December 14, 2020, the City Council authorized the City Manager to apply for and accept if awarded a National Park Service African American Civil Rights Program ("NPS AACR Program") grant; and

WHEREAS, the City was awarded funds from the NPS AACR Program grant; and

WHEREAS, the objective of the grant was for local governments or not-for-profit entities to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights; and

WHEREAS, the Best Resource Center, Inc., a not-for-profit entity, has applied to work with the City of Newburgh to provide youth engagement and coordination services for five (5) local youths over the course of approximately five (5) weeks in July and August 2022 in connection with the NPS AACR Program grant and oral history project; and

WHEREAS, this Council has reviewed the contract with Best Resource Center, Inc., annexed hereto, and finds that entering into said contract is in the best interests of the City of Newburgh; and

WHEREAS, funding for this project will derive from budget line CG.8030.0455.4400.2023; and

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 a contract with Best Resource Center, Inc. to provide youth engagement and coordination services for five (5) local youths in connection with the NPS AACR Program grant and oral history project.

SUBGRANTEE AGREEMENT
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT

This subgrantee agreement ("Agreement"), by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City") and **BEST RESOURCE CENTER**, a not-for-profit corporation, having its principal place of business at 49 Grand Street, Newburgh, New York 12550 ("Sub-grantee"), is made this dated as of _____, 2022, as follows:

RECITALS

- A. The City received an award of funds from the National Parks Service (referred to herein as "Grantor") African American Civil Rights ("AACR") program.
- B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being engagement and coordination with local youths in connection with the Grantor's African American Civil Rights Oral History Project.
- C. Sub-grantee has applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
- D. Sub-grantee has also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit A**.
- E. In addition to the terms and conditions in this Agreement, Sub-grantee has agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit B**, attached hereto and made a part of this Agreement.
- F. The City has identified Sub-grantee as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantee to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

NOW, THEREFORE, the City, and the Sub-grantee, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE I SPECIFIC TERMS OF AGREEMENT

- 1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantee. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipient shall be an independent entity and not an employee or agent of the City.
- 2. Sub-grantee shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipient a sum of two thousand seven hundred forty-seven and 00/100 dollars (\$2,747.00), said sum being a part of grant award to the City by Grantor.

ARTICLE II PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.
2. Total payment under this Contract shall not exceed two thousand seven hundred forty-seven and 00/100 dollars (\$2,747.00) as payment for all eligible services incurred by Sub-grantee.
3. The City may withhold any payment whenever the Sub-grantee fails to achieve its program goals for the vouchered expenditure period.

ARTICLE III METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantee eligible reimbursable costs.
2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.
3. The City shall reimburse Sub-grantee not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4th Floor, Newburgh, New York 12550.
4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date of December 31, 2022. The final statement of costs shall constitute Sub-grantee's final financial report.
5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

ARTICLE IV TERMINATION

1. Either party may terminate this agreement with thirty days' written notice to the parties listed below. Upon receipt of notice of termination, the Sub-grantee agrees to cancel, prior to the effective date of termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval.

If to City:

City of Newburgh
Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

If to Sub-grantee

Best Resource Center, Inc.
attn.: Vera Best
49 Grand Street
Newburgh, New York 12550

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantee under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.
3. In the event of termination, Sub-grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantee, the City may withhold from any payments due the Sub-grantee for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantee.

ARTICLE V NO ASSIGNMENT

1. Sub-grantee represents that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City.

ARTICLE VI BOOKS AND RECORDS; REPORTS

1. Sub-grantee shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The City or the Grantor shall have access to the Records during normal business hours at an office within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
2. Sub-grantee shall submit a report to the City identifying prescribed activities funded under this Agreement at the termination of this Agreement. Sub-grantee shall also submit reports identifying prescribed activities funded under this Agreement upon request by the City while this Agreement is in effect.

ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Sub-grantee, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantee shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantee agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:
 - a. was known to Sub-grantee prior to receipt from the City, as evidenced through written documentation;
 - b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantee;
 - c. is acquired from a third party entitled to disclose the information to Sub-grantee;
 - d. is developed independently by Sub-grantee;
 - e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantee shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

ARTICLE VIII INTEREST OF SUB-GRANTEE, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

1. Sub-grantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.
2. Sub-grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.
3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

ARTICLE IX INTEREST OF MEMBERS, OFFICERS OR EMPLOYEE THE CITY; MEMBERS OF THE COMMON COUNCIL, OR OTHER PUBLIC OFFICIALS

1. No member, officer or employee of the City or its designees or agents, no member of the Common Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities with respect to the program, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.
2. Sub-grantee shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

1. No member of the New York State Assembly or Senate, or any other member of New York State government, shall be permitted to any share or part of this Agreement or to any benefit to arise from the same.

ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

1. Sub-grantee represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

ARTICLE XII REPRESENTATIONS OF SUBGRANTEE

1. Sub-grantee acknowledges and agrees that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Sub-grantee will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Sub-grantee certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

ARTICLE XIII EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out the obligation of this Agreement, Sub-grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Sub-grantee shall take affirmative action to ensure that applicants for employment and employees of Sub-grantee are treated without regard to their race, color, religion, sex, national origin or handicap. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
2. Sub-grantee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Sub-grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.

3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE XIV FACILITIES AND PERSONNEL

1. Sub-grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.
2. Sub-grantee further represents that it will terminate and dismiss from further performance of work and services under this Agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to Sub-grantee by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for Sub-grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve Sub-grantee from meeting its obligations under the terms and conditions of this Agreement.

ARTICLE XV INDEMNIFICATION

1. Sub-grantee hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of Sub-grantee or its agents, sub-contractors, servants or employees.
2. If any person shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantee hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.
3. Sub-grantee shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.
 - a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.
 - b. Sub-grantee shall carry Liability and Property Damage Insurance with limits of not less than:

- i. Property Damage Liability \$1,000,000 for each occurrence

4. The Agency, as Sub-grantee shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

1. Notices of any nature referred to in this agreement shall be in writing by certified mail, hand delivery. Notices shall be effective on the date of receipt.

City of Newburgh
Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

Best Resource Center, Inc.
attn.: Vera Best
49 Grand Street
Newburgh, New York 12550

1. No changes may be made to this Agreement without written consent/amendment by the City.
2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.
3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.

4. Subrecipient has read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.

1766

DRAFT

Signature Page
Subgrantee Agreement, National Parks Service, AACR Grant
City of Newburgh / Best Resource Center, Inc.

IN WITNESS WHEREOF, Sub-grantee and the City have executed this Agreement the day and year herein mentioned.

DATED: _____, 2022

CITY OF NEWBURGH

By: _____
Name: Todd Venning
Title: City Manager

DATED: _____, 2022

BEST RESOURCE CENTER, INC.

By: _____
Name: Vera Best
Title: Chief Executive Officer

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

On this ____ day of _____, in the year 2022, before me 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 person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

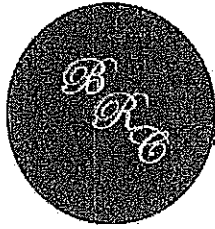
On this ____ day of _____, in the year 2022, before me personally appeared Vera Best personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK & BUDGET

EXHIBIT B – GRANTOR TERMS & CONDITIONS

DRAFT



Best Resource Center, Inc.

49 Grand Street
Newburgh, NY 12550
845-562-2378
845-562-2221 fax

June 28, 2022

Ms. Alexandra Church, AICP
Director of Planning and Development
City of Newburgh
123 Grand Street
Newburgh, NY 12550

Dear Ms. Church,

This document is to confirm that Best Resource Center, Inc. has agreed to provide Youth Coordinator services for the City of Newburgh Oral History Youth Project to convene July 5, 2022- August 5, 2022. The program is designed to serve a population of 5 participants.

The role of the Youth Coordinator will be to provide support with planning, overseeing and directing the operations, services, and activities of the Oral History Project for the City of Newburgh. These tasks will include workshops designed to prepare youth for the world of work.

The Youth Coordinator position budget allocation is planned at 100 hours and not to exceed \$2,747.

Sincerely,

Ms. Vera Best
Executive Director

Vera Best is the President & Founder of Best Resource Center, Inc., (BRC) a diversified community based not-for-profit organization with dual focus: Academic/Professional Skill Development and Community Service. The organization is dedicated to providing the "Best" education, personal and professional development workshops, workforce development and training coupled with intensive case management and support services. The programs employ an effective approach of combining mentoring, customized instruction, job readiness, work experience, cross-industry skills development, job placement assistance, distance learning opportunities and industry consulting services to build skill, competence and confidence.

Ms. Best founded Best Resource Center in 1999, launching the company to create an infrastructure to bridge the digital divide and to provide access to academic instruction, industry consultants, mentors and technology in a supportive nurturing environment. The organization focuses on first, literacy and building mastery in the core level skills. The goal is to enrich the lives of individuals by helping them to attain basic to advanced skills, better work habits, marketable skills, and the self-confidence they will need to sustain gainful employment and successfully compete in the local and global marketplace.

In 2011, Ms. Best launched a Call Center providing cross-industry Call Center/Customer Service skill development and training focusing on the high labor market demand employment opportunities.

BRC combines intense academic enrichment programs with a strategic business and industry focus. BRC promotes the entrepreneurial spirit by fostering a supportive structure and flexible business culture. BRC is committed to the continued delivery of quality workforce and education programs that enhance Orange County's talent pipeline, support lifelong learning, revitalize our urban centers, and assist the various population segments involved to truly realize their maximum potential.

BRC serves a wide-range of populations within Newburgh and across Orange County offering education, training, credential opportunities, case management, counseling, coaching, work experience and employment assistance. These populations include but is not limited to youth, adults, reentry, unemployed, underemployed, dislocated workers, HS dropouts, homeless and more.

Since 1999, BRC has expanded its services to include collaborative projects with the County of Orange, Department of Mental Health, Department of Social Services, Newburgh Enlarged City School District, faith-based entities, local businesses, Local 17, ACCESS, Project Life, SUNY Orange, and others for the Youth and Adult populations in the City of Newburgh and throughout Orange County providing tutoring for in-school students, adult education and workforce development and paid work experience for older youth and adult populations. As of March 2020, many services have transitioned to Distance Learning mode to create a hybrid opportunity while providing continuity and support to clients.

Tynisa D. Woody

tynisawoody_brc@hotmail.com

Objective An administrative position in a fast-paced environment.

Skills

- Excellent Organizational Skills
- Strong Customer Relations Skills
- Computer Proficiency
- Data Entry
- Time Management
- Telephone Answering, 12-Line System
- Word Processing and Typing
- 10-Key Calculator
- Filing
- Attentive
- Critical Thinker (analysis)
- Computer Microsoft Word, PowerPoint, Excel, Publisher, Access, data entry, internet navigation, and software installation

Experience **Best Resource Center, Inc.** **Newburgh, NY** **2002-Present**

Administrative Assistant

- Provide clerical support to all staff and fill in where needed
- Compile, prepare and update various reports
- Establish procedures that are in compliance with operational and/or fiscal policies.
- Coordinate activities of, and implements, as directed, conferences and committee meetings

Program Coordinator

- Target and secure participant information
- Data Management of program
- Outreach and recruitment for program enrollment
- Create strategic plan for participants and assist with acquisition of services
- Maintain ongoing relationship with participants
- Assist program staff with the development of workshops to offer to participants and provide presentation of materials.
- Provide job placement resources and assistance to participant.
- Provide technology training and instruction in MS word and navigation to participants
- Provide case management by assessing participant needs and providing information about available resources
- Produce well written reports; highlights, successes, and job placement statistics.

Education **Bachelors of Science (Major: History)** **2005-2008**

Mount Saint Mary College, Newburgh, NY.

A.S.S. Business Management

SUNY Orange County Community College, Middletown, NY

High School Diploma

Newburgh Free Academy, Newburgh, NY

2003-

2005

2001

CPR Certified, Best Plus and TABE Certified, Trained HSE Examiner, Narcan Trained, Notary

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 25

DATE ISSUED

09/19/2021

GRANT NO. P21AP11742-00

Federal Financial Report Cycle

Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

Performance Progress Report Cycle

Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

REMARKS

1. Grant Agreement
between
the United States Department of the Interior
National Park Service
and
the Above-Named Recipient

Articles

1. Department of the Interior Standard Terms and Conditions

Recipients must also adhere the Department of Interior Standard Terms and Conditions located at
<https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

2. Legal Authority

NPS enters into this Agreement pursuant to:

1. National Historic Preservation Act (NHPA), 54 USC 300101 *et seq.*
2. Historic Preservation Fund Grants Manual, 2007 and subsequent memos and guidance
3. Further Consolidated Appropriations Act of 2020, P.L. 116-94

3. Performance Goals and Project Objectives

The objective of this Agreement is to provide Historic Preservation Funds (HPF) to a State, Tribe, local government (including Certified Local Governments), or nonprofit to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights and the transatlantic slave trade. Projects may involve a broad range of preservation projects for historic sites including: survey & inventory, National Register nominations, oral histories, collections conservation, architectural services, historic structure reports, preservation plans, and physical preservation of resources listed or eligible National Register resources.

