

A regular meeting of the City Council of the City of Newburgh was held on Monday, June 12, 2023 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, - 6

Absent: Councilmember Sofokles - 1

COMMUNICATIONS

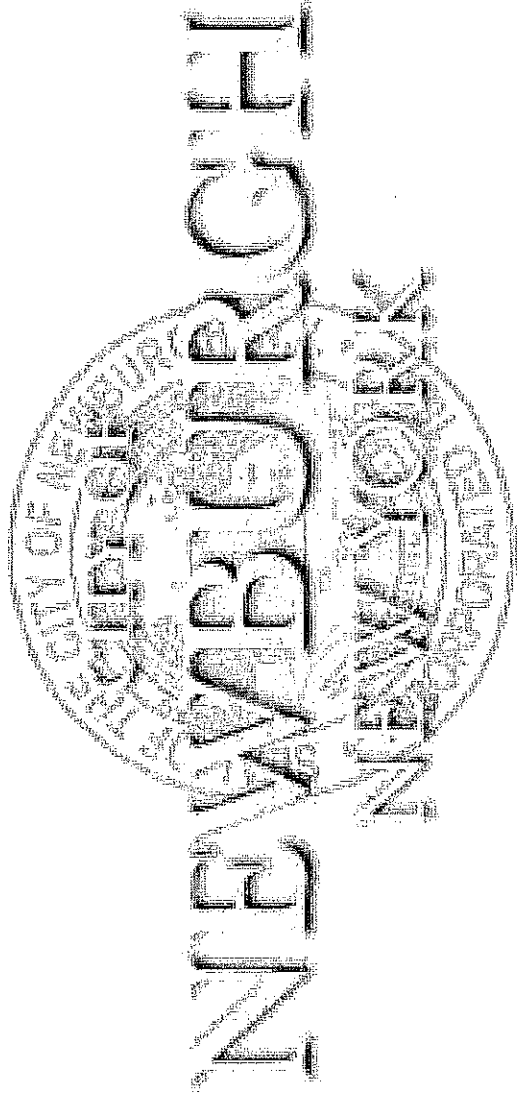
Approval of the minutes from the City Council meeting of May 22, 2023 / Aprobacion del Acta de la Reunion General del Consejo del 22 de mayo de 2023

Councilmember Shakur moved and Councilmember Sklarz seconded

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

CARRIED

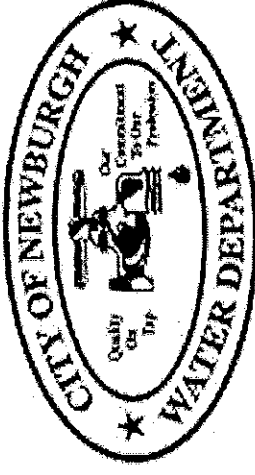
City Manager Update / Gerente de la Ciudad Pone al Dia a la Audiencia de los Planes de Cada Departamento



City Manager's Update

Newburgh City Council Meeting

Monday, June 12, 2023

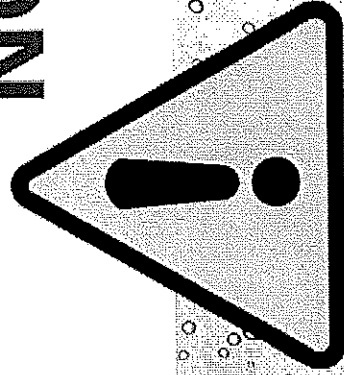


THIS BOIL WATER NOTICE APPLIES
TO CUSTOMERS AT:

LAKE DRIVE HOUSING COMPLEX

BRING TAP WATER TO A ROLLING
BOIL, BOIL FOR ONE MINUTE, AND
COOL BEFORE USING

PRECAUTIONARY BOIL WATER NOTICE





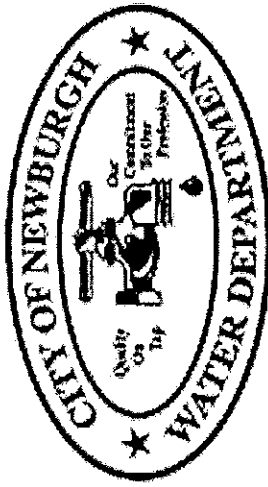
78

LEAD LINES REPLACED WITH
THIS LAST FUNDING
ALLOTMENT

**\$316,811.78
REMAINING**

FROM THE LAST ROUND OF
CITY COUNCIL ARPA
FUNDING

LEAD SERVICE LINE
REPLACEMENT PROGRAM

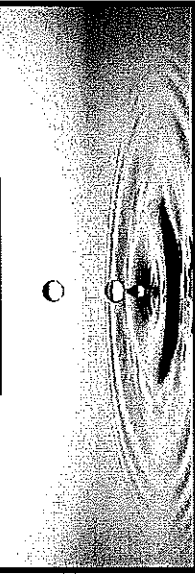


**Get Help Replacing Your
Lead Water Service Lines**

**APPLICATION AVAILABLE
IN SPANISH!
CALL: 845-565-3356**

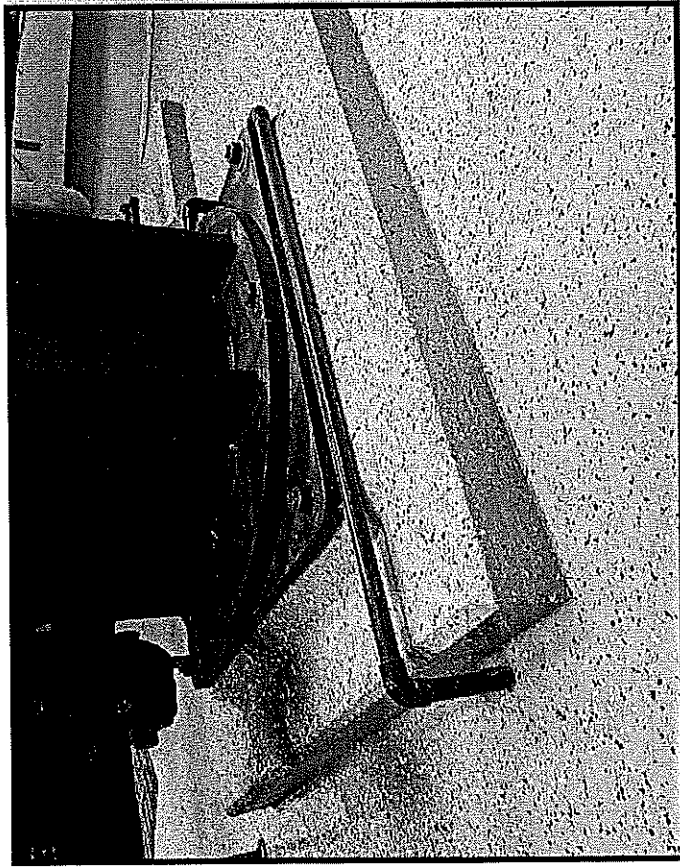


Programa de Sustitución de Líneas de
Servicio de Plomo

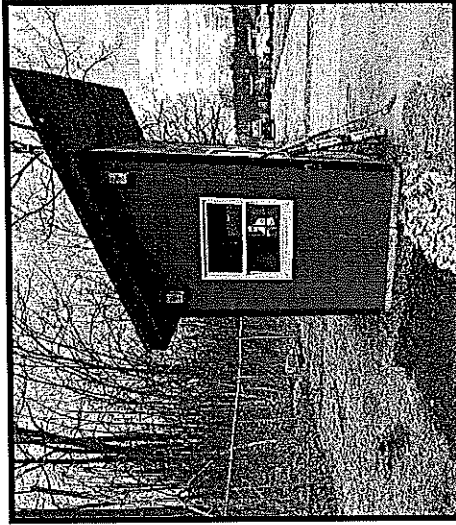




CITY OF NEWBURGH WATER DEPARTMENT



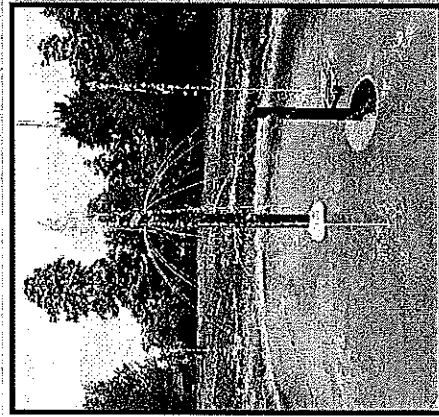
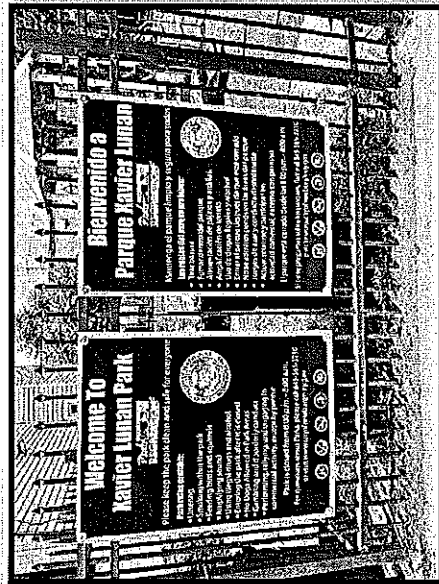
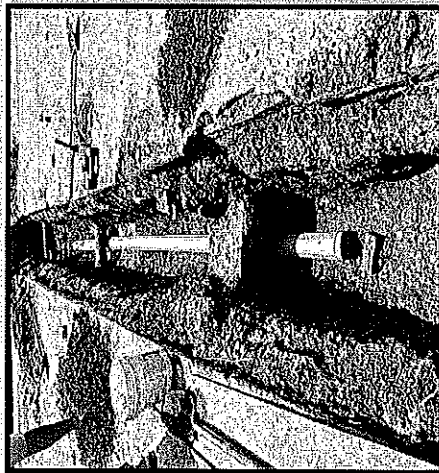
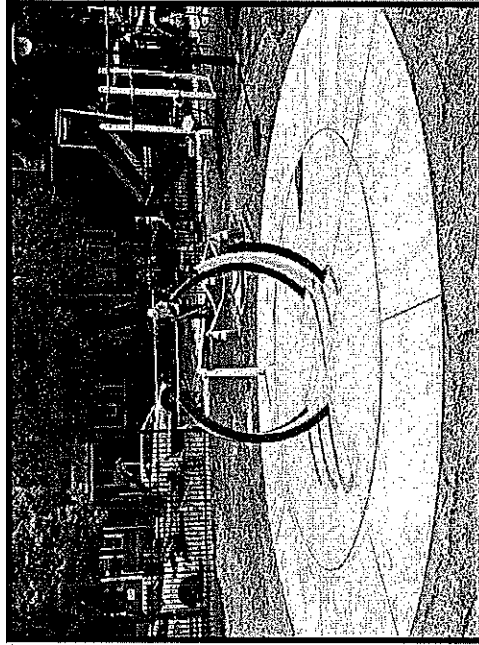
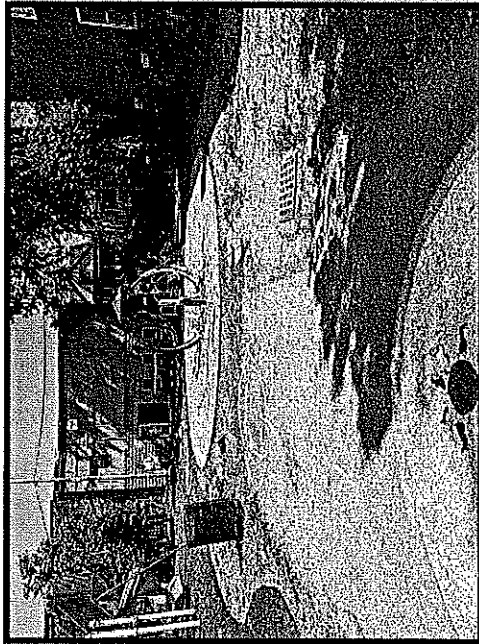
Browns Pond Pump Station Update



Work At Masterson
Park Continues

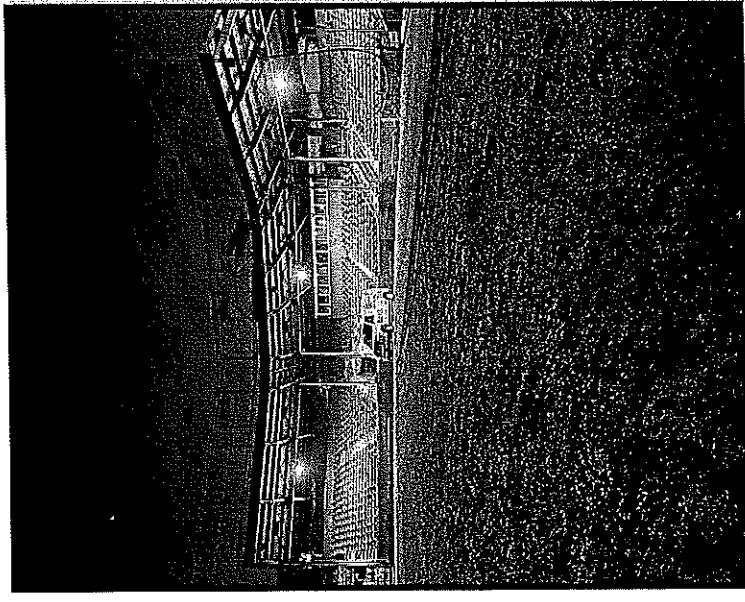
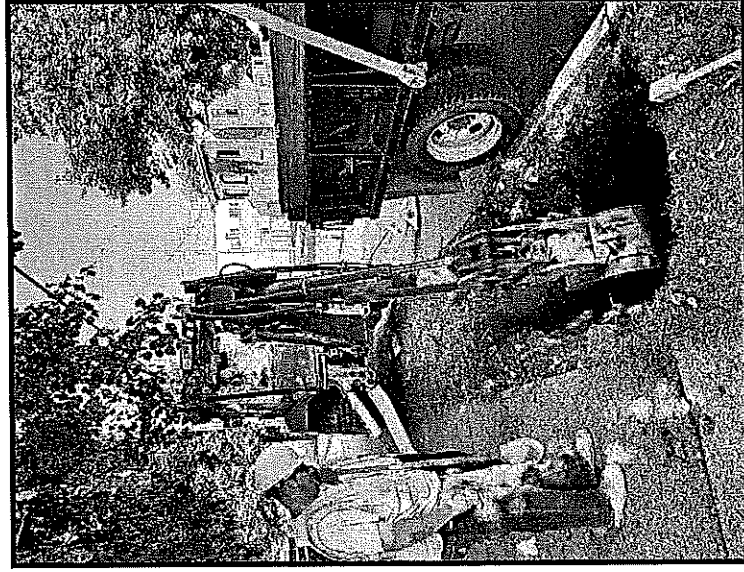
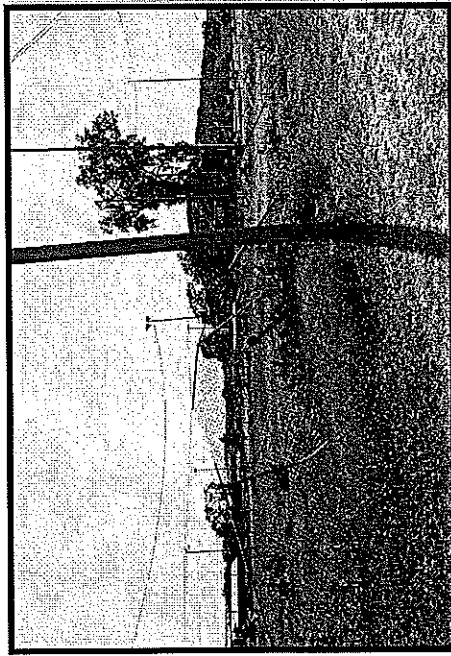


SPLASH PAD UPDATE

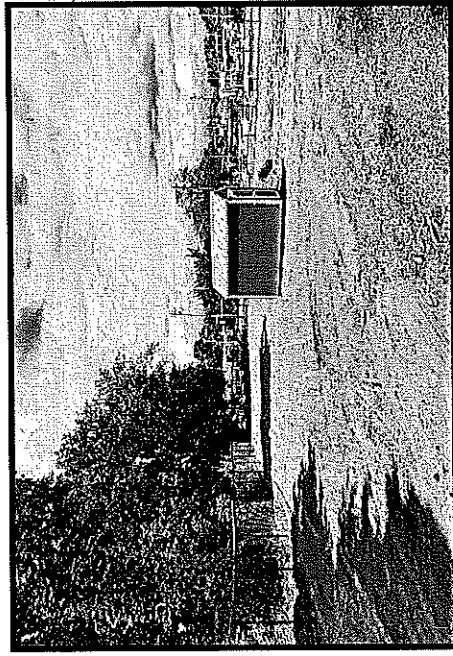




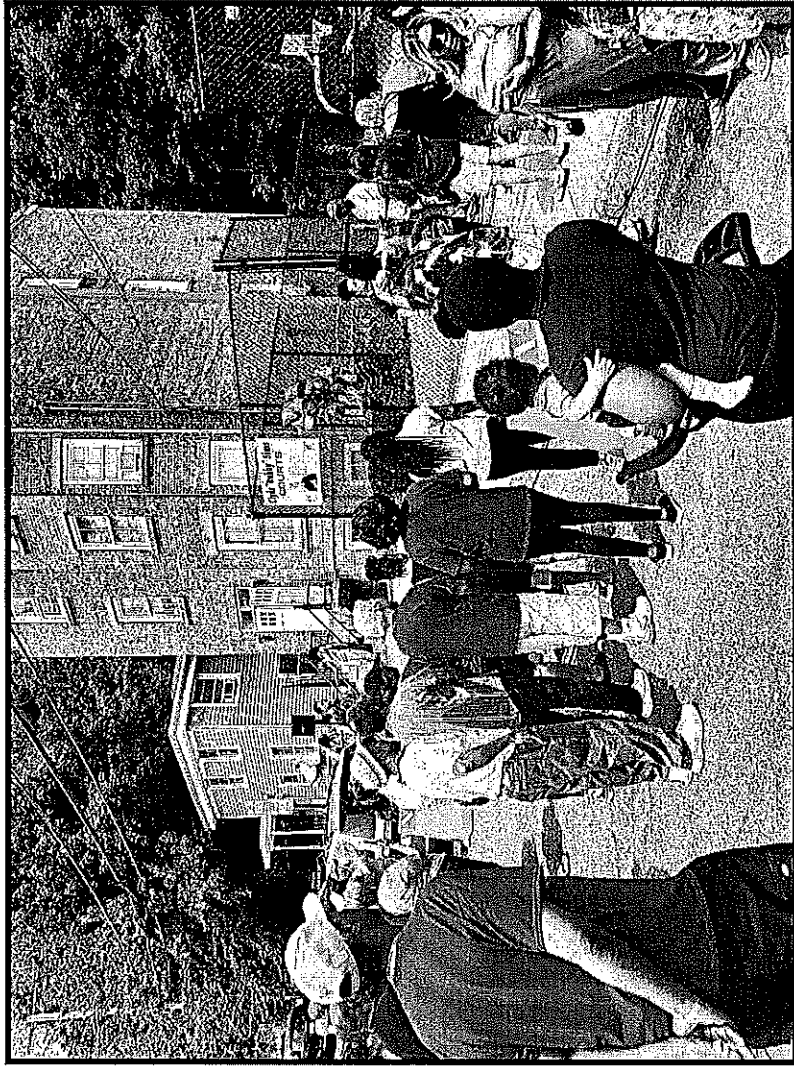
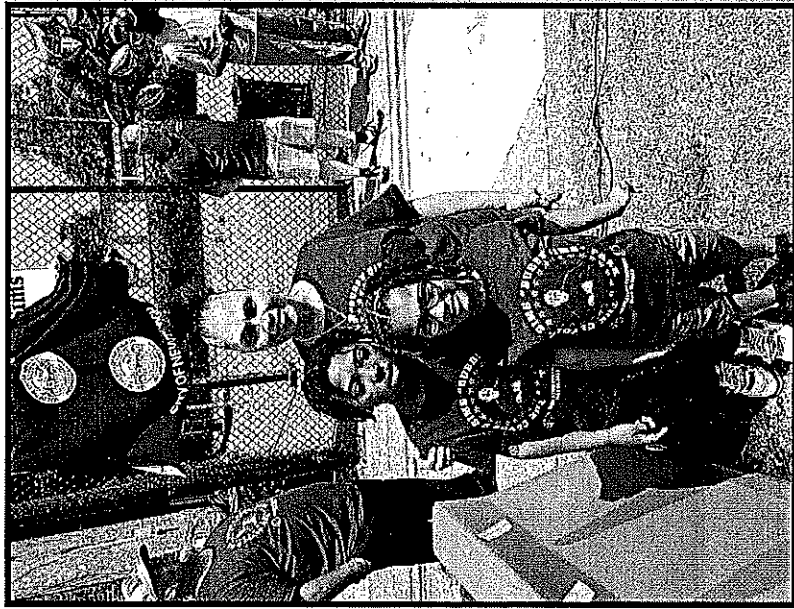
DELANO-HITCH PARK REVITALIZATION



New horseshoe pits, bocce courts, and gardens are coming soon!



GIDNEY AVENUE PARK RENAMED TO THE CLYDE 'BUBBY' SIMS PARK



Summer Fun Starts Here!

Register now for Newburgh Recreation Summer Camp
Outdoor Fun, Entertainment, Special Events, and Trips

Register in person at the Recreation Office



For more information contact 845-565-3230 or
CityOfNewburgh.RecreDesk.com/Community/Home



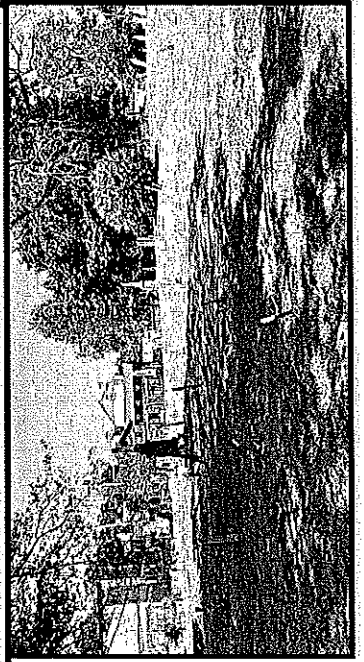
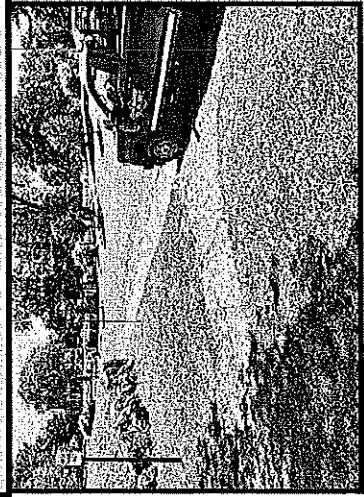
HAZARDOUS TREES REMOVED

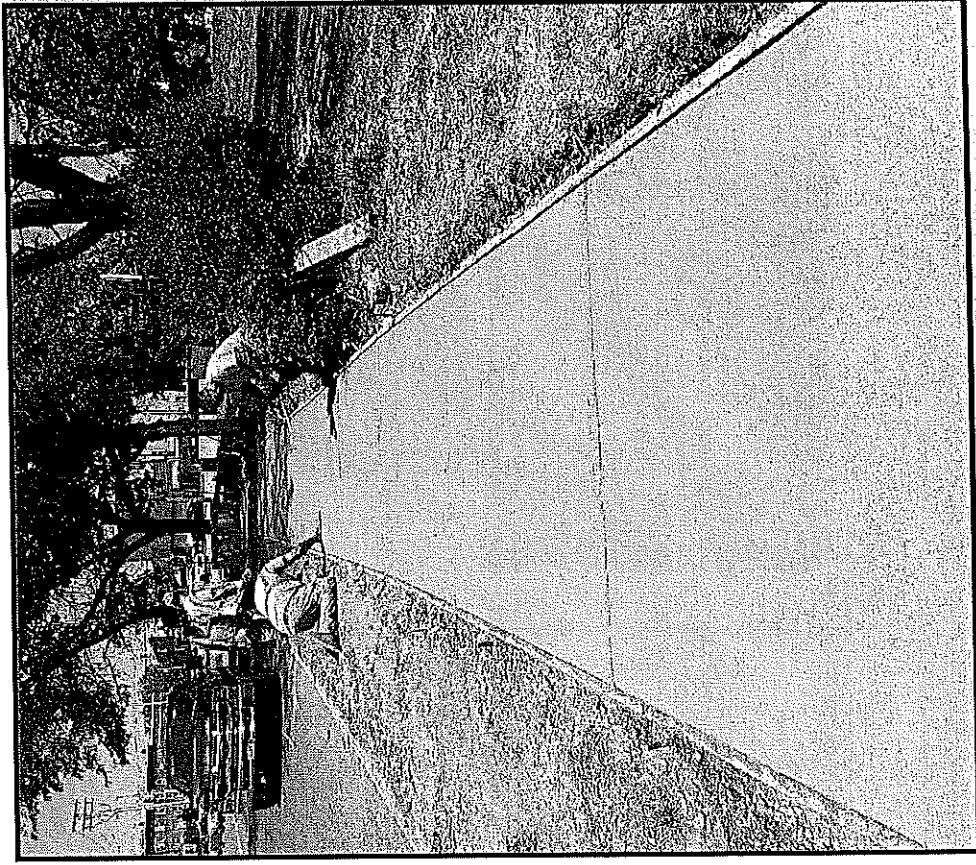
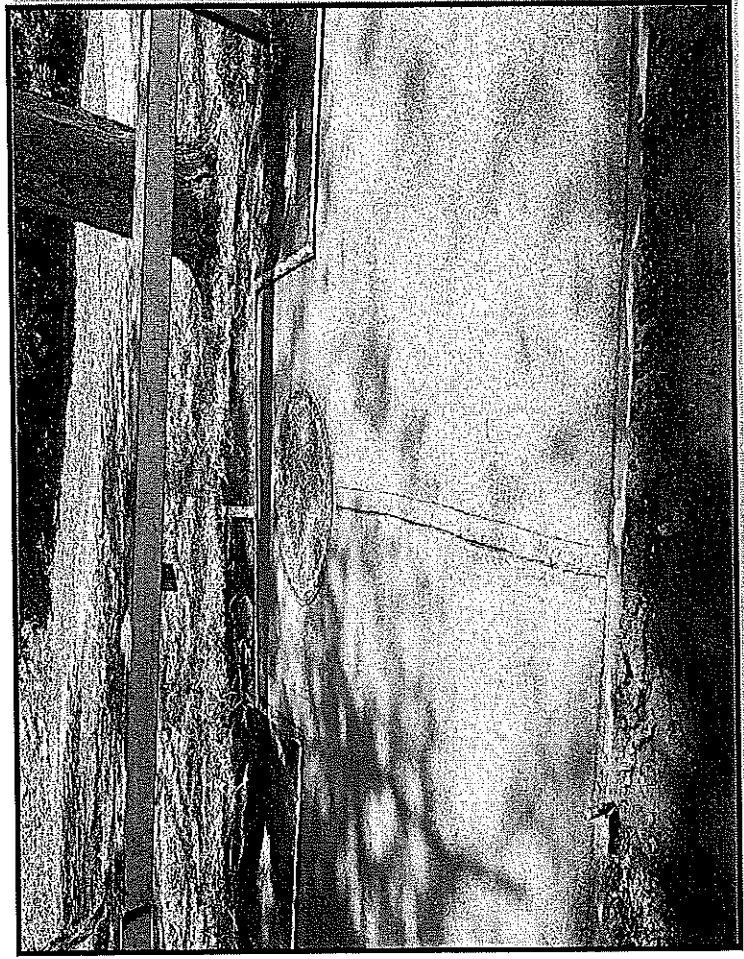


NEW CONDUIT, WIRING AND LED LIGHTING AT
ENGINE THREE FIRE HOUSE

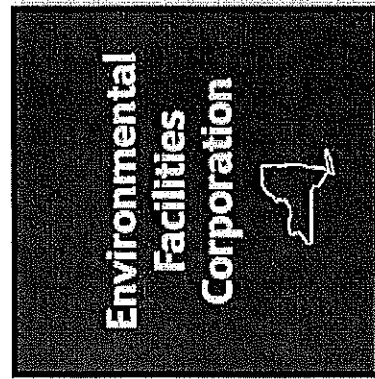
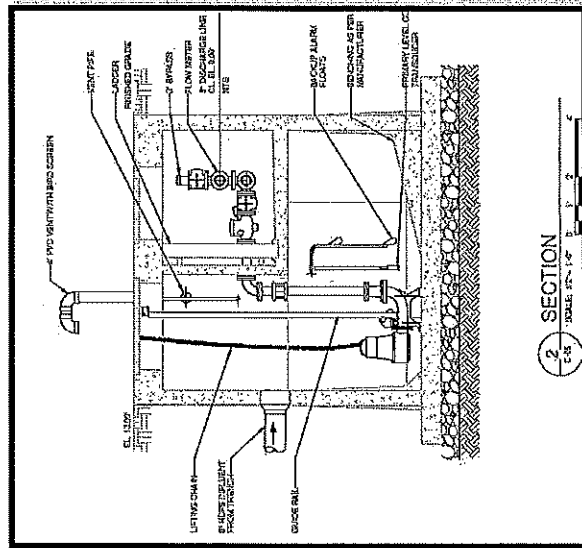


DOWNING PARK & OLD TOWN CEMETERY MAINTENANCE





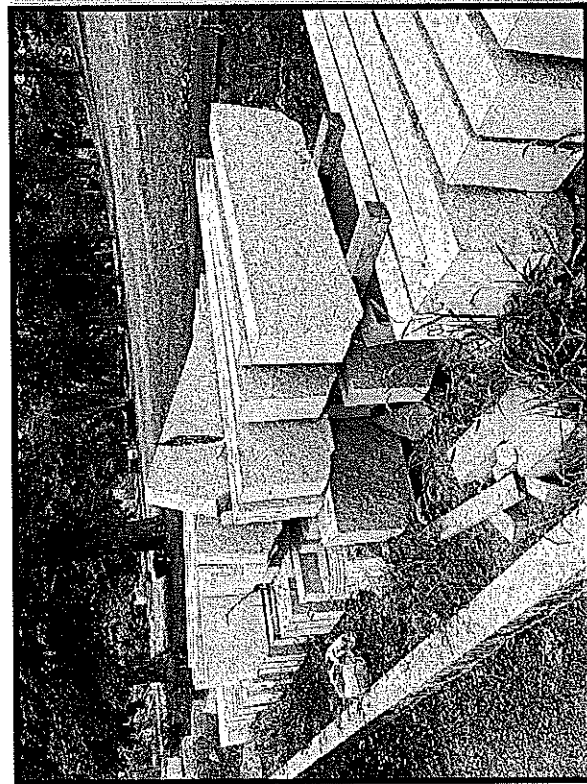
65 feet of sidewalk replaced
on Little Britain Road



NO OUT-OF-POCKET COSTS FOR MUNICIPALITIES TO PARTICIPATE



THIRD STREET STREETSCAPE IMPROVEMENTS



Installing new granite curbing and new dyed and stamped concrete sidewalks along the south side of Third Street

ALTERNATE SIDE OF THE STREET PARKING RULES SUSPENDED

ALONG SECTIONS OF:

CARPENTER AVENUE

CITY TERRACE

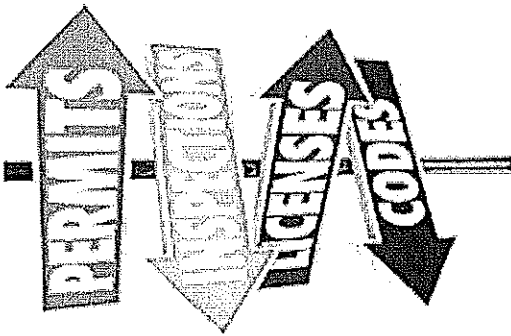
CARTER STREET

JOHNSTON STREET

WHILE THIS STREETSCAPE WORK
TAKES PLACE

CODE COMPLIANCE UPDATE

Month of May 2023



1,051

737

158

117

4

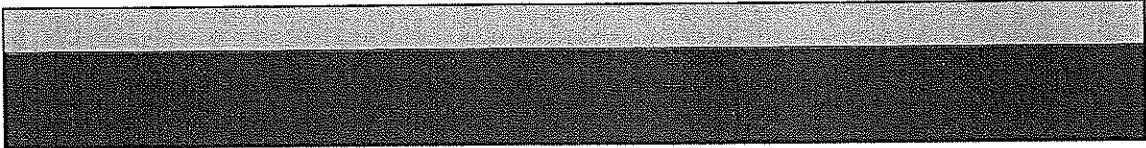
■ Construction Permits Issued

■ Inspections Completed

■ Notice of Violation Written (NOV)

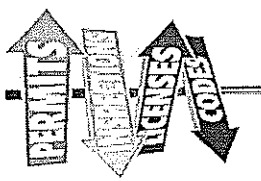
■ Sent to Court

■ Complaints Closed

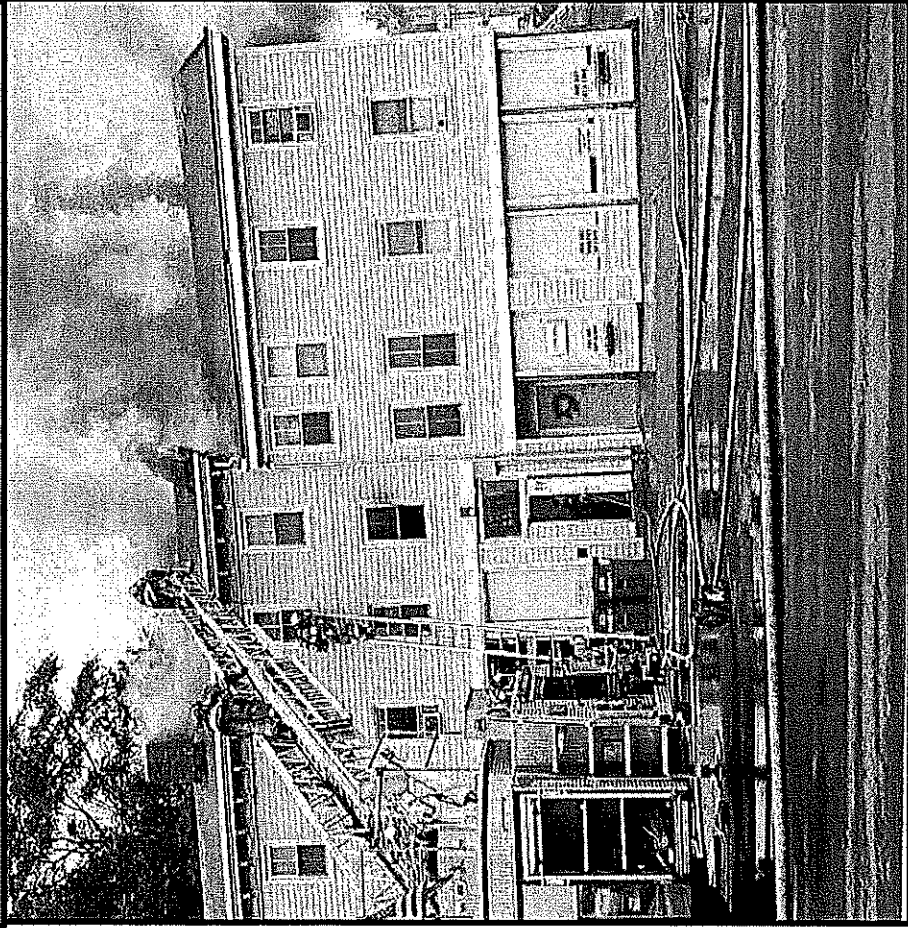


**NO
PARKING
ON
SIDEWALK**

VIOLATORS WILL BE TICKETED



STRUCTURE FIRES AT 210 BROADWAY
& 119 SOUTH STREET



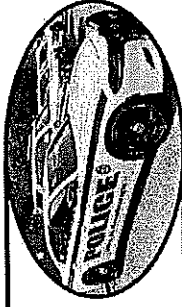
FIREFIGHTER & FIREDOG RETIREMENT



(photos: Bob McCormick)

City of Newburgh Police Department

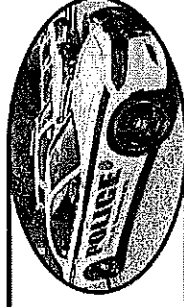
Highlight



New Parking Enforcement Uniform

City of Newburgh Police Department

Police Monthly Operations Report



Date: April 14, 2023

Table 1.

CALL TYPE	PLATOON ONE	PLATOON TWO	PLATOON THREE	TOTAL
ALARM - AUDIBLE/SILENT	187	203	189	579
DOMESTIC DISPUTE	120	191	203	514
DISORDERLY ADULT	78	190	175	443
MVA - PROPERTY DAMAGE	46	193	157	396
THEFT/LARCENY	41	228	119	388
WELFARE CHECK	71	119	157	347
DISTURBANCE	67	73	148	288
NOISE COMPLAINT	126	18	143	287
GENERAL INCIDENT	14	114	82	210
SICK/INJURED PERSON	51	78	58	187

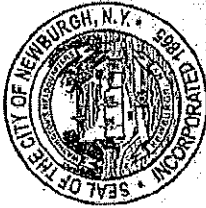
Table 2.

Part One Crime				
Jan 1 - May 31	2022	2023	Raw Change	% Change
Murder	0	3	3	UNC
Rape	10	10	0	0%
Robbery	32	21	-11	-34%
Agg. Assault	75	80	5	7%
Res. Burglary	23	23	0	0%
Comm. Burglary	22	29	7	32%
Larceny - Theft	237	220	-17	-7%
Auto Theft	35	20	-15	-43%
Total	434	406	-28	-6%
Violent Crime	117	114	-3	-3%
Property Crime	317	292	-25	-8%

Table 3.

Arrests	
Number of Arrests	135
Gender	
Female	42
Male	93
Cause of Arrest	
Arrest Warrant	44
Bench Warrant	20
Complaint	13
Court Summons	6
Crime in Progress	51
Order of Protection	1

3,200 call for service entries in May 2023



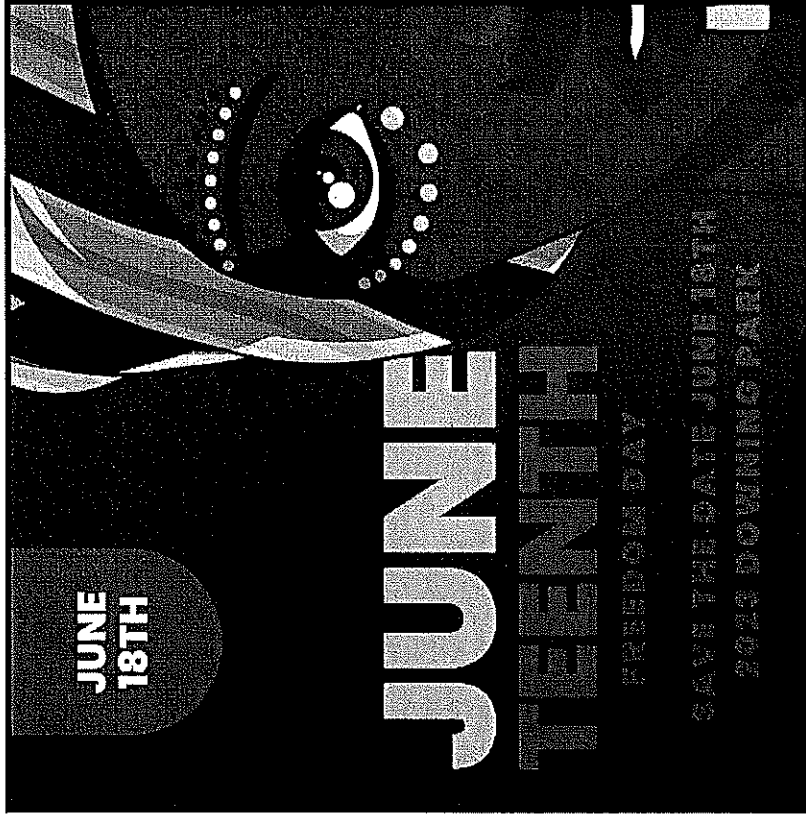
Small Business Assistance Grant Program

The Newburgh City Council announces the creation of the **City of Newburgh Small Business Assistance Grant Program**, which will allocate \$200,000 of American Rescue Plan Act (ARPA) funding to City businesses affected by COVID-19 related losses.

Grant funding will be awarded in September 2023.

➤ www.cityofnewburgh-ny.gov

COMMUNITY REMINDERS



EVENT BEGINS AT 12:00 PM



**Bulk Item
Pickup
Program**

CALL BY 3:00 PM ON JUNE 27

**TO SCHEDULE A PICK UP
CALL 845-565-3297**

COMMUNITY REMINDERS



LOVE YOUR BLOCK

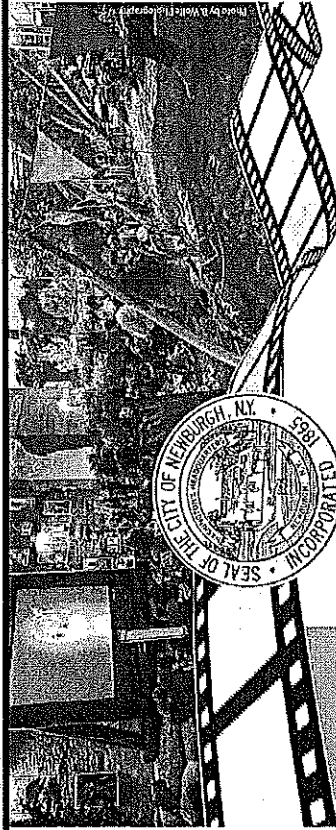
Mini-Grants

- Grants are available on a first-come, first-serve basis
- Use the mini-grants to pay for a dumpster, carting fees, cleaning supplies, as well as food and entertainment to facilitate a socially-distant block party



THOSE INTERESTED IN APPLYING
FOR THE MINI-GRANTS MUST
CONTACT NICK EDWARD
AT 845-569-7385

COMMUNITY REMINDERS



The City of Newburgh and Safe Harbors of the Hudson present:

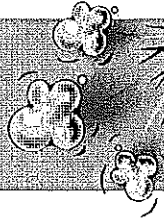
Free Summer Movies on Safe Harbors Green

Safe Harbors Green (corner of Broadway and Liberty Street),
Rain location: Safe Harbors lobby at the Ritz (107 Broadway, Newburgh)

Attendees are welcome to bring a blanket.

Thursdays
at sundown
8:30 p.m.

Pre-Movie Events
Begin 7:30 p.m.



Free Popcorn

June 29 July 6 July 13 July 20 July 27 Aug. 3

June 29: Puss in Boots - The Last Wish
July 6: Black Panther - Wakanda Forever
July 13: Minions - The Rise of Gru
July 20: Sing 2
July 27: Turning Red
August 3: Selena

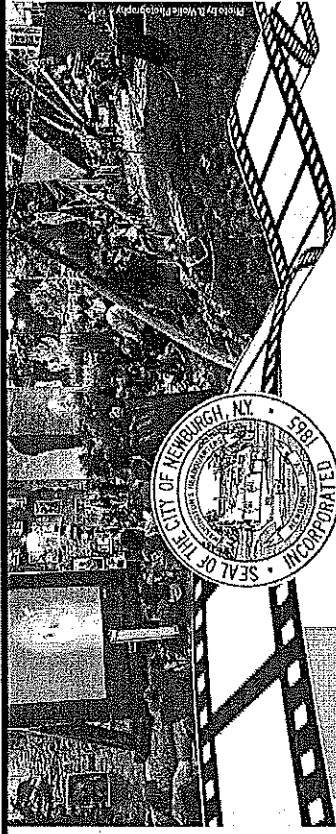
<https://www.cityofnewburgh-ny.gov>

Transforming lives and building community through housing and the arts.

**SAFE
HARBORS
OF THE HUDSON**

HOUSING • ARTS • COMMUNITY

Safe Harbors Green • Broadway/Liberty Street • www.safe-harbors.org



The City of Newburgh and Safe Harbors of the Hudson present:

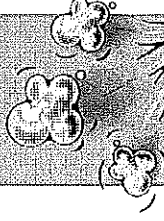
Películas de verano gratis en Safe Harbors Green

Safe Harbors Green (esquina de Broadway y Liberty Street),
Ubicación en caso de lluvia: Vestíbulo Safe Harbors en el Ritz (107 Broadway, Newburgh)

Los asistentes pueden traer una manta.

Jueves
al atardecer
8:30 p.m.

Eventos previos
a la película
Comienzo
7:30 p.m.



Palomitas
de maíz gratis

June 29 July 6 July 13 July 20 July 27 Aug. 3

29 de junio: Puss in Boots - The Last Wish
6 de julio: Black Panther - Wakanda Forever
13 de julio: Minions - The Rise of Gru
20 de julio: Sing 2
27 de julio: Turning Red
3 de agosto: Selena

<https://www.cityofnewburgh-ny.gov>

Transforming lives and building community through housing and the arts.

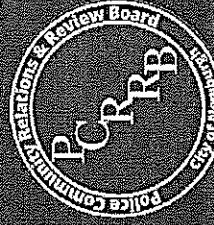
**SAFE
HARBORS
OF THE HUDSON**

HOUSING • ARTS • COMMUNITY

Safe Harbors Green • Broadway/Liberty Street • www.safe-harbors.org

BOARD & COMMISSION VACANCIES REMINDER

**The PCRRB
has
Open Vacancies**

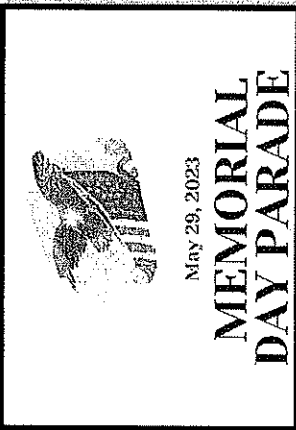
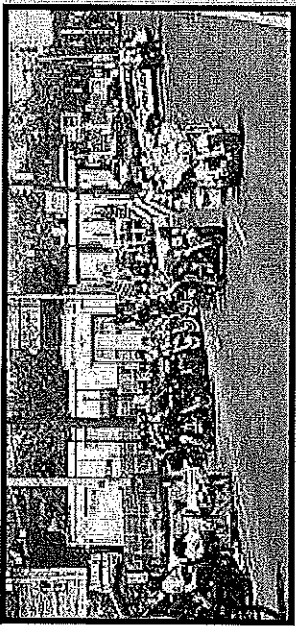
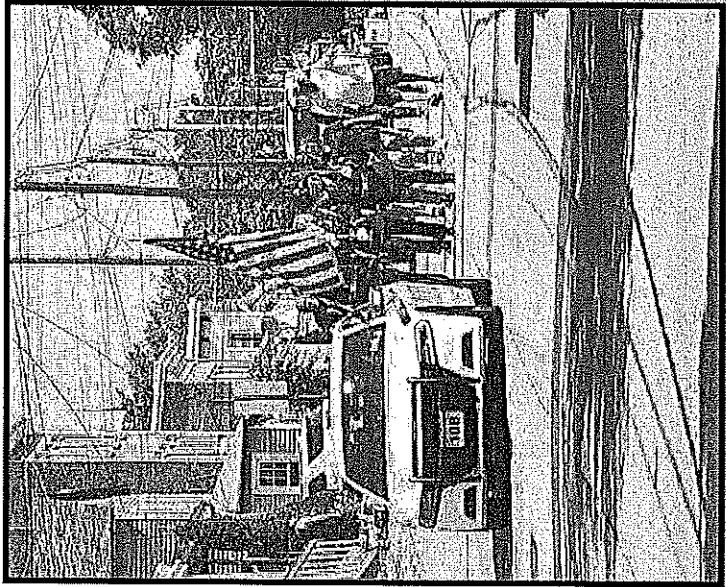
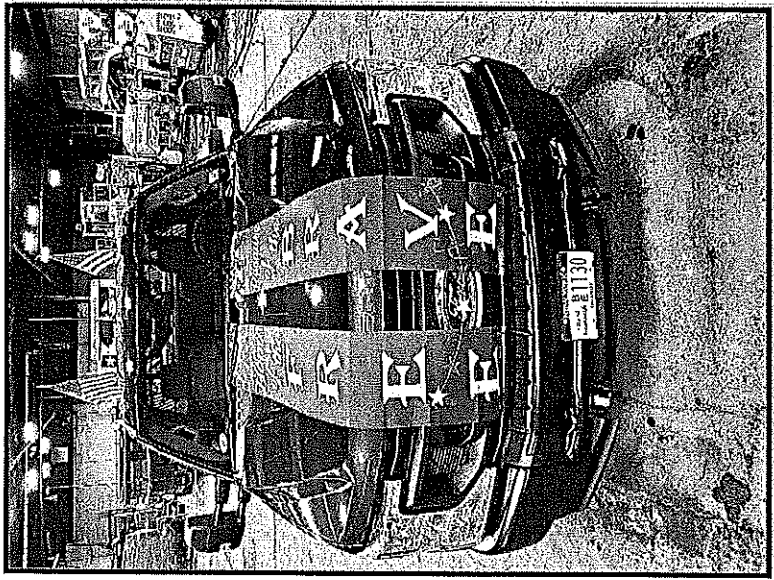


**SUBMIT AN APPLICATION BY
JULY 14**



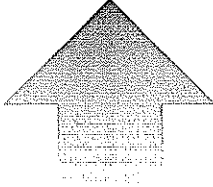
**CITIZENS ADVISORY COMMITTEE
SEEKS
MEMBERS FOR
DISTRICTING COMMISSION**

APPLY ONLINE ON THE CITY WEBSITE OR
SEND COMPLETED APPLICATION VIA EMAIL:
BOARDS@CITYOFNEWBURGH-NY.GOV



June 27

PRIMARY ELECTION



POLLS ARE OPEN FROM:
6:00 AM to 9:00 PM

POLLING LOCATIONS:

1W - Dist 1, 2, 3 & 4 2W - Dist 1 & 2	Newburgh Heritage Center 123 Grand St, Newburgh
3W - Dist 1 & 2 4W - Dist 2 & 4	Kol Israel 290 North St, Newburgh
3W - Dist 3 & 4 4W - Dist 1, 3, & 5	City of Newburgh Activity Center 401 Washington St, Newburgh

**ANYONE WHO HAS QUESTIONS REGARDING THEIR
VOTER REGISTRATION STATUS OR OTHER RELATED
INQUIRIES CAN CALL THE COUNTY BOARD OF**

**ELECTIONS AT:
845-360-6500**

Early Voting	
Dates	Times
June 17	10:00 AM - 6:00 PM
June 18	9:00 AM - 5:00 PM
June 19	7:00 AM - 3:00 PM
June 20	12:00 PM - 8:00 PM
June 21	12:00 PM - 8:00 PM
June 22	9:00 AM - 5:00 PM
June 23	7:00 AM - 3:00 PM
June 24	9:00 AM - 5:00 PM
June 25	9:00 AM - 5:00 PM
Early Voting Site: Activity Center 401 Washington Street	

OFFICE	TERM
Mayor	Four (4) years
Council Member at Large	Four (4) years
Council Member at Large	Four (4) years



CONTACT US

Members of the news media are asked to direct all press inquiries to:

press@cityofnewburgh-ny.gov

PRESENTATIONS

PKF O'Connor Davies, LLP - 2022 Audit Presentation

Delano-Hitch Recreation Park Aquatics Center Design Presentation Update to Council

1st Public Hearing for the FY2024 Community Development Block Grant (CDBG) Annual Action Plan (AAP)

Mayor Harvey called for a public hearing that was advertised for this meeting to receive public comment on the City of Newburgh Community Development Block Grant (CDBG) FY2024 Annual Action Plan.

Sertaira Boyd, City of Newburgh said that this year residents have noticed that some blocks are being paved while others are being skipped so what is the projection of having streets paved? South Street was paved but will the streets where kids walk be paved? How do you decide which blocks will be paved and which won't.

Jewel Martin, City of Newburgh said she would like to see housing and the people in Shelters get out of them. They are moved from city to town and when you don't comply you end up where you shouldn't. Housing is a human right so she would like to see housing for people in the Shelters and we have a lot of vacant buildings here.

Gabrielle Hill, City of Newburgh noted that some streets belong to the State, so we have no control on the paving of those roads. She asked if any of this money could be used for our local park. The wall at Tyrone Crabb Park that supports the park and the parking lot is an eyesore. There is also a small space where they have a basketball hoop that we could do something with to spruce up the park.

Ray Harvey, City of Newburgh said he has received requests from seniors about handicapped parking on the streets because people in wheelchairs can't park in the regular spots.

Councilmember Grice said that one of the things he would like to talk about later is the sidewalk improvements. Mr. Harvey mentioned handicapped parking and he thought we had started something for that which he supports. On Tyrone Crabb Park, there was conversation about having a taller fence over there because of some issues with the parking lot.

Councilmember Martinez said she is excited about the infrastructure plans that are set especially for paving. On the sidewalks, she would like to see where property owners could apply for some funding to fix their own sidewalks as many of them are very uneven and dangerous and a lot of seniors have expressed issues. She added that she would also like to advocate for the housing projects that are going on and to prioritize our most vulnerable population.

Councilmember Monteverde noted that the budget for housing repairs is not very much so could it be increased?

Alexandra Church, Planning & Development Director said that these funds do not expire at the end of the year so we have ongoing projects. That is how we can spend five hundred thousand on one project because we've kept some. We are actually allocating fifteen thousand more but we have a lot more already in that fund. We have been setting aside for emergencies so we have plenty and haven't gone over it yet.

Councilmember Monteverde asked if that's still with Habitat.

Ms. Church said that half goes to Habitat for their program but we keep about fifteen thousand on hand to cover if someone has an issue. If a building is condemned, the Code Office will reach out saying they have a senior with low income who can't afford these repairs and then the city can step in to make those repairs.

Councilmember Monteverde hopes we prioritize seniors.

Ms. Church said that they haven't turned anyone away and if they are income qualified it gets done.

Councilmember Shakur wants everyone to understand that these are Community Development Block Grants to develop the community. They encourage people to get involved in this process at the beginning and don't wait until the end asking why we did or didn't do something.

Councilmember Sklarz agrees it would be nice to support a sidewalk improvement plan especially for senior citizens who can't afford to take care of the areas in front of their homes.

Mayor Harvey agrees with that also because homeowners own their sidewalks and many can't afford the replacements especially the seniors. He is excited about the infrastructure improvements. We have twenty percent of the overall funds going to infrastructure for ADA compliant curbs because we are a walkable city so when we mill and pave we have to do ADA curbs to comply with the law so this helps us get more roads done.

There being no further comments this public hearing was closed.

Continuation of Public Hearing on 2022-2023 MS4 Annual Report

Mayor Harvey called for a continuation of a public hearing that was advertised for this meeting to received comments on the City's 2022-2023 MS4 Annual Report.

Michelle Kelson, Corporation Counsel said this is a continuation for the public hearing that was opened at the last meeting. The City has a permit issued by the Department of Environmental Conservation for pollutant discharge and to comply with the stormwater regulations we have to file an annual report pertaining to discharges and the operation of the Wastewater Treatment Plan. That report was posted online and if there are any additional comments on that report we would like to hear them now because we have to make our submission.

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

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

Debra Danzy, Lake Street, thanked Councilmembers Sklarz and Grice, Mayor Harvey, the Water Department and Mr. Garrison for taking care of the water main break on Lake Street quickly. She thanked the City for donating cases of water to the seniors at the high rise as well as Rev. McLymore of Life Restoration Church, Rev. Lewis from Calvary Presbyterian and Mayor Harvey. There was a water main break and fire in the building that was contained and no one was hurt. She added that the Newburgh Food Project Community Survey is up and running and they are joining Churches in the City to get involved. Lastly, she didn't understand the money for the pool and was against it but she now has clarity and will ensure community members that the money is worth the investment.

Carla Johnson, City of Newburgh asked what W.H.G. stands for on numbers 17 and 18. Following communication with the Fair Housing Justice Organization, she doesn't believe William Giametta should be allowed these properties he is asking these deeds for. He used to be a code officer in the City of Newburgh and he took a lot of buildings from the City so she asked the Council to please hold off on this because the City might be getting some of these buildings back. He also gave properties to people who are slumlords so he shouldn't be rewarded with the deed to these properties just yet. She agrees on the funding for our roads and sidewalks and she told the City Manager that she thinks he is doing a good job for our City.

Brian Scully, City of Newburgh said he is a traumatic brain injury survivor and suggested that people using the Skateboard Park should be wearing helmets because a head injury is a dangerous thing. A friend of his hit his head and a week later he passed away, so a head injury is very serious. His neighbor's house is vacant and they have been working on it for years. Two years ago they took half the roof down and slid it onto his property so he had to clean it up. He asked them not to put things on his property but they made an agreement with the Inspector's Office that they were going to cover his house and remove the asbestos. Our houses are about eight feet apart so they left asbestos on his property which he and his tenant had to clean up and he took pictures. He was told that if he worked with them it would be easier for everyone but if he didn't cooperate they would give him a hard time.

Mayor Harvey gave Mr. Scully his card to call his office because it sounds like he may need an Attorney.

Gabrielle Hill, City of Newburgh said she was always bugging the City Manager and his staff about the pool and then one day he told her to be patient and he promised it would be worth the wait and it will be. She is excited that our children will have the opportunity to have that experience that only water can bring because it is soothing and therapeutic. She suggested that they have fifty plus senior swim parties in the evening. She is proud of her fellow residents and business owners and wanted to thank them for planning our first We Still Lit Festival. It was a fun filled event and it's important for all of us to come together

as much as we can as we move forward to make our city the great place we know that it can be. In addition to the Juneteenth events at Downing Park on Saturday and Sunday, she announced that we will be having our second Barbershop Appreciation Day this Thursday, June 15th from 4:00 pm to 7:00 pm at the Broadway community lot between Lander Street and Johnston Street. This is an opportunity for us again to come together, have some fun and maybe enjoy a free haircut. She asked if a date has been set for the sprinklers at Tyrone Crabb Park. She reminded the Council to please think about the date for the Colored Burial Ground Marker Installation as they would like to have it before Mr. Grice leaves the Council and the date she has in mind is Sunday, September 24th because there is no school or work that Monday.

Andre Niles, 258 Liberty Street said he doesn't understand why someone wants to become a cop if they are afraid of the people they have to police. He had an incident the same day as the fire where there was a barrier. He went up to an Officer to ask some questions, but he was very aggressive and non-cooperative. He was being very calm but if he did that to someone else, they could match his energy creating an incident. They should be deescalating the situation not making a bigger issue.

Sertaira Boyd, City of Newburgh said that they know Mr. Green and they have visited this issue with him before as he works with housing and DSS. There is a young lady who has been sleeping in her car and she was stopped by the Police because she had no tags on her car and was driving with three small children. She can't get housing and she is homeless trying to go to Shelters but she wants her children with her. She can't have them with her at the Ministry so they denied her and right now she is on the street and the children are with family. Mr. Green is very nasty and he demeans women especially minority women. He is disrespectful and treats them like crap so he is a problem and something needs to be done.

Mayor Harvey recommended that they get a petition with a thousand or more signatures and he will help submit it to the County Executive's Office because they oversee his office.

Ms. Boyd added that we are short on police but we have had road rage twice this week so we need some kind of enforcement and the police to be out here stopping people. Lastly people are asking about the swimming pool. Will the residents of the City of Newburgh be free or at a reduced cost with outside municipalities paying a different fee?

Jewel Martin, City of Newburgh wanted to address a comment she made that was taken way out of context. She doesn't care for her words being twisted around to suit an agenda. She like all types of people and the Police Department is a rainbow of colors. When she goes to 2 Alices, it's a rainbow of colors and she doesn't care for lawlessness which is what she was talking about. When it comes to housing, the Shelters are not safe. Councilman Shakur told her to come to the City Council to speak but every time she comes here she is told to go to the Newburgh Ministry but they are not safe and she keeps telling the Council this. They should be closed down because they aren't doing anything for your constituents which are incarcerated, have mental health or substance abuse. When she talks about the Police and Fire Department, she gets criticized again. She doesn't care for the criticism but she will keep coming back to hold each and every one of them accountable.

Ray Harvey, City of Newburgh said he will be the first to admit that when he heard twelve

million dollars for the swimming pool he didn't know what the City was doing but he thinks it's important for everyone to come to these meetings to get the truth. Once he listened with an open mind and he saw the plan, it made sense. It's a lot of money but people are misinformed. He feels that the City is in the best financial shape than it's been in a long time because of difficult decisions that were made. He noted that there will be Juneteenth events on Saturday and Sunday and the Barbershop event on the 15th. He appreciates the work that the Council is doing even though he doesn't always agree he sees the progress.

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 the Fire Department because they have been working very hard. There was a fire on the corner of City Terrace and Broadway and he saw the videos. He also wanted to thank the Water Department for their help with the water main break over at Lake Street. The Fire Department, DPW and one of our Lawyers was also there helping out. He suggested signing up for the text alerts to get information which will help to reduce the panic. He agrees that we need a traffic unit for our Police Department as there is an uptick with off-road vehicles so he is going to work with his colleagues to see what they can do to curb that. We Are Lit was lit and he had a great time there and we have the Barbershop and two Juneteenth Events coming up. There is also an Event coming up from July 17th to July 21st with Church At The Bridge called Love My City. It will be a City wide event with lots of Churches, organizations and businesses with a culminating Event at Delano-Hitch so he is looking forward to that.

Councilmember Martinez thanked everyone for being here and on housing she agrees that Shelters are not the safest place. The County has to do better because our Shelters do not equip people with the right resources and there are not enough resources here for City of Newburgh residents. The County treats us like we are the only place along with Middletown and Port Jervis to send people to. She wants to emphasize that they should have more Shelters or at least transitionals where they can help people regardless of mental health or substance abuse issues. Perhaps this is a conversation we can have with our County Legislators to get some help and get the ball rolling on that. She is very excited about the Juneteenth Events and Block Party happening in Ward 1 and she hopes to see the community come out to support these efforts.

Councilmember Monteverde said we had a great presentation from the Auditors, and it was really good news. Today she had the honor of meeting Lt. Governor Delgado and gave him a tour of the Cornerstone building as he is very interested in seeing supportive, affordable, low-income housing and what it looks like. What we need to do in the County is not build Shelters because we need affordable permanent housing. Studies will show that Shelters are alright for a minute but in the United States because of the housing crisis we need to build affordable housing for families, adults and young adults as well as senior citizen housing because there is not a lot of that in the City of Newburgh.