4. Performance Goals and Project Objectives

NOTICE OF AWARD (Continuation Sheet)

PAGE 3 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

This grant program enables eligible grantees, as stated in the Notice of Funding Opportunity, across the nation to participate in a nationwide historic preservation program and meet the goals of 54 U.S.C. 300101 et seq., commonly known as the National Historic Preservation Act.

5. COVID-19 Provisions

Due to the COVID-19 pandemic, access to National Park Service (NPS) property, personnel, or resources may be limited at the start of the agreement. Any performance that requires access to National Park Service property, personnel, or resources shall not commence until the recipient receives confirmation from the NPS Financial Assistance Awarding Officer of the availability of those resources. The recipient shall contact the NPS Financial Assistance Awarding Officer for approval prior to incurring any costs for performance that requires access to National Park Service property or resources. Such approvals can only be provided by the NPS Financial Assistance Awarding Officer. In the event of a prolonged unavailability of resources, the period of performance may be modified to a later date, or the agreement may be cancelled, by either the National Park Service or the recipient, in its entirety. In addition, the recipient shall contact the NPS Financial Assistance Awarding Officer to coordinate any other changes to the agreement that may be needed to ensure successful performance during the COVID-19 pandemic.

6. Statement of Work

The Statement of Work to be performed in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and as determined eligible in the National Historic Preservation Act (NHPA), 54 U.S.C 300101 et. seq., and in the Historic Preservation Grant Fund Manual.

The Statement of Work is further defined in an addendum at the end of this Notice of Award.

7. Responsibilities of the Parties

1. The Recipient agrees to:

1. The Recipient shall carry out the Statement of Work in accordance with the terms and conditions stated herein, such as the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.
2. The Recipient shall adhere to all applicable Federal, state, and local laws, regulations, and codes, such as the National Historic Preservation Act.

2. No substantial involvement on the part of the NPS is anticipated for the successful completion of the statement of work detailed in this award. It is anticipated that involvement will be limited to actions related to monitoring project performance and technical assistance at the request of the recipient.

8. Cost-Share Requirement

Non-Federal cost-share is required for costs incurred under this Agreement, as identified in the attached project budget. If pre-award costs are authorized, reimbursement of these costs is limited to Federal cost share percentage identified in this agreement.

9. Pre-Award Incurrence of Costs

NOTICE OF AWARD (Continuation Sheet)

PAGE 4 of 25

DATE ISSUED
09/19/2021

GRANT NO. P21AP11742-00

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

10. Administrative & Indirect Costs

The Recipient has chose not to use a federally approved negotiated indirect cost rate.

The federally-negotiated indirect rate plus administrative costs to be applied against this agreement, by statute 54 U.S.C. § 302902, shall not exceed 25% of the total budget.

Administrative costs are defined as: Allowable, reasonable, and allocable costs related to the overall management of activities directly related to finance (accounting, auditing, budgeting, contracting), general administrative salaries and wages (grant administration, personnel, property management, equal opportunity) and other overhead functions (general legal services, general liability insurance, depreciation on buildings and equipment, etc.) not directly attributable to specific program areas identified in the grant agreement. All administrative costs reported must be absolutely necessary for project and/or program implementation, such as the cost items identified in the final grant agreement or items otherwise approved in writing by the NPS Awarding Officer (AO).

11. Key Officials

1. Communications. Recipient shall address any communication regarding this Agreement to the ATR/Program Officer with a copy to the Awarding/Grants Management Officer. Communications that relate solely to technical matters may be sent only to the ATR/Program Officer.
2. Changes in Key Officials. Neither the NPS nor Recipient may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

12. Award and Payment

1. The NPS will provide funding to the Recipient in an amount not to exceed the figure in block 11m of the Notice of Award for the Statement of Work described in Article VI and in accordance with the NPS approved budget. The approved budget detail is incorporated herein. Any award beyond the current fiscal year is subject to availability of funds. Acceptance of a Federal financial assistance award from the Department of the Interior carries with it the responsibility to be aware of, and comply with the terms and conditions within this award document. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means.
2. Recipient shall request payment in accordance with the following:
 1. Method of Payment. Payment will be made by advance and/or reimbursement through the Department of Treasury's Automated Standard Application for Payments (ASAP) system.
 2. Requesting Advances. Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the Financial Assistance (FA) Recipient to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
 3. Requesting Reimbursement. Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each

NOTICE OF AWARD (Continuation Sheet)

PAGE 5 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.

4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.
3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match.** Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

13. Prior Approval

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

NOTICE OF AWARD (Continuation Sheet)

PAGE 6 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

14. Insurance and Liability

Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

15. Reports and/or Outputs/Outcomes

1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.
2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIS). Each report shall be submitted as described above.
3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.
4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

16. Property Utilization

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 applies to this Agreement.

17. Modification, Remedies for Noncompliance, Termination

1. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the NPS Awarding Officer and the authorized representative of Recipient.
2. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.339.
3. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

18. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you, as the recipient, during that period of time

NOTICE OF AWARD (Continuation Sheet)

PAGE 7 of 25

DATE ISSUED
09/19/2021

GRANT NO. P21AP11742-00

must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of \$5,000 or more; or reimbursement, restitution, or damages in excess of \$100,000; or
 4. Any other criminal, civil, or administrative proceeding if:
 1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
 2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

NOTICE OF AWARD (Continuation Sheet)

PAGE 8 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

- does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
 3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

19. Funding Used for the Operation of Unmanned Aircraft Systems (UAS)

If Federal funding is provided to a State, local, tribal, or territorial government for the use of UAS for their operations, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

Per the policy memorandum issued by National Park Service Director, dated June 19, 2014, the launching, landing, and operating of unmanned aircraft, that is not under the control of the Federal government, on lands and waters administered by the National Park Service is prohibited unless approval is received from the Associate Director for such purposes as: Scientific study, search and rescue operations, fire operations, and law enforcement.

Administrative use includes the use of unmanned aircraft by

- NPS personnel as operators or crew;
- cooperators such as government agencies and universities that conduct unmanned aircraft operations for the NPS pursuant to a written agreement; and
- other entities, including commercial entities, conducting unmanned aircraft operations for the NPS, provided such entities are in compliance with all applicable FAA and Department of the Interior requirements.

20. Patents and Inventions (37 CFR 401)

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the National Park Service, is hereby included in this agreement:

1. Definitions

1. *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
2. *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement

NOTICE OF AWARD (Continuation Sheet)

PAGE 9 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

performance.

3. *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
4. *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. *Small Business Firm* means a small business concern as defined at section 2 of Public Law. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
6. *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

2. Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

3. Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

1. The Recipient will disclose each subject invention to the National Park Service within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the National Park Service shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the National Park Service, the Recipient will promptly notify the National Park Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
2. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the National Park Service within two years of disclosure to the National Park Service. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the National Park Service to a date that is no more than 60 days prior to the end of the statutory period.
3. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory

NOTICE OF AWARD (Continuation Sheet)

PAGE 10 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the National Park Service, be granted.

4. Conditions When the Government May Obtain Title

The Recipient will convey to the National Park Service, upon written request, title to any subject inventions

1. If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph 3, above, or elects not to retain title; provided that the National Park Service may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
2. In those countries in which the Recipient fails to file patent applications within the times specified in paragraph 3 above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph 3 above, but prior to its receipt of the written request of the National Park Service, the Recipient shall continue to retain title in that country.
3. In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

5. Minimum Rights to Recipient and Protection of the Recipient Right to File

1. The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph 3, above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the National Park Service except when transferred to the successor of that party of the Recipient's business to which the invention pertains.
2. The Recipient's domestic license may be revoked or modified by the National Park Service to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the National Park Service licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the National Park Service to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the National Park Service will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient

NOTICE OF AWARD (Continuation Sheet)

PAGE 11 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

will be allowed thirty days (or such other time as may be authorized by the National Park Service for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and National Park Service regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

6. Recipient Action to Protect the Government's Interest

1. The Recipient agrees to execute or to have executed and promptly deliver to the National Park Service all instruments necessary to
 1. establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and
 2. convey title to the National Park Service when requested under paragraph 4 above and to enable the government to obtain patent protection throughout the world in that subject invention.
2. The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (3)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Recipient will notify the National Park Service of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
4. The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

7. Subcontracts

The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental, developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

8. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the National Park Service may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the

NOTICE OF AWARD (Continuation Sheet)

PAGE 12 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

National Park Service in connection with any march-in proceeding undertaken by the National Park Service in accordance with paragraph (10) of this provision. As required by 35 U.S.C. 202(c)(5), the National Park Service agrees it will not disclose such information to persons outside the government without permission of the Recipient.

9. Preference for United States Industry

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the National Park Service upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

10. March-in Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:

1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Agreements with Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

1. Rights to a subject invention in the United States may not be assigned without the approval of the National Park Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
2. The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the National Park Service deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
3. The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the

NOTICE OF AWARD (Continuation Sheet)

PAGE 13 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

- administration of subject inventions, will be utilized for the support of scientific research or education; and
4. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the National Park Service may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the National Park Service when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (11)(4).

12. Communication

Communications regarding matters relating to this provision shall be directed to:
Deputy Associate Solicitor
Branch of Procurements and Patents
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

21. Strengthening Buy-American Preferences for Infrastructure Projects per E.O. 13858

Per Executive Order 13858, entitled "Strengthening Buy-American Preferences for Infrastructure Projects" the Recipient shall maximize, consistent with law, the use of iron and steel goods, products, and materials produced in the United States, for infrastructure projects as defined by the Executive Order when the statement of work includes alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair.

22. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Quarterly Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act, Standards and Guidelines for detailed information (<https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>).

The following summarizes some of the requirements for preparing NPS reports in conformance with

NOTICE OF AWARD (Continuation Sheet)

PAGE 14 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to <https://section508.gov/create>. All accessible digital content must conform to the requirements and techniques of the Web Content Accessibility Guidelines (WCAG) 2.0 or later (<https://www.w3.org/WAI/standards-guidelines/wcag/>), Level AA Success Criteria.

- **Electronic documents with images**

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

- **Electronic documents with complex charts or data tables**

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

- **Electronic documents with forms**

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

23. General and Special Provisions

1. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
2. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
3. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
4. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
5. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
6. **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS

NOTICE OF AWARD (Continuation Sheet)

PAGE 15 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

- employees are not agents of the Recipient and will not act on behalf of the Recipient.
7. **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
 8. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
 9. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
 10. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
 11. **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305 (5)). As allowed under 2 CFR §200.307, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.
 12. **Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
 13. **Conflict of Interest**
 1. **Applicability.**
 1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
 2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.
 2. **Requirements.**
 1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
 2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

NOTICE OF AWARD (Continuation Sheet)

PAGE 16 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

3. Notification.

1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.

4. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

5. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

6. Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

24. Signatures

Recipients are **not** required to sign the Notice of Financial Assistance Award letter or any other award document. As per DOI standard terms and conditions, the recipient's acceptance of a financial assistance award is defined as the start of work, drawing down of funds, or accepting the award via electronic means.

25. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;

2. Extend or renew a contract to procure or obtain; or

3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2. Telecommunications or video surveillance services provided by such entities or using such equipment.

3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the secretary of defense, in consultation with the director of the

NOTICE OF AWARD (Continuation Sheet)

PAGE 17 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

- national intelligence or the director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services and to ensure that communications service to users and customers is sustained.
 3. See Public Law 115-232, section 889, for additional information.
 4. See also §200.471.

Program Specific Requirements

1. NPS Oversight

The NPS will provide oversight of this grant project through the following NPS reviews:

1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;
2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;
3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;
4. Review and approval for compliance with the National Environmental Policy Act (NEPA);
5. Review and approval of project signage to notify the public of federal involvement; and
6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

2. Determination of Risk

In accordance with 2 C.F.R. § 200.205, the application for this award was subjected to a pre-award risk assessment which included a review of information contained within the application, past audits, Federal Awardee Performance and Integrity Information System (FAPIS), and/or past performance on previous Federal financial assistance awards and other factors.

This award has been determined to be a low risk with the following requirements:

Requests for payment may be made directly from the ASAP grant account without prior NPS approval after expenses have been incurred, invoiced, and paid. All documentation of expenses must be kept on file for audit purposes and may be requested by the NPS at any time. If payments are drawn down prior to invoice and payment or in amounts larger than costs incurred, the Recipient may be determined medium or high risk and be subject to additional grant terms and conditions.

3. Eligible Costs

NOTICE OF AWARD (Continuation Sheet)

PAGE 18 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

Eligible costs under this award are as described in this Notice, 2 CFR 200, and the Historic Preservation Fund Grants Manual (HPF Manual).

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);
2. Administrative costs necessary to complete and administer the grant requirements;
3. Rehabilitation of properties;
 1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
 2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
 3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
 4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement
4. Survey and Inventory of historic resources to determine eligibility;
5. Cost for producing a nomination to the National Register of Historic Places (if applicable);
6. Conservation of collections;
7. Cost for any required audits or financial requests;
8. Cost for the production of project signs;
9. Costs for public notice of grant opportunities;
10. Costs associated with required training or reporting; and/
11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

4. Equipment Purchases

Each item of equipment purchased under this award must be approved specifically and in writing by the NPS prior to purchase to confirm the allowability of the costs. Approval of the application is not approval of equipment included within the application. Equipment is defined by 2 CFR 200.1 as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000.

5. Consultants & Contractors

Consultant/contractor(s) must have the requisite experience and training in historic preservation or relevant field to oversee the project work. All consultants and contractors must be competitively selected and documentation of this selection must be maintained by the grantee and be made readily available for

NOTICE OF AWARD (Continuation Sheet)

PAGE 19 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

examination by the NPS. Federal contracting and procurement guidance can be found in 2 CFR 200.318. Maximum rates charged to this grant may not exceed 120% of a Federal Civil Service GS-15, step 10 salary per project location. Current regional salary tables can be found on the Office of Personnel and Management website: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

6. Requirement for Project Sign & Public Notification

As stipulated in 36 CFR Part 800, public views and comments regarding all Federally-funded undertakings on historic properties must be sought and considered by the authorizing Federal agency. Therefore, the grantee is required to post a public notification regarding the undertaking under this grant in one or more of the major newspapers or news sources that cover the area affected by the project within 30 days of receiving this awarded grant agreement. A copy of the posted release must be submitted to NPS within 30 days of the posting.

HPF funded projects must create public notification of the project in the form of a project sign, website posting, and proper credit for announcements and publications as appropriate. Signage/notification must be submitted for approval by the ATR in advance. Also the sign/notification must be of reasonable and adequate design and construction to withstand weather exposure (if appropriate); be of a size that can be easily read from the public right-of-way; and be accessible to the public throughout the project term as stipulated in this agreement. At a minimum, all notifications must contain the following statement:

"[Project Name] is being supported in part by an African American Civil Rights grant from the Historic Preservation Fund administered by the National Park Service, Department of the Interior."

Additional information briefly identifying the historical significance of the property and recognizing other contributors is encouraged and permissible. The NPS arrowhead logo may only be used in conjunction with the HPF approved signage format that can be provided upon request. Any other use of the logo is prohibited.

Cost of posting, fabricating, and erecting notification are eligible grant costs.

7. Publicity & Press Releases

Press releases about this project must acknowledge the grant assistance provided by the Historic Preservation Fund and the National Park Service, and copies of the press releases must be provided to the NPS. The Recipient must transmit notice of any public ceremonies planned to publicize funded or related projects in a timely enough manner so that the NPS, Department of the Interior, Congressional or other Federal officials can attend if desired. All publicity and press releases related to activities funded with this award should include a statement that funding for the activity was provided (in part or in whole) by the Historic Preservation Fund (HPF) administered by the National Park Service.

8. Funding Acknowledgement

The grantee must include acknowledgment of grant support from the Historic Preservation Fund of the National Park Service, Department of Interior, in all deliverables and publications concerning NPS grant-supported activities as referenced in the Statement of Work.

All deliverables must contain the following disclaimer and acknowledgement:

"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number [insert grant number, block 4a of this Notice of Award's coversheet]. Any opinions, findings, and conclusions or recommendations

NOTICE OF AWARD (Continuation Sheet)

PAGE 20 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

1. Deliverables/publications include but are not limited to grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation of events, including programs; invitations and photos; websites; mobile apps; exhibits; and interpretive signs.
2. All digital copies must follow the file naming convention described in the attached Digital Product Submission Guidelines. Refer to the attached guidance document for instructions on creating, naming and submitting digital copies of deliverables/publications.
3. All consultants hired by the grantee must be informed of this requirement.
4. Grantees, subgrantees, contractors may not use the NPS Arrowhead in any form without written permission.

9. Copyright

Per 2 CFR 200.315(b), the NPS reserves a royalty-free right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, any materials produced under this grant. All photos included as part of the interim & final reporting and deliverables/publication will be considered released to the NPS for future official use. Photographer, date, and caption should be identified on each photo, so NPS may provide proper credit for use.

A digital (preferred) or physical copy of all deliverables must be available for public access. Sensitive information may be redacted from the public access copy.

All consultants hired by the Recipient must be informed of this requirement.

10. NPS Review of Planning/Design Documents for National Historic Landmarks

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;
2. a city/county map with the site of the property clearly labeled;
3. set of plans and specifications for the project;
4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;
5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;
6. for NHL Districts include overall views of the district from the project area; and
7. any additional information that will better enable a technical review of the project to be completed.

The grantee must submit documents for the entire undertaking to the NPS for its review and approval to ensure conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, Historic Preservation Fund Grant Manual, and with the conditions listed in this Grant Agreement, prior to the beginning of grant-assisted work. Work that does not comply with these Standards in the judgment of the NPS will not be reimbursed, and may cause the grant to be terminated

NOTICE OF AWARD (Continuation Sheet)

PAGE 21 of 25

DATE ISSUED
09/19/2021

GRANT NO. P21AP11742-00

and funds deobligated.

Plans & specifications for the project must be marked on the cover with this statement:

The {name of property} is designated a National Historic Landmark for its architectural and historic significance. It is considered to have irreplaceable cultural, material, and aesthetic value. The work is funded in part by the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. The funding of which is subject to having all work items meet The Secretary of the Interior's Standards for the Treatment of Historic Properties.

11. Compliance with Section 106

Pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), the NPS and the grantee must complete the consultation process stipulated in the regulations issued by the Advisory Council on Historic Preservation (ACHP) in 36 CFR 800 prior to the commencement of all grant-assisted construction or ground disturbance on the property.

12. Compliance with Section 110

Section 110 of The National Historic Preservation Act identifies the responsibility of the federal agency in their treatment of historic properties. Section 110(f) (54 USC 306107) clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm. See this agreement for submission requirements regarding NHL properties. In addition, Section 110(k) (54 USC 306113) prohibits the NPS from funding any grantee or subgrantee that attempts to avoid the requirements of Section 106. Grantees must make every effort to fund preservation projects that do no harm or adverse effects to NHL properties. Should it be discovered a grantee has deliberately damaged a property (e.g., pre-emptive demolition) to avoid requirements, the NPS must be notified to determine, in consultation with the ACHP, if the project can proceed.

13. Requirement for NEPA Compliance

All HPF funded grants are subject to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. This Act requires Federal agencies to consider the reasonably foreseeable environmental consequences of all grant-supported activities. As part of the NPS implementation of NEPA, grantees are required to notify the NPS of any reasonably foreseeable impacts to the environment from grant-supported activities, or to certify that no such impacts will arise upon receipt of a grant award. In addition, the NPS has determined that most HPF grant funds are not expected to individually or cumulatively have a significant impact on the environment, unless the activity involves development (construction) or archeology. For construction or archeology projects, the applicant/grantee should submit an *Environmental Screening Worksheet*, in order to assist the NPS in determining if a Categorical Exclusion (found in *NPS Director's Order 12*) can be utilized.

14. Compliance with the Americans with Disabilities Act and the Architectural Barriers Act

The use of federal funds to improve public buildings, to finance services or programs contained in public buildings, or alter any building or facility financed in whole or in part with Federal funds (except privately owned residential structures), requires compliance with the 1990 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the Architectural Barriers Act (ABA). Work done to alter the property should be in compliance with all applicable regulations and guidance.

NOTICE OF AWARD (Continuation Sheet)

PAGE 22 of 25

DATE ISSUED
09/19/2021

GRANT NO. P21AP11742-00

15. Unanticipated Discovery Protocols

At a minimum, unanticipated discovery protocols for subgrants or contracts shall require the sub-grantee or contractor to immediately stop construction in the vicinity of the affected historic resource and take reasonable measures to avoid and minimize harm to the resource until the SHPO or THPO, sub-grantee or contractor, and Indian Tribes, as appropriate, have determined a suitable course of action within 15 calendar days. With the express permission of the SHPO and/or THPO, the sub-grantee or contractor may perform additional measures to secure the jobsite if the sub-grantee or contractor determines that unfinished work in the vicinity of the affected historic property would cause safety or security concerns.

16. NAGPRA Costs Are Unallowable

Cost related to Native American Graves Protection and Repatriation Act (NAGPRA) activities are unallowable under this agreement. Funds for NAGPRA activities are available through the NPS National NAGPRA Program.

17. GIS Spatial Data Transfer Standards

All GIS data collected with HPF funds shall be in compliance with the NPS Cultural Resource Spatial Data Transfer Standards with complete feature level metadata. Template GeoDatabases and guidelines for creating GIS data in the NPS cultural resource spatial data transfer standards can be found at the NPS Cultural Resource GIS Facility webpage:

https://www.nps.gov/crgis/crgis_standards.htm

Technical assistance to meet the NPS Cultural Resource Spatial Data Transfer Standard specifications will be made available if requested. Execution of a Data Sharing Agreement between the NPS and the Recipient shall take place prior to collection of GIS data using HPF funds.

18. Funding for Use of Unmanned Aircraft Systems (UAS) (AKA Drones)

HPF funding for unmanned aircraft systems (UAS) usage is eligible only in the contracting of an experienced, licensed contractor of UAS who possesses the appropriate license, certifications, and training to operate UAS. The contractor is required to provide proof of liability insurance in the operation of UAS for commercial use.

If HPF funding is provided to a state, tribal, local, or territorial government, or other non-profit organization for the use of UAS as part of their scope of work, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

19. Subgrant Awards

The awarding of subgrants must follow the general criteria described below in addition to the eligibility factors outlined in the Notice of Funding Opportunity, OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual.

The Grantee must publicly announce the availability of HPF funds and include the following information:

1. A summary statement of the priorities for funding;
2. Description of eligible activities for which funding is to be provided;

NOTICE OF AWARD (Continuation Sheet)

PAGE 23 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

3. The total amount available, or expected to be available for subgrants;
 4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;
 5. The deadline for submitting the completed application;
 6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;
 7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;
 8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
 9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;
 10. Notice of the requirement for easements or covenants for grant assisted preservation work.
- To qualify a subgrantee as responsible, the grantee must ensure that a subgrantee will:
1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;
 2. Be able to comply with the proposed or required completion schedule for the project;
 3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;
 4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;
2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);
4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

NOTICE OF AWARD (Continuation Sheet)

PAGE 24 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

5. Verification of submission of any subgrants over \$30,000 federal share to Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS);

6. Review of final executed preservation easement/covenant;

7. Additional requirements as determined for the grantee based on risk or program requirements.

20. Requirement for Training

At the direction of the National Park Service, personnel associated with management of the grant program may be required to attend trainings and/or meetings. The grantee will be provided adequate notice to plan for any required activities; expenses incurred as part of this requirement are eligible to charge towards the grant.

21. Demonstration of Effort – Performance Goals

In order to ensure the timely and successful completion of all HPF grant awards, the NPS requires acceptable demonstration of effort by the grantee on project work supported by all HPF funded grants.

Demonstration of effort means acceptable performance by undertaking meaningful progress on grant-supported activities and complying with award terms and conditions.

22. Notice of Financial Management Review

As part of government-wide efforts to improve coordination of financial management and increase financial accountability and transparency in the receipt and use of federal funding, the grantee is hereby notified that this award may be subject to higher scrutiny. This may include a requirement to submit additional reporting documentation.

23. Catalog of Federal Domestic Assistance/Assistance Listing Inclusion in Single Audit

Non-Federal entities receiving financial assistance through the Historic Preservation Fund must include the appropriate Catalog of Federal Domestic Assistance (CFDA) number in the Schedule of Expenditures of Federal Award in their Single-Audit. The CFDA number applicable to this award as identified in block 2 on the first page of this agreement document.