Councilmember Shakur thanked everyone for coming out and said he has been hearing Mr. Green's name come up for ten years every time someone has a housing problem. He is not

here to help our city, he is here to keep things as they are. Same thing with the Newburgh Ministry because none of those people are from Newburgh and there are no programs for them so they are creating a problem for us. These people are put out in the morning and then they sit out here all day until night because they have nothing to do. There are no programs to help them out of this situation so the Newburgh Ministry doesn't do anything for our City. Newburgh Ministry and Mr. Green are the biggest problems of why our housing is the way it is right now so get those petitions going and get Mr. Green out of there. Also, Wednesday, June 14th is the third part of our Stop the Violence Tour in the community asking them to join in to talk about how we can stop this gun and chemical violence in our community. This is a big problem in our community and we have to understand that this is our problem too so we have to make sure that we do our job to help with this. He noted that June 17th will be the first day of early voting so make sure you get out to vote. Everyone goes to the Activity Center for the first nine days and then on the last day you go to your assigned location which will be the Activity Center, Kol Israel or the Heritage Center. Get out to vote and get to these meetings.

Councilmember Sklarz said that the water main break on Lake Street was a big one and he thinks it was the fourth one our Water Department responded to last week. They quickly responded to excavate the area and he looked in the hole and saw the main break, which was pretty sizable, along with Verizon utility lines, power lines and the water but they were in there working hard and doing their thing. It was fixed quickly so water and power were restored by 10:00 that night. The Fire Department was also called for fires at the Lake Street High-Rise which is a difficult building for the Fire Department to respond to so he wanted to thank both the Water Department and the Fire Department for their extraordinary work over the weekend. On Saturday he attended a Fundraiser at Downing Park hosted by the Downing Park Conservancy which was a nice event and a lot of money was raised to continue the great work that they are doing. They gave a special thank you to the Department of Public Works for all of the work they are doing in the Park to keep it looking nice and if you want to make a donation to the Conservancy, you can do so at downingparknewburgh.org. He added that he also visited an event on Saturday sponsored by the Quassaick Creek Watershed Alliance and the Newburgh Rowing Club where they had kayaking and tours of the Muchattoes Lake area. What a treasure that small lake is in the middle of the city.

Mayor Harvey thanked everyone who came out tonight. He thanked Wayne Vradenburgh and his staff for all of their help with the water main break on Lake Drive and Chief Spinelli and his team for the two or three fires we had this past week especially the one on Broadway. It was a major undertaking and our Fire Department did a heroic job along with the Police Department, DPW and everyone involved putting out the fire and keeping people safe. He thanked Debra Danzy for always being on his radar and calling him when it's an emergency because the seniors are important to all of us. He thanked Gabrielle Hill with the Barbershop Events and the Colored Burial work also. Ms. Boyd is serious about Prospect Street because she is the queen block captain. On the homeless shelters, we have the Newburgh Ministry which is in line to double their capacity and he agrees we need to speak to the County and put our voices in writing with those petitions. He agrees with the person who spoke earlier that people on our police force have to know and understand how to relate to the people that they serve. They are here to protect and serve.

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

CITY MANAGER'S REPORT

Resolution No. 105 - 2023 - PIN No. 8761.57 Lake Street (Route 32) Bridge Rehabilitation Supplemental Agreement w/McLaren Engineering Group

Councilman Shakur moved and Councilwoman Sofokles seconded.

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

Adopted

Resolution No. 106 - 2023 - BIN No. 2223640 Little Britain Road Over Quassaick Creek Inspection Proposal w/HVEA

Councilman Shakur moved and Councilman Sklarz seconded.

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

Adopted

Resolution No. 107 - 2023 - North Interceptor Sewer Project Change Order No. 1 Kubricky Construction Corp

Councilman Shakur moved and Councilwoman Monteverde seconded.

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

Adopted

Resolution No. 108 - 2023 - Delano-Hitch Recreation Park Aquatics Center SEQRA

Mayor Harvey said he is super excited and proud of what we are going to be able to do for our kids, adults, and families when this Aquatic Center opens. They have discussed having a groundbreaking ceremony and ribbon cutting when it's ready. This is going to be spectacular.

Councilman Sklarz moved and Giselle Martinez seconded.

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

Adopted

Resolution No. 109 - 2023 - Award of Bid No. 2.23 Delano-Hitch Recreation Park Aquatic Center Demolition

Councilman Sklarz moved and Councilman Shakur seconded.

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

Adopted

Resolution No. 110 - 2023 - Proposal with CPL for Construction Administration Professional Services Pool Demolition

Councilman Sklarz moved and Councilman Grice seconded.

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

Adopted

Resolution No. 111 - 2023 - 153 Lander Street - Release of Restrictive Covenants

Councilman Sklarz moved and Councilman Grice seconded.
Ayes: Grice, Martinez, Monteverde, Shakur, Sklarz, Harvey - 6
Adopted

Resolution No. 112 - 2023 - 166 South Street - Release of Restrictive Covenants

Councilman Sklarz moved and Councilman Shakur seconded.
Ayes: Grice, Martinez, Sklarz, Harvey - 4
Nays: Shakur-1
Adopted

Resolution No. 113 - 2023 - 27 Lander Street - Release of Restrictive Covenants

Councilman Sklarz moved and Giselle Martinez seconded.
Ayes: Grice, Martinez, Sklarz, Harvey - 4
Nays: Shakur-1
Adopted

Resolution No. 114 - 2023 - 17 Johnston Street - Extension of Site Development Agreement

Councilmember Grice said that at least once a week he speaks with our homeless population, and he finds that a lot of our homeless population is not from here. They are from surrounding areas that do not have affordable housing so they get forced out of where they live and are sent here to the City of Newburgh. Some are on drugs and have mental health issues but housing is a human right just like food, clothing and shelter. It's a complex problem so we need other surrounding towns to have affordable and transitional housing also and we need the County and State to push these other places to get rid of the laws that prevent this in those areas. He is going to support this because we have a population here that needs it but there is a lot of work to be done.

Councilmember Shakur said that Newburgh has always had a housing problem but now we have a homeless problem. The Newburgh Ministry and this drug problem has brought a population here that is now homeless and a lot of it is coming from other municipalities. There is an influx of people coming here to buy drugs and the Newburgh Ministry is bringing people from the County, but they are not giving them the means and the programs to survive. They just house them for a couple days and then put them out on their own.

Mayor Harvey said he is very aware of the homeless situation in our City and he has had conversations with the homeless population as well as people advocating for our homeless. As it was mentioned, the City of Newburgh and Middletown are the only municipalities in the entire County with homeless shelters. This has been the case for decades and he once overheard a County person say that the City of Newburgh was their dumping ground. They were strategically put here because this is where "*All of the social services were*" and this is the way it's been for fifty years but other municipalities need to have homeless shelters and facilities also. We are in a housing crisis, which is why he got passionate in some of the discussion last Thursday about the six or seven development properties that have already passed through Council. These developers have amazing projects for affordable housing and or mixed income housing. One on Colden Street has sixty-six units so he got passionate this past Thursday because he is constantly communicating with the homeless population and families that have been here for decades that are getting priced

out. People are getting eviction notices, not because they didn't pay rent but so some of these landlords can do some touch ups on the apartments and then jack up the prices to \$2,000.00 or \$3,000.00 per month. We are in a housing crisis which is why the Lt. Governor was here at Cornerstone for a tour because they know we are in a housing crisis and have already declared that in the State of New York.

Councilman Grice moved and Giselle Martinez seconded.

Ayes: Grice, Martinez, Monteverde, Sklarz, Harvey - 5

Nays: Shakur-1

Adopted

Resolution No. 115 - 2023 - 155 Dupont Avenue - Satisfaction of Mortgage

Councilman Sklarz moved and Councilman Shakur seconded.

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

Adopted

Resolution No. 116 - 2023 - To Apply for and Accept if Awarded a NYS DEC 2023 Urban and Community Forestry Grant for Tree Inventory and Community Forest Management Plan Update

Councilman Sklarz moved and Councilman Grice seconded.

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

Adopted

Resolution No. 117 - 2023 - License Agreement - The Cathedral at the House - Healthy Orange Farmers Market at 140 Broadway

Councilman Shakur moved and Councilman Grice seconded.

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

Adopted

Resolution No. 118 - 2023 - 2023-2024 Gun Involved Violence Elimination(GIVE) Initiative

Councilman Sklarz moved and Giselle Martinez seconded.

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

Adopted

Resolution No. 119 - 2023 - Delano-Hitch Stadium Locker Room - Pre-renovation Environmental Testing Proposal

Councilman Sklarz moved and Councilwoman Monteverde seconded.

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

Adopted

NEW BUSINESS

Councilmember Monteverde said that we have hired a lot of young firefighters and she would like the Chief to give a presentation to discuss where we are with manpower in the Fire Department. We've had a lot of fires in the City of Newburgh recently so she would like an update on how things are going.

Mayor Harvey said he is in the preparation phase of writing a summary so we can do a

resolution for a street naming in honor of Mr. Johnson who was one of a few African American architects in the Mid-Hudson Valley. He did the architectural design for Lake Street Apartments and some other buildings in the City of Newburgh as well as taught at Vassar College for thirty-seven years and he passed away in 2021. They would like to do a street naming in his honor where the new bridge is.

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

OLD BUSINESS

Councilmember Monteverde asked for an update on the community aggregation program.

Councilmember Shakur asked about the sidewalks and curbs by the Hospital because there have been several accidents there. People have been complaining that the curbs are too tight.

Mayor Harvey said he received several calls and spoke with Mr. Morris. The curbs have been built and designed by State regulations to slow people down at that intersection.

Jason Morris, City Engineer said that they are designed to slow traffic down. The ones being done on Third Street will have line striping to aid pedestrians and vehicles as they pass through those corridors to know where those curb ramps are which will help address some of those complaints.

Mayor Harvey added that it's right there at the Hospital in a residential area with kids playing. People complain about the potholes and then when the streets are milled and paved people start speeding on them. We solve the pothole issue but then everyone wants to speed.

Councilmember Shakur suggested maybe putting up signs notifying people there are new curbs and to slow down but the Hospital is already a slow zone area. The people that contacted him were elderly, so they probably weren't aware of the new curbs.

Mayor Harvey received a call about a Key to the City for Ms. Roxie Royal and her family would like to have that presentation added to the agenda for July.

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

FURTHER COMMENTS FROM THE COUNCIL

Councilmember Grice said that as Councilmember Shakur mentioned, early voting is coming up and it's critical that people participate in the Election process if you want your voice to be heard. Some people have asked him who he is endorsing or would like to see so he says to think about the people you see out there every day who are working for you not just when there is an election. That will give you a clear indication of which way you should vote because local elections are where the decisions that those people make will impact you directly every single day.

Councilmember Martinez reminded everyone that early voting is coming up on June 17th and the Primary is on June 27th so it's important to vote. Our community deserves leaders that reflect them so please vote. Everyone has a voice so choose the representative that you feel best fits that voice for you.

Councilmember Monteverde wished everyone a good night.

Councilmember Shakur thanked everyone for coming out tonight and watching. On June 14th the Stop the Violence Tour will be at 104 South Street, on June 17th early voting starts and June 18th will be our Juneteenth Event at the Downing Park so come out to enjoy celebrating our ancestors.

Councilmember Sklarz wished everyone a good night.

Mayor Harvey said he is excited about a lot of the things happening in our city. We've made a lot of progress thus far and will continue to make progress. He thanked everyone for coming out because it's encouraging to see so, please continue to do so. Come support our Juneteenth Event and continue to support your city elected officials and workers because a lot of the work being done is not easy, but we have made some serious inroads. He thanked the entire team for their day to day work because it is noticed so keep doing what you are doing.

ADJOURNMENT

There being no further business to come before the Council the meeting adjourned at 9:53 PM.

LORENE VITEK
CITY CLERK

RESOLUTION NO.: 105 - 2023

OF

JUNE 12, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL
AND EXECUTE AN AMENDMENT TO THE AGREEMENT WITH
MCLAREN ENGINEERING GROUP FOR PROFESSIONAL ENGINEERING AND
CONSTRUCTION SUPPORT SERVICES RELATED TO
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE (LAKE STREET BRIDGE)
REHABILITATION PROJECT BIN NO. 2022260 AT A COST OF \$49,810.00**

WHEREAS, by Resolution No. 225-2014 of September 8, 2014, the City of Newburgh approved a contract with McLaren Engineering Group for inspection and engineering design services for the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (the "Project"); and

WHEREAS, the Project was suspended until the City was awarded a New York State Department of Transportation Bridge NY 2016 Program grant; and

WHEREAS, by Resolution No. 264-2018 of September 24, 2018, the City of Newburgh approved a contract amendment with McLaren Engineering Group for professional engineering and construction support services, including certain design and pre-bid requirements required by the New York State Department of Transportation, for the Project; and

WHEREAS, by Resolution No. 17-2021 of February 8, 2021, the City of Newburgh approved a contract amendment with McLaren Engineering Group for professional engineering services in the bid phase of the Project at a cost of \$41,770.00; and

WHEREAS, McLaren Engineering Group has submitted a proposal for a contract amendment for additional professional engineering services agreement during the construction phase of the Project, including modifications of the design manufacture and installation of the steel plate liner, at a cost of \$49,810.00 with funding for the additional services to be derived from an allocation of NYSDOT Touring Route Funds; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that continuing with such work as proposed would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute a contract amendment with McLaren Engineering Group for professional engineering and construction support services in connection with repairing and rehabilitating the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) BIN No. 2022260 Rehabilitation Project at a cost of \$49,810.00.



Structural | Civil + Site | Marine + Coastal
Bridge, Highway + Rail | Entertainment | Geotechnical
Facade + Building Envelope | Construction Engineering
Forensic Investigation | Surveying + Mapping

May 18, 2023

City of Newburgh
83 Broadway
Newburgh, New York 12550

Attn: Mr. Jason C. Morris, P.E., City Engineer

Email: JMorris@cityofnewburgh-ny.gov

Re: Rehabilitation of Route 32 Bridge/Culvert over Quassaick Creek (Lake Street Bridge)
BIN 2022260, City of Newburgh, NY
McLaren File No. 140246

Dear Mr. Morris,

As requested, M. G. McLaren Engineering and Land Surveying P.C. (McLaren) is pleased to provide the City of Newburgh our proposal for a contract amendment to perform construction support for the rehabilitation of Route 32 Bridge/Culvert over Quassaick Creek in the City of Newburgh.

The City of Newburgh contracted with McLaren to provide professional engineering services for the Lake Street bridge over the Quassaick Creek. The construction phase of the project is winding down, with completion anticipated early summer 2023.

McLaren performed a number of additional tasks during the construction phase that are considered beyond the scope of our original contract and previous amendments for construction support services. Fulfillment of these tasks listed below exceeded our previously contracted budget therefore we seek an additional fee amendment of \$49,810:

1. Field survey data indicating the existing arch had settled more than expected led to additional effort as McLaren needed to develop a new shallower liner profile design along with the submission of two memos on this issue. Updated submittals also had to be reviewed again for the revised steel liner design. McLaren reviewed a total of five submittals for the liner, where two would be typically anticipated.
2. Typical NYSDOT local bridge project scope of services assume 5 RFI responses are required throughout the construction phase. McLaren responded to 21 RFIs in total. Therefore, the effort required to respond to 16 of these RFIs is considered additional work.
3. McLaren provided 5 field change sheets to remove the riprap item that was deemed unnecessary in order to simplify construction, reduce costs and mitigate environmental permit concerns. Provision of field change sheets was not included in the original scope of work. McLaren also performed additional effort related to environmental permit interpretation and renewals / extensions which required review time and a significant amount of correspondence. Effort related to permitting was excluded from the original 6/16/14 scope.
4. A significantly longer than anticipated construction phase duration combined with rising billing rates due to unprecedented industry inflation since the January 19, 2021

11 Offices Worldwide
Licensed and Operating in 49 States and Internationally
www.mgmclaren.com
MGMclaren@mgmclaren.com

M.G. McLaren Engineering and Land Surveying, P.C.
530 Chestnut Ridge Road
Woodcliff Lake, NJ 07677
T. 201.775.6000 | F. 201.748.8522

supplement for Construction Support Services and Bid Support contributed to McLaren exceeding the supplement budget. The supplement had used McLaren's 2020 billing rates and had also assumed a December 2021 construction completion date, which is now anticipated to be early summer 2023. Increased infrastructure demand and competition for hiring and retaining technical staff paired with historic nationwide inflation in cost of living and company overhead costs have caused billing rates to increase significantly in a very short time period, which could not have been anticipated.

Please do not hesitate to contact me or Gavin Daly if have any questions or require additional information. This proposal is subject to the terms and conditions that follow. Should you find this proposal acceptable, kindly sign and return one copy to serve as our contract.

Very truly yours,

The Office of
M.G. McLaren, Engineering and Land Surveying. P.C.



Gerard J. Bartucci, P.E.
Vice President – Bridge/Highway/Rail Division

cc: GPD, Internal

ACCEPTED:

For City of Newburgh

Title

Date

TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** M.G. McLaren Engineering and Land Surveying, P.C. (McLaren), through and by its officers, employees and subcontractors, (hereinafter McLaren) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal. No third party beneficiaries are intended by this agreement.
2. **PAYMENT TERMS.** Client agrees to pay McLaren's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of McLaren's invoice, Client agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from McLaren's invoice on account of liquidated damages unless expressly included in the Agreement. Client receipt of invoice will be presumed three days after mailing by McLaren first class, with adequate postage attached. Time is of the essence for this provision.

Client payment to McLaren shall not depend, or be conditioned upon payment by the Owner or others to Client. Client's obligation to pay McLaren for its services shall be independent of payment by the Owner to Client.

Because most of the engineer's (McLaren) involvement in the project occurs in the early stages of the project, Client agrees to pay McLaren at a percentage commensurate with the actual amount of work accomplished by other members of the project. If there is a Construction Administration (CA) component to this project, Client further agrees to compensate McLaren appropriately for all work expended on the project regardless of the percentage of work accomplished by the Architect or other team members.

3. **TERMINATION.** Either party may terminate this Agreement without cause upon 30 days prior written notice. This Agreement will terminate automatically upon the insolvency of Client. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay McLaren for all reasonable charges incurred to date and associated with termination of the work, plus a termination fee of 10% of the total fee under this agreement.

If the Project is suspended for more than thirty consecutive days, for reasons other than McLaren's fault, McLaren shall be compensated for services performed prior to such suspension. When the project is resumed, our compensation shall be equitably adjusted.

If Client abandons the Project because of the Owner's abandonment of the Project for more than ninety consecutive days, McLaren may terminate this Agreement by giving written notice. McLaren shall be compensated for all services performed prior to such abandonment, plus 10% of McLaren total fee under this Agreement, together with reimbursables then due.

4. **STANDARD OF CARE.** McLaren will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of McLaren's profession practicing in the same or similar locality at the time of service. No other warranty, express or implied, is made or intended by McLaren's proposal or by its oral or written reports.
5. **INSURANCE.** Both McLaren and Client will effect and maintain insurance to protect themselves from claims arising out of the performance of professional services under this Agreement and caused by any error, omission or negligent act for which we are legally liable. Both McLaren and Client will maintain this insurance in force, if available, after the completion of professional services under this Agreement until the expiration of any applicable statutes of limitation. In the event there is no such statute specifically applicable to design and construction of improvements to real property, this insurance, if available, shall be maintained in force by both parties for a period of six (6) years after the date of substantial completion of the Project as agreed to.

Unless otherwise agreed, both parties will effect and maintain insurance to protect ourselves from claims under workers' or workmen's compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

The insurance required above shall be as provided below. McLaren and Client will file with each other certificates of insurance for each type and amount prior to commencement of work under this agreement:

Professional Liability Insurance (Errors & Omissions), with a limit of \$2,000,000 for each claim and \$2,000,000 in the aggregate.

Comprehensive General Liability - \$1,000,000 per occurrence, \$2,000,000 Aggregate Bodily Injury and Property Damage; Blanket Contractual All Operations Completed Operations; \$1,000,000 Personal Injury A.B.C., plus \$5,000,000 Excess Liability Umbrella.

Worker's Compensation/Coverage A - Statutory/Coverage B - \$1,000,000

6. **SITE OPERATIONS.** Client will arrange for right-of-entry with safe access to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

McLaren will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in McLaren's proposal, the Contract Sum does not include cost of restoration due to any related damage,

unless such damage directly results from McLaren's negligent actions. If Client requests McLaren to repair such damage, it will be done at an appropriate additional cost to be paid by Owner.

McLaren shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the contractor (Work), nor shall McLaren be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

7. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing McLaren's services. If this occurs, McLaren will promptly notify and consult with Client, but will act based on McLaren's sole judgment where risk to McLaren's personnel is involved. Possible actions could include:
- a. Complete the original Scope of Services in accordance with the procedures originally intended in this Agreement, if practicable in McLaren's judgment;
 - b. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
 - c. Terminate the services effective on the date specified by McLaren in writing.
8. **DOCUMENTS.** McLaren will furnish Client the agreed upon number of written reports and supporting documents. These instruments of service are furnished for Client's exclusive internal use and reliance, use of Client's counsel and for regulatory submittal in connection with the project provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:
- a. All documents including paper documents and electronic files generated by McLaren under this Agreement shall remain the sole property of McLaren. Any unauthorized use or distribution of McLaren's work shall be at Client's and recipient's sole risk and without liability to McLaren.
 - b. If Client desires to release, or for McLaren to provide, our documents to a third party not described above for that party's reliance, McLaren will agree to such release provided McLaren receives written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement. Documents provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that McLaren's documents reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request creates potential conflict of interest for McLaren and by this request Client waives any such claim if McLaren complies with the request.

- c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by McLaren pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without McLaren's prior written approval.
 - d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by McLaren for proper performance of our services. McLaren may rely upon Client-provided documents in performing the services required under this Agreement; however, McLaren assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but McLaren may retain one confidential file copy as needed to support our report.
9. **CLAIMS.** The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.
10. **OPINIONS OF COST.** If included in our scope of services, McLaren will use its best efforts and experience on similar projects to provide realistic opinions of costs for remediation or construction as appropriate based on reasonably available data, McLaren's designs or McLaren's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation. Client understands actual costs of such work depend on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond McLaren's control.
11. **TESTIMONY.** Should McLaren or any McLaren employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing or trial, in relation to services provided under this Agreement, and McLaren is not a party in the dispute, then McLaren shall be compensated by Client for the associated reasonable expenses and labor for McLaren's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides McLaren such compensation, Client will receive a credit or refund on any related double payments to McLaren.
12. **CONFIDENTIALITY.** McLaren will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Client.

13. **PRIORITY OVER FORM AGREEMENTS/PURCHASE ORDERS.** The Parties agree that the provisions of these terms and conditions shall control over and govern as to any form writings signed by the Parties, such as Client Purchase Orders, Work Orders, etc., and that such forms may be issued by Client to McLaren as a matter of convenience to the Parties without altering any of the terms or provisions hereof.
14. **SURVIVAL.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and McLaren shall survive the completion of the services and the termination of this Agreement.
15. **SEVERABILITY.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.
16. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior permission of the other.
17. **INTEGRATION.** This agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.
18. **LIMIT OF LIABILITY**
 - A. In the event the Owner or Client consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved in writing by McLaren, the Client recognizes that such changes and the results thereof are not the responsibility of McLaren. Therefore, the Client agrees to release McLaren from any liability arising from the construction, use or result of such changes. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the design Professional and all his employees, officers, and directors harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of McLaren or its employees, officers or directors.
 - B. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or McLaren. McLaren's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against McLaren because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.
 - C. The Client agrees to limit McLaren's liability and his or her consultants to Owner and to all Construction Contractors and Subcontractors on the project,

due to McLaren's negligent acts, errors, or omissions, such that the total aggregate liability of McLaren to all those named, including legal fees and costs, shall not exceed \$41,700.

The Client shall make no claim for professional negligence, either directly or in a third party claim, against McLaren unless the Client has first provided McLaren with a written certification executed by an independent design professional currently practicing in the same discipline as McLaren and licensed in the State of this project. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an Engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to McLaren not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation or judicial proceeding.

- D. The Client shall promptly report to McLaren any defects or suspected defects in McLaren's work or services of which the Client becomes aware, so that McLaren may take measures to minimize the consequences of such a defect. The Client warrants that he or she will impose a similar notification requirement on all contractors in his or her Owner/ Client contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client, and the Contractors or Subcontractors to notify McLaren, shall relieve McLaren of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- E. Payments to McLaren shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Client of offsetting reimbursement or credit from other parties causing Additional Services or expenses. No withholdings, deductions or offsets shall be made from McLaren's compensation for any reason unless McLaren has been found to be legally liable for such amounts.
- F. If, due to McLaren's error, any required item or component of the project is omitted from McLaren's construction documents, McLaren shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will McLaren be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.
- G. All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after three (3) years have passed from the date McLaren concluded rendering professional services, issuance of the Certificate of Completion or Certificate

of Occupancy, whichever is sooner, unless McLaren's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.

- H. It is intended by the parties to this Agreement that McLaren's services in connection with the project shall not subject McLaren's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against McLaren, a New York corporation, and not against any of McLaren's employees, officers or directors.
- I. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect or consequential damage that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- J. Because evaluation of the existing structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending additional sums of money or destroying otherwise adequate or serviceable portions of a structure, the Client agrees, to the fullest extent permitted by law, to indemnify and hold McLaren harmless from and against any and all damage, liability and cost, including reasonable attorneys' fees and defense costs, arising or allegedly arising out of the professional services under this Agreement, except for the sole negligence or willful misconduct of McLaren.

\\nydata01\Projects\Proj140\140246\2_Contract\Supplement 2023-05-16.docx

RESOLUTION NO.: 106 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
HUDSON VALLEY ENGINEERING ASSOCIATES, P.C.
FOR BRIDGE INSPECTION SERVICES RELATED TO
THE LITTLE BRITAIN ROAD BRIDGE OVER THE QUASSAICK CREEK
(BIN NO. 2223640) AT A COST OF \$6,275.00

WHEREAS, the New York State Department of Transportation has inspected and issued a red flag (8B23T1W009) for the Little Britain Road over the Quassaick Creek Bridge (BIN No. 2223640); and

WHEREAS, Hudson Valley Engineering Associates, P.C. has submitted a proposal a professional engineering services agreement to provide bridge inspection services at a cost of \$6,275.00 with funding for the additional services to be derived from an allocation of NYSDOT Touring Route Funds; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that continuing with such work as proposed would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Hudson Valley Engineering Associates, P.C. for professional engineering inspection services in connection with a red flag (8B23T1W009) for the Little Britain Road over the Quassaick Creek Bridge (BIN No. 2223640) at a cost of \$6,275.00.

**New York State Department of Transportation
Red Flag 8B23T1W009**

By: Matthew Vasco
Flag Date: May 17, 2023

Superseding Information:
This flag supersedes: YF 8B22VLW010

Structure Information

BIN: 2223640 Feature Carried: LITTLE BRITAIN RD Feature Crossed: QUASSAIC CREEK Orientation: 3 - EAST Posted Load Matches Inventory : Yes Bridge Load Posting (Tons) : Not Posted for Load Primary Owner: 42 - City Primary Maintenance Responsibility: 42 - City Typical or Main Span Type: 3 - Steel, 19 - Culvert This Bridge is not a Ramp Number of Spans: 2	Region: 08 - POUGHKEEPSIE County: ORANGE Political Unit: City of NEWBURGH Approximate Year Built: 1975
---	---

Verbal Notification Information

Person Notified: Jain Alexander Of: NYSDOT R-8	Date: May 17, 2023 12:30:00 PM
---	--------------------------------

Signature Information

Signature: Matthew Vasco, P.E. 103878-1 Reviewed By: Robert J. Seeley	Date: May 18, 2023 Date: May 19, 2023
--	--

Attachments: 10

Flagged Elements

Parent Element	Element	Total Quantity	Unit
<i>Span Number : 1</i>			
	240 - Steel Culvert	76	ft
<i>Span Number : 2</i>			
	240 - Steel Culvert	76	ft

Flagged Condition Description

Reg Flag 8B23T1W009 (Supersedes 8B22VLW010)

Subject: Steel plate arch perforations and section loss in spans 1 and 2.

The bridge consists of a 2-span corrugated steel pipe arch culvert structure with each span having a barrel length of approximately 76'. The pipe arches are founded on concrete footings which are 4' thick for the full length of both arches. The bridge is not currently posted for load.

The corrugated steel plate arch in each span has heavy corrosion over the entire length of the culverts that extends 6" to 12" above the normal waterline. In spans 1 and 2, the begin and end legs of the culvert has perforations and significant section losses for the full length of the culvert (span 1 most significant). In areas where perforations were not found, the steel was easily dented with a hammer. Water and soil could be seen spilling out of many of the perforations. Perforations were noted at various locations throughout the full length of the barrels. The perforations range in size from crack like to 8" high. Overall culvert section losses are as follows:

Span 1:

The begin leg in span 1 exhibits overall section losses of 60% from stations 0+00 – 0+30. From station 0+30 to 0+76, the begin leg exhibits overall section losses of 75% with numerous perforations, mostly located on the outwards crest and slopes of the corrugations. The end leg of the pipe arch exhibits 75% section loss from stations 0+00 – 0+30, and 0+50 – 0+65. From stations 0+30 – 0+50, and 0+65 – 0+76 the end leg exhibits 60% section loss.

Span 2:

The begin leg, between stations 0+00 – 0+20 exhibits 50% section loss. Between stations 0+20 – 0+35, and 0+40 – 0+75 the begin leg exhibits 40% section loss and between stations 0+35 – 0+40 the begin leg exhibits 75% section loss with perforations. The end leg, between stations 0+00 – 0+35 and 0+50 – 0+60 exhibits 75% overall section loss with numerous perforations. From stations 0+35 – 0+50, and 0+60 – 0+76 the end leg exhibits 50% section loss.

Section losses and perforations appear to have increased slightly since the previous inspection.