24. Audit Findings and Follow-Up

The Recipient is hereby informed that the NPS may withhold or suspend award funds, or may impose other related conditions, if the recipient does not satisfactorily and promptly address findings from Single or program-specific audits, investigations, or reviews of NPS programs and awards. Each year the award is active, the Recipient must require its auditors to provide status report updates of all audit findings included in the prior audit's Schedule of Findings and Questioned Costs, as required by 2 CFR 200, Subpart F ("Grants and Agreements, Audit Requirements"). Upon review of subsequent annual audits, the NPS will determine if further corrective action is warranted.

When findings exist, the Recipient must submit a status report every six months to the NPS of all steps being taken to resolve related audit findings included in the prior audit's *Schedule of Findings and Questioned Costs* to remain in good standing for all NPS grant awards. If the Recipient fails to meet these deadlines without written approval of extension from the NPS, NPS may withhold remaining and future award funds, or may impose other related requirements to ensure compliance with this condition.

NOTICE OF AWARD (Continuation Sheet)

PAGE 25 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

Outstanding audit findings, if any, are included in the attachments of this Agreement.

RESOLUTION NO.: 175 - 2022

OF

JULY 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$10,000.00
WITH CHOICE FILMS, INC. FOR A FILM AND TELEVISION TRAINING PROGRAM
FOR YOUTH AND YOUNG ADULT RESIDENTS OF THE CITY OF NEWBURGH**

WHEREAS, by Resolution No. 265-2021 of November 8, 2021, the City Council of the City of Newburgh approved and adopted the Community Development Block Grant ("CDBG") the FY2022 one-year Action Plan; and

WHEREAS, one of the activities included in the CDBG FY2022 annual action was for economic development and workforce development; and

WHEREAS, Choice Films, Inc. shall administer a program to train local City of Newburgh residents, ages 17 to 30, in "below the line film and television production" and train youth attendees, ages 8 to 16, in "above the line acting and audition protocol"; and

WHEREAS, funding for the cost of the program in the amount of \$10,000.00 will be derived from CD1.8686.0400.8040.2022; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into a sub-recipient grant agreement with Choice Films, Inc. to provide funding for said program;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a sub-recipient grant agreement with Choice Films, Inc. in the amount of \$10,000.00, with all such terms and conditions as may be required by the Corporation Counsel, for a film and television training program for youth and young adult residents of the City of Newburgh.

COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
CHOICE FILMS INC

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the September 2, 2021, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Choice Films Inc, a for-profit corporation ("Subrecipient"), with an address of 9 Scobie Drive, Newburgh, New York 12550.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is February 3, 2021. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MC-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2022.

SECTION 2 SUBRECIPIENT OBLIGATIONS

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

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

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

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

b. Affirmative Action

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

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.

c. Employment Restrictions

- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

d. "Section 3" Clause

- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

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

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

SECTION 3 DISBURSEMENT OF FUNDS

1. Maximum Amount of CDBG Funds. The maximum amount of CDBG funds to be provided to Subrecipient is \$10,000.00 in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. Maximum Amount of General Funds. Not applicable.
3. Termination of Fund Obligation. The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. Method of Payment- CDBG Funds. Unless otherwise specified in Exhibit A, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (Exhibit B) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. Method of Payment - General Funds, if applicable. City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. Program Income. Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

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

SECTION 4 PERFORMANCE SCHEDULE

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

SECTION 5 COORDINATION OF WORK

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

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

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

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

SECTION 6 INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

c. Professional Liability Insurance.

- i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - [A] The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - [B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - [C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
 - [D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
- iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
- iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

d. All Policies Requirements.

- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

- ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- iii. Wasting Policies. No policy required by this Section 6 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient's breach:
 - [A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - [B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or
 - [C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

2. Documentation and Record-Keeping

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

6. National Objectives. Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).
7. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. Close-Outs. Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. Audits and Inspections. All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

SECTION 8 ENFORCEMENT OF CONTRACT

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

until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the default is not cured.

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

whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 9 CITY OFFICERS AND EMPLOYEES

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

SECTION 10 MISCELLANEOUS PROVISIONS

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

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

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

To Subrecipient: Choice Films Inc
9 Scobie Drive
Newburgh, New York 12550

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Signature Page

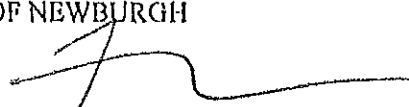
City of Newburgh with CHOICE FILMS INC.

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

DATED: 9/2/, 2021.

CITY OF NEWBURGH

By:


Name: Todd Venning
Title: City Manager

DATED: July 13th, 2021

CHOICE FILMS INC

By:

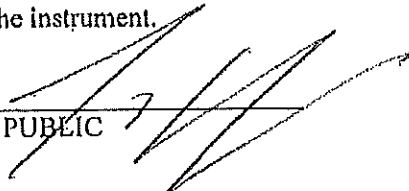

Name: Summer Crockett Moore
Title: Managing Partner

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

On this 2 day of SEPTEMBER, in the year 2021, before me personally appeared Joseph P. Donat, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

TODD VENNING 

Jeremy Kaufman
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02KA6202389
Qualified in Dutchess County
Commission Expires March 16, 2025


NOTARY PUBLIC

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

On this 22nd day of July, in the year 2021, before me personally appeared Summer L. Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

MEGAN J. REILLY
Notary Public, State of New York
01RE6088525
Residing in Orange County
Commission Expires 8/15/2023

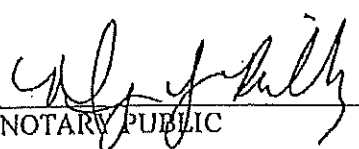

NOTARY PUBLIC

EXHIBIT A -- SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A
Community Development Block Grant (CDBG)

Scope of Services

Training Young People Today, for a Successful Tomorrow in the Film and Television Industry.

Below the Line Bootcamp is a not-for-profit training program dedicated to the training of at-risk youth in the basic fundamentals of film production which gives them immediate opportunities for employment as Production Assistants. BTL Bootcamp also provides continuing mentorship to all graduates as they consider and navigate a career in the film/television world. The program is free to students and relies heavily on the enormous generosity of our sponsors.

Now entering its fourth year, previous graduates received the opportunity for immediate placement in paying transitional and then fully paid jobs on set, and of the 65 graduates, over ½ of them are currently employed on fabulous jobs here in the Hudson Valley, working for HBO, REMCycle Productions, Netflix, Crown Media/Hallmark, and of course, with Umbra Stages and Choice Films Inc.

With the grant provided by The City of Newburgh, Choice Films will train local City of Newburgh residents, ages 17 – 30, in below the line film/tv production, as well as in above the line acting / audition protocol for younger attendees, ages 8 - 16.

EXHIBIT B

Community Development Block Grant (CDBG)

Line Item Budget Form – Line Item Budget Template

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

Organization/Agency Name:	CHOICE FILMS INC / fso "Below The Line Bootcamp"
----------------------------------	--

A Budget Item	B Calculation	C CDBG Funding
	Please provide description of how you arrive at total for each line item	
Below The Line Bootcamp	\$7,500.00	
Youth Training Intensive	\$2,500.00	
BTL	\$1,000 - space rental (w/ utilities)	
	\$750 - working meals	
	\$2,500 - teacher stipend	
	\$500 - office supplies	
	\$500 - transportation students	
	\$250 - PPE/supplies	
	\$2,000 - trainee stipend pool	
YTI		
	\$500 - space rental w/ utilities	
	\$1000 - gear rental	
	\$500 - working meals	
	\$200 - transportation stipend	
	\$300 - teacher stipends	
TOTAL OPERATING COSTS	\$10,000.00	

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
CHOICE FILMS INC**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the _____, 2022, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Choice Films Inc, a for-profit corporation ("Subrecipient"), with an address of 9 Scobie Dr., Newburgh, NY 12550.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is May 13, 2022. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-22-MC-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in **Exhibit A** (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2023.

SECTION 2 SUBRECIPIENT OBLIGATIONS

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

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

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

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

b. Affirmative Action

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

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.

c. Employment Restrictions

- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

d. "Section 3" Clause

- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

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

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

SECTION 3 DISBURSEMENT OF FUNDS

1. **Maximum Amount of CDBG Funds.** The maximum amount of CDBG funds to be provided to Subrecipient is \$10,000.00 in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. **Maximum Amount of General Funds.** Not applicable.
3. **Termination of Fund Obligation.** The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. **Method of Payment- CDBG Funds.** Unless otherwise specified in Exhibit A, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (Exhibit B) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. **Method of Payment - General Funds, if applicable.** City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. **Program Income.** Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

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

SECTION 4 PERFORMANCE SCHEDULE

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

SECTION 5 COORDINATION OF WORK

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

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

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

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

SECTION 6 INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

- c. Professional Liability Insurance.

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

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

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

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

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

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

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

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

2. Documentation and Record-Keeping

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

program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

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

SECTION 8 ENFORCEMENT OF CONTRACT

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

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

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

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

SECTION 9 CITY OFFICERS AND EMPLOYEES

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

SECTION 10 MISCELLANEOUS PROVISIONS

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

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

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

To Subrecipient: Choice Films Inc
 9 Scobie Dr.
 Newburgh, NY 12550

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

DATED: _____, 2022 CITY OF NEWBURGH

By: _____
Name: Todd Venning
Title: City Manager

DATED: _____, 2022 [SUBRECIPIENT NAME]

By: _____
Name: _____
Title: _____

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

On this ____ day of _____, in the year 2022, before me 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 person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

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

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A

Community Development Block Grant (CDBG)

Scope of Services

Training Young People Today,
for a Successful Tomorrow
in the Film and Television Industry.

Below the Line Bootcamp is a not-for-profit training program dedicated to the training of at-risk youth in the basic fundamentals of film production which gives them immediate opportunities for employment as Production Assistants. BTL Bootcamp also provides continuing mentorship to all graduates as they consider and navigate a career in the film/television world. The program is free to students and relies heavily on the enormous generosity of our sponsors. We appreciate our working relationship with the Newburgh Housing Authority and the City of Newburgh Police Department, who are helping to direct attendees to our program.

Now entering its fourth year, previous graduates received the opportunity for immediate placement in paying transitional and then fully paid jobs on set, and of the 65 graduates, over ½ of them are currently employed on fabulous jobs here in the Hudson Valley, working for HBO, REMCycle Productions, Netflix, Crown Media/Hallmark, Peacock/NBC Universal, MRC, MarVista, and of course, with Umbra Stages and Choice Films Inc.

With the grant provided by The City of Newburgh, Choice Films will train local City of Newburgh residents, ages 17-30, in below the line film/tv production, as well as in above the line acting/auditioning protocol for younger attendees, ages 8-16.

EXHIBIT B

Community Development Block Grant (CDBG)

Line Item Budget Form -- Line Item Budget Template

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

Organization/Agency Name:	CHOICE FILMS INC/ fso "Below The Line Bootcamp"
----------------------------------	---

A Budget Item	B Calculation	C CDBG Funding
	Please provide description of how you arrive at total for each line item	
Below the Line Bootcamp	\$7,750.00	
Youth Training Intensive	\$2,250.00	
BTL	\$750 working meals	
	\$2,500 teacher stipend	
	\$250 office supplies	
	\$100 transportation stipend	
	\$1,000 PPE/supplies	
	\$2,000 trainee stipend pool	
	\$750 gear rental	
	\$400 childcare	
YTI	\$250 gear rental	
	\$500 working meals	
	\$1000 teacher stipend	
	\$500 PPE/supplies	
TOTAL OPERATING COSTS	\$10,000.00	

City Council Work Session/Meeting – Talking Points

Novus Item Name:	Subrecipient Agreement to Choice Films for a Film and Television Training Program for Youth and Young Adult Residents of the City of Newburgh
Work Session/City Council Meeting Date:	07/07/2022 / 07/13/2022
Prepared By:	Ellen J. Fillo

Highlights:

• New Subrecipient Agreement (\$10,000.00) to continue paid On-the-Job Film and Television Workforce Training for City of Newburgh Residents.
• Production Assistants needed for 2 TV projects and 5 Feature Films coming.
• Below the Line Bootcamp is partnering with the Newburgh Housing Authority and the City of Newburgh Police Department for program referrals.
• Continued partnership referrals from Newburgh Free Academy and Orange-Ulster BOCES.
• Pilot program to include childcare and transportation vouchers for program participants.
• Immediate job placement (paid).
• Career mentorship.
• Priority for City of Newburgh residents.
• Target Adult Age: 17 – 30 (But will accept older than age 30 on a case by case basis). Will still offer modified program for Age 8 – 16.
• Program held at Choice Films Office, 385 Broadway and City of Newburgh Sound Stages (Scobie Dr. and Lake St.).
• Next Below the Line Bootcamp scheduled for Summer, 2022. Date TBD.

RESOLUTION NO.: 176 - 2022

OF

JULY 11, 2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
TO APPLY FOR AND ACCEPT IF AWARDED A
NEW YORK STATE HOMES AND COMMUNITY RENEWAL
NEW YORK MAIN STREET DOWNTOWN ANCHOR PROJECT PROGRAM GRANT
THROUGH THE 2022 CONSOLIDATED FUNDING APPLICATION
ON BEHALF OF GENESIS GLOBAL HOLDINGS, LLC
FOR THE RENOVATION OF 120 GRAND STREET
ALSO KNOWN AS THE CITY CLUB

WHEREAS, the New York Main Street Grant Program is intended to assist communities downtown revitalization efforts by providing resources to invest in projects that provide economic development and housing opportunities in downtown, mixed-use commercial districts with a primary goal of stimulating reinvestment and leverage additional funds to establish and sustain downtown and neighborhood revitalization efforts in eligible target areas that have experienced sustained physical deterioration, decay, neglect, or disinvestment; have a number of substandard buildings or vacant residential or commercial units; and in which more than fifty percent of the residents are persons whose incomes do not exceed ninety percent of the area median income for the county or metropolitan statistical area in which the project is located, or which is designated by a state or federal agency to be eligible for a community or economic development program; and

WHEREAS, by Resolution No. 103-2022 of April 25, 2022, the City Council approved a site development agreement with Genesis Global Holdings, LLC for the redevelopment of property located at 120 Grand Street, in the City of Newburgh also known as the City Club; and

WHEREAS, 120 Grand Street is a historic property located within the City of Newburgh downtown core which requires extensive rehabilitation in order to contribute to the economic development and revitalization of downtown Newburgh; and

WHEREAS, Genesis Global Holdings, LLC proposes to redevelop and renovate 120 Grand Street into a commercial hub with a training restaurant, supplied from culinary school and those seeking to learn the restaurant industry on the job on the ground floor; adaptable office spaces to be leased to an incubator creating an environment for aspiring entrepreneurs to pursue their companies' development on the upper floors; and an escape for workers and artists to take a break and reflect as well as a performance venue on the roof deck; and

WHEREAS, the City of Newburgh, as an eligible Main Street Program applicant, proposes to assist the project by applying for funding under the New York Main Street Downtown Anchor Project grant program, to assist Genesis Global Holdings, LLC complete building renovations to 120 Grand Street; and

WHEREAS, the New York Main Street Downtown Anchor Project funding application will contribute to ongoing community revitalization efforts; the same being in the best interests of the City of Newburgh and its future development;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh be and hereby authorizes the City Manager to apply for and accept if awarded a New York State Homes and Community Renewal New York Main Street Anchor Project Grant through the 2022 Consolidated Funding Application for funding in the amount of \$426,200.00 for the redevelopment and renovation of 120 Grand Street, also known as the City Club in the City of Newburgh.

New York Main Street (NYMS)

CONSOLIDATED FUNDING APPLICATION 2022 AVAILABLE RESOURCES GUIDE



**Homes and
Community Renewal**

OFFICE OF COMMUNITY RENEWAL

**KATHY HOCHUL, GOVERNOR
RUTHANNE VISNAUSKAS, COMMISSIONER/CEO**

New York Main Street Program

Funding Available: Up to \$4.2 million

Description:

The New York Main Street (NYMS) Program was created by the Housing Trust Fund Corporation (HTFC) in 2004 to provide resources to assist New York's communities with Main Street and downtown revitalization efforts. Article XXVI was added to NYS Private Housing Finance Law in 2009 to formally establish the New York Main Street Program in statute. The NYMS Program is administered by the Office of Community Renewal (OCR) under the direction of the Housing Trust Fund Corporation.

NYMS provides resources to invest in projects that provide economic development and housing opportunities in downtown, mixed-use commercial districts. A primary goal of the program is to stimulate reinvestment and leverage additional funds to establish and sustain downtown and neighborhood revitalization efforts.

Eligible Types of Applicants:

Eligible applicants for NYMS program applications are:

- Units of Local Government; or
- Organizations incorporated under the NYS Not-for-Profit Corporation Law that have been providing relevant service to the community for at least one year prior to application.

Eligible Target Area:

All NYMS activities must be located in an eligible target area. Applicants must clearly identify how the target area meets each of the three components of the statutory definition of an eligible target area. Applications that do not address each of the three statutory criteria, or do not provide clear source documentation will be deemed ineligible. Please note, based on the statutory criteria there are areas within NYS that are not eligible; therefore, vague or unclear responses cannot be interpreted to present an eligible target area.

Article XXVI of the Private Housing Finance Law indicates that an eligible target area shall mean an area:

- (i) that has experienced sustained physical deterioration, decay, neglect, or disinvestment;
- (ii) has a number of substandard buildings or vacant residential or commercial units;
- and (iii)** in which more than fifty percent of the residents are persons whose incomes do not exceed ninety percent of the area median income for the county or metropolitan statistical area (MSA) in which the project is located, or which is designated by a state or federal agency to be eligible for a community or economic development program.

Applicants are encouraged to identify well-defined Main Street areas to maximize the impact that the funds will have on the community. The proposed activities must be carried out in a program target area of generally no more than three contiguous blocks which has experienced sustained physical deterioration, decay, neglect, or disinvestment, and has a number of substandard buildings or vacant residential or commercial units.

Applicants are required to include a Target Area Map to identify the location of the proposed target area or project site and source documentation to demonstrate how the target area meets eligibility criteria.

Pre-Application Requirements:

Municipal Resolution

Each municipality in which the proposed program or project will function must approve a formal resolution supporting an application for the proposed NYMS program or project. The resolution must be passed prior to the application deadline and attached in the documents section of the application.

- The resolution must be on official stationery and should hold the official seal. Applicants within New York City must obtain the resolution from the Community Board with jurisdiction over the project target area.
- Draft or proposed resolutions are not acceptable.
- Support letters do not meet this requirement.
- The resolution must be for the current 2022 funding round and the specific NYMS project.
- If the municipality or Community Board provides only a summary letter without the full text of the resolution, a copy of the meeting minutes must be provided to document the vote and formal board resolution.

This requirement applies to all NYMS application types. Applications without a Municipal Resolution, as described above, will be deemed ineligible.

Eligible Activities

Applicants may propose **one** activity for a 2022 New York Main Street (NYMS) application. Four NYMS activities are available in the 2022 CFA New York Main Street application:

1. Technical Assistance Project

Applicants may request up to \$20,000 to complete a project that improves community or property owner readiness to participate in a future New York Main Street renovation activity. Examples of eligible NYMS-TA activities include, but are not limited to, the projects described below. Please contact the Office of Community Renewal at HCR_CFA@hcr.ny.gov to discuss project eligibility prior to applying.

- **Building Reuse or Feasibility Analysis** - Analysis of rehabilitation or adaptive re-use options for downtown, mixed-use building(s) to provide property owners with the resources necessary to make informed decisions regarding the feasibility of rehabilitation projects. These studies may include: historic and architectural analysis; building condition assessment; building code analysis; structural engineering study; proposed uses for the building including opportunities for upper story apartments; plan drawings; green technology potential; cost estimates; funding strategies, including historic tax credits; and pro-forma analysis.
- **Design Guidelines** - The importance of preserving downtown architecture must not be overlooked in repairing and renovating buildings for new occupants and uses. Design Guidelines should be an educational tool for property owners and provide technical assistance and practical recommendations for repairing and renovating downtown, potentially historic, building facades and storefronts. Proposals to produce Design Guidelines must provide clear community support, and a plan for formal adoption and implementation once produced.
- **Economic Development Planning** - Economic resilience and sustainability is important to preserving and expanding the downtown or main street business community, so

resources are available to support future building renovation projects. These studies may include market analyses, economic redevelopment implementation, business development strategic plans, and plans for continuity of business operations.

Examples of completed NYMS-TA Projects are available for review online, here: <https://hcr.ny.gov/new-york-main-street-technical-assistance-nyms-ta-completed-projects>

2. Traditional NYMS Target Area Building Renovation Project

Applicants may request between \$50,000 and \$500,000 for Target Area Building Renovation Activities. Requests must not exceed an amount that can be reasonably expended in the identified target area, within a 24-month term.

- Building Renovation: Matching grants available for renovation of mixed-use buildings. Recipients of NYMS funds may award matching grants of up to \$50,000 per building, not to exceed 75% of the total project cost, in a designated target area. Renovation projects that provide direct assistance to residential units may be awarded an additional \$25,000 per assisted residential unit, up to a per-building maximum of \$100,000, not to exceed 75% of the total project cost.
- Streetscape Enhancement: Applicants may request up to \$15,000 in grant funds for streetscape enhancement activities, such as: planting trees, installing street furniture or public art or other activities to enhance the NYMS target area.

Applicants may request a higher amount, up to \$25,000, if the additional requested funds directly alleviate COVID related impacts and further economic recovery and neighborhood and community revitalization (e.g. creation of shared outdoor dining space, public space improvements to improve access and use of outdoor space, mechanicals necessary to use outdoor public spaces, etc.). Projects that specifically create paid work for artists or support the artist community will also receive favorable consideration.

The project and budget should be clearly defined at the time of application and include a detailed description of the proposed Streetscape project, how the proposed project enhances the planned building renovation projects, and contributes to other downtown revitalization efforts underway. If more than \$15,000 will be requested, the plan should also identify how the project will alleviate COVID related impacts.

- Streetscape enhancement grant funds will be awarded only for activity ancillary to a traditional NYMS building renovation project and cannot be applied for on its own. NYMS Downtown Anchor or Downtown Stabilization applicants may not request Streetscape funds.
 - Streetscape enhancement activities must be reviewed for eligibility and approved by HTFC prior to commencement of construction or installation.
 - Streetscape activities must be completed within the proposed target area.
- Administration: Applicants may request up to 7.5% of the grant amount for salaries and other costs associated with the administration of the grant. The administrative funds must be requested at the time of application, and must be included within the maximum request amount.

- **Soft Costs:** Applicants may request funds to cover architectural and engineering work, required environmental testing and clearances, and filing fees. These expenses must be included in the per-building activity funding limits, require matching funds and may not exceed 18% of the NYMS renovation funds for a specific project. Project costs incurred for work on buildings that eventually prove infeasible and do not receive other investments will not be reimbursed with NYMS funds. Funds for Soft Costs must be requested at the time of application, and must be included within the maximum request amount.

Funds for Administration and Soft Costs are available on a reimbursement basis, and will therefore be reviewed for eligibility prior to disbursement of funds. Applicants are not required to request NYMS program funds for Administration or Soft Costs, but are encouraged to identify alternate sources of funds for administrative expenses and soft costs. Additional funding commitments for administrative expenses and soft costs strengthen an application.

Example NYMS Target Area Building Renovation Application Request:

\$250,000	2022 NYMS Request Amount
\$210,000	Building Renovation Funds: to renovate five buildings
\$15,000	Streetscape Enhancement Funds: install bike racks, benches
\$10,000	Soft Costs: to hire environmental firm to complete five site specific reviews
\$15,000	Administration: hire consultant to administer grant

3. **NYMS Downtown Anchor Project:**

Applicants may request between \$100,000 and \$500,000 for a standalone, single site, "shovel ready" renovation project. NYMS Downtown Anchor Project funds are intended to help establish or expand cultural, residential or business anchors that are key to local downtown revitalization efforts through substantial interior and/or exterior building renovations. The NYMS Downtown Anchor Project funds may not exceed 75% of the Total Project Cost.

Applicants for NYMS Downtown Anchor Project funds must:

- Document a compelling need for substantial public investment and justify how the project qualifies as a Downtown Anchor.
- Document project readiness, as evidenced by funding commitments, developer site control, pre-development planning completed, and local approvals secured;
- Provide cost estimates to substantiate the request amount;
- Identify source(s) of available construction financing and matching funds;
- Demonstrate the importance of the project for the neighborhood, community and region;
- Provide a Business Plan and Market Analysis to demonstrate project viability.

- **Administration:** Applicants may request up to 5% of the grant amount for salaries and other costs associated with the administration of the Downtown Anchor Project grant. The administrative funds must be requested at the time of application and must be included within the maximum request amount.
- **Soft Costs:** Applicants may request funds to cover architectural and engineering work, required environmental testing and clearances, and filing fees. These expenses must be included in the per-building activity funding limits, requires matching funds and may not exceed 18% of the NYMS renovation funds for the project. Funds for Soft Costs must be

requested at the time of application, and must be included within the maximum request amount.