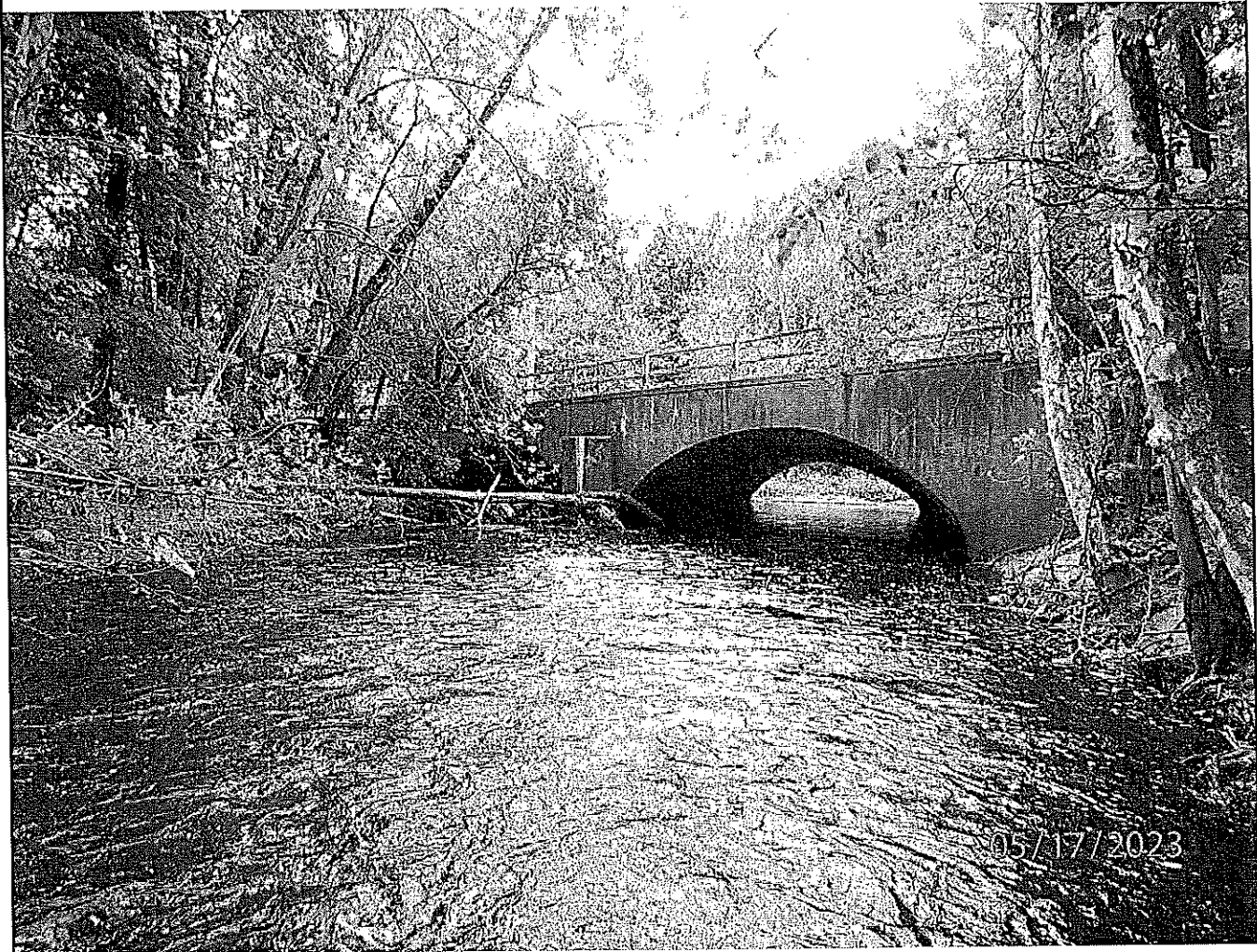
Additionally, there is deformation to both culvert arches, which has been noted since the 2014 inspection. The deformation is most notable on the begin side of the crown in both spans. Culvert readings show no significant changes since the previous inspection. The roadway surface above the culvert shows no signs of distress.

A Red Flag is being issued due to advanced section loss and perforation in the culverts. There is water and backfill actively flowing out of the perforations at many locations. Continued loss of fill and section loss could affect the structural integrity of the culverts.

Flag Photographs

Photo Number: 1

Photo Filename: 23_P5171323.JPG



Attachment Description: Left elevation looking right.

Photo Number: 2

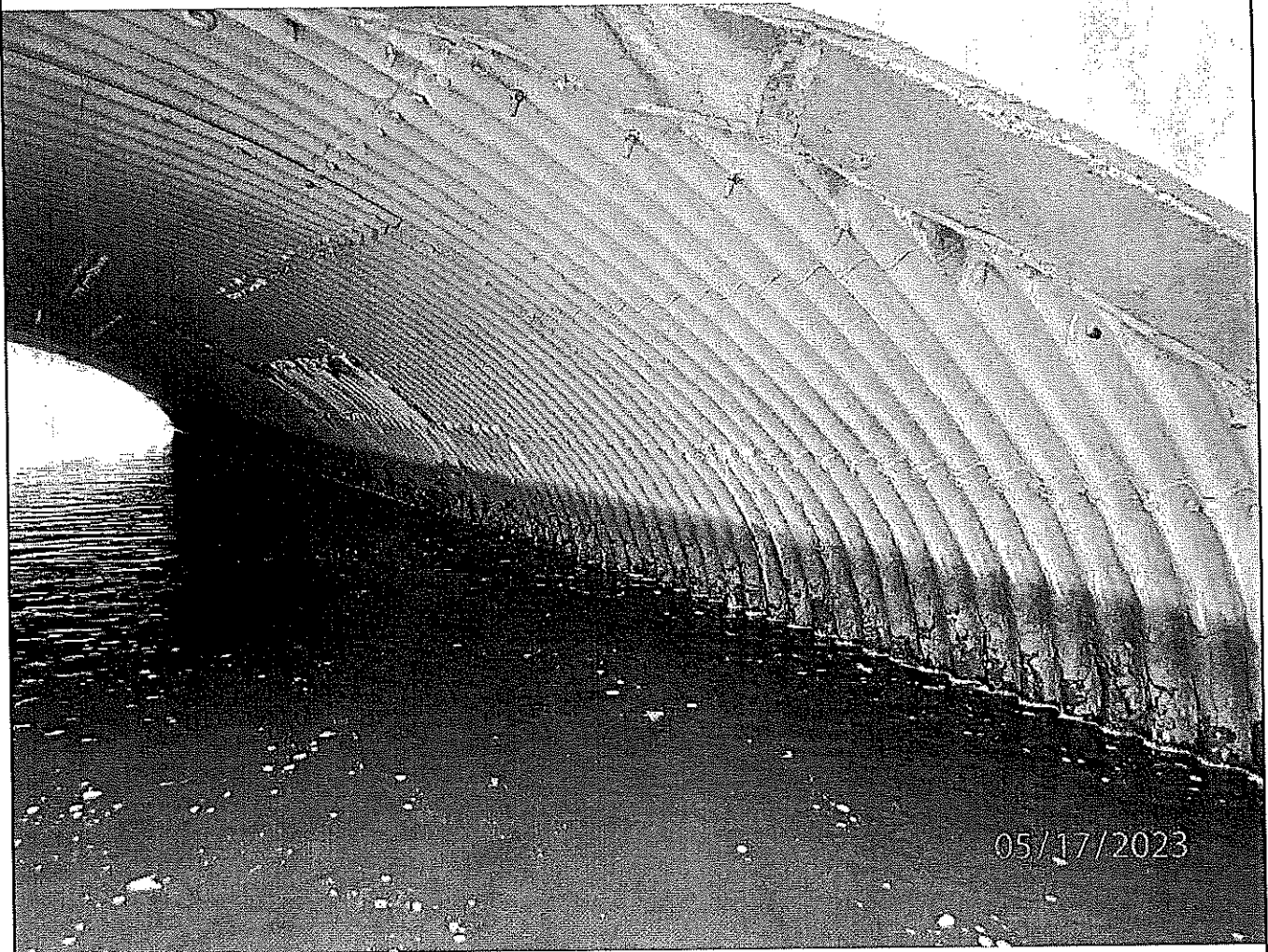
Photo Filename: 23_P5171360.JPG



Attachment Description: Top of wearing surface looking right.

Photo Number: 3

Photo Filename: 23_P5171325.JPG



Attachment Description: Span 1, begin leg at left side looking right.

Photo Number: 4

Photo Filename: 23_P5171326.JPG



Attachment Description: Span 1, begin leg at station 0+35.

Photo Number: 5

Photo Filename: 23_P5171330.JPG



Attachment Description: Span 1, begin leg at station 0+65 looking left.

Photo Number: 6

Photo Filename: 23_P5171339.JPG



Attachment Description: Span 1, end leg at station 0+60 looking right.

Photo Number: 7

Photo Filename: 23_P5171355.JPG



Attachment Description: Span 2, end leg at station 0+35 looking left.

Photo Number: 8

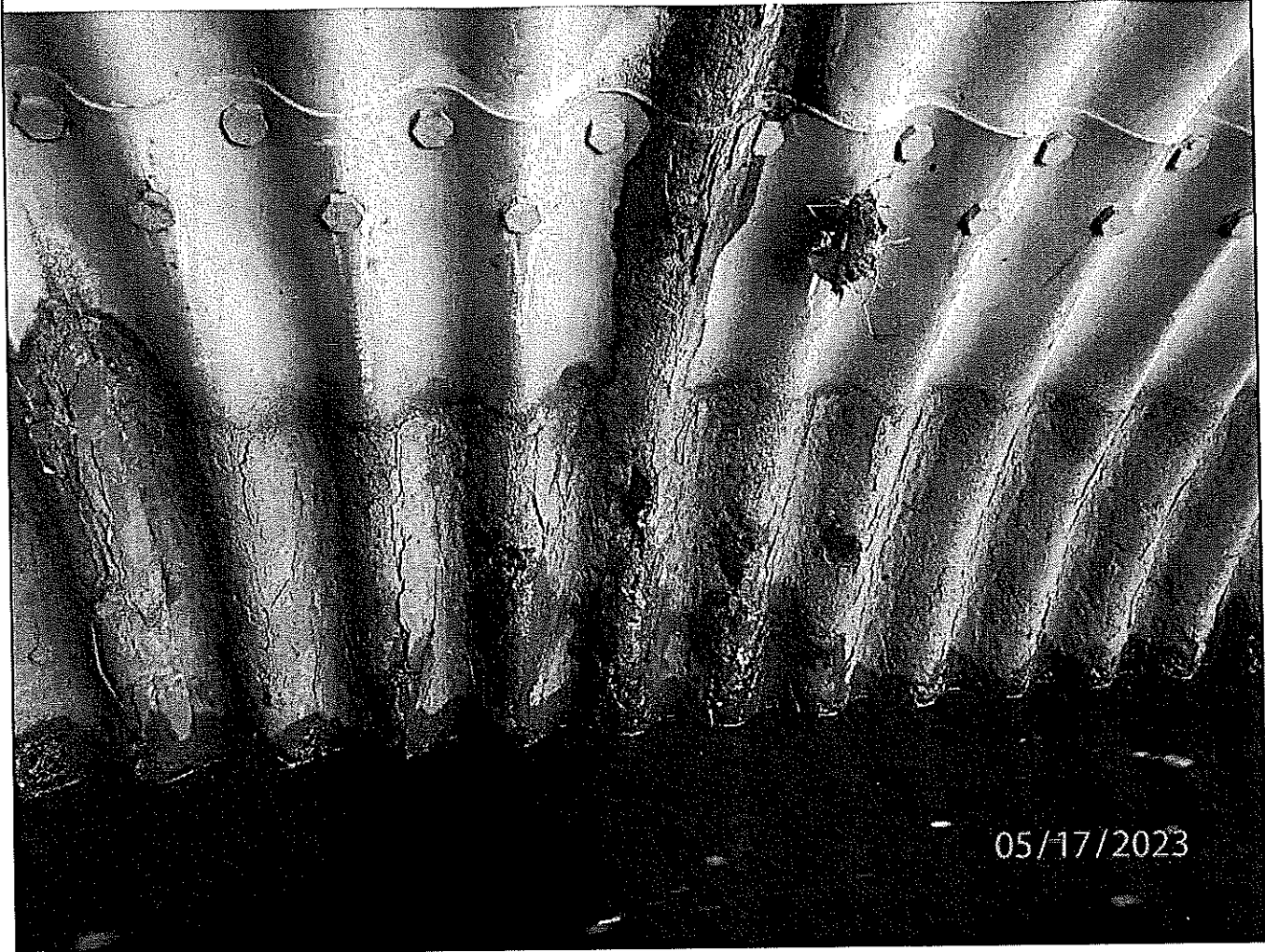
Photo Filename: 23_P5171350.JPG



Attachment Description: Span 2, end leg at station 0+05 looking right.

Photo Number: 9

Photo Filename: 23_P5171354.JPG

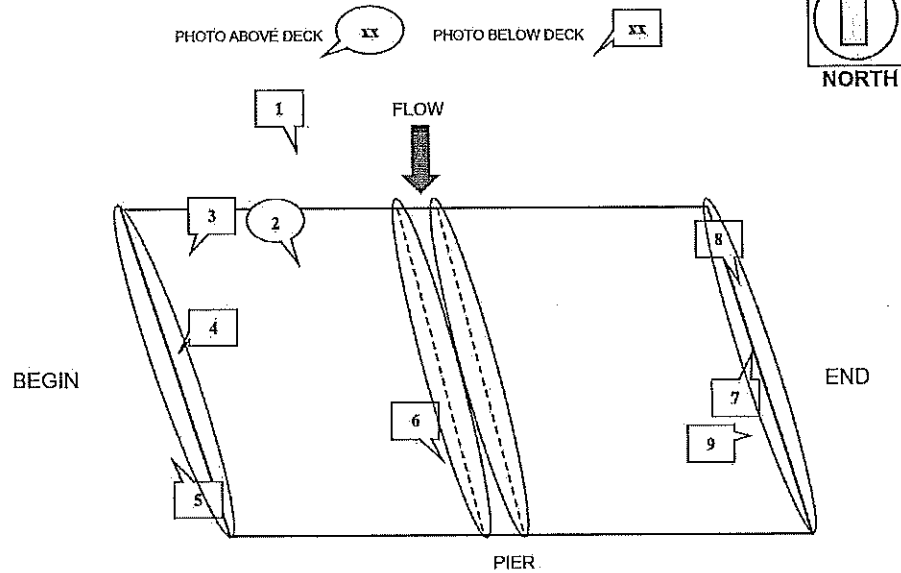


Attachment Description: Span 2, end leg at station 0+55.

Photo Number: 10

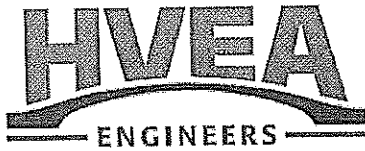
Photo Filename: 23_Flag Photo Location Plan_RF009.jpg

NYS DEPT. OF TRANSPORTATION

BIN: 83 - 2223640DATE: 05/17/2023FEATURE CARRIED: LITTLE BRITAIN ROADFEATURE CROSSED: QUASSAIC CREEK**Red Flag 8B23T1W009 Photo Location Plan**

KEY:

 - Red Flag 8B23T1W009**Attachment Description: 23_Flag Photo Location Plan_RF009**



May 26, 2023

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

**Re: Little Britain Road over Quassaick Creek Bridge Inspection
Cost Proposal**

Dear Mr. Morris:

Hudson Valley Engineering Associates, PC dba HVEA Engineers (HVEA) is pleased to present our proposal for Bridge Inspection services.

1.0 SCOPE OF SERVICES

HVEA will complete an in-depth inspection of the bridge carrying Little Britain Road over the Quassaick Creek. HVEA will perform the following tasks:

- Complete an onsite, nondestructive inspection of the structure including an examination of the red flag condition;
- Provide a detailed report of the condition of the various structural elements;
- Provide a discussion of bridge geometry, nonstandard features, preliminary hydraulic analysis, and potential rehabilitation and replacement options.
- Provide a recommendation for monitoring the red flag condition.

2.0 FEE FOR SERVICES

Our proposed cost for performing this work is a **Lump sum cost of \$6,275.**

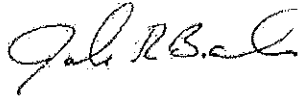
3.0 AUTHORIZATION TO PROCEED

Should you find this proposal acceptable and wish to retain HVEA to provide professional services, please issue a Purchase Order or similar authorization to proceed.

Little Britain Road over Quassaick Creek Bridge Inspection
Cost Proposal

If you have any questions or require additional information, please do not hesitate to call me. We look forward to continuing our work with the City of Newburgh.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Balison".

John R. Balison, P.E.
Principal

RESOLUTION NO.: 107 - 2023

OF

JUNE 12, 2023

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1G TO
THE CONSTRUCTION CONTRACT WITH KUBRICKY CONSTRUCTION CORP.
FOR THE NORTH INTERCEPTOR SEWER MAIN IMPROVEMENTS PROJECT**

WHEREAS, by Resolution No. 48-2022 of March 14, 2022, the City Council of the City of Newburgh, New York awarded a bid to Kubricky Construction Corp. in the amount of \$27,044,650.00 for the construction of the North Interceptor Sewer Main Improvements Project; and

WHEREAS, contract changes include replacing Supplementary Conditions Attachment - Mandatory State Revolving Fund Terms and Conditions, effective November 1, 2021, with updated Mandatory State Revolving Fund Equivalency Project Terms and Conditions, effective October 1, 2022, and adding Section 01 58 00b Specification for EPA Bipartisan Infrastructure Law Signage; and

WHEREAS, Kubricky Construction Corp. has submitted Change Order No. 1G to include the contract changes; the same being in the best interest 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. 1G with Kubricky Construction Corp. for the North Interceptor Sewer Main Improvements Project.

CHANGE ORDER NO.: 1

Owner:	City of Newburgh	Owner's Project No.:	1.22
Engineer:	Arcadis of New York, Inc.	Engineer's Project No.:	30141834
Contractor:	Kubricky Construction Corp.	Contractor's Project No.:	2022006
Project:	North Interceptor Sewer Replacement		
Contract Name:	General Construction		
Date Issued:	5/31/2023	Effective Date of Change Order:	

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

Description:

1. Replace Supplementary Conditions Attachment -- Mandatory State Revolving Fund Terms and Conditions, Effective November 1, 2021, with the updated Mandatory State Revolving Fund Equivalency Project Terms and Conditions, Effective October 1, 2022, attached hereto.
2. Add Section 01 58 00b Specification for EPA Bipartisan Infrastructure Law Signage.

Attachments:

- Mandatory State Revolving Fund Equivalency Project Terms and Conditions, Effective October 1, 2022
- 01 58 00b Specification for EPA Bipartisan Infrastructure Law Signage

Change in Contract Price		Change in Contract Times	
Original Contract Price:		Original Contract Times:	
\$ 27,044,650.00		Substantial Completion:	540 Days
		Ready for final payment:	570 Days
Increase from previously approved Change Orders:		Increase from previously approved Change Orders:	
\$ 0		Substantial Completion:	0
		Ready for final payment:	0
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 27,044,650.00		Substantial Completion:	540 Days
		Ready for final payment:	570 Days
Increase this Change Order:		Increase this Change Order:	
\$ 0		Substantial Completion:	0
		Ready for final payment:	0
Contract Price incorporating this Change Order:		Contract Times with all approved Change Orders:	
\$ 27,044,650.00		Substantial Completion:	540 Days
		Ready for final payment:	570 Days

	Recommended by Engineer (if required)	Accepted by Contractor
By:	_____	_____
Title:	_____	_____
Date:	_____	_____
	Authorized by Owner	Approved by Funding Agency (if applicable)
By:	_____	_____
Title:	_____	_____
Date:	_____	_____



**Environmental
Facilities Corporation**

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

Mandatory State Revolving Fund Equivalency Project Terms and Conditions

**For Equivalency Projects Funded with NYS Clean Water State
Revolving Fund or Drinking Water State Revolving Fund**

Identify Contract Type prior to Advertisement for Bid:

☐ **Construction**

- ☐ **Treatment Works and Drinking Water Projects**
- ☐ **Non-Treatment Works**

☐ **Non-Construction**

Effective October 1, 2022

**New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924
www.efc.ny.gov**

Contents

INTRODUCTION.....	4
REQUIRED CONTRACT LANGUAGE.....	4
COMMONLY USED TERMS	4
SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS	5
SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS	5
I. General Provisions.....	5
II. Equal Employment Opportunities (EEO)	6
III. Good Faith Efforts and Fair Share Objectives for DBEs.....	7
A. Fair Share Objectives for this Contract are 20%	7
B. Good Faith Efforts	7
C. DBE Utilization Plan	8
D. Submission of Good Faith Effort Documentation.....	8
E. Quarterly Report.....	8
SECTION 3 BUILD AMERICA, BUY AMERICA (BABA) ACT AND AMERICAN IRON AND STEEL (AIS) REQUIREMENTS	9
I. BABA Requirements	9
II. AIS Requirements	10
SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS	10
SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT	16
SECTION 6 RESTRICTIONS ON LOBBYING	16
SECTION 7 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT	16
SECTION 8 CONSTRUCTION SIGNS	17
ATTACHMENTS (Required Forms).....	18
Attachment 1 – EFC DBE Utilization Plan	19
Attachment 2 – BABA Contractor's Certification.....	20
Attachment 3 – AIS Contractor's Certification.....	21
Attachment 4 – Lobbying Certification	22

INTRODUCTION

The terms and conditions below must be incorporated verbatim into contracts receiving SRF financial assistance. Additional information relating to each of the requirements is included in the companion guidance document.

REQUIRED CONTRACT LANGUAGE

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Equivalency means projects in the amount equal to the funds "directly made available" by an Environmental Protection Agency (EPA) Capitalization Grant and funding for those projects is considered federal funds, or federal financial assistance. The Equivalency designation is indicated in the Intended Use Plan.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction Provider means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

Recipient means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

State means the State of New York.

Subcontract means an agreement between a Contractor and a Subcontractor.

Subcontractor means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Mandatory SRF Terms and Conditions for Treatment Works and Drinking Water Equivalency Project Funded with NYS CWSRF or DWSRF

Treatment Works is defined in Clean Water Act (CWA) Section 212. This does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

Any Architectural and Engineering (A/E) services for all Clean Water State Revolving Fund (CWSRF) projects and for Drinking Water State Revolving Fund (DWSRF) projects receiving federal grant are required to be procured in compliance with 40 USC 1101 et. seq., and 48 CFR Part 36 Subpart 36.6. The Recipient must certify compliance to receive financing. Disregard this section if it does not apply to this Contract.

SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of: (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts; and (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than \$10,000.

The Disadvantaged Business Enterprises ("DBE") requirements of this section apply to construction, equipment, services, and/or supplies Contracts.

I. General Provisions

A. Contractors and Subcontractors are required to comply with the following provisions:

1. 40 CFR Part 33 ("Federal DBE Regulations") for contracts under EPA financial assistance agreements, as those terms are defined therein.
2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.
3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction contracts related to any government programs providing federal financial assistance, as those terms are defined therein.
4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction contracts in excess of \$10,000, as those terms are defined therein.
5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

- B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all DBE and EEO records available within a reasonable time or as otherwise determined by EFC.
- C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.
- D. If any terms or provisions herein conflict with Federal DBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.
- E. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, age, disability, or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

II. Equal Employment Opportunities (EEO)

- A. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- B. For federally assisted construction Contracts, the Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- C. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- D. Pursuant to 41 CFR § 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet>, if Contractor or Subcontractor:
 - 1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
 - 2. Has 50 or more employees;
 - 3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and

4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.
- E. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.
- F. For federal or federally assisted construction contracts in excess of \$10,000, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.
- G. The Contractor will include the provisions of Subdivisions II(A) and II(B) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

III. Good Faith Efforts and Fair Share Objectives for DBEs

- A. Fair Share Objectives for this Contract are 20%
- B. Good Faith Efforts

Pursuant to 40 CFR § 33.301, the Contractor must demonstrate and document "good faith efforts" to provide meaningful participation by DBEs as Subcontractors or Suppliers in the performance of the Contract.

1. For purposes of demonstrating good faith efforts and achieving the fair share objectives established herein, the Contractor should seek out the participation of the following certified entities:
 - a. DBEs certified by the Small Business Administration (SBA), directory available at: https://web.sba.gov/pro-net/search/dsp_dsbs.cfm
 - b. DBEs certified by state DOTs on behalf of the United States Department of Transportation (USDOT), directories by state available at <https://www.transportation.gov/DBE%20State%20Websites>, including:
 - i. DBEs certified in New York State: <https://nysucp.newnycontracts.com/>
 - ii. DBEs certified in New Jersey: <https://njucp.dbesystem.com/>
 - iii. DBEs certified in Connecticut: https://biznet.ct.gov/DOT_DBE/dbesearch.aspx
2. Participation of Brokers and Truckers/Haulers
 - a. Contractors cannot count the participation of a DBE who acts as a Broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime contract or subcontract is subcontracted to a non-DBE, the DBE prime contractor or subcontractor will be presumed to be a Broker.
 - b. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:
 - i. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
 - ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

C. DBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the EFC DBE Utilization Plan with all required bid forms to the MBO no later than the execution date of this Contract.
2. The Contractor agrees to use such DBE Utilization Plan for the performance of DBEs on the Contract.
3. The Contractor further agrees that a failure to submit and/or use such DBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the Recipient in the Quarterly Report immediately following the change. See Section III(E), *Quarterly Report*. At EFC's discretion, an updated DBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a change order is executed the change order and supporting documentation should be submitted to the MBO and a revised Utilization Plan may be required at EFC's discretion.
5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the DBE Utilization Plan to the MBO within 30 days of their execution.

D. Submission of Good Faith Effort Documentation

1. If the Contractor, after making good faith efforts, is unable to meet the DBE fair share objectives, the Contractor must submit documentation showing good faith efforts made by the Contractor to meet the fair share objectives. Such documentation should be submitted to the MBO in accordance with the instructions on the DBE Utilization Plan.
2. If the MBO, upon review of the DBE Utilization Plan and updated Quarterly Reports determines that the Contractor is failing or refusing to comply with the good faith effort requirements or that the good faith efforts are not in the requested format, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within a reasonable time and provide documentation showing good faith efforts as requested.

E. Quarterly Report

1. The Contractor agrees to submit a Quarterly Report to the MBO by the fifteenth business day following the end of each calendar quarter over the term of this Contract documenting the payments made and the progress towards achievement of the DBE fair share objectives of the Contract. The Quarterly Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Quarterly Report must reflect all Utilization Plan revisions, final adjusted payments to subcontractors, and all change orders and be marked as "final".
2. The Contractor agrees to submit any other information as may be requested by the MBO or EFC during the term of the Contract as needed to assist EFC for completion of federal reporting to EPA.

F. Other Requirements

1. All contracts shall comply with the contract administration requirements outlined at 40 CFR 33.302.
2. Contractor and Subcontractors shall assist EFC and the Recipient as necessary with complying with the recordkeeping and reporting requirements outlined at 40 CFR Part 33 Subpart E.

SECTION 3 BUILD AMERICA, BUY AMERICA (BABA) ACT AND AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

Applicable to all contracts for DWSRF or CWSRF Treatment Works projects.

I. BABA Requirements

The requirements of this subsection shall not apply to CWSRF or DWSRF Contracts or Subcontracts which have been notified by EFC they are waived pursuant to the Build America, Buy America Act, Pub. L. No. 117-58, section 70914, including, but not limited to, the Adjustment Period Waiver for CWSRF and DWSRF projects that initiated project design planning prior to May 14, 2022. Disregard this subsection if the Contract or Subcontract is eligible for such a waiver, however, note that Subsection II below on AIS Requirements still applies.

If such Contracts or Subcontracts are not eligible for such a waiver, then the DWSRF or CWSRF Contract or Subcontract shall be subject to the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-70953), which requires, among other things, that no SRF funds "may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States."

The Contractor shall submit with their bid or proposal documents an executed BABA Contractor's Certification on the form attached hereto as Attachment 2 acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron, steel, manufactured products, and construction materials used in the project be produced in the United States ("BABA Requirement") including iron, steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the BABA Requirement,
- (b) all of the iron, steel, manufactured products, and construction materials covered by the BABA Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the BABA Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the BABA Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this

paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

II. AIS Requirements

The requirements of this section apply to (1) all contracts for which Part 1 of this section does not apply, (2) all Construction Contracts and Subcontracts for DWSRF projects and CWSRF Treatment Works projects and (3) all contracts for the purchase of iron and steel products for a DWSRF project or CWSRF Treatment Works project. Disregard this section if it does not apply to this Contract or Subcontract.

The Contractor shall submit with their bid or proposal documents an executed AIS Contractors Certification on the form attached hereto as Attachment 3 acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

The requirements of this section apply to all Construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF Treatment Works projects. Disregard this section if it does not apply to this Contract or Subcontract.

For Contracts in Excess of \$2,000:

1. Minimum Wages

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto

and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The Davis-Bacon poster (WH-1321) can be found at <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>. Wage determinations may be obtained from the US Department of Labor's website, <https://sam.gov/content/wage-determinations>.

- (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
 2. The classification is utilized in the area by the construction industry; and,
 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Recipient shall upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government->

contracts/construction/forms or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
1. That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;
 2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

4. Apprentices and trainees.

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a

payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in

29 CFR § 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.
10. Certification of eligibility.
 - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

For Contracts in Excess of \$100,000:

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. In any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Recipient and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

Contractor and any Subcontractors shall comply with Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

In addition, the Contractor and any Subcontractors have not been debarred from or deemed ineligible for government contracts or federally assisted Construction contracts pursuant to Executive Order 12549.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

SECTION 6 RESTRICTIONS ON LOBBYING

The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.

The Contractor and any Subcontractor bidding or proposing a Contract or Subcontract in excess of \$100,000 shall submit with their bid or proposal documents an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 4, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

SECTION 7 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Mandatory SRF Terms and Conditions for Treatment Works and Drinking Water Equivalency Project Funded with NYS CWSRF or DWSRF

The requirements of this section apply to all Contracts and Subcontracts.

This prohibition is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs (Recipients), are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. 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). EPA funds may not be used to purchase:

- a. 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).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. 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 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.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - (1) Procure or obtain, extend or renew a contract to procure or obtain;
 - (2) Enter into a contract (or extend or renew a contract) to procure; or
 - (3) Obtain the equipment, services, or systems.

Contractors and Subcontractors shall not procure or install prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, that are recorded in the System for Award Management exclusion list located at <https://sam.gov/SAM/>.

SECTION 8 CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects. Specific federal Bipartisan Infrastructure Law (BIL) signage is required for projects receiving financing from BIL.

If Contractor is expected to provide and install an EFC or BIL Construction Sign, a specification will be included in the enclosed contract documents.

ATTACHMENTS (Required Forms)

Attachment 1 – EFC DBE Utilization Plan



Environmental Facilities Corporation

NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. Submit the completed, signed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO) no later than the date of contract execution. Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be obtained from EFC.

If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified DBE, please contact EFC for assistance.

DBEs on this form may include disadvantaged firms certified by the New York State Unified Certification Program (NYSUCP), and disadvantaged firms certified by the Small Business Administration. In addition, the participation of DBEs will be credited according to the following requirements:

- Contractors cannot count the participation of a DBE who acts as a broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime contract or subcontract is subcontracted to a non-DBE, the DBE prime contractor or subcontractor will be presumed to be a broker.
- Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:
 - The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
 - The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

See the Mandatory Equivalency Terms and Conditions or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

If the Utilization Plan will not meet or exceed the DBE fair share objective, then the good faith effort documentation noted in Section 4 must be submitted with this form.

**NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:		County:	
Project No.:	Contract ID:	Registration No. (NYC only):	
Minority Business Officer:	Email:	Phone #:	
Address of MBO:			
Electronic Signature of MBO:			
☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			
			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION					
Firm Name:				Contract Type: ☐ Construction ☐ Other Services	
Is the Prime Firm certified as a DBE? ☐ Yes ☐ No If yes, please include Prime information in Section 3.					
Address:		Phone #:		Fed. Employer ID #:	
Description of Work:		Email:			
Award Date:	Start Date:	Completion Date:	DBE Fair Share Objective		PROPOSED DBE Participation
Total Contract Amount: \$			DBE Fair Share Objective		PROPOSED DBE Participation
DBE Eligible Contract Amount: \$			Total: 20% \$		Total: % \$
(DBE Fair Share Objectives are applied to this amount and includes all change orders, amendments, & specialty waivers)					
If fair share objectives are <i>not met</i> , <i>documentation must be attached</i> : ☐ No Participation ☐ Short of the DBE Fair Share Objective					
☐ Specialty Equipment/Services: must be of SIGNIFICANT cost – attach list of cost and type of equipment and good faith effort documentation					

**NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 3: DBE SUBCONTRACTOR INFORMATION				
This Submittal is:	☐ The First/Original Utilization Plan ☐ Revised Utilization Plan #: 	Contract Amount	For EFC Use:	
DBE Subcontractor Information				
Business Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date: Completion Date:			
DBE Subcontractor Information				
Business Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date: Completion Date:			
DBE Subcontractor Information				
Business Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date: Completion Date:			
DBE Subcontractor Information				
Business Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date: Completion Date:			

**NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 3: DBE SUBCONTRACTOR INFORMATION continued

Business Name:	Fed. Employer ID#:	
Address:	Phone #:	
Scope of Work:	Email:	
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date:	
	Completion Date:	
Business Name:	Fed. Employer ID#:	
Address:	Phone #:	
Scope of Work:	Email:	
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date:	
	Completion Date:	
Business Name:	Fed. Employer ID#:	
Address:	Phone #:	
Scope of Work:	Email:	
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date:	
	Completion Date:	
Business Name:	Fed. Employer ID#:	
Address:	Phone #:	
Scope of Work:	Email:	
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date:	
	Completion Date:	
Business Name:	Fed. Employer ID#:	
Address:	Phone #:	
Scope of Work:	Email:	
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	Start Date:	
	Completion Date:	

**NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 4: GOOD FAITH EFFORT DOCUMENTATION

Utilization Plans that do not meet the Fair Share Objective must be accompanied by the documentation requested in numbers 1 – 7, as listed below. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in number 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in number 13, as listed below. Please contact the MBO and/or EFC for assistance or to request sample documentation.

Provide the following:

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.
2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.
3. Screenshots of search results (using commodity codes) from DBE Directories of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective. Each search should be saved as an individual file.
4. A log of solicitation results, consisting of the list of DBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians). The log should show that each firm was contacted twice by two different methods (e.g., email and phone); who was spoken to; what was said; and the final outcome of the solicitation.
5. List of the general circulation, trade association, and DBE oriented publications and dates of publication soliciting for certified DBE participation as a subcontractor/supplier and copies of such solicitations.
6. Description of the negotiations between the contractor and certified DBEs for the purposes of complying with the DBE goals of this contract.
7. Any other information deemed relevant to the request.

EFC and the MBO reserve the right to request additional information and/or documentation.

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no DBE firms could be utilized to provide the equipment.
9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
10. Letter, email, or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
11. Screenshots of DBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.
12. An invoice or executed purchase order showing the value of the equipment.

**NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan**

Documentation for Requests for Specialty Service Exclusions:

13. A letter of explanation containing information about the scope of work and why no DBE firms could be subcontracted to provide that service.

SIGNATURE	
Electronic Signature of Contractor: ☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all DBE subcontractors will participate in subcontracts in accordance with the requirements of 40 CFR Part 33.	Date:
Name (Please Type):	

Attachment 2 – BABA Contractor's Certification



Environmental Facilities Corporation

BABA CONTRACTOR CERTIFICATION

FOR EQUIVALENCY CONSTRUCTION CONTRACTS PAID FOR WITH FUNDS THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title:

Contractor's Name:

Contract ID:

SRF Project No.:

SRF Recipient Name:

I certify that all iron and steel, manufactured products and construction materials permanently incorporated into the project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and Pub. L. No. 117-58 and any regulations promulgated thereunder. I will develop and maintain the necessary documentation to demonstrate that the applicable products permanently incorporated into the project were produced in the United States and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature:

Name (print):

Title:

Date:

Attachment 3 – AIS Contractor's Certification



Environmental Facilities Corporation

AIS CONTRACTOR CERTIFICATION
FOR CONSTRUCTION CONTRACTS FUNDED THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title:

Contractor's Name:

Contract ID:

SRF Project No.:

SRF Recipient Name:

I certify that the iron and steel products permanently incorporated into the public water system or wastewater treatment works project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and 33 U.S.C. § 1388, 42 U.S.C. § 300j-12(a)(4) and any regulations promulgated thereunder. I will develop and maintain necessary documentation to demonstrate that the iron and steel products permanently incorporated into the project were produced in the United States, and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature:

Name (print):

Title:

Date:

Attachment 4 – Lobbying Certification



Environmental Facilities Corporation

**New York State Environmental Facilities Corporation
CERTIFICATION REGARDING LOBBYING
FOR
CONTRACTS, GRANTS, LOANS, AND
COOPERATIVE AGREEMENTS
40 CFR Part 34**

SRF Project No.:

Recipient:

Project Description:

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 cooperative agreement.
- (2) 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 1352, 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.

Signature:

Name:

Title:

Company Name:

Date:

Contract ID:

Section 01 58 00b Specification for EPA Bipartisan Infrastructure Law Signage

PART 1 GENERAL

1.1 SUMMARY

- A. This specification covers the fabrication and installation of a construction sign for facilities receiving federal Bipartisan Infrastructure Law (BIL) funding through the New York Clean Water State Revolving Fund (CWSRF). Facilities receiving BIL funds are required to utilize this template.

1.2 RELATED SECTIONS

- A. Section 01 58 00a Specification for New York State Environmental Facilities Corporation (EFC) Signage

1.3 SUBMITTALS

- A. Shop Drawings: In compliance with direction from the Engineer and Owner, Contractor shall prepare and submit site plan and mock-up of temporary project and informational signs.

PART 2 PRODUCTS

2.1 GENERAL

- A. The sign shall be fabricated and erected within 21 days following the notice to proceed on the first contract at the facility and shall be maintained by site Contractors, as directed by Owner, until final construction completion for all funded projects at the facility.
- B. The BIL sign must comply with the guidance provided according to the attached schematic on a white background and with the guidance available here: <https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>
- C. There should be one project sign per project. If the project has multiple locations, one project sign near the work occurring in an easily visible location that can be directly linked to the work taking place, as directed by the Engineer is acceptable.

2.2 MATERIALS AND FABRICATION

- A. Sign Panel: The sign panel shall be constructed of materials capable of withstanding typical weather conditions common to the project site. Use of recycled or recovered materials is encouraged.
- B. Fasteners: All fasteners used in the fabrication of the sign shall be rust-proof.
- C. Sign Supports: The sign shall be adequately supported and braced to remain in the proper positioning and alignment, including resistance to wind loads and toppling of the sign.
- E. Coating: All paint or exterior coverings used shall be exterior grade coating suitable for use on wood or the material of construction. The sign face background shall be white and can consist of a minimum two coats of paint.
- F. Lettering and Emblem: The sign shall include the following logos in an aspect ratio consistent with other lettering on the sign but not less than a height of 2.0".
 - 1. The CWSRF EFC logo available at www.efc.ny.gov/efc-logo-pdf
 - 2. The EPA logo consistent with the EPA Logo & Seal Specifications for Signage Produced by EPA Assistance Agreement Recipients as outlined in https://www.epa.gov/sites/default/files/2015-01/documents/epa_logo_seal_specifications_for_infrastructure_grants.pdf
 - 3. The sign shall include the Building a Better America Emblem that identifies the project as "a project funded by President Biden's Bipartisan Infrastructure Law"
 - 4. BIL projects must incorporate the following language:
 - i. This project is jointly funded by the New York State Clean Water State Revolving Fund and the U.S. Environmental Protection Agency and President Biden's Bipartisan Infrastructure Law. The CWSRF is administered by the New York State Environmental Facilities Corporation

PART 3 EXECUTION

3.1 INSTALLATION

- A. The project sign shall be erected in the location and alignment, as directed by the Engineer, with the bottom of the sign panel a minimum of five feet above existing grade.

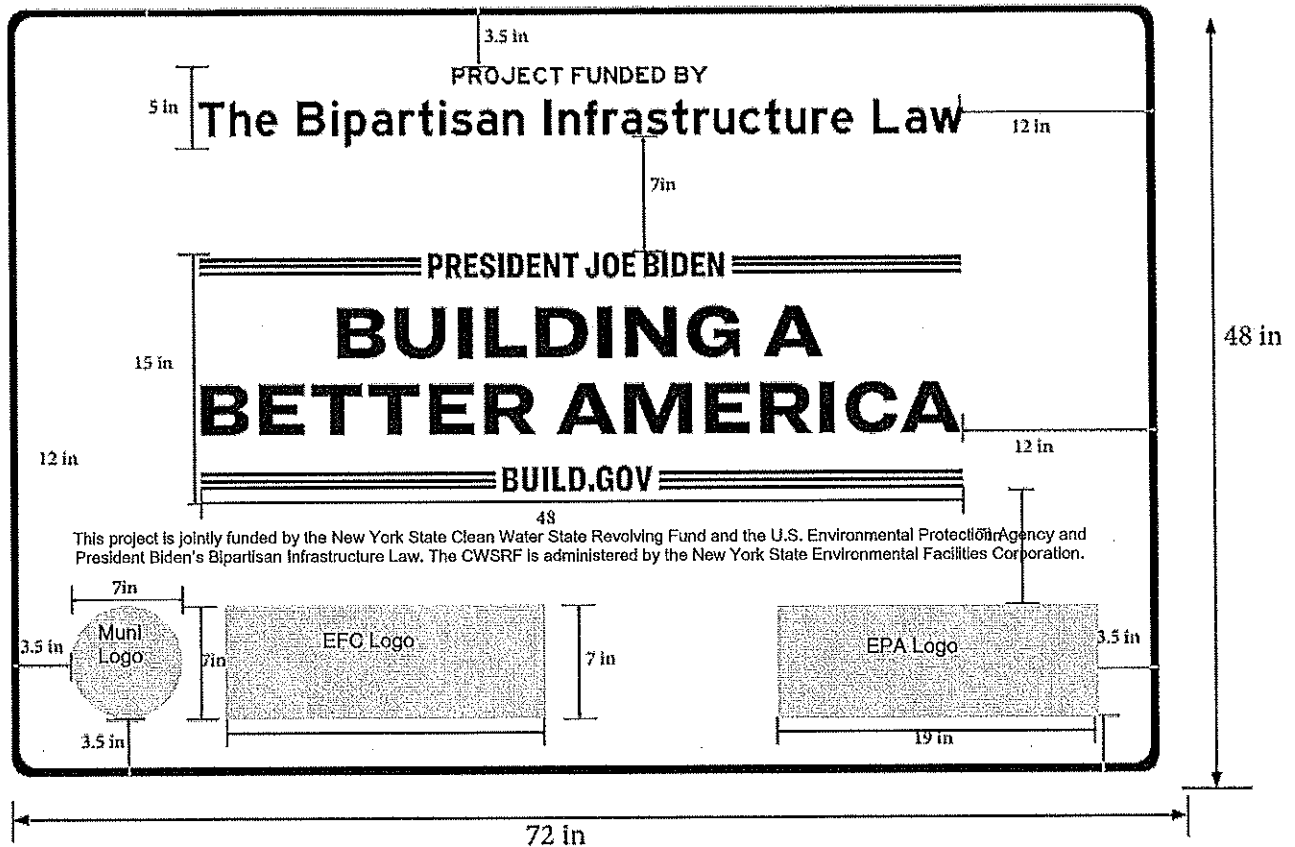
3.2 MAINTENANCE

- A. The Contractor shall provide any and all materials required to maintain the sign in good condition throughout the duration of the Contract.
- B. Upon notification of the Owner, the Contractor shall remove the sign from the construction site.

End of Section

ATTACHMENT 1

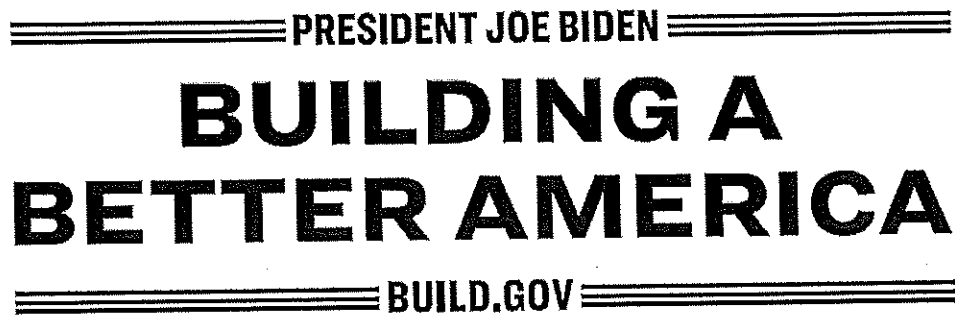
Building A Better America General Guidelines for Logo Applications



Variations and Usage

There is one approved mark associated with the Building A Better America logo. To preserve the integrity of the Building A Better America logo mark, make sure to apply them correctly. Altering, distorting, or recreating the 'marks' in any way weakens the power of the image and what it represents.

Layout and design of signs and communication materials will vary, so care must be taken when applying the logo mark.



The colors, graphics and fonts used should conform to graphic standards.

COLOR		CMYK	RGB	HEX P	MS
	Blue	83,48,0,48	22/68/132	#164484	PMS7687C
	Red	0,100,81,0	255/0/49	#FF0031	PMS185C
	White	2,2,0,3	242/244/248	#F2F4F8	Bright White

RESOLUTION NO.: 108 - 2023

OF

JUNE 12, 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER
STATE ENVIRONMENTAL QUALITY REVIEW ACT FOR
THE DELANO-HITCH RECREATION PARK AQUATIC CENTER PROJECT,
DECLARING THE PROJECT TO BE AN UNLISTED ACTION,
ADOPTING PART 1 AND PART 2 OF AN ENVIRONMENTAL ASSESSMENT FORM
AND ISSUING A NEGATIVE DECLARATION

WHEREAS, the City of Newburgh proposes to undertake improvements to the pool located within the Delano-Hitch Recreation Park and designated as the Delano-Hitch Recreation Park Aquatic Center Project (the "Project"); and

WHEREAS, in compliance with the State Environmental Quality Review Act (SEQRA), the City Council of the City of Newburgh wishes to assume Lead Agency status, declare the Project to be an unlisted action, approve and adopt Part 1 and Part 2 of the Short Environmental Assessment Form and find that the Project will not have any significant adverse environmental impacts; and issue a negative declaration;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. That the City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and
2. Classifies the action as unlisted action; and
3. Adopts Part 1 and Part 2 of the Short Environmental Assessment Form; and
4. Issues a Negative Declaration with respect to the Project; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary in connection with this SEQRA classification of the Project listed in this resolution.

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

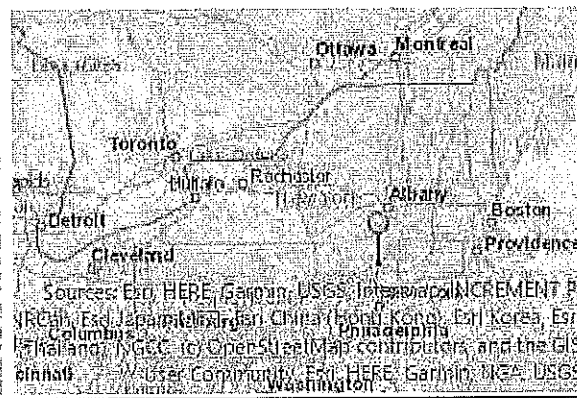
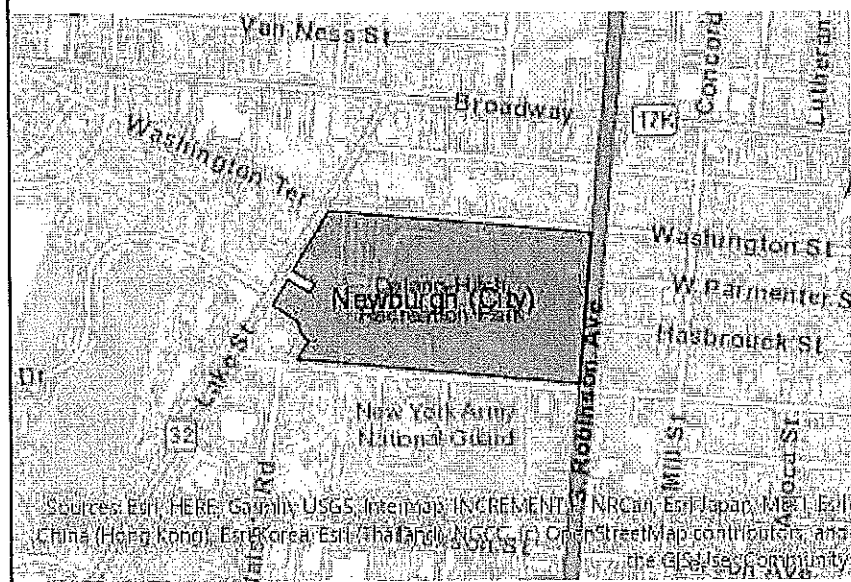
Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
City Manager and City Council of the City of Newburgh			
Name of Action or Project: Delano-Hitch Recreation Park Aquatic Center Improvements			
Project Location (describe, and attach a location map): Located at 375 Washington Street, Newburgh, NY, bounded by Robinson Ave., So. Williams St., and Lake St., surrounded by many neighborhoods			
Brief Description of Proposed Action: Delano-Hitch Park is the site of a pool completed in 1932, which was renovated in 2000 and renamed the Delano-Hitch Aquatic Center. The 2000 renovations included: filling the existing swimming pool with a new, smaller pool; construction of a pool house with lockers, bathrooms, a concession stand and check-in office; and construction of a water slide. The pool was last open in 2018 and was since closed because of severe maintenance issues. Please refer to the attached maps showing the project site, its environs and a close up aerial view. The project is proposed in the northeastern corner of the park parcel (refer to the project plans). The proposed action involves demolition of: all pool related structures, pool, pool house and deck; asphalt and base from existing parking, portions of some pedestrian walkways and areas, and fencing; minimal tree removal and protection of avoidance of existing features and trees (9) to remain. The project involves: the construction of a new splash pad area, pool, pool house with bathrooms and lockers; shelters, expanded deck area around the pool; reconfigured and expanded parking area, and gates; and new trees and other landscape plantings. All disturbed areas will be stabilized with new improvements.			
Name of Applicant or Sponsor: City Manager and the City Council of the City of Newburgh		Telephone: 845-569-7301 E-Mail: tvenning@cityofnewburgh-ny.gov	
Address: City of Newburgh, 83 Broadway			
City/PO: Newburgh		State: NY	Zip Code: 12550
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO ☒	YES ☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: NYSDEC, and Orange County Department of Health		NO ☐	YES ☒
3. a. Total acreage of the site of the proposed action? b. Total acreage to be physically disturbed? c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		25.7 acres 2.4 acres 25.7 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. ☒ Urban ☐ Rural (non-agriculture) ☐ Industrial ☒ Commercial ☒ Residential (suburban) ☐ Forest ☐ Agriculture ☒ Aquatic ☒ Other(Specify): existing park facilities ☒ Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	☐	☒	☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	☐	☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	☒	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	☒	☐	
b. Are public transportation services available at or near the site of the proposed action? Bus lines run along Washington Street and at the intersection of S Williams St. with Lake St. and Robinson Ave.	☐	☒	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action? Sidewalks are found all around the park and bike racks are proposed near the pool.	☐	☒	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: This project will be constructed to meet the energy code.	☐	☒	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____	☐	☒	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____	☐	☒	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? Please refer to the attached letter from the New York State Historic Preservation Office (NY SHPO) dated 2/27/23 indicating that no historic properties would be affected by the proposed action.	NO	YES	
	☐	☒	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☒	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	☒	☒ *	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☒	☐	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			
*The "Yes" response to question 13. a., was automatically inputted by the NYSDEC EAF Mapper on-line platform's database. This may be due to the presence of a riverine and freshwater pond feature located more than 0.1 miles from the closest corner of the site on Lake Street. According to mapping from the Orange County Geographic Information Systems (OCGIS), there are no mapped state or federal wetlands on the Delano-Hitch Recreation Park parcel. Please refer to the attached maps showing the project site, its environs and a close up aerial view.			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☒ Urban ☒ Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? The NYSDEC EAF Mapper on-line platform indicates that the Bald Eagle may be present on the site. There is no on-site forest, yet trees are present on the site, and most existing trees (9) will be protected or avoided during demolition and construction.	NO	YES
	☐	☒
16. Is the project site located in the 100-year flood plan?	NO	YES
	☒	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	☐	☒
a. Will storm water discharges flow to adjacent properties?	☒	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	☐	☒
If Yes, briefly describe:		
Stormwater runoff from the site with its existing improvements, the site during demolition and construction; and the site after construction has been completed and the site is fully stabilized, will be directed to existing, reconstructed and new drainage pathways to the City's existing stormwater drainage system.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
The existing and proposed pool are facilities for recreation, which are filled and drained seasonally.	☒	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	☒	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	☐	☒
This was triggered by the adjacency to the remediated Provan Ford site. Off-site testing was done as part of the remediation, and none was found to be near this project site.		
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Todd Venning</u> Date: _____		
Signature: _____ Title: <u>City Manager and CEO</u>		

Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	Yes
Part 1 / Question 12b [Archeological Sites]	No
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 15 [Threatened or Endangered Animal - Name]	Bald Eagle
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	Yes

Wetlands (NWI)

-



A vertical number line labeled "Miles" with tick marks at 0, 0.03, 0.06, and 0.12.

DISCLAIMER: This map is a product of Orange County GIS Division. The data depicted here have been developed with extensive cooperation from other County departments, as well as other Federal, State and Local government agencies. Orange County make no representations as to the accuracy of the information in the mapping data, but rather, provide said information as is. Orange County expressly disclaim responsibility for damages or liability that may arise from the use of this map.

[illegible]

Wetlands (NWI)

-

 $\mathbb{Z}$

1:4,514

A vertical number line labeled "Miles" with tick marks at 0, 0.01, 0.03, and 0.06.

CREDITS: Orange County, Esri Community Maps Contributors, Orange County, NY, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, U.S. Census Bureau, USDA. Sources: Esri, Airbus DS, USGS, NGA, NASA, CGTAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatasrvylen, Rijkswaterstaat, GSA, Geoland, FEMA, METI/NASA, USGS, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS.

DISCLAIMER: This map is a product of Orange County GIS Division. The data depicted here have been developed with extensive cooperation from other County departments, as well as other Federal, State and Local government agencies. Orange County make no representations as to the accuracy of the information in the mapping data, but rather, provide said information as is. Orange County expressly disclaim responsibility for damages or liability that may arise from the use of this map.



New York State
Parks, Recreation and
Historic Preservation

KATHY HOCHUL
Governor

ERIK KULLESEID
Commissioner

February 27, 2023

Jonathan DiRocco
Project Manager
CPL
26 IBM Road
Poughkeepsie, NY 12601

Re: ARPA

Delano-Hitch Aquatic Center: Removal of Pool, Poolhouse, and Parking lot and
Rehabilitation of Archway Entrance. New Pool Construction.
375 Washington St, Newburgh, NY 12550
23PR00922

Dear Jonathan DiRocco:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon this review, it is the opinion of the New York SHPO that no historic properties, including archaeological and/or historic resources, will be affected by this undertaking.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

R. Daniel Mackay

Deputy State Historic Preservation Officer
Division for Historic Preservation

rev: J. Betsworth

Project: Delano-Hitch Rec Pk Aquatic Imprvmts

Date: 6/1/23

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	☒	☐
2. Will the proposed action result in a change in the use or intensity of use of land?	☒	☐
3. Will the proposed action impair the character or quality of the existing community?	☒	☐
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	☒	☐
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	☒	☐
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	☒	☐
7. Will the proposed action impact existing:	☒	☐
a. public / private water supplies?	☒	☐
b. public / private wastewater treatment utilities?	☒	☐
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	☒	☐
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	☒	☐
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	☒	☐
11. Will the proposed action create a hazard to environmental resources or human health?	☒	☐

Project: Delano-Hitch Rec Pk

Date: 6/1/23

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Delano-Hitch Park is the site of a pool completed in 1932, which was renovated in 2000 and renamed the Delano-Hitch Aquatic Center. The 2000 renovations included: filling the existing swimming pool with a new, smaller pool; construction of a pool house with lockers, bathrooms, a concession stand and check-in office; and construction of a water slide. The pool was last open in 2018 and was since closed because of severe maintenance issues. Please refer to the attached maps showing the project site, its environs and a close up aerial view. The project is proposed in the northeastern corner of the park parcel (refer to the project plans). The proposed action involves demolition of: all pool related structures, pool, pool house and deck; asphalt and base from existing parking, and portions of some pedestrian walkways and areas, and fencing; minimal tree removal and protection of avoidance of existing features and trees (9) to remain. The project involves: the construction of a new splash pad area, pool, pool house with bathrooms and lockers; shelters, expanded deck area around the pool; reconfigured and expanded parking area, and gates; and new trees and other landscape plantings. All disturbed areas will be stabilized with new improvements.

No moderate or large impacts were noted in Short EAF Part 2. No impacts or very minor impacts may occur due to the demolition and construction necessary to restore this portion of the park and to create an aquatic park with added improvements and enhanced access and accessibility.

Accordingly, the proposed action will not result in any significant adverse environmental impacts.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☒ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

City of Newburgh City Council

Name of Lead Agency

Todd Venning

Print or Type Name of Responsible Officer in Lead Agency

Date

City Manager & CEO

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

PRINT FORM

RESOLUTION NO.: 109 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE AWARD OF A BID TO AND
THE EXECUTION OF A CONTRACT WITH ADP GROUP, INC.
FOR THE DEMOLITION OF
THE DELANO HITCH RECREATION PARK AQUATIC CENTER
IN THE AMOUNT OF \$427,000.00

WHEREAS, the City of Newburgh has duly advertised for bids for the demolition of the Delano Hitch Recreation Park Aquatic Center; and

WHEREAS, 5 bids were received and opened and ADP Group, Inc. is the lowest bidder; and

WHEREAS, funding for the demolition shall be derived from an allocation of funding received under the American Rescue Plan Act of 2021;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that that the bid for the demolition of the Delano Hitch Recreation Park Aquatic Center be and it hereby is awarded to ADP Group, Inc. in a total amount not to exceed \$427,000.00; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh that the City Manager be and he is hereby authorized to enter into a contract for such work in this amount.

NOTICE TO BIDDERS

INVITATION FOR BIDS

for

Delano-Hitch Recreation Park Aquatic Center Demolition

Bid No. 2.23

City of Newburgh, Orange County, New York

Sealed bids will be received by City Comptroller Janice Gaston in her office located at 83 Broadway, 4th Floor, Newburgh, NY 12550 until 11:00 a.m. (local time), Wednesday, May 24, 2023, at which time they will be publicly opened and read aloud.

The City of Newburgh plans the removal of all pool related structures including existing pool, pool house, and pool deck (including all below deck spaces). Removal also includes all associated MEP. Location at 375 Washington Street, Newburgh, New York. Work is subject to prevailing wage rates and requires submission of original certified payrolls as a condition for payment. A Pre-Bid Site Visit Meeting has been set for Thursday, May 4, 2023 at 10:00 a.m. Contractor attendance is strongly encouraged.

The work will be substantially complete by Friday, September 15, 2023; completed and ready for final payment within ninety (90) days. The scope of work includes providing all labor, materials, machinery, tools, equipment and other means of construction necessary and incidental to the completion of the work shown on the plans and described in these specifications including, but not necessarily limited to the following: the removal of existing boilers, oil piping, oil burners, miscellaneous piping, valves, controls, etc. and the installation of new high efficiency gas fired boilers and accessories.

Complete sets of the drawings, specifications, and bid forms, becoming available to the public on Thursday, April 20, 2023 may be viewed and downloaded at no charge by visiting the Empire State Purchasing Group website at: www.BidNetDirect.com/new-york/city-of-newburgh, selecting the "Open Solicitations" tab and title of solicitation. Vendors may have to register if visiting this site for the first time. Prospective Bidders must obtain all Bid Documents, including Addenda and other Bid correspondence, from the Empire State Purchasing Group's website in order to be considered an official Plan Holder. Bids received from Contractors that are not considered an official Plan Holder shall not be accepted by the City of Newburgh.

Bidders shall promptly notify the City of Newburgh if any errors, omissions, conflicts, ambiguity, etc. within the contract documents. The above item and/or questions shall be submitted in writing via email to JMorris@cityofnewburgh-ny.gov. Interpretations or clarifications considered necessary will be issued via Addenda posted to the Empire State Purchasing Group website at www.BidNetDirect.com/new-york/city-of-newburgh. Questions must be received on or before 12:00 p.m., EST, Wednesday, May 10, 2023. Questions received after this date may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Where state and local requirements differ from federal, the federal requirements shall be followed.

All Bids must be made on the official Bid Form or an exact copy by reproduction thereof. All Bids must be in original form and signed in blue ink, except for a Notary Public. Photocopies will not be accepted and will result in a rejection of the Bid. Everything must be enclosed in a sealed envelope with the following clearly marked on the front of the envelope:

- Bidders name and address
- Bid #2.23 – BID for Delano-Hitch Recreation Park Aquatic Center Demolition
- Date and Time of Bid Opening

This is a unit price bid as described in the Instructions to Bidders. No Bidder may withdraw his or her Bid within forty-five (45) calendar days after the actual date of the opening thereof. Each Bid must be accompanied by a bid security in the amount of five (5) percent of the base bid in accordance with the Instructions to Bidders. Successful bidders will be required to provide performance and payment bonds, proof of appropriate insurance, and execute contracts prior to commencement of work.

The successful Bidder will be required to furnish construction performance and payment bonds in the full amount of the contract price. The successful Bidder will be required to comply with all provisions of the Federal Government Equal Employment Opportunity clauses issued by the Secretary of Labor on May 21, 1968 and published in the Federal Register (41CFR Part 60-1, 33 F.2 7804).

The City of Newburgh reserves the right to reject any and all Bids, to waive any and all informalities and the right to disregard all nonconforming, non-responsive, or Conditional Bids.

OWNER:

City of Newburgh
83 Broadway
Newburgh, New York 12550

Contact:

Jason Morris
Commissioner of Public Works
& City Engineer
(845) 569-7447

Design Firm:

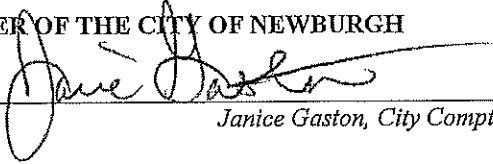
CPL Architects, Engineers, Landscape
Architect and Surveyor, D.P.C.
26 IBM Road,
Poughkeepsie, New York 12601

Contact:

Jonathan DiRocco,
AIA
Project Manager

BY ORDER OF THE CITY OF NEWBURGH

By: _____



Janice Gaston, City Comptroller

Dated: Wednesday, April 19, 2023

City of Newburgh - An Equal Opportunity Employer

Justice, Equity, Diversity and Inclusion are core values to the City of Newburgh, where there is a strong commitment to establishing and maintaining an environment free of discrimination. These values are promoted through the daily practice of professionalism, respect, acceptance and understanding. As such, City residents along with women, minorities, individuals with disabilities, members of the LGBTQ community, and veterans are encouraged to apply.