Funds for Administration and Soft Costs are available on a reimbursement basis, and will therefore be reviewed for eligibility prior to disbursement of funds. Applicants are not required to request NYMS program funds for Administration or Soft Costs, but are encouraged to identify alternate sources of funds for administrative expenses and soft costs. Additional funding commitments for administrative expenses and soft costs strengthen an application.

Example NYMS Downtown Anchor Project Application Request:

\$250,000	2022 NYMS Downtown Anchor Project Request Amount
\$227,500	Building Renovation Funds: to renovate one building
\$10,000	Soft Costs: to hire firm to complete environmental review
\$12,500	Administration: staff time to administer grant

4. NYMS Downtown Stabilization Project

Applicants may request \$100,000 to \$500,000 to complete a Downtown Stabilization Project. Funds are available to assist with environmental remediation and associated construction costs, as well as other innovative approaches to stabilizing and developing a downtown, mixed-use project. NYMS Downtown Stabilization Project funds may not exceed 75% of the total project cost.

NYMS Downtown Stabilization Project funds are available for projects that meet the goals identified above and, include, but are not limited to: asbestos management (surveys, abatement design plans, air monitoring, etc.), soil vapor intrusion testing and mitigation, building stabilization construction activities (e.g. roof stabilization in conjunction with asbestos remediation) or other projects that identify or mitigate risks associated with other hazardous materials or remove obstacles to future redevelopment. Applicants must demonstrate local support, financial commitments and a compelling need for substantial public investment.

Please contact the Office of Community Renewal at HCR_CFA@hcr.ny.gov to discuss project eligibility prior to submitting an application.

COVID Relief Activities

In conjunction with Target Area Building Renovation Activities or a Downtown Anchor Project, applicants may request to use funds to alleviate the impacts of the COVID-19 Pandemic. Requests must be specifically outlined in the application. COVID Relief activities must be directly related to a building renovation activity and awarded on a per project basis. Funds will be awarded only for activity ancillary to a traditional NYMS building renovation or Downtown Anchor project and cannot be applied for on its own. NYMS Downtown Stabilization applicants may not request to use funds for these activities. Program administrators will be required to document:

- Impact of COVID on participating business or property owner;
- Need for funding;
- Confirmation that funds do not duplicate other available resources and;
- Explanation for how the investment impacts the sustainability and resiliency of the business or property. Small projects are unlikely to demonstrate long term viability.

Funds may be used for:

- Reconfiguration of existing facilities to encourage reduced density;
- Redesign and updates for air filtering or ventilation systems;
- Equipment or software required to increase business capacity and efficiency in a post-COVID climate, e.g. online sales, POS systems. One-time only purchases, subscription or membership fees are not eligible for reimbursement;
- Fixtures and equipment to partition customers, guide social distancing or provide contact-less sales opportunities;
- Interior and exterior improvements to support adjusted business practices, e.g. pick-up windows, outdoor seating areas.

Ineligible expenses include:

- Inventory, rent or lease expenses, working capital or other undefined expenses, general or disposable supplies;
- Other expenses that do not sustain business operations.

Applicants requesting to use funds for COVID Relief activities in conjunction with a NYMS Downtown Anchor project must specifically identify the amount allocated for these activities in the budget and budget table attachment as well as describe the specific use in the budget narrative question.

Applicants requesting to use NYMS funds for COVID Relief activities must confirm that funds will not duplicate other available resources. Award of NYMS funds does not confirm eligibility of all activities included in an application proposal. All activities must be reviewed for eligibility and approved by HTFC prior to commencement.

New York Main Street (NYMS) Program Ineligible Activities

Please note: An applicant is encouraged to focus its efforts on one project type. For this reason, applicants may propose only one NYMS activity in an application.

Ineligible uses of NYMS funds include, but are not limited to: demolition; new construction; improvements to structures owned by religious or private membership organizations; improvements to municipally-owned buildings used for municipal purposes; the purchase of non-permanent fixtures, such as furnishings, appliances, electronics, and business equipment; general organizational operating expenses; capitalizing a revolving loan fund; site work or ancillary activities on a property, including septic systems and laterals, grading, parking lots, sidewalks, landscaping, fences, free standing signs, and general maintenance. General planning activities are not eligible under the four NYMS program activities.

Costs that are not adequately justified or that do not directly support the project are not eligible for reimbursement with NYMS funds. Contact the Office of Community Renewal prior to submitting an application to discuss project eligibility, and review the NYMS Program Guide for more detailed guidance on NYMS program rules: <https://hcr.ny.gov/new-york-main-street>

NYMS Selection Criteria – up to 100 Points

Total Vision and REDC Strategies –20 points

The Regional Council rates the degree with which the proposed project aligns with the Regional Council's Strategic Plan.

Need - 10 points

Measures the severity of need for the proposed Main Street activities, based on the analysis of existing commercial and residential conditions in the target area. The needs described must correspond to the proposed activities and the extent to which the activity resolves or addresses the identified need. Applications should include data and a relevant examination of that data to demonstrate substantial need. The application must provide a clear statement about the need for public investment in the proposed target area and specific need for the NYMS program funds to receive maximum points.

Impact - 10 Points

Measures the extent to which the project described in the application will have a positive public benefit and sustainable positive impact on the commercial and residential conditions in the target area and surrounding community and neighborhoods. Applications should provide clear explanations of the anticipated impact of the proposed program, including but not limited to: enhancement of existing assets in the target area and community, expansion of economic opportunities, ability to spur investment of private resources, improvement of aesthetics, and preservation and creation of affordable housing in the upper floors of mixed-use buildings. Applications determined to have the greatest impact on increasing the availability of quality, affordable housing and the greatest impact on business conditions, when compared to other applications, will receive the highest scores.

Leveraging & Financing Plan - 20 Points

Measures the quality and completeness of the proposed project budget and status of funding commitments, specifically:

- Clarity of project budget including eligible use of funds and substantiated request amount;
- Status of funding commitments for required match and construction financing;
- Extent to which the NYMS resources will result in additional investments including private sources beyond the required matching funds (leveraging);
- Plan for use of funds for soft costs and administrative expenses.

Implementation Capacity and Readiness - 40 Points

Measures the extent to which the applicant has organized the proposed project and has assembled sufficient resources to complete the project, and achieve the goals and objectives of the program in a manner that is timely, effective and on-budget. Applications submitted by current awardees with open, on-going contracts may be negatively impacted if substantial expenditures or funding commitments have not been achieved. An applicant's past and current performance in other state programs and contracts will be considered in rating and ranking its application.

- Program Experience - Points for performance history are available to applicants that are administering an open NYMS or other Office of Community Renewal program contracts where substantial expenditure or funding commitments have been achieved and sufficient progress has been made. Points are also available to applicants that have successfully and effectively completed previous NYMS or other Office of Community Renewal program contract obligations. Applicants that have not previously participated in the NYMS program but have a successful record of achievement within the community where the proposed Main Street target area is located, and have assembled

a team with experience in community development, housing rehabilitation, or commercial revitalization in mixed-use districts on a scale comparable to the proposed program or projects will also be eligible for points.

- Implementation Capacity - Proposals that have identified specific projects, clearly substantiated the request amount, obtained local approvals, have demonstrated a clear understanding of NYMS administrative procedures, and have necessary organizational structures in place to implement the proposed projects, without delay, will receive the most points.
- Program Support - Evaluates local support and linkages between the proposed project and local planning and development efforts. Rates the degree to which the proposal relies on building consensus and cooperation among groups and individuals who have a role in the revitalization process.
- Design - Applicants must outline the plan for a coordinated design review process. The highest scores will be awarded to proposals in communities that have existing design standards and have identified the necessary resources to work with building owners to enhance the physical appearance of the commercial area by preserving historic buildings and implementing sensitive design plans.
- Business Strategy - Applications must demonstrate a viable strategy for retaining and assisting existing businesses, attracting new customers, potential investors and residents, and finding new commercial uses for traditional buildings in the district. Downtown Anchor applications must present a viable strategy for establishing or expanding a cultural, residential or business anchor that is key to local revitalization efforts. Priority consideration will be given to applicants that demonstrate a strong understanding of current economic conditions in the district, identify opportunities for market growth, and clearly demonstrate how the proposed project contributes to improving economic conditions. Projects that demonstrate capacity to grow the district's existing economic base, while meeting the challenges of commercial sprawl, will receive the highest scores.

Funding Priorities:

- Ready to go or "shovel ready" projects. Project readiness is best demonstrated by clear funding commitments for permanent and construction financing, documented site control, completed pre-development planning work, local approvals, and administrative capacity.
- A proposed NYMS service area should include a mix of uses, such as residential, commercial, and civic buildings. Individual assisted buildings are not required to include both residential and civic or commercial spaces; however, applications should propose a comprehensive approach to strengthen both the commercial and residential sectors. Affordable housing in upper-floor spaces and on adjacent streets helps to strengthen the social and economic vitality of the business district. Incorporating residential units on the upper floors is strongly encouraged and those projects will receive priority consideration.
- For NYMS there is a preference for funding proposals where contiguous buildings will be assisted, maximizing the impact of the investment.
- Applicants able to successfully demonstrate broad local support and linkages between the proposed project and local planning and development efforts, and applicants documenting high percentages of committed matching and leveraged funds will receive the highest scores.

Award Criteria Details:

- HTFC reserves the right not to issue an award or contract to any applicant if it has been determined that the applicant is not in compliance with existing state contracts and has not taken satisfactory steps to remedy such non-compliance. Not-for-profit organizations applying for NYMS program funds must submit a Vendor Responsibility Questionnaire (VRQ) with the application. Projects that commence prior to contract execution and environmental review will not be eligible for reimbursement.
- HTFC reserves the right to award all, a portion of, or none of a program's funds based upon funding availability, feasibility of the applications received, the competitiveness of the applications, an applicant's ability to meet HTFC criteria for funding, the applicant's ability to advance the State's housing goals, and HTFC's assessment of cost reasonableness. HTFC reserves the right to award less than the requested amount, and further reserves the right to review an application requesting project funds as an application for funding under other programs for which the project is eligible, and to change or disallow aspects of the applications received.
- Award of NYMS funds does not confirm eligibility of all activities included in an application proposal, and HTFC reserves the right to change or disallow aspects of the applications received and may make such changes an expressed condition of its commitment to provide funding to a project.
- HTFC will consider regional distribution in the determination of awards, to the extent practicable.

Limitations:

The list below identifies several program requirements, and limitations, but applicants are advised to review the NYMS Program Guide for additional detail related to activity eligibility and grant administration:

<https://hcr.ny.gov/new-york-main-street#forms-and-documents>

Environmental Review

Prior to the commitment or expenditure of NYMS program funds, the environmental effects of each activity must be assessed in accordance with the State Environmental Quality Review Act (SEQRA). Environmental Compliance areas evaluated for each project include, but are not limited to: Historic and Cultural Resources, Floodplains, Zoning, Site Contamination, Lead Based Paint, Asbestos Containing Materials, Radon, Endangered Species, and Smart Growth. Please review the NYMS Program Environmental Compliance Handbook for additional information:

<https://hcr.ny.gov/new-york-main-street#forms-and-documents>

Funding Commitments

NYMS Downtown Anchor and Stabilization Projects must be ready to commence upon award, grant agreement execution and environmental review. HTFC will not execute a grant agreement with applicants unable to present evidence of site control and construction financing commitments sufficient to undertake the proposed project following award of NYMS funds.

Procurement & Bidding

All NYMS activities including contracting, professional services, and administration require a minimum of two bids or proposals to be solicited and accepted by the applicant organization to establish reasonableness of cost.

Regulatory Term

The owner of a property improved with NYMS funds must agree for a minimum of five years to: maintain the property in good operating order and condition; to make available and maintain the affordability of residential housing units to persons of low income (90% Area Median Income) by signing and filing a Property Maintenance Declaration with the County in which the building is located.

Project Term Completion Dates:

Projects must not commence prior to award, and grant agreement execution. Costs incurred prior to award and grant agreement execution will not be eligible for reimbursement. NYMS-Technical Assistance project awardees enter into a one-year grant agreement. NYMS Target Area Building Renovation, Downtown Anchor and Downtown Stabilization awardees enter into a two-year grant agreement.

Applicants should not submit applications if they do not expect to initiate the project within a reasonable time after receiving an executed contract or will not be able to complete the project within the term. Funds remaining at the end of the term are subject to de-obligation and reallocation.

Matching Fund Requirements:

Each of the NYMS activities require matching funds, and only funds directly invested in eligible project activities are eligible as the required match. In kind match is not eligible, and costs incurred for ineligible activities or prior to award and contract execution are not eligible.