May 25, 2023

Elizabeth Garrison
Administrative Assistant to the Commissioner of Public Works and City Engineer
City of Newburgh
83 Broadway
Newburgh, NY 12550

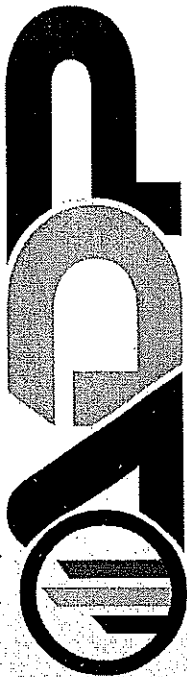
Re: Delano-Hitch Recreation Park Aquatic Center Demolition – Recommendation For Bid Award

Dear Ms. Garrison:

We have reviewed the three lowest bidders' packages, called their references, and confirmed that they all are confident they can complete the work for the lump sum price they provided. We feel that all three of these companies are fully capable of completing this project. We do want to point out that the lowest bidder, ADP Group (\$427,000.00), did not have a notary stamp on their "Iranian Energy Sector Div. Act Affidavit" and did not provide a copy of their bid package (only provided an original). We also want to point out that the second lowest bidder, Gentile Construction Corp. (\$490,000.00), did not provide a copy of their bid package (only provided an original). Both of these bids are technically considered incomplete by the bid instructions. The third lowest bidder, Taylor-Montgomery LLC (\$535,871.25), is the lowest bidder to provide all of the documents how the instructions required them to be provided.

Very truly yours,

Jonathan DiRocco, AIA
Project Manager



GRUP INC
27 E 33rd Street, Paterson, NJ 07514

SEALED BID ENCLOSED

○ Bidder:

ADP Group Inc.

27 East 33rd Street, Paterson, NJ 07514

Phone: 973-689-0449

○ Bid Title

Delano-Hitch Recreation Park Aquatic Center Demolition

○ To:

City of Newburgh, Orange County, New York

83 Broadway, 4th Floor, Newburgh, NY 12550

○ Bid Due Date:

Time:

5/24/2023

11:00 AM

RVV
5/24/2023

10:45
A.M

①

SECTION 00 41 13

BID FORM

Project Identification: Delano-Hitch Recreation Park Aquatic Center Demolition

Contract Identification And Number: Bid No. 2.23

Submitted To: City of Newburgh

83 Broadway - 4th Floor, Newburgh, NY 12550

Attn: City Comptroller

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for forty-five (45) days after the day of the submission deadline. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents as more fully set forth in the Agreement, that:
 - a. BIDDER has examined and carefully studied the Notice to Bidders, Bid Documents and the following Addenda receipt of all which is hereby acknowledged:

List Addenda by Addendum Number and Date:

Addendum No.1 Date: 05/16/2023

- b. BIDDER has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Work. Alternatively, in lieu of such, do solely and completely accept all risks inherent in not doing so.
 - c. BIDDER is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
 - d. BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) which have been provided in paragraph 4.2 of the General Conditions. BIDDER accepts the determination set forth in paragraph 4.2 of the General Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in paragraph 4.2 of the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER's purposes. BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bid Documents with respect to underground facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price, and other terms and conditions of the Contract Documents.
 - e. BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.

- f. BIDDER has correlated the information known to BIDDER, information and observation obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- g. BIDDER has given OWNER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- h. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and, BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
- i. Any other representation required by Laws and Regulations.
4. BIDDER will complete the Work in accordance with the Contract Documents for the following price(s). The Lump Sum Bid Price shall be the cost of the Work for the Project outlined and described in all of the Contract. The City shall make the determination post bid as to how to proceed based upon the bid proposals.

LUMP SUM BID PRICE:

Four Hundred and Twenty Seven Thousand Dollars

\$ 427,000.00

Written or Typed in Text

Numerical

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.
6. The following documents are attached to and made a condition of this Bid:
- a. Resolution of Board of Directors
 - b. Non-Collusion Bidding Affidavit
 - c. Required BIDDER's Qualification Statement with supporting data
 - d. Affidavit of Workers' Compensation
 - e. Iranian Energy Sector Divestment
7. Communications concerning this Bid shall be addressed to, the address of BIDDER indicated below:

27 East 33rd Street, Paterson, New Jersey 07514

8. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.

SUBMITTED on: May 24th 2023
Month Day Year

State Contractor License No.: 20-4235899

If BIDDER is:

An Individual

By: _____

Individual's Name

Seal

Doing business as _____

Business Address: _____

Phone Number: _____

A Partnership

By: _____

Firm Name

Seal

General Partner _____

Business Address: _____

Phone Number: _____

A Corporation

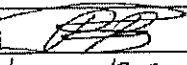
By: _____

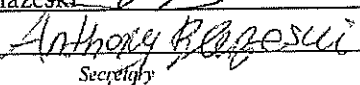
ADP Group Inc.

Corporation Name

Seal

State of Incorporation: New Jersey

Authorized Signatory: Phillip Blazeski  Title: President

Attestation: Anthony Blazeski 
Secretary

Seal

Business Address: 27 East 33rd Street, Paterson, New Jersey 07514

Phone Number: 973-689-0449

Date qualified to do business: 02/02/2006

A Joint Venture

By: _____

Individual's Name

Seal

Address: _____

By: _____

Individual's Name

Seal

Address: _____

Official Communications Address: 27 East 33rd Street, Paterson, New Jersey 07514

Official Communications Phone Number: 973-689-0449

Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.

SECTION 00 43 13.13
BID BOND
Delano-Hitch Recreation Park Aquatic Center Demolition
Bid No. 2.23
City of Newburgh, New York

BIDDER, Name and Address:

ADP Group Inc.

Address: 27 East 33rd Street, Paterson, New Jersey 07514

SURETY, Name and Address of Principal Place of Business:

Colonial Surety Company

123 Tice Boulevard, Woodcliff Lake, NJ 07677

OWNER, Name and Address:

City of Newburgh

83 Broadway, NEWBURGH, NY 12550

BID:

Due Date: Wednesday, May 24, 2023

Project, brief description and location:

Delano-Hitch Recreation Park Aquatic Center Demolition

located at 375 Washington Street

BOND:

Bond Number: _____

Date, no later than Bid Due Date: 05/24/2023

Penal Sum: _____

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER:

ADP Group Inc.

Bidder's Name and Corporate Seal

By: **Phillip Blazeski, President**

Signature and Title

Attest:

Laneta Blazeski
Signature and Title
Notary Public

SURETY, attached power of attorney:

Colonial Surety Company

Surety's Name and Corporate Seal

By: **Daniel Kochovski, Attorney-in-fact**

Signature and Title

Attest:

Laneta Blazeski
Signature and Title
Notary Public

-
- 4.1 Above addresses are to be used for giving required notice.
- 4.2 Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.
- 4.3 Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.
- 4.4 Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bid Documents the executed Agreement required by the Bid Documents and any performance and payment bonds required by the Bid Documents and Contract Documents.
- 4.5 This obligation shall be null and void if:
- 5.1 OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bid Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bid Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
 - 5.2 All Bids are rejected by OWNER, or
 - 5.3 OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bid Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
- 4.6 Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
- 4.7 Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.
- 4.8 No suit or action shall commence under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety, and in no case later than one (1) year after Bid Due Date.
- 4.9 Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
- 4.10 Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
- 4.11 Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
- 4.12 This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of any Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
- 4.13 The term "bid" as used herein includes a bid, offer, or proposal as applicable.
-

State of New Jersey

County of Essex

AND NOW, this 24th day of May, in the calendar year of 2023, before me, a duly appointed and commissioned notary public, came the identified subscriber to the within instrument or instruments, and/or the demonstrated attorney-in-fact for said signatory and subscriber on said instrument or instruments, **Daniel Kochovski, attorney-in-fact of Colonial Surety Company**, an insurance company duly organized and existing under the laws of the Commonwealth of Pennsylvania and which is authorized to conduct business in this State, and that as such being authorized to do so, acknowledged that the within instrument or instruments were executed as the authorized act of his disclosed principal for the purposes therein contained, and declared to be a person executing said instrument or instruments as attorney-in-fact and with full capacity and competency, at the request of and on behalf of Colonial Surety Company therein named and acknowledged to me that the aforesaid Colonial Surety Company had authorized the execution by the aforesaid attorney-in-fact of said instrument or instruments with the intent to be legally bound as required by common and statutory law.

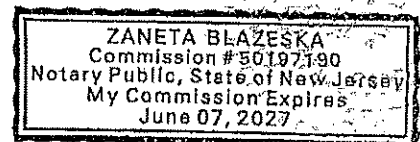
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

A Notary Public of New Jersey
My Commission Expires on 6/7/2027

Notary Public in and for the

County of Essex
State of New Jersey

Zaneta Blazeska
NOTARY PUBLIC



SURETY DISCLOSURE STATEMENT AND CERTIFICATION

Colonial Surety Company, reinsured by Beazley Insurance Company, Inc. the surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety(ies) meets (meet) the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amounts as of the calendar year ended December 31, 2020 (most recent calendar year which capital and surplus amounts are available), which amounts have been certified by Johnson Lambert & Co., One Lawson Lane, P.O. Box 525, Burlington, VT 05402 and KPMG 345 Park Ave New York, NY and are included in the Annual Statement on file with the Pennsylvania Department of Insurance, 1345 Strawberry Square, Harrisburg, PA 17120 and State of Connecticut Department of Insurance, 153 Market St., Hartford, CT 06103.

<u>Surety Companies(y)</u>	<u>Capital and Surplus</u>
Colonial Surety Company	\$ 54,568,766
Beazley Insurance Company, Inc.	249,251,605

(3) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. 19305, the underwriting limitation established therein on July 1, 2021 (most recent calendar year available) is as follows:

<u>Surety Companies(y)</u>	<u>Limitation</u>
Colonial Surety Company	\$ 5,457,000
Beazley Insurance Company, Inc.	24,925,000

(4) The amount of the bond to which this statement and certification is attached is 5% of amount bid not to exceed \$24500

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in item (3) above, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of the reinsurer's participation in the contract is as follows:

<u>Reinsurer</u>	<u>Address</u>	<u>Amount</u>
Colonial Surety Company	123 Tice Blvd, Suite 250, Woodcliff Lake, NJ 07677	N/A
Beazley Insurance Company	30 Batterson Park Road, Farmington, CT 06032	N/A

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L. 1993, c.243(C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent for each surety on the bond)

I, Wayne Nunziata, as President for Colonial Surety Company, a corporation domiciled in the State of Pennsylvania, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGED that, if any of those statements made by me are false, this bond is VOIDABLE.



Wayne Nunziata

President

Dated: May 24, 2023

COLONIAL SURETY COMPANY

Duncannon, Pennsylvania
Administrative Office: 123 Tice Boulevard, Woodcliff Lake, New Jersey 07677

GENERAL POWER OF ATTORNEY

Know all Men by These Presents, That COLONIAL SURETY COMPANY, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and having an administrative office in Woodcliff Lake, Bergen County, NJ does by these presents make, constitute and appoint Daniel Kochovski of Paterson, NJ its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver,

Bid Bonds and Consent of Surety Only

and to bind the Company thereby as fully and to the same extent as if such bids were signed by the President, sealed with the corporate seal of the Company, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of the Colonial Surety Company at a meeting held on the 25th day of July, 1950.

"Be It Resolved, that the President, any Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

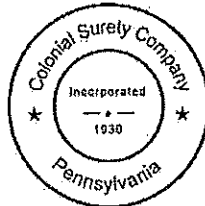
"Section 1. Attorney-in-Fact. Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, bid bonds and consent of surety only, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents cancelling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President."

"In Witness Whereof, Colonial Surety Company has caused these presents to be signed by its President and its corporate seal to be hereto affixed the 7th day of April, A.D., 2023.

State of New Jersey

County of Bergen

} SS.



COLONIAL SURETY COMPANY

By

Wayne Nunziata, President

On this 7th day of April, in the year 2023, before me Theresa La Monica, a notary public, personally appeared Wayne Nunziata, personally known to me to be the person who executed the within instrument as President, on behalf of the corporation therein named and acknowledged to me that the corporation executed it.



THERESA LA MONICA
A Notary Public of New Jersey
My Commission Expires September 5, 2025

Theresa La Monica

Theresa La Monica

Notary Public

I, the undersigned President of Colonial Surety Company, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in force and effect.

GIVEN under my hand and the seal of said Company, at Woodcliff Lake, New Jersey this 24th day of May, 20 23

Wayne Nunziata

Wayne Nunziata, President

Original printed with Blue and/or Black ink.
For verification of the authenticity of this Power of Attorney you may call (201) 573-8788 and ask for the Power of Attorney clerk. Please refer to the above named individual(s) and details of the bond in which the power is attached.

Colonial Surety Company
Duncannon, Pennsylvania
-Inc 1930-

Balance Sheet as at December 31, 2022

Cash & Invested Assets:		Liabilities:	
Cash	\$9,057,792	Outstanding Losses & Loss Expenses	\$4,119,774
Cash Equivalents	3,519,458	Unearned Premiums	18,018,052
Common Stocks*	9,757,005	Funds Held	5,412,876
Bonds*	49,594,003	Reinsurance Payable	9,118,420
Receivables for Securities	100,000	Accrued Expenses	609,482
		Income Taxes Payable	2,146,546
Total Cash & Invested Assets	\$72,028,258	Payable to Parents, Subs & Affiliates	2,314,262
		Miscellaneous Liabilities	11,364
		Total Liabilities	\$41,750,776
Other Assets:		Capital & Surplus:	
Accrued Investment Income	\$493,741	Common Capital Stock	\$ 4,000,000
Premiums Receivable	20,448,949	Additional Paid in Capital	1,000,000
Funds Held – Collateral	5,406,668	Unassigned Surplus	57,754,325
Reinsurance Recoverable	5,295,919		
Net Deferred Tax Assets	830,542	Total Capital & Surplus	\$62,754,325
Other Assets	1,024		
Total Admitted Assets	\$104,505,101	Total Liabilities, Capital & Surplus	\$104,505,101

*Bonds and stocks are valued on basis approved by National Association of Insurance Commissioners.

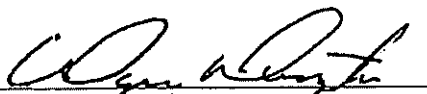
STATE OF NEW JERSEY }

ss.:

COUNTY OF BERGEN }

I, Wayne Nunziata, President of Colonial Surety Company, do hereby certify that the foregoing is a full, true and correct copy of the Financial Statement of said Company, as of December 31, 2022.

IN WITNESS WHEREOF, I have signed this statement at Woodcliff Lake, New Jersey, this 7th day of April, 2023.


Wayne Nunziata, President




Theresa La Monica, Notary Public

THERESA LA MONICA
A Notary Public of New Jersey
My Commission Expires September 9, 2025

SECTION 00 43 13.135

CERTIFIED COPY OF RESOLUTION
OF

BOARD OF DIRECTORS OF
Delano-Hitch Recreation Park Aquatic Center Demolition

Bid No. 2.23

City of Newburgh, New York

ADP Group Inc.

Name of Corporation

Resolved that Phillip Blazeski, President
Authorized Signatory Title

of ADP Group Inc. Authorized to sign and submit the Bid of the Corporation for
Name of Corporation

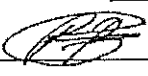
the following project: Delano-Hitch Recreation Park Aquatic Center Demolition
and to include in such Bid the Certificate as to Non-Collusion, and for any inaccuracies or misstatements in such Certificate this
Corporate Bidder shall be liable under the penalties of perjury.

The foregoing is a true and correct copy of the Resolution adopted by:

ADP Group Inc.

Name of Corporation

At a meeting of its Board of Directors held on the 23th day of May, 20 23

By: Phillip Blazeski  Title: President

Seal

This form must be completed if the Bidder is a Corporation

SECTION 00 43 13.14

BIDDER'S QUALIFICATION QUESTIONNAIRE

Delano-Hitch Recreation Park Aquatic Center Demolition

Bid No. 2.23

City of Newburgh, Orange County, New York

The undersigned guarantees the accuracy of all statements and answers herein contained. (Please print in ink).

1. How many years has your firm been in business as a Contractor?

in years: 17 Years

2. List projects of this nature that you have completed in the last three (3) years, and give the name, address and telephone number of a reference from each. Also give the completion date, the original contract bid price and the completed cost of each project listed (use additional sheet, if necessary).

Please see attached Project Reference List

3. List projects presently under construction by your firm, the dollar volume of the contract and the percentage completion of the contract.

Please see attached Project Reference List

4. Work awarded to you; if so, state where and why.

Please see attached Project Reference List

5. What equipment do you own that is available for this work?

Please see attached List of Equipment

6. What equipment do you plan to rent or purchase for this work?

None, ADP Group Inc. owns all of the necessary equipment to complete this project.

-
-
-
7. Have you ever performed work under the direction of a Professional Engineer or Registered Architect? If so, list up to three (3) such firms giving the name of the firm, its address, telephone number and the name of the project. (List most recent projects).

Yes, please see the attached Project Reference List

8. Give the name, address and telephone number of an individual who represents each of the following and whom the OWNER may contact to investigate your financial responsibility: a surety, a bank, and a major material supplier.

Theodore Mossmann - (201) 949-1123 - Colonial Surety Company

Javier Hernandez - (862) 264-9811 - Spencer Savings Bank

Robert Vista - (917) 642-9804 - Century Waste

9. Provide a financial statement for your company. This should include a balance and income statement for your most recent fiscal year. A certified audit is preferred but not required. Use an insert sheet, if needed. Only three (3) lowest bidders shall submit this information (if requested by OWNER) to the OWNER within forty-eight (48) hours of the opening of the Bids.

Will be provided upon request.

10. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business, and the address of the place of business. (If a corporation, state the name of all partners. If a trade name, state the names of the individuals who do business under the trade name.) It is absolutely necessary that information be furnished.

The business is a ADP Group Inc.

Type of Legal Entity

The address of principal place of business is:

27 E 33rd Street, Paterson, NJ 07514

The names of the corporate officers, or partners, or individual doing business under a trade:

Phillip Blazeski - President

Anthony Blazeski - Vice President

Daniel Kochovski - CEO

SECTION 00 43 13.15

AFFIDAVIT - WORKERS' COMPENSATION

Delano-Hitch Recreation Park Aquatic Center Demolition

Bid No. 2.23

City of Newburgh, Orange County, New York

STATE OF: New Jersey

)

) SS:

County of: Essex

)

I, Phillip Blazeski of the Town, Village, City of Cedar Grove, NJ

in the County of Essex and the State of New Jersey

of full age, being duly sworn according to law on my oath depose and say that:

I am the President, an officer of the firm of ADP Group Inc.

being duly sworn, deposes and says that he now carries or that he has applied for a Workers' Compensation Policy to cover the operations, as set forth in the preceding contract, and to comply with the provisions thereof.

ADP Group Inc.

Contractor Name

Subscribed and sworn to

Phillip Blazeski

Name of Affiant

President

Title of Affiant

Signature of Affiant (in blue ink)

before me this 24th day of May, 20 23

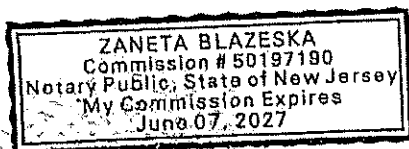
Affix Notary Seal or Stamp below

Notary Public of State of New Jersey

My commission expires: 06/07/2027

Notary Signature:

Zaneta Blazeski



This Affidavit must be completed by all Bidders

SECTION 00 43 15

NON-COLLUSION BIDDING AFFIDAVIT

Delano-Hitch Recreation Park Aquatic Center Demolition

Bid No. 2.23

City of Newburgh, Orange County, New York

STATE OF: New Jersey)

) SS:

County of: Essex)

I, Phillip Blazeski of the Town, Village, City of Cedar Grove

in the County of Essex and the State of New Jersey

of full age, being duly sworn according to law on my oath depose and say that:

I am President, an officer of the firm of ADP Group Inc.

the Bidder making the Proposal for the above named Work, and that I executed the said Proposal with full authority to do so; that said Bidder has not, directly or independently, entered into any agreement, participated in any collusion, or otherwise in connection with the above named work; and that all statements contained in said Proposal and in this affidavit are true and correct, and made with the full knowledge that the City of Newburgh, NY as OWNER relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for said work.

I further warrant that no person or selling agency has been employed or retained to solicit or secure contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bonafide employees or bonafide established

commercial or selling agencies maintained by ADP Group Inc.

Contractor Name

Subscribed and sworn to Phillip Blazeski President

Name of Affiant

Title of Affiant

Signature of Affiant (in blue ink)

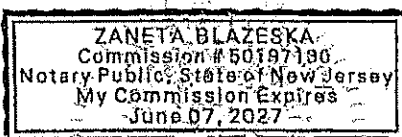
before me this 24th day of May, 20 23

Affix Notary Seal or Stamp below

Notary Public of New Jersey

My commission expires: 6/7/2027

Notary Signature: Zaneta Blazeska



This Affidavit must be completed by all Bidders

SECTION 00 43 20

Certification Pursuant to Section 103-g of the New York State General Municipal Law

IRANIAN ENERGY SECTOR DIVESTMENT ACT AFFIDAVIT

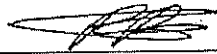
Delano-Hitch Recreation Park Aquatic Center Demolition

Bid No. 2.23

- 1 By submission of this Bid/Proposal, each Bidder/Proposer and each person signing on behalf of any Bidder/Proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.
- 2 A Bid/Proposal shall not be considered for award, nor shall any award be made where the condition set forth in Paragraph 1 above has not been complied with; provided, however, that in any case the Bidder/Proposer cannot make the foregoing certification set forth in Paragraph 1 above, the Bidder/Proposer shall so state and shall furnish with the Bid a signed statement which sets forth in detail the reasons therefor. Where Paragraph 1 above cannot be complied with, the Purchasing Unit to the political subdivision, public department, agency or official thereof to which the Bid/Proposal is made, or his/her designee, may award a Bid/Proposal, on a case by case business under the following circumstances:
 - i. The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
 - ii. The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

3 Name: Phillip Blazeski Title: President

Signature: _____



Date: 05/24/2023 Company Name: ADP Group Inc.

STATE OF: New Jersey)
) SS:

County of: Essex)

Subscribed and sworn to Zaneta Blazeska Notary Public
Name of Affiant *Title of Affiant*

before me this 24th day of May, 20 23

Affix Notary Seal or Stamp below

Notary Public of State of New Jersey

My commission expires: 06/07/2027

Notary Signature: Zaneta Blazeska

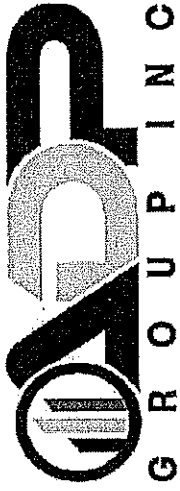
This Affidavit must be completed by all Bidders

-
- 4.1 Above addresses are to be used for giving required notice.
- 4.2 Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.
- 4.3 Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.
- 4.4 Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bid Documents the executed Agreement required by the Bid Documents and any performance and payment bonds required by the Bid Documents and Contract Documents.
- 4.5 This obligation shall be null and void if:
- 5.1 OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bid Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bid Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
 - 5.2 All Bids are rejected by OWNER, or
 - 5.3 OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bid Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
- 4.6 Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
- 4.7 Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.
- 4.8 No suit or action shall commence under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety, and in no case later than one (1) year after Bid Due Date.
- 4.9 Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
- 4.10 Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
- 4.11 Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
- 4.12 This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of any Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
- 4.13 The term "bid" as used herein includes a bid, offer, or proposal as applicable.
-



PROJECT REFERENCE LIST

Type of Contract	Agency/Contact Person And Telephone Number	Contract Name	Contract Amount	Percent Completed	Date Completed or Anticipated Completion Date	Type of Work
Public	County of Rockland 50 Sanatorium Road, Bldg. A, 2 nd Fl. Pomona, New York 10970 Contact: Robert Kolka Tel: (845-364-3845)	Firematic Training Site – Fire Operations Building Foundations	\$686,570.00	0%	07/2023	Excavation, Site Work, Concrete Foundations
Public	City of Hoboken 94 Washington Street, Hoboken, NJ 07030 Contact: Anthony Calzaretta Tel: (973) 774-3342	Former Monarch Site Walkway Improvements	\$224,125.00	99%	05/2023	Excavation, Concrete Sidewalks, Concrete Aprons, Brick Paving, Concrete Curb, Chain Link Fence
Public	Nyack Union Free District 13A Dickinson Ave., Nyack, NY 10960 Contact: Brian Dunn Tel: (914) 666-5900	Hilltop Professional Development Center	\$442,270.00	30%	06/23	Interior Selective Demolition, Metal Framing, Gypsum Board, Special Ceilings
Public	Borough of Chester 50 North Road, Chester, NJ 07930 Contact: Mark Hansen Tel: (609) 410-3916	Demolition of Three Buildings and Site Items	\$479,000.00	100%	06/2023	Hazardous Materials Abatement and Demolition



PROJECT REFERENCE LIST

Public	Hudson County Public Works 555 Duncan Ave, Jersey City, NJ 07306 Contact: John Delutis Tel: (908) 347-5552	Demolition of Prosecutor's office	\$888,500.00	45%	06/2023	Metal Framing, Hazardous Materials Abatement and Structure Demolition
Public	City of New Rochelle 515 North Ave New Rochelle, NY 10801 Contact: Alvaro Alfonso Lorrain Tel: (914) 654-2136	City Hall Employee Entrance Renovations	\$454,300.00	100%	12/2022	Excavation, Concrete Work, Asphalt, Painting, Metal Railing, Site Restoration
Public	City of New Rochelle 515 North Ave New Rochelle, NY 10801 Contact: Alvaro Alfonso Lorrain Tel: (914) 654-2136	Pedestrian Bridge Replacement	\$294,120.00	100%	10/2022	Replacement of Pedestrian Bridges, Concrete, Asphalt, Fence
Public	Monroe- Woodbury Central School District 278 Rt. 32 Central Valley, NY 10917 Contact: Andrzej Rudiak Tel: (845) 460-6770	General Construction Repairs and Carpentry	\$66,123.00	100%	09/2022	School Restroom Ceiling, Wall Tile, Floor Tile, Fixtures
Public	Monroe- Woodbury Central School District 278 Rt. 32 Central Valley, NY 10917 Contact: Andrzej Rudiak Tel: (845) 460-6770	General Construction Repairs and Carpentry	\$41,930.65	100%	08/2022	Gymnasium Wall Cleaning, Patching and Painting



PROJECT REFERENCE LIST

Public	Monroe- Woodbury Central School District 278 Rt. 32 Central Valley, NY 10917 Contact Andrzej Rudiak Tel: (845) 460-6770	General Construction Repairs and Carpentry	\$52,248.00	100%	02/2023	Auditorium Floor Cleaning, Patching and Painting
Public	Monroe- Woodbury Central School District 278 Rt. 32 Central Valley, NY 10917 Contact Andrzej Rudiak Tel: (845) 460-6770	General Construction Repairs and Carpentry	Service Contract Open	80%	06/2023	General Construction Repairs and Carpentry
Public	NYC DEP 59-17 Junction Blvd Queens, NY 11368 Contact: Sven Nielsen Tel: (551) 299-2200	Demolition of Four BSW Facilities	\$495,000.00	60%	12/2023	Structure Demolition, Fence Installation
Public	Village of Florida 33 S Main St, Florida, NY 10921 Contact Darren Doetsch Tel: (845) 704-8140	WWTP Building Demolition Project	\$55,800.00	100%	7/2022	Demolition of WWTP Building
Private	Lake Mohawk Country Club, 21 The Boardwalk, Sparta, New Jersey 07871 Contact : Sabine Watson Tel: (973) 729-6159	2022 Boardwalk Restoration	\$75,000.00	100%	4/2022	Boardwalk Restoration and Painting



PROJECT REFERENCE LIST

Public	DASNY 80-45 Winchester Blvd Queens Village, NY 11427 GC: AAA Windows & Doors Corp. Contact: Greg Duverge Tel: (973) 341-9091	Replace Windows Building 73	\$627,000.00	100 %	12/2020	Window Replacement, Interior Plaster Patching and Painting of Walls
Public	Office of General Services 80-45 Winchester Blvd Queens Village, NY 11427 GC: AAA Windows & Doors Corp. Contact: Elena Mileska Tel: 201-289-9191	Replace Windows Building 41	\$185,000.00	100 %	12/2020	Selective Demolition and Interior Painting
Public	Morris County Vocational School District 400 E Main St, Denville, NJ 07834 GC: Daskal LLC Contact: Damjan Daskaloski Tel: (973) 653-6789	Exterior and Interior Renovations of Morris County School of Technology	\$218,300.00	100%	10/2020	26,700 SF of Exterior Stucco and Interior Plastering and 7,800 SF of Interior Painting
Public	Yonkers Public Schools 373 Bronxville Rd, Yonkers, NY 10708 GC: APS Contracting Inc Contact: Steve Savreski Tel: 973-725-3742	Interior Upgrades at Yonkers PS 8	\$241,800.00	100%	9/2020	40,000 SF of Interior Plaster Patching and Painting
Public	Glen Ridge Board of Education 12 High St, Glen Ridge, NJ 07028 GC: Daskal LLC Contact: Damjan Daskaloski Tel: (973) 653-6789	Interior Renovations at Glen Ridge BOE	\$467,250.00	100%	9/2019	74,800 SF of Interior Plastering, Spackling and Painting



PROJECT REFERENCE LIST

Public	Yonkers Public Schools 579 Warburton Ave, Yonkers, NY 10701 GC: APS Contracting Inc Contact: Steve Savreski Tel: 973-725-3742	Interior Upgrades at Yonkers PS 25	\$289,750.00	100%	9/2019	45,000 SF of Interior Plaster Patching, Spackling and Painting of Walls and Doors
Public	Mount Olive Board of Education 227 US-206 #10, Flanders, NJ 07836 GC: Daskal LLC Contact: Damjan Daskaloski Tel: (973) 653-6789	Interior Renovations at Mount Olive PS	\$197,750.00	100%	10/2018	35,000 SF Interior Painting and Plastering

List of Equipment: ADP Group Inc.

1. Excavator	2008	Caterpillar 320D	Grapple
2. Excavator	2010	Caterpillar 321C Zero Swing	Bucket
3. Skid Steer	2016	Caterpillar 262D	Bucket
4. Excavator	2006	Komatsu PC300LCO	Jackhammer
5. Front End Loader	2000	Caterpillar IT28G	Bucket
6. Front End Loader	1999	John Deer 410D	Bucket
7. Dozer	2000	Caterpillar D4H	Grading Blade
8. Dozer	2001	Caterpillar D5	Grading Blade
9. Skid Steer	2013	JLG 55	Grapple
10. Telescope Forklift	2012	Kobelco PC206	Forks
11. Mini Excavator	2006	Volvo VHD64T	Bucket
12. Dump Truck	2005	Mack CV513	Dump Truck
13. Roll Off Truck	2004	Freightliner	Roll-Off
14. Roll Off Truck	2016	Sterling LT8	Roll Off
15. Roll Off Truck	2002	Caterpillar 262D	Roll Off
16. Tractor Trailer	2005	Mack 4x2 112.6	Skid Steer
17. Roller Compactor	2001	Bomag	Tractor
18. Skid Steer	2015	Komatsu	Double Vibratory Drums
19. Mini Excavator	2004	Bobcat 325M	Bucket
20. Excavator	2002	Caterpillar 320L	Jackhammer
			Bucket

Unofficial Bid Tabulation

City of Newburgh, NY

Project: 2.23 - Delano-Hitch Recreation Park Aquatic Center Demolition

Bid Opening: Wednesday, May 24, 2023 at 11:00 a.m., (local time)

ADP Group, Inc.	\$427,000.00
Gentile Construction Corp.	\$490,000.00
Taylor-Montgomery, LLC	\$535,871.25
Premier Building & Construction Management, Inc.	\$777,777.70
Dan's Hauling & Demo, Inc.	\$1,979,000.00

RESOLUTION NO.: 110 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL
AND EXECUTE A CONTRACT WITH CLARK PATTERSON LEE
FOR CONSTRUCTION ADMINISTRATION PROFESSIONAL ENGINEERING SERVICES
FOR THE DELANO-HITCH RECREATION PARK
AQUATIC CENTER DEMOLITION PROJECT IN THE AMOUNT OF \$32,000.00

WHEREAS, by Resolution No. 250-2022, the City Council of Newburgh authorized a contract with Clark Patterson Lee in the amount of \$804,000.00 for professional design and bid preparation and management services in the Delano-Hitch Recreation Park Aquatic Center Improvements Project (the "Project"); and

WHEREAS, Clark Patterson Lee has submitted a letter proposal for professional construction administration engineering services for the demolition phase of the Project; and

WHEREAS the cost of the services an amount not to exceed \$32,000.00 shall be derived from an allocation of funding received under the American Rescue Plan Act of 2021; and

WHEREAS, this Council determines that accepting the proposal and executing a contract with Clark Patterson Lee 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 construction administration engineering services agreement with Clark Patterson Lee for the demolition phase of the Delano-Hitch Recreation Park Aquatic Center Improvements Project in an amount not to exceed \$32,000.00.



April 10, 2023

Alexandra Church, AICP
Director of Planning and Development
City of Newburgh
83 Broadway
Newburgh, NY 12550

RE: Delano-Hitch Recreation Park Aquatic Center Demolition CA services

Dear Ms. Church:

CPL has been working with the City on the Delano-Hitch Recreation Park Aquatic Center Demolition and Construction projects. We have completed our demolition package portion of the project. This proposal is to provide the City with CA (Construction Administration) services related to the demolition portion of the project.

THE APPROACH:

SCOPE OF WORK:

Our scope of work will include one general phase which will last for the duration of the project. This phase is the Construction Administration Phase. Below is an itemized list of Work expected during this phase.

CONSTRUCTION ADMINISTRATION PHASE:

- CPL will provide "part-time" CA for the duration of the demolition project.
- Project duration is expected to last 12 weeks, which CPL will be providing twice-a-week on-site inspections to review compliance with drawings/specifications (24 total).
- Attend an on-site pre-construction conference with the City and Contractor.
- Review all submittals and shop drawings for conformance with the contract documents; review, verify and approve contractor submittals; maintain records of accepted and rejected submittals.
- Respond to contractor requests-for-information (RFIs).
- Review any change order requests and make a recommendation to the City.
- Review, verify and approve requests for payment from contractor, check progress against milestones.
- Prepare a punch list and oversee correction of punch list items.
- Review and approve closeout documents at project completion.



SITE VISIT SCHEDULE:

We anticipate the following on-site visits and meetings:

- Inspections twice-a-week for a duration of 12 weeks (24 total).
- Meetings on site with owner once-a-month for a duration of 3 months (3 total).
- Punch list/substantial completion.
- Final inspection.

FEE FOR BASIC CA PROFESSIONAL SERVICES

Our fee for Basic CA Services shall be a Lump Sum plus reimbursable expenses based on our understanding of the project. Based on the above, a break down in fees and assumed distribution of compensation is as follows:

Construction Administration Phase	\$ 30,000.00
*Reimbursables:	\$ 2,000.00
Total CA Fee and Reimbursables Budget Estimate:	\$ 32,000.00

*Schedule of Reimbursable Expenses: Article 11.8 Compensation for Reimbursable Expenses of AIA Document B101 is very specific on what is considered a reimbursable expense. These include, but may not be limited to, reproductions, etc.

If you are in agreement with the above, please sign below and forward a copy to our office, along with EC PO#, and retain a copy for your files. Should you have any questions or require additional information, please do not hesitate to call.

Very truly yours,

CPL

Timothy J. Moot, PG
Principal

SIGNATURE:

City of Newburgh

Date

RESOLUTION NO.: 111-2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO ANA VEGA OVALLE TO THE PREMISES KNOWN AS
151 LANDER STREET, 153 LANDER STREET, AND 153 LANDER STREET REAR
(SECTION 18, BLOCK 4, LOTS 43, 44.1, AND 44.2)
(N/K/A 153 LANDER STREET, SECTION 18, BLOCK 4, LOT 44.12)

WHEREAS, on March 27, 2015, the City of Newburgh conveyed three (3) parcels of property located at 151 Lander Street, 153 Lander Street, and 153 Lander Street Rear, being more accurately described on the official Tax Map of the City of Newburgh at the time as Section 18, Block 4, Lots 43, 44.1, and 44.2, respectively, to Ana Vega Ovalle; and

WHEREAS, Ms. Ovalle merged all three (3) parcels in 2017, such that the new parcel is now known as 153 Lander Street, and more accurately described on the official Tax Map of the City of Newburgh as Section 18, Block 4, Lot 44.12; and

WHEREAS, Ms. Ovalle has requested a release of the restrictive covenants contained in the March 27, 2015 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 three (3) premises described as 151 Lander Street, 153 Lander Street, and 153 Lander Street Rear, being more accurately described on the official Tax Map of the City of Newburgh at the time as Section 18, Block 4, Lots 43, 44.1, and 44.2, respectively (and now collectively known as 153 Lander Street, more accurately described on the official Tax Map of the City of Newburgh as Section 18, Block 4, Lot 44.12), from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated March 27, 2015, from THE CITY OF NEWBURGH to ANA VEGA OVALLE, recorded in the Orange County Clerk's Office on May 5, 2015, in Liber 13889, Page 329 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: June _____, 2023

THE CITY OF NEWBURGH

By: _____

Todd Venning, City Manager

Pursuant to Res. No.: _____-2023

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On the _____ day of June in the year 2023, 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: Alexandra Church, Director of Planning and Development
Jeremy Kaufman, Assistant Corporation Counsel

FROM: F. J. Spinelli, Fire Chief and Interim Building Inspector

DATE: May 11, 2023

SUBJECT: 153 Lander Street, Release of Restrictive Covenants Inspection

I conducted an inspection of 153 Lander Street, on May 5, 2023. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

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

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

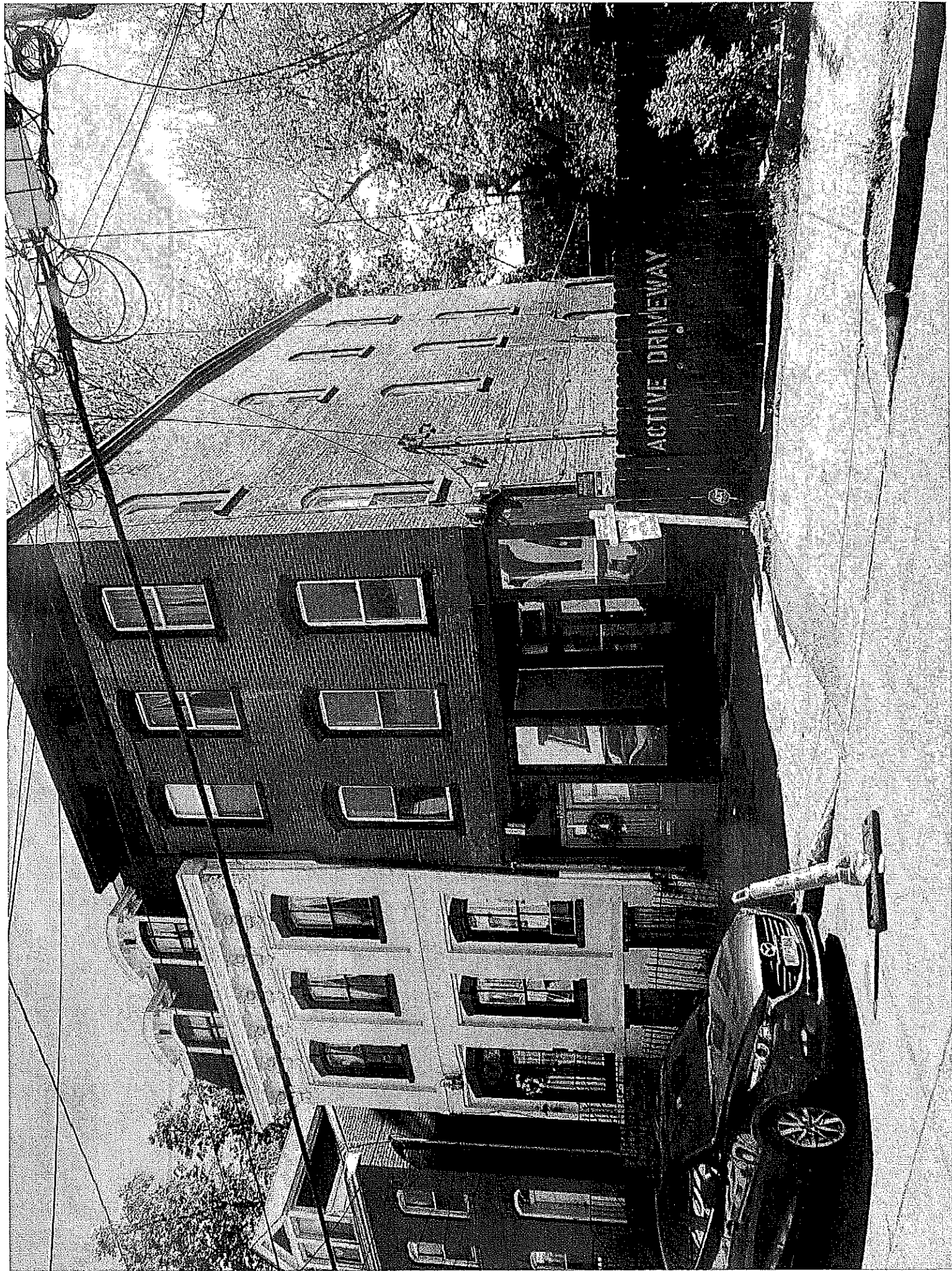
There are no open permits or open permit applications.

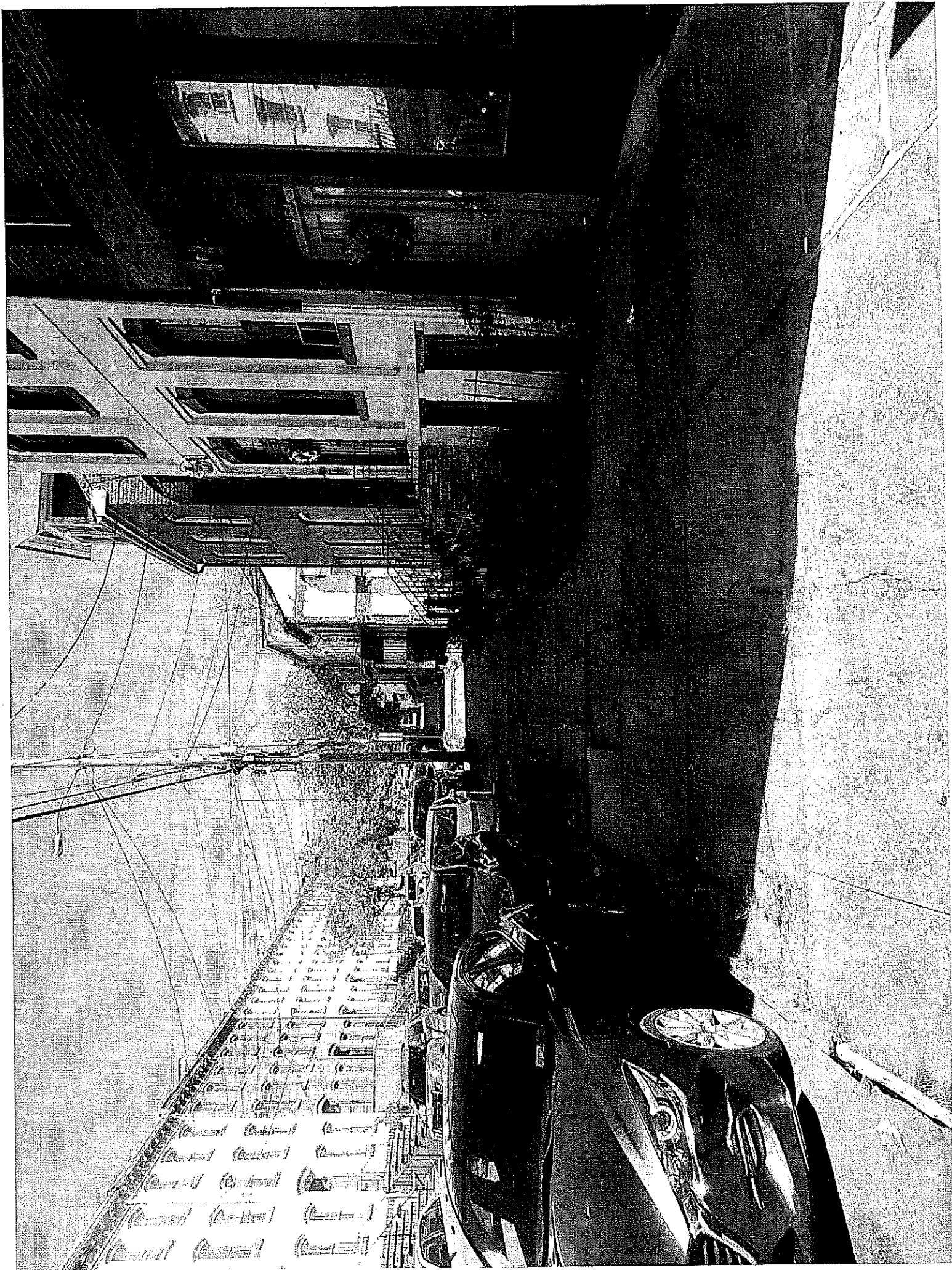
The property is an owner occupied, three story, mixed occupancy.

There is a valid Certificate of Occupancy in the property file dated May 2, 2023, for a 3 family dwelling (R2) with a first floor retail/business space (B).

Thank you,

Francis J. Spinelli





RESOLUTION NO.: 112-2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED ISSUED TO
W.H.G. OF NEW YORK, INC. TO THE PREMISES KNOWN AS
166 SOUTH STREET (SECTION 11, BLOCK 2, LOT 14)

WHEREAS, on August 18, 1992, the City of Newburgh conveyed property located at 166 South Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 11, Block 2, Lot 14, to W.H.G. of New York, Inc.; and

WHEREAS, W.H.G. of New York, Inc. (by William Giametta, President), has requested a release of the restrictive covenants contained in the deed from the City of Newburgh; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh and its further development 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 166 South Street, Section 11, Block 2, Lot 14 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, and 4 in a deed dated August 18, 1992, from THE CITY OF NEWBURGH to W.H.G. OF NEW YORK, INC., recorded in the Orange County Clerk's Office on September 11, 1992, in Liber 3562, Page 215 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: _____, 2023

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: _____-2023

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

On the ____ day of June in the year 2023, 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.: 113-2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED ISSUED TO
W.H.G. OF NEW YORK, INC. TO THE PREMISES KNOWN AS
27 LANDER STREET (SECTION 30, BLOCK 4, LOT 30)

WHEREAS, on November 9, 1995, the City of Newburgh conveyed property located at 27 Lander Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 30, Block 4, Lot 30, to W.H.G. of New York, Inc.; and

WHEREAS, W.H.G. of New York, Inc. (by William Giametta, President), has requested a release of the restrictive covenants contained in the deed from the City of Newburgh; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh and its further development 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 27 Lander Street, Section 30, Block 4, Lot 30 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, and 4 in a deed dated November 9, 1995, from THE CITY OF NEWBURGH to W.H.G. OF NEW YORK, INC., recorded in the Orange County Clerk's Office on May 28, 1996, in Liber 4390, Page 172 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: _____, 2023

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: _____-2023

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

On the ____ day of June in the year 2023, 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.: 114 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
AN ADDENDUM TO A SITE DEVELOPMENT AGREEMENT WITH
THE NEWBURGH MINISTRY, INC. FOR THE TRANSFER AND REDEVELOPMENT
OF PROPERTY LOCATED AT 17 JOHNSTON STREET
(SECTION 30, BLOCK 1, LOT 21)

WHEREAS, by Resolution No. 141-2019, the City of Newburgh authorized execution of a Site Development Agreement with The Newburgh Ministry, Inc. for the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21); and

WHEREAS, Colin Jarvis, Executive Director of The Newburgh Ministry, Inc., has requested an extension of certain key performance dates contained in the Site Development Agreement; and

WHEREAS, the City Council of the City of Newburgh finds that approving an Addendum to the Site Development Agreement that modifies said key performance dates 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 enter into the attached Addendum to the Site Development Agreement with The Newburgh Ministry, Inc. for the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21).

ADDENDUM TO SITE DEVELOPMENT AGREEMENT

THIS ADDENDUM TO SITE DEVELOPMENT AGREEMENT OF LEASE ("Addendum"), made as of this _____ day of _____, 2023, by and between the City of Newburgh, a New York municipal corporation, with offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City") and The Newburgh Ministry, Inc., a not-for-profit corporation, organized under the laws of the State of New York and having its principal office for the transaction of business at 9 Johnston Street, Newburgh, New York 12550 ("Developer").

WITNESSETH:

WHEREAS, the City and Developer executed a Site Development Agreement ("Agreement") for, among other things, the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21) (the "Project"); and

WHEREAS, certain key dates contained in the Agreement, Schedule C, have expired; and

WHEREAS, Developer desires to continue developing the Project to its completion; and

WHEREAS, the parties desire to extend certain key performance dates contained in the Agreement, Schedule C;

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

1. Schedule C as originally set forth in the Agreement shall be replaced in total with the "Amended Schedule C," annexed hereto and made a part hereof.
2. All other terms and conditions set forth in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Developer have duly executed this Addendum as of the day and year first above written.

THE CITY OF NEWBURGH

THE NEWBURGH MINISTRY, INC.

By: _____
Todd Venning, City Manager
Per Resolution No.: _____-2023

By: _____
Colin Jarvis
Executive Director

DRAFT

AMENDED SCHEDULE "C"
PROJECT AND DEVELOPMENT DEADLINES

1. That no longer than twelve (12) months from the execution of this Contract Addendum, the Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.
2. That no longer than fifteen (15) months from the execution of this Contract Addendum, the Developer shall have applied for and received a Project Mortgage from a Lending Institution funding the acquisition and construction of the Project.
3. That by September 30, 2024, the Developer shall have commenced construction of the Project.
4. That no longer than twenty-four (24) months from the Closing Date set forth in Section 3 of the original Agreement, Developer shall have completed construction of the Project and received a Certificate of Occupancy from the Code Compliance Bureau of the City of Newburgh.



9 Johnston Street
PO Box 1449
Newburgh, NY 12551

newburghministry.org
phone: 845.561.0070
fax: 845.561.5087

Proposed Amendment Request

Between The Newburgh Ministry Inc. and The City of Newburgh

Dear City Council Members,

Please accept this correspondence as an official request to amend the site development agreement between the City of Newburgh and the Newburgh Ministry regarding the development of 17 Johnston Street. The draft agreement document is date 5/30/19. Although this agreement has long expired, we are happy to report that we have and continue to make great progress and as such would like to amend the development timeline for this project.

According to Section C of the agreement all development activities related to this project should have been completed within twelve months of the date of the agreement. The agreement further states that within fifteen months of the execution of the contract, the developer would commence construction. In addition, the developer would be required to complete construction within twenty-four months. While we are way beyond the deadlines contained therein, I would like to provide some context and updates to where we are currently.

Development Project Status

In 2022 we received permission from Architectural Review Commission for the demolition of the buildings which now stand as 17 and 19 Johnston Street. The idea is to join the two lots along with the green space currently owned by the Newburgh Ministry in order to construct a five-story building with 40 studios and 10 one-bedroom apartments. This will become the Ministry's first low-income supportive housing project.





9 Johnston Street
PO Box 1449
Newburgh, NY 12551

newburghministry.org
phone: 845.561.0070
fax: 845.561.5087

We have participated with the planning board in several work group sessions over the past six months and we had our first formal presentation to the Board on Tuesday April 18th, 2023. We have already secured funding through the Empire State Supportive Housing Initiative program for the operation of the facility. We are now working with other state entities including HHAP and HCR to secure the construction funding.

As you are aware it is very difficult to articulate a schedule as it relates to building and construction. We are aggressively working towards securing construction funding for this project. We anticipate it would probably take fifteen months to complete this funding process. It is our hope that we will be shovel ready by the end September 2024.

In light of the afore mentioned, we are requesting that the Site Development Agreement dated May 30th, 2019, be amended to reflect an extension of the development schedule. I am available for a presentation to the Council if deemed appropriate.

Thank you so much for your understanding in this matter.

Sincerely,

Colin Jarvis
Executive Director

6/11/19

SITE DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWBURGH

AND

THE NEWBURGH MINISTRY

DATED AS OF July 15, 2019

Regarding:
17 Johnston Street, Tax ID 30-2-21
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 EXCEPTIONS
SCHEDULE C	PROJECT AND DEVELOPMENT DEADLINES
SCHEDULE D	PROPOSED DEED
SCHEDULE E	PROPOSED RELEASE

SITE DEVELOPMENT AGREEMENT

This SITE DEVELOPMENT AGREEMENT ("Contract") dated _____, 2019 between the City of Newburgh, a municipality of the State of New York, having a principal office at City Hall, 83 Broadway, Newburgh, NY 12550 ("Seller" or "City") and The Newburgh Ministry, a New York not-for-profit/religious corporation having an address at 9 Johnston Street, NY ("Developer").

WITNESSETH:

WHEREAS, the City is the owner of the property located at 17 Johnston Street in the City of Newburgh, more accurately described as Section 30, Block 2, Lot 21 on the official tax map of the City of Newburgh, described in Section 3.01 hereof (the "Property"); and

WHEREAS, the Seller desires to provide for the redevelopment of the Property; and

WHEREAS, the Developer has proposed to acquire the Property from the Seller for the purposes of developing the Property as a residential care facility, and Seller desires to convey the Property to the Developer pursuant to the terms set forth in this Contract; and

WHEREAS, the Developer acknowledges that the Seller is conveying the Property subject to the terms and conditions set forth herein for the purpose of providing for the redevelopment of the Property in accordance with this Contract;

NOW THEREFORE, in consideration of mutual covenants herein contained and the payment of the sum of one dollar (\$1.00) by the Developer to Seller, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

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

"Approvals and Permits" shall mean, collectively, all approvals and permits 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, architectural review approvals, easement and franchise agreements, building permits, certificate of occupancy, and all applications for licenses, permits and permission to construct and maintain all on-site and off-site improvements, curbcuts, roadway, mediate cuts and utility lines and services.

"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 temporary or permanent certificate of occupancy issued by the City of Newburgh Code Compliance Bureau.

"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, NY 12550, its successors and assigns.

"Claims" shall mean any and all claims (whether in tort, contract 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.

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

"Developer" shall mean the Newburgh Ministry or its successors and assigns to the extent permitted under Article 12 of this Contract.

"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, other than the City; 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 contract, 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, specifications, drawings and related documents for the Improvements which shall be prepared by an architect or other design professional, as appropriate, and shall be as detailed as the plans required to be submitted to the building inspector of the City for purposes of obtaining a building permit, including at least a site plan, landscaping plan, drainage plan, pedestrian and vehicle ingress and egress, floor plan, utilities, water, sewer, exterior materials, colors and elevations, parking plan, and signage, including all amendments and modifications thereof made in accordance with the terms hereof.

"Project" shall mean the redevelopment of the existing building located on the Property as a residential care facility for the expansion of services currently provided by the Developer.

"Project Lender" shall mean a Lending Institution that is the mortgagee of a Project Mortgage or 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 Contract.

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

"Required Guarantee" shall mean an unconditional letter of credit issued by a New York or U.S. federal bank whose unsecured obligations are rated at least "A/IX", in form and substance satisfactory to the Seller or a surety bond in form and substance satisfactory to the Seller.

"Residential Care Facility" shall mean a supervised residential board and care establishment, used as a group residence or extended care facility for the care of persons, where compensation and/or reimbursement of costs is paid to an operator, pursuant to state or federal standards, licensing requirements, or programs funding residential care services. The residential care facility provides common eating facilities for residents and common meeting or social or recreation areas. Such housing may also include daily activity assistance, such as dressing, grooming, bathing, etc.

"Substantially Complete" shall mean Developer's receipt of all Approvals and Permits (as defined above) that, when considered in total, would allow Developer to pursue the project to its completion.

"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 or the federal, state, county, school and city governments and of all other governmental authorities whatsoever.

"Title Insurer" shall mean any reputable title company or a member of the New York Board of Title Underwriters that is willing to approve and insure in accordance with a standard form title insurance policy.

SECTION 1.02 Interpretation. As used in this Contract, 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 Contract, 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 not-for-profit and/or religious corporation 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 Contract, a Project Mortgage, and the closing documents to be signed by Developer. 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 Contract.

(b) Developer intends to proceed to seek the Approvals and Permits promptly following the execution of this Contract for the development and rehabilitation of the Property.

(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 Approvals and Permits 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.

(f) Developer will indemnify and hold harmless Seller, its successors and assigns, against any expenses or damages, including reasonable attorneys' fees, that Seller incurs because of the breach of any of the above representations and warranties, whether such breach is willful or otherwise, before or after Closing.

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 Contract, and subject to the further terms of this Contract, Seller shall convey to Developer and Developer shall purchase, at the price and upon the terms and conditions set forth in this Contract, the Property in the City of Newburgh, Orange County, which "Property" includes:

- (a) the real property located in Orange County and described in Schedule "A" attached hereto and made part hereof (the "Land");
- (b) all buildings and other improvements constructed or situated on the Land (collectively the "Improvements");
- (c) 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;

- (d) the appurtenances and all the estate and rights currently held by the Seller in and to the Land and Improvements;
- (e) all right, title and interest currently held by the Seller, if any, in and to the furniture, machinery, fixtures, equipment attached to or located on the Land or the Improvements (collectively referred to in the Contract as the "Equipment")

SUBJECT TO the further easements and rights of reverter reserved herein.

SECTION 3.02. Title; Permitted Exceptions. Seller shall convey fee simple title to the Property in accordance with the terms of this Contract, subject only to the following (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 ; and
- (c) such other matters as the Title Insurer shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Property.

SECTION 3.03 Closing. Except as otherwise provided in this Contract, the closing of title pursuant to this Contract (the "Closing") shall take place at 10:00 am on the date determined by the parties but in any event not later than thirty (30) days from the date that the Developer is issued a building permit for the Project, 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 \$1,000.00, payable as follows:

- (a) The Developer shall pay to the Seller a down payment of \$100.00 (the "Earnest Money") upon the execution of this Contract, which Earnest Money shall be non-refundable, except to the extent provided in Section 7.02).
- (b) The Developer may apply the Earnest Money as a credit toward the Purchase Price at Closing.

SECTION 4.02 Acceptable Moneys. All monies payable under this Contract, unless otherwise specified in this Contract 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 condition:

- (a) Prior to conveyance of the Property, the Developer shall have the option to terminate this Contract, but without the right to receive a refund of the Earnest Money, on or before the Closing Date if despite Developer's best efforts:
 - a. Developer is unable to obtain all approvals necessary to receive a Building Permit for the Project. Best efforts shall include, but not be limited to, receipt on or before twelve (12) months after the date of this Contract of a complete site plan approval or special use permit, if applicable, for the Project from the City of Newburgh Planning Board, any variances (if applicable) from the City of Newburgh Zoning Board of Appeals, and any approvals (if applicable) from the City of Newburgh Architectural Review Commission.
 - b. Developer is unable to secure the necessary funding to finance the acquisition and construction of the Project. Best efforts shall include, but not be limited to, obtaining a Project Mortgage on or before twelve (12) months after the date of this Contract.
- (b) Developer shall be deemed to have waived such contingency if written notice is not given to Seller no fewer than twenty (20) days 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 Contract.
- (b) Developer shall have deposited all Required Guarantees required by this Contract.
- (c) Developer shall have furnished the Seller with a certified statement of the total development cost of the Project and evidence reasonably satisfactory to the Seller that the Developer has adequate financing to complete the Project. The Developer shall have obtained all required Approvals and Permits for the Project.
- (d) The Developer shall have submitted Plans and Specifications prepared by an architect, engineer, or other design professional duly licensed by New York State and a certificate of said architect, engineer or other design professional that such Plans and Specifications are consistent with all Approvals and Permits.
- (e) The Developer shall not be in default in any other fashion pursuant to the terms of this Contract.

SECTION 5.03 Seller's Right to Terminate. Seller shall have the right to terminate this Contract by written notice to the Developer, but without any obligation to refund the Earnest Money, if all of the conditions precedent to conveyance set forth in Section 5.01 have not been satisfied by the Closing Deadline. Seller shall have the exclusive right to determine whether any of said conditions have (or have not) been satisfied.

SECTION 5.04 Termination of Contract. Upon termination by either party, this Contract shall be null and void, and no action, claim or demand may be based on any term or provision of this Contract, 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 prepare a project design for the Project and submit Plans and Specifications to the appropriate land use boards for review and approval prior to the Closing Date.
- ii. Developer will use its best efforts to obtain land use board(s) approval for the Project at least 60 days prior to the Closing Date and obtain any other Approvals and Permits for the Project at least 30 days prior to the Closing Date.

(b) Completion Deadline:

- i. Developer will complete the construction of the Project no later than the 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 have received Seller's prior written approval, not to be unreasonably withheld, of all architects, engineers and general contractors to be engaged in the planning, design, and construction of the Public Improvements, which prior written approval of Seller will not be given, apart from any other considerations, unless such architects, engineers, and contractors specifically agree to complete their work for Seller, at Seller's request, in the event of Developer's default.

- iv. 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 Contract.
- v. Shall pay all proper accounts for work done or materials furnished under all contract which it has entered into relating to the construction of the Project.
- vi. If any Lien is filed or asserted, including, without limitation, any Lien for the performance of any labor or services or the furnishing of materials, whether or not valid, is made against the Property or any part thereof in the interest therein of the Seller, or the interest therein of a Party under this Contract, other than Liens for Taxes not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or Liens being contested as permitted by this Section, the Developer forth with upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to Seller and, except where the validity of such Lien is being contested in accordance with the provisions of this Section, take all action (including the payment of money and/or the securing of a bond) at its own expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Contract shall be construed as constituting the express or implied consent to or permission of the seller for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against Seller's interest in the Property. The Developer may at its sole expense contest, after prior written notice to the Seller, by appropriate action conducted in good faith and with due diligence in the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Property or Improvements or any part thereof or any interest therein, or in this Contract, of the Sell or Developer or against any of the rentals or other amounts payable under this Contract, (ii) neither the Property or Improvements nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) Seller would not be in any reasonable danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Developer shall have furnished such security, if any, as may be required in such proceedings; if such proceeding could result in the Seller being in any reasonable danger of civil liability, including accrual of interest, fines and/or penalties, (y) the Developer shall deliver a written confirmation to the Seller that the Developer shall indemnify and hold the Seller harmless from any claims, liabilities, costs or expenses as may derive with respect thereto, and (z) the Developer shall provide to the Seller such security as the Seller may reasonably require.
- vii. At the written request of the Seller, the Developer shall provide all reasonable information as may be requested with respect to any Lien, 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 Contract and the Closing, unless this Contract 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 12.09 of this Contract.
- (c) The Seller shall cooperate when reasonably requested by Developer, at Developer's expense, in connection with any application for planning or other regulatory approvals necessary in connection with the contemplated use of the Property for the Project, 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 which may be imposed upon, incurred by or asserted against the Seller other than losses arising from the negligence or willful misconduct of the Seller arising during the term of this Contract upon or about the Property or resulting from, arising out of, or in any way connected with (1) the funding of the costs of the Project; (2) 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; (3) any defects, whether latent or patent, in the Improvements; (4) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Improvements or any portion thereof; or (5) any act or omission of Developer or any of its agents, concessionaires, contractors, servants, employees, tenants, or invitees, including without limitation any failure by Developer to perform or comply with any of the covenants, agreements, terms, conditions or limitations of this Contract. The Developer shall require any of its Permittees who perform construction work on the Property to agree to indemnify the City 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 thirty (30) days of the date hereof. Seller shall be entitled to a reasonable period of time of not less than one hundred eighty (180) days to remove any defects in or objections to title caused by Seller and noted in such title report. For express purposes of this Section, any objections by Developer or a Title Insurer with respect to Seller's tax foreclosure proceedings shall not be deemed valid or actionable objections to

title, provided that Seller can demonstrate compliance with Article 11 of the New York State Real Property Tax Law.