- New York Main Street Technical Assistance Project
NYMS-TA funds may reimburse up to 95% of the project cost, not to exceed \$20,000. The remaining 5% must be provided as a cash match, in kind match will not be accepted. A total project cost of at least \$21,053 must be presented to request a \$20,000 NYMS-TA grant.
- New York Main Street Building Renovation Project
The NYMS Program operates as a reimbursement program and the NYMS Program Guidelines require matching funds for each participating building project. NYMS funds may reimburse up to 75% of total, eligible project costs for general building renovations up to a maximum of \$50,000 per building, or up to \$100,000 for a building renovation project involving direct assistance to a minimum of two residential units.
- New York Main Street Downtown Anchor Project
NYMS Downtown Anchor Project funds are available to reimburse up to 75% of a total, eligible project cost not to exceed \$500,000 in NYMS Downtown Anchor Project funds. The minimum NYMS Downtown Anchor request amount is \$100,000.
- New York Main Street Downtown Stabilization Project

NYMS Downtown Stabilization funds are available to reimburse up to 75% of a total, eligible project cost not to exceed \$500,000. The minimum NYMS Downtown Stabilization Project request is \$100,000.

Additional Resources:

For more information, applicants should contact the Office of Community Renewal at New York State Homes and Community Renewal, 38-40 State St, Albany, New York 12207, call (518) 474-2057, email HCR_CFA@hcr.ny.gov or visit the NYMS website: <https://hcr.ny.gov/new-york-main-street#funding-round-materials>

RESOLUTION NO.: 177 - 2022

OF

JULY 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE A CONTRACT WITH AXON ENTERPRISE, INC.
FOR BODY WORN CAMERAS AND RELATED TECHNOLOGY**

WHEREAS, the City of Newburgh wishes to increase the number of body worn cameras such that each sworn member of its police department is assigned a separate, individual body worn camera; and

WHEREAS, Axon Enterprise, Inc. has submitted an agreement to provide 46 body worn cameras, along with technology, cloud, and other services that support the upload, download, and transfer of body worn camera footage to the City of Newburgh; and

WHEREAS, this Council has reviewed the attached agreement and has determined that executing same under the terms and conditions set forth therein is in the best interests of the City of Newburgh; and

WHEREAS, funding for such project shall be derived from A.3120.0205, Other Equipment; and

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 a contract with Axon Enterprise, Inc. to provide 46 body worn cameras, along with technology, cloud, and other services that support the upload, download, and transfer of body worn camera footage to the City of Newburgh.



Axon Enterprise, Inc.
17800 N 85th St
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-372355-44734.657 JL

Issued: 06/22/2022

Quote Expiration: 07/31/2022

Estimated Contract Start Date: 09/01/2022

Account Number: 132800

Payment Terms: N30

Delivery Method: Fedex - Ground

SHIP TO	BILL TO
City of Newburgh Police Department 55 Grand Street Newburgh, NY 12550 USA	City of Newburgh Comptroller 83 Broadway, 4th Floor Newburgh, NY 12550 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Jesse Lowe Phone: Email: jlowe@axon.com Fax:	Anthony Geraci Phone: 845-569-7566 Email: ageraci@cityofnewburgh-ny.gov Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	\$316,692.50
ESTIMATED TOTAL W/ TAX	\$316,692.50

Discount Summary

Average Savings Per Year	\$12,767.76
TOTAL SAVINGS	\$63,838.80

Payment Summary

Date	Subtotal	Tax	Total
Aug 2022	\$63,338.49	\$0.00	\$63,338.49
Aug 2023	\$63,338.51	\$0.00	\$63,338.51
Aug 2024	\$63,338.50	\$0.00	\$63,338.50
Aug 2025	\$63,338.50	\$0.00	\$63,338.50
Aug 2026	\$63,338.50	\$0.00	\$63,338.50
Total	\$316,692.50	\$0.00	\$316,692.50

Quote Unbundled Price: \$380,531.30
 Quote List Price: \$321,522.50
 Quote Subtotal: \$316,692.50

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
BWCUTAP	BWC Unlimited with TAP	46	60	\$110.38	\$89.00	\$87.25	\$240,810.00	\$0.00	\$240,810.00
A la Carte Hardware									
11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50			\$41.75	\$41.75	\$2,087.50	\$0.00	\$2,087.50
70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X28P	10			\$121.76	\$121.76	\$1,217.60	\$0.00	\$1,217.60
AB3C	AB3 Camera Bundle	46			\$699.00	\$699.00	\$32,154.00	\$0.00	\$32,154.00
AB3MBD	AB3 Multi Bay Dock Bundle	6			\$1,538.90	\$1,538.90	\$9,233.40	\$0.00	\$9,233.40
A la Carte Software									
73478	REDACTION ASSISTANT USER LICENSE	46	60		\$9.00	\$9.00	\$24,840.00	\$0.00	\$24,840.00
Basic License	Basic License Bundle	4	60		\$15.00	\$15.00	\$3,600.00	\$0.00	\$3,600.00
A la Carte Services									
85144	AXON STARTER	1			\$2,750.00	\$2,750.00	\$2,750.00	\$0.00	\$2,750.00
Total							\$316,692.50	\$0.00	\$316,692.50

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
AB3 Camera Bundle	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	51	08/01/2022
AB3 Camera Bundle	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	46	08/01/2022
AB3 Camera Bundle	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	1	08/01/2022
AB3 Camera Bundle	74028	WING CLIP MOUNT, AXON RAPIDLOCK	51	08/01/2022
AB3 Multi Bay Dock Bundle	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	6	08/01/2022
AB3 Multi Bay Dock Bundle	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	6	08/01/2022
AB3 Multi Bay Dock Bundle	74210	AXON BODY 3 - 8 BAY DOCK	6	08/01/2022
A la Carte	11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50	08/01/2022
A la Carte	70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2X26P	10	08/01/2022
BWC Unlimited with TAP	73309	AXON CAMERA REFRESH ONE	47	02/01/2025
BWC Unlimited with TAP	73689	MULTI-BAY BWC DOCK 1ST REFRESH	6	02/01/2025
BWC Unlimited with TAP	73310	AXON CAMERA REFRESH TWO	47	08/01/2027
BWC Unlimited with TAP	73688	MULTI-BAY BWC DOCK 2ND REFRESH	6	08/01/2027

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Basic License Bundle	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE-	4	09/01/2022	08/31/2027
Basic License Bundle	73640	EVIDENCE.COM BASIC LICENSE	4	09/01/2022	08/31/2027
BWC Unlimited with TAP	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	46	09/01/2022	08/31/2027
BWC Unlimited with TAP	73746	PROFESSIONAL EVIDENCE.COM LICENSE	46	09/01/2022	08/31/2027
A la Carte	73478	REDACTION ASSISTANT USER LICENSE	46	09/01/2022	08/31/2027

Services

Bundle	Item	Description	QTY
A la Carte	85144	AXON STARTER	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BWC Unlimited with TAP	80464	EXT WARRANTY, CAMERA (TAP)	46	09/01/2022	08/31/2027
BWC Unlimited with TAP	80464	EXT WARRANTY, CAMERA (TAP)	1	09/01/2022	08/31/2027
BWC Unlimited with TAP	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	6	09/01/2022	08/31/2027

Payment Details

Aug 2022						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50	\$417.50	\$0.00	\$417.50
Year 1	70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X26P	10	\$243.52	\$0.00	\$243.52
Year 1	73478	REDACTION ASSISTANT USER LICENSE	46	\$4,968.00	\$0.00	\$4,968.00
Year 1	85144	AXON STARTER	1	\$550.00	\$0.00	\$550.00
Year 1	AB3C	AB3 Camera Bundle	46	\$6,430.80	\$0.00	\$6,430.80
Year 1	AB3MBD	AB3 Multi Bay Dock Bundle	6	\$1,846.68	\$0.00	\$1,846.68
Year 1	BasicLicense	Basic License Bundle	4	\$720.00	\$0.00	\$720.00
Year 1	BWCUwTAP	BWC Unlimited with TAP	46	\$48,162.00	\$0.00	\$48,162.00
Total				\$63,338.49	\$0.00	\$63,338.49

Aug 2023						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50	\$417.50	\$0.00	\$417.50
Year 2	70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X26P	10	\$243.52	\$0.00	\$243.52
Year 2	73478	REDACTION ASSISTANT USER LICENSE	46	\$4,968.00	\$0.00	\$4,968.00
Year 2	85144	AXON STARTER	1	\$550.00	\$0.00	\$550.00
Year 2	AB3C	AB3 Camera Bundle	46	\$6,430.80	\$0.00	\$6,430.80
Year 2	AB3MBD	AB3 Multi Bay Dock Bundle	6	\$1,846.68	\$0.00	\$1,846.68
Year 2	BasicLicense	Basic License Bundle	4	\$720.00	\$0.00	\$720.00
Year 2	BWCUwTAP	BWC Unlimited with TAP	46	\$48,162.01	\$0.00	\$48,162.01
Total				\$63,338.51	\$0.00	\$63,338.51

Aug 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50	\$417.50	\$0.00	\$417.50
Year 3	70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X26P	10	\$243.52	\$0.00	\$243.52
Year 3	73478	REDACTION ASSISTANT USER LICENSE	46	\$4,968.00	\$0.00	\$4,968.00
Year 3	85144	AXON STARTER	1	\$550.00	\$0.00	\$550.00
Year 3	AB3C	AB3 Camera Bundle	46	\$6,430.80	\$0.00	\$6,430.80
Year 3	AB3MBD	AB3 Multi Bay Dock Bundle	6	\$1,846.68	\$0.00	\$1,846.68
Year 3	BasicLicense	Basic License Bundle	4	\$720.00	\$0.00	\$720.00
Year 3	BWCUwTAP	BWC Unlimited with TAP	46	\$48,162.00	\$0.00	\$48,162.00
Total				\$63,338.50	\$0.00	\$63,338.50

Aug 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50	\$417.50	\$0.00	\$417.50
Year 4	70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X26P	10	\$243.52	\$0.00	\$243.52
Year 4	73478	REDACTION ASSISTANT USER LICENSE	46	\$4,968.00	\$0.00	\$4,968.00
Year 4	85144	AXON STARTER	1	\$550.00	\$0.00	\$550.00
Year 4	AB3C	AB3 Camera Bundle	46	\$6,430.80	\$0.00	\$6,430.80

Q-372355-44734.657 JL

Aug 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	AB3MBD	AB3 Multi Bay Dock Bundle	6	\$1,846.68	\$0.00	\$1,846.68
Year 4	BasicLicense	Basic License Bundle	4	\$720.00	\$0.00	\$720.00
Year 4	BWCUwTAP	BWC Unlimited with TAP	46	\$48,162.00	\$0.00	\$48,162.00
Total				\$63,338.50	\$0.00	\$63,338.50

Aug 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	50	\$417.50	\$0.00	\$417.50
Year 5	70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X28P	10	\$243.52	\$0.00	\$243.52
Year 5	73478	REDACTION ASSISTANT USER LICENSE	46	\$4,968.00	\$0.00	\$4,968.00
Year 5	85144	AXON STARTER	1	\$550.00	\$0.00	\$550.00
Year 5	AB3C	AB3 Camera Bundle	46	\$6,430.80	\$0.00	\$6,430.80
Year 5	AB3MBD	AB3 Multi Bay Dock Bundle	6	\$1,846.68	\$0.00	\$1,846.68
Year 5	BasicLicense	Basic License Bundle	4	\$720.00	\$0.00	\$720.00
Year 5	BWCUwTAP	BWC Unlimited with TAP	46	\$48,162.00	\$0.00	\$48,162.00
Total				\$63,338.50	\$0.00	\$63,338.50

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

By: Todd Venning
City Manager

Date



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the agency on the Quote ("**Agency**"). This Agreement is effective as of the later of the last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**") pursuant to the Quote, annexed hereto and made part hereof.

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the Agency. Agency is responsible for any shipping charges in the Quote. Any shipping charges not expressly listed in the Quote are the responsibility of Axon.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 Warranty.

7.1 Hardware Limited Warranty. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 Claims. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 Spare Axon Devices. For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

7.4 Limitations. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.



Master Services and Purchasing Agreement

- 8 **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("SOW"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
- 9 **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.
- 10 **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
- 11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability Insurance. Upon request, Axon will supply certificates of insurance.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("Agency Indemnitees") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's gross negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 17 **Termination.**
- 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.



Master Services and Purchasing Agreement

- 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
18. **Confidentiality.** "Confidential Information" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.
19. **General.**
- 19.1 **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 19.2 **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 19.3 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 19.4 **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 19.5 **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 19.6 **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 19.7 **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 19.8 **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
-



Master Services and Purchasing Agreement

- 19.9 Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 19.10 Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 19.11 Notices.** All notices must be in English. Notices regarding patch notes or upcoming maintenance may be posted on Agency's Axon Evidence site and are effective upon posting. Any notice, payment, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when deposited by registered or certified mail, with postage and charges prepaid and addressed to the parties at the address(es) as set forth below:
- Axon:
- Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com
- Agency:
- City of Newburgh
Attn: City Clerk
83 Broadway
Newburgh, NY 12550
- with copy to:
- City of Newburgh Police Department
attn.: Police Chief
55 Grand Street
Newburgh, New York 12550
- City of Newburgh Office of Corporation Counsel
83 Broadway
Newburgh, New York 12550
- 19.12 Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.



Master Services and Purchasing Agreement

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

City of Newburgh

Signature: _____

Signature: _____

Name: _____

Name: Todd Venning

Title: _____

Title: City Manager

Date: _____

Date: _____



Axon Cloud Services Terms of Use Appendix

1 Definitions.

"**Agency Content**" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"**Evidence**" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"**Non-Content Data**" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

"**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- 2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

- 3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

- 4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (a) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and



Master Services and Purchasing Agreement

utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
- 7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("Skyhook") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term ("**Axon Records Subscription**")

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13 Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - 13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14 After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15 Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.



- 16 **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
- 17 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month ("OSP 7 Term").
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.



- 9.2 Axon will not and has no obligation to provide the Upgrade Models.
- 9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.



Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

- 1 **Subscription Term.** If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

- 2 **Axon Citizen Storage.** For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
- 3 **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.

RESOLUTION NO.: 178-2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION
OF A NEW PODIUM FROM PASTOR RANDY GAUGER AND
THE FOX HILL COMMUNITY FOR USE BY
THE CITY OF NEWBURGH POLICE DEPARTMENT

WHEREAS, Pastor Randy Gauger and the Fox Hill Community has offered to donate a new podium to the City of Newburgh Police Department; and

WHEREAS, such donation shall be at no cost to the City; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donation;

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 accept the podium being donated by Pastor Randy Gauger and the Fox Hill Community with the appreciation and thanks of the City of Newburgh.



RESOLUTION NO.: 179 - 2022

OF

JULY 11, 2022

A RESOLUTION ADOPTING
THE MAYOR'S STRATEGIC ECONOMIC DEVELOPMENT ADVISORY COMMITTEE
POLICY AND PROCEDURE AS APPENDIX A
TO THE CITY OF NEWBURGH SURPLUS REAL PROPERTY DISPOSITION POLICY

WHEREAS, the City of Newburgh periodically acquires real property through various means, some of which may not be not required or designated for municipal or public use, and designated as surplus real property; and

WHEREAS, by Resolution No. 97-2021 of April 26, 2021, the City Council of the City of Newburgh adopted the City of Newburgh Surplus Real Property Disposition Policy to establish a uniform policy that provides details and procedures about how the City will offer surplus real property for sale to the general public in an open, transparent, and cost-effective manner; and

WHEREAS, the City of Newburgh Surplus Real Property Disposition Policy provides for a disposition method through a Request for Proposals process under which the Mayor's Strategic Economic Development Committee ("SEDAC") is authorized to advise the Mayor and City Council on City-owned land development and dispositions consistent with the City's development goals, objectives, and current planning and zoning documents; and

WHEREAS, this Council finds that establishing a policy and procedure for the formation and operation of the Mayor's SEDAC, as annexed hereto, is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York, hereby adopts the Mayor's Strategic Economic Development Advisory Committee Policy and Procedure as Appendix A to the City of Newburgh Surplus Real Property Disposition Policy.

APPENDIX A
MAYOR'S STRATEGIC ECONOMIC DEVELOPMENT
ADVISORY COMMITTEE ("SEDAC")

I. Formation; purpose

The Mayor's Strategic Economic Development Advisory Committee ("SEDAC") is hereby formed for the purpose of advising the Mayor and City Council on proposals for future City-owned land development dispositions consistent with the City's current Master Plans, Zoning Code, and Surplus Real Property Disposition Policy and Procedure and ensuring the consistent application of the City's goals and objectives as provided in the City's planning documents.

II. Composition, method of appointment

- A. The SEDAC shall consist of a maximum of 10 members appointed by the Mayor after consultation with the City Council comprised as follows:
 1. Seven (7) members of the SEDAC shall be City residents, owners of property or businesses located within the City or must have professional qualifications or experience in real estate sales, real property management, small and medium sized business ownership, banking, finance, housing, urban planning, or economic development;
 2. The Executive Director of the City of Newburgh Industrial Development Agency;
 3. The City of Newburgh Director of Planning and Development; and
 4. A City resident or City business owner displaced by the City of Newburgh's Urban Renewal Program(s) or a descendant of such City resident or business owner
- B. The Mayor shall designate the SEDAC Chairperson.
- C. Diversity and Inclusion - Justice, Equity, Diversity and Inclusion are core values to the City of Newburgh, and these values are promoted through SEDAC composition which includes City residents, women, racial and ethnic minorities, individuals with disabilities, members of the LGBTQ community, and veterans.
- D. Two alternate members of the SEDAC shall be appointed by the Mayor in consultation with the Council. The alternate members shall serve when members are unable to participate in the development of a request for proposals or review of submissions received in response to a request for proposals. The Chair of the SEDAC may designate an alternate substitute for a member when such member is unable to participate on a matter under development or review by the SEDAC. When so designated, the alternate member shall serve for the full length of the relevant process (RFP development and/or proposal review and scoring) possess all the powers and responsibilities of a member of the SEDAC. All provisions of law, codes, rules and regulations relating to the SEDAC member eligibility, vacancy, or

removal, compatibility of office and service on other boards shall also apply to alternate members.

- E. The Chairperson shall preside at all meetings of the SEDAC and prepare the agenda in consultation with City staff. The Chairperson shall designate a secretary. The secretary shall be responsible for taking meeting minutes and maintaining SEDAC records.

III. Duties and Responsibilities

SEDAC is authorized to perform the following functions:

- A. Prepare, write, and draft requests for proposals for the sale and development/redevelopment of City-owned real property consistent with the City's current master/comprehensive plan, zoning code, and surplus real property disposition policies.
- B. Analyze, review, and advise the City Council on proposals received for the purchase and development/redevelopment of City-owned real property consistent with City's current master/comprehensive plan, zoning code, and surplus real property disposition policies.
- C. Prioritize strategies, projects and programs that promote economic and community development throughout the City of Newburgh consistent with City's current master/comprehensive plan, zoning code, and surplus real property disposition policies.
- D. Adopt rules of procedure and keep a record of its recommendations.

IV. Ethics and Conflicts of Interest

- A. Members and Alternates of the SEDAC are subject to all of the provisions of the City of Newburgh Code of Ethics as set forth in Chapter 34 of the City of Newburgh Code of Ordinances and all of the provisions of Article 18 of the New York State General Municipal Law.
- B. Members and Alternates of the SEDAC shall not be a relative of any incumbent elected official of the City of Newburgh as "relative" is defined in Section 34-2 of the City of Newburgh Code of Ethics.
- C. Members and Alternates of the SEDAC, and their relatives as defined in Section 34-2 of the City of Newburgh Code of Ethics, shall not be relatives, directors, shareholders, members, officers or employees or have any financial ties with any individual or entity, including any subcontractor, consultant or partner individual or entity, submitting a proposal or offer for purchase and/or development/redevelopment of City-owned real property.
- D. Members and Alternates of the SEDAC shall:
 - 1. Preserve and maintain the confidentiality of records, including but not limited to, submissions and proposals received in response to a request for proposals.
 - 2. Recuse themselves from participating in the review of any proposal and/or offer of purchase and/or development/redevelopment of City-owned property in which they may have a personal, professional or financial conflict of interest.

3. Conduct themselves at all times in a manner that will maintain the public confidence in the fairness, impartiality, and integrity of the SEDAC.
 4. During a Request for Proposal process, decline any gifts, gratuities, meals or reimbursements in any form or value from any individual or entity that responds to a request for proposals or from any other individual or entity having a personal, professional, or financial interest in the outcome of any request for proposal process.
 5. During a Request for Proposal process, decline all ex parte communications with any individual or entity that responds to a request for proposals or from any other individual or entity having a personal, professional, or financial interest in the outcome of any request for proposal process, except as provided in any specific request for proposals and its approved evaluation plan.
- E. Members and Alternates of the SEDAC shall complete the Ethics and Confidentiality Agreement upon appointment and the Conflict of Interest Endorsement after proposals received in response to a request for proposals are opened and prior to the commencing review of the proposals.

**CITY OF NEWBURGH
SEDAC ETHICS AND CONFIDENTIALITY AGREEMENT**

I, _____ (Print Full Name), by my signature below, declare and attest that I, as a member or alternate of the SEDAC, am subject to all the provisions of the City of Newburgh Code of Ethics as set forth in Chapter 34 of the City of Newburgh Code of Ordinances and all of the provisions of Article 18 of the New York State General Municipal Law, and I am not a relative of any incumbent elected official of the City of Newburgh as "relative" is defined in Section 34-2 of the City of Newburgh Code of Ethics.

I agree to preserve and maintain the confidentiality of records, including but not limited to, submissions and proposals received in response to a request for proposals.

I will recuse myself from participating in the review of any proposal and/or offer of purchase and/or development/redevelopment of City-owned property in which I or my relative may have a personal, professional or financial conflict of interest.

I will conduct myself at all times in a manner that will maintain the public confidence in the fairness, impartiality, and integrity of the SEDAC.

I will decline any gifts, gratuities, meals or reimbursements in any form or value from any individual or entity that responds to a request for proposals or from any other individual or entity having a personal, professional, or financial interest in the outcome of any request for proposal process.

I also will decline all ex-parte communications with any individual or entity that responds to a request for proposals or from any individual or entity having a personal, professional, or financial interest in the outcome of any request for proposal process, except as provided in any specific request for proposals and its approved evaluation plan.

Signed: _____ Date: _____

Subscribed and sworn to before me
this ____ day of _____, 20____

Notary Public

CITY OF NEWBURGH
SEDAC Conflict of Interest (COI) Endorsement

Signed after proposals are opened for RFP# _____

I declare and affirm that, to the best of my knowledge, neither I nor any relative, as defined in Section 34-2 of the City of Newburgh Code of Ethics, are directors, shareholders, members, officers or employees or are relatives of directors, shareholders, members, officers or employees, nor has any financial ties with any individual or entity, including any subcontractor, consultant or partner individual or entity, submitting a proposal or offer for purchase and/or development/redevelopment of City-owned property in connection with the above noted RFP.

I agree to maintain the confidentiality of all information and materials that I receive as a result of my participation in this RFP process unless required to make a disclosure as required by law.

Signed: _____ Date: _____

Subscribed and sworn to before me
this ____ day of _____, 20____

Notary Public

RESOLUTION NO.: 180 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION
REGARDING THE FORECLOSURE OF TAX LIENS IN REM
FOR THE YEAR 2018 RELATED TO PROPERTY KNOWN AS
76 ROBINSON AVENUE (SECTION 22, BLOCK 4, LOT 46)

WHEREAS, The City of Newburgh commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number EF-011885-2018; and

WHEREAS, New Evolution Alliance LLC (by Jonathan Hunte, managing member), filed an Answer to the tax foreclosure proceeding on April 4, 2022 with respect to the property known as 76 Robinson Avenue (Section 22, Block 4, Lot 46); and

WHEREAS, the property owner indicated that he is prepared to withdraw his Answer and settle the action as it applies to the subject property; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer is hereby authorized to withdraw the liens on the property located at 76 Robinson Avenue (Section 22, Block 4, Lot 46), City of Newburgh, from the List of Delinquent Taxes and remove the property from the 2018 *In Rem* tax foreclosure action (Index Number EF-011885-2018), as the sum of Sixty-Three Thousand Three Hundred Seventeen and 13/100 dollars (\$63,317.13), representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, water charges, sewer charges, and sanitation charges, have been tendered to the City of Newburgh in full by certified check and is ready for acceptance.

RESOLUTION NO.: 181 - 2022

OF

JULY 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PAYMENT
OF CLAIM WITH PROGRESSIVE SPECIALTY INSURANCE COMPANY A/S/O
YULISSA MARTINEZ IN THE AMOUNT OF \$17,189.30

WHEREAS, Progressive Specialty Insurance Company a/s/o Yulissa Martinez brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the claim in the amount of Seventeen Thousand One Hundred Eighty-Nine and 30/100 Dollars (\$17,189.30) in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to settle the claim of Progressive Specialty Insurance Company a/s/o Yulissa Martinez in the total amount of Seventeen Thousand One Hundred Eighty-Nine and 30/100 Dollars (\$17,189.30) and that the City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement as herein described.