SECTION 7.02 Developer's Right to Terminate. If Seller is unable to cause title to the Project to be conveyed at the Closing in accordance with the provisions of this Contract, Developer may elect to accept such title as Seller may be able to cause to be conveyed. If Developer shall not so elect, Developer may terminate this Contract upon thirty (30) days' notice to Seller and Seller shall be obligated to return the Earnest Money to Developer. Upon such termination, the Contract 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 6.05 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 Contract.

ARTICLE 9 SITE CONDITIONS; INVESTIGATIONS; APPROVALS

SECTION 9.01 As-Is Condition. The Seller is conveying the Property in "as is" condition. The Seller expressly disclaims any warranties or representations whatsoever including without limitation soil conditions, the existence of below-grade foundations (whether or not concealed), environmental conditions, air-quality, or the location of existing underground utilities. Any costs related to abnormal conditions or quality of the subsoil, or to the improvement of the subsoil, or to demotion and removal of any abandoned utilities or improvements, or to the construction of new utilities, or related to hazardous soil conditions in any way whatsoever, 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 Contract 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 contract to change, amend, modify, or alter any local law, code, or ordinance of the City or any agency or body of the City. The failure by Developer to receive any Approvals and/or Permits from Seller, other body of the City, and/or public agency, shall not be a valid basis for claiming Seller default pursuant to the terms of this Agreement.

SECTION 9.04 Zoning and Planning Approvals.

- (a) Developer anticipates that the development of the Project as presently contemplated will not require an amendment to the zoning code and/or area or use variances. In the event of any proposed modifications by the Developer to the 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 Contract obligates the City, the Seller, or any other governmental body to provide for such approvals. The Project must be in conformance with all applicable zoning requirements as they may be so amended.
- (b) If Developer shall be delayed, hindered in or prevented from the performance of any act required under this Contract by reason(s) related to grant of approvals from the City of Newburgh Planning Board, Zoning Board of Appeals, and/or Architectural Review Commission, Developer may request an extension of time to receive any Approvals and Permits required to complete the Project. Developer must make said request in writing. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time for a period not to exceed, three (3) months. Any additional request(s) thereafter shall be made in writing and placed before the City Council for its consideration.

SECTION 9.05 Environmental and Soil Investigation and Testing.

- (a) Seller grants to Developer the right to conduct an examination to obtain a report or reports by a qualified consultant or consultants (the "Consultants") concerning the presence of any (i) contamination of the Property by hazardous materials; (ii) apparent violation of environmental requirements upon or associated with activities upon the Property; (iii) potential incurrence of environmental damages by the prior or current owner(s) or operator(s) of the Property; or (iv) such other soil, subsoil, geological and engineering investigations as Developer may desire or as may be required by a Governmental Authority which must approve any aspect of the development of the Project.
- (b) Developer may terminate this Contract on or before 180 days after the date of this Contract (but without the right to receive a refund of the Earnest Money) in the event such report indicates the presence of any such matters. Developer shall provide a copy of any such report to Seller.
- (c) Such investigation and testing may include, without limitation, (i) site inspection; (ii) drilling, core sampling, taking of samples for analysis, installing, monitoring and testing devices; (iii) interviews of present occupants of the Property; (iv) a review of public records concerning the Property and other properties in the vicinity of the Property; and (v) a review of aerial photographs of the Property and other evidence of historic land uses.
- (d) The investigation and testing any be performed at any time or times, except that entry upon the Property shall be on reasonable notice and under reasonable conditions to Seller. The Consultants are hereby authorized to enter upon the Property for such purposes and to perform such testing, including drilling, core sampling, and the taking of such other samples as may be necessary to conduct the investigation and testing as required in the opinion of

the Consultants. The Consultants may install, and monitor such testing and sampling devices as in their opinion are reasonable and necessary. Seller shall have the right to be present during all testing and sampling and survey work.

- (e) Developer shall pay all costs and expenses of such investigation and testing, and Developer shall indemnify and hold Seller harmless from and against all costs and liabilities relating to Developer's activities. Developer shall further repair and restore any damage to the Property caused by or occurring during Developer's investigation and testing and return the Property to substantially the same condition as existed prior to such entry. Developer and Consultants shall provide evidence of insurance satisfactory to Seller prior to having access to the site.

ARTICLE 10 CLOSING OBLIGATIONS; APPORTIONMENTS

SECTION 10.01 Seller's Closing Obligations. At the Closing, the 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 Contract (including without limitation the right of reverter/re-entry set forth in Section 11.04).
- (b) A bill of sale conveying, transferring and selling to Developer all right, title and interest of the Seller in and to any Equipment (if applicable).
- (c) A non-foreign affidavit ("FIRPTA Affidavit"), properly executed and in recordable form, containing such information as shall be required by Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations issued therefor.
- (d) Such affidavits as Developer's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the Seller's name, provided that such affidavits are provided to Seller no later than one (1) week prior to Closing.
- (e) A designation agreement designating the "reporting person" for purposes of completing IRS Form 1099-S.
- (f) Subject to Permitted Exceptions, possession of the property in the condition required by this Contract.

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

- (a) Deliver to Seller the portion of Purchase Price payable at Closing.
- (b) Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause necessary payments for recording to be delivered to the appropriate officers at Closing.
- (c) Deliver a designation agreement designated the "reporting person" for purposes of completing IRS Form 1099-S.

- (d) Provide an Affidavit from a natural person with authority to act on Developer's behalf that provides the name(s), address(es), contact phone number(s), of the members or shareholders (as the case may be) of the entity taking title to the Property.

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

ARTICLE 11 DEFAULTS AND REMEDIES

SECTION 11.01 Remedies on Default.

- (a) Termination of Contract by Seller. Upon the occurrence of any default under this Contract by Developer, or upon default under any Related Contract, Seller may, at its option, or any time thereafter, give written notice to Developer specifying the default and stating that this Contract shall terminate on the date specified in such notice, which shall be not less than ten (10) days after the date of such notice. Upon the date specified in the notice, this Contract and all rights of Developer under this Contract shall terminate. Time shall be of the essence to close as of the date specified in said notice, regardless of whether said notice provides "time is of the essence" language. The termination of this Contract does not relieve Developer of its liability and obligations under Section 9.05(e) and Section 6.05 of this Contract, which shall survive. Upon such termination Seller will retain the Earnest Money as liquidated damages. The termination of this Contract and the retention of the Earnest Money will be the sole remedy available to Seller for such default by Developer and Developer will not be liable for damages or 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 Contract shall terminate on the date specified in such notice, which shall not be less than ten (10) days after the date of such notice. Upon the date specified in the notice, this Contract shall terminate. The termination of this Contract shall not relieve the Developer of its liability and obligations under Section 9.05(e) and Section 6.05 of this Contract, which shall survive. If Seller defaults under this Contract, this provision does not preclude Developer from seeking specific performance of this Contract. Developer shall have no right to seek damages from Seller for Seller's defaults hereunder. Any costs or expenses incurred by Developer pursuant to this Contract shall not be recoverable in any lawsuit by Developer, in law or in equity.

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 Contract by reason of Force Majeure, performance of that act shall be excused for the period of the delay (but not exceeding ninety (90) days from the date of the Force Majeure event) 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 ten (10) days after the Force Majeure event occurred. The provisions of this Section shall not excuse Developer from the prompt payment of amounts due under this Contract or any Related Contract.

SECTION 11.03 Cumulative Rights and Remedies. Each right and remedy under this Contract shall be cumulative and shall be in addition to every other right or remedy provided for in this Contract 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 or any or all other rights or remedies Seller may have.

SECTION 11.04 City's Right of Reverter/Re-Entry.

- (a) The Property shall be developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed will contain provisions stating that the Developer is required to rehabilitate any building on the Property 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 or Certificate of Compliance from the City of Newburgh Code Compliance Bureau for all buildings on the Property. 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. 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 and another other reasonable terms/conditions that Seller deems necessary to protect its interest herein.
- (b) The Parties recognize that Project development and rehabilitation costs may be substantial, and that Developer may seek the financial assistance of a lender to complete the Project. In the event that Seller seeks lender financing to assist in the completion of the Project, and Seller's lender conditions its financial assistance on the subordination of the City's Right of Reverter/Re-Entry to the lender's loan terms, Developer shall provide a written notice from Developer's lender outlining the terms of the loan commitment. Upon receipt of said notice and upon being provided documents that create an adequate alternative to protecting the City's interests herein, the City Manager may, in his sole discretion, execute documents and enter into any agreements with Developer or Developer's lender in order to effectuate the grant of a lending facility to Developer. However, Developer's failure to obtain financing for any reason, including failure to obtain Seller's consent to subordinating its interests herein, shall not be cause for Default or Seller's breach pursuant to this Contract.

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 Contract 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 Contract and agreed to be subject to all conditions and restrictions herein.

SECTION 12.02 Entire Agreement; Amendment. This Contract 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 Contract. Neither this Contract 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.

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 Contract shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflict of laws.

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

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

SECTION 12.07 Binding Effect. This Contract 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 Contract 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 contract with a view toward effecting the purpose of this contract, 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 Contract shall be in writing and shall be delivered personally, sent by a nationally recognized reputable overnight delivery service, or sent by 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 or as Developer or Seller shall otherwise have given notice as herein provided.

Developer as follows:

with a copy to:

Seller as follows:

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

With a copy to

Corporation Counsel
Attn: Michelle Kelson
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 Contract 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 No Partnership or Joint Venture. This Contract 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 to a new, specifically defined legal relationship.

SECTION 12.12 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 her or her 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 Contract shall be deemed withdrawn unless accepted by Seller and a fully executed counterpart of this Contract returned to Developer on or before _____ (said date being 30 days from City Council approval).

SECTION 12.15 Further Assurances. The Parties hereto agree to make, execute and deliver all further instruments and documents reasonably necessary or proper to fully effectuate the terms, covenants and provisions of this Contract.

SECTION 12.16 Gender and Number. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural thereof. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

SECTION 12.17 Waiver of Trial by Jury. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT.

SECTION 12.18 Jurisdiction. The Parties each submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Contract and, in furtherance of said Contract, each Party agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over each Party in any such action or proceeding may be obtained within or without the jurisdiction of any court located in the State of New York, Orange County, and that any process or notice of motion or other application to any such court in connection with

any such action or proceeding may be served upon each Party as provided for in the New York State Civil Practice Laws and Rules.

SECTION 12.19 Authority. The Parties represent that that they are duly authorized to enter into this Contract and to execute any and all documentation necessary to effectuate the terms contained herein, and have each taken all requisite action to obtain such authorization. All references to the Parties in this Contract shall be deemed to also be references to such officers or employees or other designees of the Parties as may be appropriate to implement the terms of this Contract

SECTION 12.20 Non-waiver. No failure or delay of any Party in the exercise of any right or remedy given to such Party hereunder, or the waiver by any Party of any condition hereunder for its benefit shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by any Party of any other breach hereunder or failure or refusal by the other Party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

SECTION 12.21 Counterparts. This Agreement may be executed in counterparts by original or copy, each of which shall constitute one and the same instrument.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
[Signature Page to Follow]

Signature Page, Site Development Agreement

City of Newburgh to the Newburgh Ministry

Premises: 17 Johnston Street, Newburgh, New York (Section 30, Block 2, Lot 21)

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

Seller: CITY OF NEWBURGH

By:

Joseph P. Donat, City Manager
Per Resolution No. 141-2019

Developer: The Newburgh Ministry

By:

STATE OF NEW YORK)

) ss:

COUNTY OF ORANGE)

On the 15 day of July in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH P. DONAT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

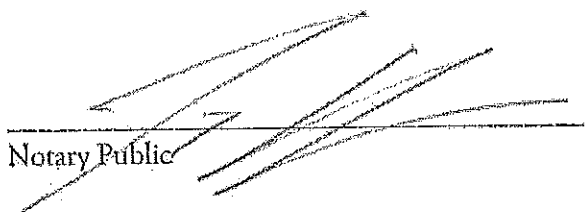
Jeremy Kaufman
Notary Public, State of New York
No. 02KA6202389
Qualified in Sullivan County
Commission Expires March 16, 2021

Notary Public

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

On the 10 day of July in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Colleen Jarvis, 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.

Jeremy Kaufman
Notary Public, State of New York
No. 02KA6202389
Qualified in Sullivan County
Commission Expires March 16, 2021



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 17 Johnston Street, being more accurately described as Section 30, Block 2, Lot 21 on the Official Tax Map of The City of Newburgh.

SCHEDULE "B"
PERMITTED EXCEPTIONS

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, assessments, or school taxes 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 right of reverter/re-entry described in Section 11.04 of this Contract.

SCHEDULE "C"
PROJECT AND DEVELOPMENT DEADLINES

1. Within thirty (30) days of the execution of this Contract, the Developer shall submit to the Director of Planning and Development of the City of Newburgh, a plan and narrative description of the Developer's plan for financing the acquisition and redevelopment of the Property.
2. That no longer than twelve (12) months from the execution of this Contract, the Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.
3. That no longer than twelve (12) months from the execution of this Contract, the Developer shall have applied for and received a Project Mortgage from a Lending Institution funding the acquisition and construction of the Project.
4. That no longer than fifteen (15) months from the execution of this Contract, the Developer shall have commenced construction of the Project.
5. That no longer than twenty-four (24) months from the Closing Date set forth in Section 3 of this Agreement, Developer shall have completed construction of the Project and received a Certificate of Occupancy from the Code Compliance Bureau of the City of Newburgh.

SCHEDULE "D"
PROPOSED DEED

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

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

_____, having an address of _____, party of the second part.

WITNESSETH, that the party of the first part, in consideration of \$_____.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 _____, in the City of Newburgh and being more accurately described as Section ____, Block ____, Lot ____ 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, provided any covenants and restrictions that are not of record have been disclosed to the party of the second part prior to the recording of this deed, 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 indicated as In Rem No.: _____ in a deed from _____ 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 bring the property conveyed herein 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, evidencing compliance with all said statutes, codes, rules, and regulations set forth herein, for all buildings and structures located on the property. If a Certificate of Occupancy has not been issued for any building or structure on such property, prior to the date of this deed, the party of the second part shall, within twenty-four months after the date of this deed, either make such building or structure fit for the use set forth in such Certificate of Occupancy or shall obtain a new Certificate of Occupancy for another use or shall demolish such building or structure;

(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 or Compliance shall be issued by the Building Inspector. Nothing to the contrary herein withstanding any and all rights of the party if the first to reconveyance as set forth in this deed shall cease upon the issuance of a Certificate of Occupancy by the Building Inspector;

(3) prior to the issuance of a Certificate of Occupancy or Compliance, 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, reconvey 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, reconvey 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. Provided, that such conditions subsequent and any reverting of title as a result thereof in the party of the first part shall always be subject to and limited by and shall not defeat, render invalid or limit in any way, the lien of any mortgage obtained by the party of the second part for the purpose of financing the work necessary to bring the property into compliance with all statutes, codes, rules and regulations as is required by the covenants contained in this deed. The words, "the party of the second part", as used in this paragraph, shall be construed to mean the party of the second part or his successors or assigns.

IN WITNESS WHEREOF, the parties have duly executed this deed the day and year first above written.

THE CITY OF NEWBURGH

BY: _____
Joseph P. Donat, City Manager
Pursuant to Resolution No.: 141-2019

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

On the _____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH P. DONAT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

BY: _____

Title:

STATE OF NEW YORK)

) ss:

COUNTY OF ORANGE)

On the _____ day of _____ in the year 20____, 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.

RECORD & RETURN TO:

SCHEDULE "E"
PROPOSED RELEASE OF COVENANTS AND RIGHT OF RE-ENTRY

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 _____, Section ____, Block ____, Lot __ 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 _____, from THE CITY OF NEWBURGH to _____, recorded in the Orange County Clerk's Office on _____ in Liber _____ of Deeds at Page _____ 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: _____, 20__

THE CITY OF NEWBURGH

By: _____

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

City Manager

On the ____ day of _____ in the year 20__, before me, the undersigned, a Commissioner of Deeds 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 she 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.

RESOLUTION NO.: 115 - 2023

OF

JUNE 12, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
SATISFACTION OF MORTGAGE IN CONNECTION WITH THE PREMISES
LOCATED AT 155 DUPONT AVENUE (SECTION 26, BLOCK 1, LOT 7)**

WHEREAS, the City of Newburgh issued a mortgage to Wendy M. Brant in the principal sum of \$5,500.00 for the premises located at 155 Dupont Avenue (Section 26, Block 1, Lot 7) ("Premises"), dated September 9, 2013, and recorded in the Orange County Clerk's Office on September 24, 2013, in Book 13652, Page 1452; and

WHEREAS, said mortgage converted into a grant over a period of time provided that, among other things, the owner did not sell, convey, or transfer title to the Premises within 5 years from the issuance of the mortgage; and

WHEREAS, the mortgagor has appeared to comply with the terms and conditions of said mortgage and is entitled to a discharge of record; 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 mortgage issued by the City of Newburgh to Wendy M. Brant in the principal sum of \$5,500.00 is hereby satisfied, and the City Manager is hereby authorized to execute the attached Satisfaction in connection with said mortgage.

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT

The City of Newburgh, a municipal corporation with a principal place of business at 83 Broadway, Newburgh, New York 12550;

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

MORTGAGE bearing the date of September 9, 2013, made by Wendy M. Brant to the City of Newburgh, given to secure payment of the principal sum of \$5,500.00, and duly recorded in the office of the Orange County Clerk's Office on September 24, 2013, in Book 13652, Page 1452; and

which Mortgage has not been further assigned of record.

Dated: June ____, 2023

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Pursuant to Res. No.: ____-2023

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

On the ____ day of June in the year 2023, 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

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE

THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE

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

Wendy M Brant

TO

CITY of newburgh

SECTION 26 BLOCK 1 LOT 7

RECORD AND RETURN TO:
(name and address)

City of Newburgh
Dept of Planning & Dev
City Hall - 83 Broadway
Newburgh NY 12550



THIS IS PAGE ONE OF THE RECORDING

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

2089 BLOOMING GROVE (TN)
2001 WASHINGTONVILLE (VLG)
2003 SO. BLOOMING GROVE (VLG)
2289 CHESTER (TN)
2201 CHESTER (VLG)
2489 CORNWALL (TN)
2401 CORNWALL (VLG)
2600 CRAWFORD (TN)
2800 DEERPARK (TN)
3089 GOSHEN (TN)
3001 GOSHEN (VLG)
3003 FLORIDA (VLG)
3005 CHESTER (VLG)
3200 GREENVILLE (TN)
3489 HAMPTONBURGH (TN)
3401 MAYBROOK (VLG)
3689 HIGHLANDS (TN)
3601 HIGHLAND FALLS (VLG)
3889 MINISINK (TN)
3801 UNIONVILLE (VLG)
4089 MONROE (TN)
4001 MONROE (VLG)
4003 HARRIMAN (VLG)
4005 KIRYAS JOEL (VLG)

4289 MONTGOMERY (TN)
4201 MAYBROOK (VLG)
4203 MONTGOMERY (VLG)
4205 WALDEN (VLG)
4489 MOUNT HOPE (TN)
4401 OTISVILLE (VLG)
4600 NEWBURGH (TN)
4800 NEW WINDSOR (TN)
5089 TUXEDO (TN)
5001 TUXEDO PARK (VLG)
5200 WALLKILL (TN)
5489 WARWICK (TN)
5401 FLORIDA (VLG)
5403 GREENWOOD LAKE (VLG)
5405 WARWICK (VLG)
5600 WAWAYANDA (TN)
5889 WOODBURY (TN)
5801 HARRIMAN (VLG)
5809 WOODBURY (VLG)
CITIES
0900 MIDDLETOWN
1100 NEWBURGH
1300 PORT JERVIS
9999 HOLD

NO. PAGES 6 CROSS REF.
CERT. COPY ADD'L X-REF.
MAPS PGS.

PAYMENT TYPE: CHECK
CASH
CHARGE X
NO FEE

Taxable
CONSIDERATION \$
TAX EXEMPT
Taxable
MORTGAGE AMT. \$ 4700

MORTGAGE TAX TYPE:

 (A) COMMERCIAL/FULL 1%
 (B) 1 OR 2 FAMILY
 (C) UNDER \$10,000
X (E) EXEMPT
 (F) 3 TO 8 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

Newburgh Comm. Dev

RECORDED/FILED
09/24/2013/ 15:55:49
County Clerk
DONNA L. BENSON
ORANGE COUNTY, NY
FILE # 20130097630
MORT/BK 13652 PG 1452
SER# DE006133 MTAX 0.00
BASIC 0.00
MTA 0.00
SPECIAL 0.00
SPECIAL ASST 0.00
RECORDING FEES 70.00
Receipt#1664425 dab



Two thousand thirteen
THIS BOND AND MORTGAGE, made the 9th day of September, ~~1938~~
BETWEEN

Wendy M. Brant having an address of 155 Dupont Ave. Newburgh, NY

herein referred to as the mortgagor,

and the City of Newburgh, 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
Five Thousand ~~Five~~ Hundred----- (\$ ~~5,500.00~~) Dollars
lawful money of the United States, which the mortgagor does hereby agree and bind himself to repay to the mortgagee

As follows:

- a) If within 1 year from the date of this instrument-100% of the amount
- b) If within 2 years from the date of this instrument-80% of the amount
- c) If within 3 years from the date of this instrument-60% of the amount
- d) If within 4 years from the date of this instrument-40% of the amount
- e) If within 5 years from the date of this instrument-20% of the amount
- f) After 5 years from the date of this instrument, if the mortgagor has
otherwise complied with the terms hereof and has not sold, conveyed, loan
herein shall become a grant and there shall be no obligation on the mortgagor
to pay any part thereof...such percentage amount to be immediately due and
payable within 5 years from the date of this instrument, upon the earliest
to occur of the following events:

- i) Default under term and condition of this bond and mortgage
- ii) Sale or other conveyance of the mortgaged premises to a person
other than a named mortgagor herein; and
- iii) No mortgagor in domicile at the mortgaged premises

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

That certain plot, piece or parcel of land, with the building and
improvements thereon erected, situate, lying and be in the
City of Newburgh, County of Orange, and State of New York and
described as follows:

SECTION 26 BLOCK 1 LOT 7

on the official tax map of the City of Newburgh.

65.3

19

$$\left. \begin{array}{l} \text{---} \\ \text{---} \\ \text{---} \end{array} \right\} \text{---}$$

1

in

; that he is the

15.

19

18

1

in

, that he knows

01

Bond and Mortgage

Dated _____ 19____

Amount, \$

Due, 19

Int. Payable

The land affected by the within instrument lies
in

Record and return to

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.

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:


James A. Slaughter,
Acting City Manager
City of Newburgh

9/10/2013
Date


Wendy M. Brant

9/9/2013
Date

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, aeriads, 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.

STATE OF NEW YORK)

SS:

COUNTY OF ORANGE)

On the 10 day of September the year 2013, before me, the undersigned, a ~~(Commissioner of Deeds)~~ (Notary Public) in and for said State, personally appeared James A. Slaughter, 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)

MICHELLE KELSON
Notary Public, State Of New York
Sullivan County Clerk's #2564
Commission Expires: March 20, 2014

On the 9th day of September, in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Wendy M. Brant, 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.

ELIZABETH A. EVANS
Notary Public, State of New York
No. 01EV829792
Qualified in Orange County
Commission Expires April 15, 2017

RESOLUTION NO.: 116 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT
IF AWARDED A NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION 2023 URBAN FORESTRY PROGRAM GRANT ROUND 16
IN THE AMOUNT OF \$75,000.00 FOR A TREE INVENTORY AND
COMMUNITY FOREST MANAGEMENT PLAN UPDATE

WHEREAS, the Conservation Advisory Council has requested that the City of Newburgh apply for and accept if awarded a New York State Department of Environmental Conservation 2023 Urban and Community Forestry Program Grant (DEC01-UCF1-2023) for a Tree Inventory and Community Forest Management Plan Update in the amount of \$75,000.00; and

WHEREAS, such grant funds will be used to conduct a comprehensive tree inventory that includes tree species, location, GPS coordinates, crown condition, and maintenance recommendations and to develop a community forest management plan, supervised by an ISA Certified Arborist, which outlines the long-term vision and goals for the community forest, and strategies for managing and caring for community trees; and

WHEREAS, the grant requires no City match; and

WHEREAS, this Council has determined that applying for and accepting said grant if awarded is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Department of Environmental Conservation 2023 Urban and Community Forestry Program Grant (DEC01-UCF1-2023) for a Tree Inventory and Community Forest Management Plan Update in the amount of \$75,000.00; and to execute all such further contracts and documents and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: 117 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH THE CATHEDRAL AT THE HOUSE
F/K/A HOUSE OF REFUGE
TO ALLOW USE OF CITY OWNED PROPERTY LOCATED AT
140 BROADWAY FOR THE HEALTHY ORANGE FARMERS MARKET

WHEREAS, the City of Newburgh is the owner of several parcels of real property located at 132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway"; and

WHEREAS, the Healthy Orange Farmers Market f/k/a Tuesday Farm Market has been held at 140 Broadway since 2012 and provides the following benefits:

1. To provide greater visibility to attract more buyers and vendors;
2. To promote positive activity on Broadway; and
3. To provide more space for Orange County agencies to provide information and conduct demonstrations for the community; and

WHEREAS, holding the Healthy Orange Farmers Market at 140 Broadway requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with The Cathedral at The House to allow access to and use of several City-owned properties for the purpose of holding the Healthy Orange Farmers Market.

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, 2023, by and between The Cathedral at The House f/k/a HOUSE OF REFUGE, with offices at 131 Broadway, Newburgh, New York 12550 as "LICENSEE; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor and in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway".

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

Section 1. Grant of License. Licensor hereby gives to Licensee, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 140 Broadway, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, tables, chairs and other materials as may be necessary; for the purposes of hosting a farmer's market, including but not limited to the sale of farm products, produce and other general information and demonstrations by Orange County agencies on property owned by Licensor. No permanent improvements may be erected on the premises.

Section 2. Scope of License. Use of and access to the 140 Broadway is limited to hosting a farmer's market, including but not limited to the sale of farm products, produce and other general information and demonstrations by Orange County agencies. Licensee agrees to use and maintain said facilities in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority obtaining any and all permits required thereby and subject to the following conditions:

- a. Farmer's Market Hours of Operation: 10:00 am to 2:00 pm.
- b. Parking: the parking spaces located on the north side of Broadway between Lander Street and Johnston Street during set up and clean up and hours of operation of the farmer's market.

- c. Grilling is prohibited within or near tents and must be at least 25 feet from commercial structures (or 3 family or above).
- d. Grilling is prohibited on the public sidewalk.
- e. At all times there must be either an extinguisher, hose, or other source of water to extinguish the flames/fire when grilling activities are completed for the day.

Section 3. Licensors acknowledges that the use of the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the Licensee granted hereunder.

Section 4. Defense, Indemnity, and Insurance. Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Section 5. Term. This Agreement and the license or privilege term shall commence on July 11, 2023 and shall expire without further notice to either party to the other at 11:59 pm to October 31, 2023.

Section 6. Assignment of License; No Sub-Licensing. This License may not be assigned or sub-let to any other party.

Section 7. Termination of License. Either party may terminate this license prior to the expiration of the term specified in paragraph 5, with or without cause, on at least thirty (30) days prior written notice to the other party. Upon termination by either party, Licensee shall not be entitled to reimbursement of any of its costs, and Licensee and its agents, employees and contractors will restore of the property to a clean and orderly state and in substantially the same condition as existed prior to the granting of this license.

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

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

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

Remainder of this page intentionally left blank

WITNESSETH:

THE CITY OF NEWBURGH
LICENSOR

By:

TODD VENNING, City Manager
Per Resolution No.:

THE CATHEDRAL AT THE HOUSE
F/K/A HOUSE OF REFUGE
LICENSEE

By:

BISHOP JEFFREY WOODY

Approved as to Form:

JANICE GASTON
City Comptroller

Approved as to Form:

MICHELLE KELSON
Corporation Counsel

RESOLUTION NO.: 118 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED A GRANT FROM
THE NEW YORK STATE DEPARTMENT OF CRIMINAL JUSTICE SERVICES
UNDER THE GUN INVOLVED VIOLENCE ELIMINATION ("GIVE") PARTNERSHIP
TO ENHANCE LAW ENFORCEMENT IN THE CITY OF NEWBURGH
TO ACHIEVE SUSTAINED, LONG-TERM CRIME REDUCTION
IN THE AMOUNT OF \$837,964.00 WITH A CITY MATCH OF 25%
FOR SALARY AND BENEFITS FOR ALL GIVE FUNDED POSITIONS
FOR THE PERIOD JULY 1, 2023 TO JUNE 30, 2024

WHEREAS, the City of Newburgh wishes to apply for and accept a Grant Award in the amount of \$837,964.00 under the Division of Criminal Justice Services Gun Involved Violence Elimination ("GIVE") Partnership; and

WHEREAS, the GIVE Grant Program provides funding to the City of Newburgh for Hotspot Policing Strategies and will continue to support emerging hotspot patrols, long term hotspot foot patrols, investigations of shootings/homicides involving identified group members, the Youth and Police Initiative, the Crime Analyst position, a field intelligence officer position, a Sargent and 2 full time Detectives and fund an Anti-Violence Coordinator Contract; and

WHEREAS, the Program funding shall be for New York State fiscal year beginning July 1, 2023 and ending June 30, 2024; and

WHEREAS, the Program will enhance enforcement and prosecution efforts against crime in the City of Newburgh and no City matching funds are required, except the City of Newburgh will be responsible for certain fringe benefit costs which are not covered by the grant; and

WHEREAS, this Council has determined that accepting such funding is in the best interests of the City of Newburgh and the safety of its residents and visitors alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to apply for and accept if awarded a grant award from the New York State Department of Criminal Justice Services under the Gun Involved Violence Elimination ("GIVE") Partnership, in the amount of \$837,964.00 with no City match required for New York State Fiscal Year beginning July 1, 2023 and ending June 30, 2024, to be used to carry out the program; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: 119 - 2023

OF

JUNE 12, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)
FOR PRE-RENOVATION ENVIRONMENTAL TESTING
FOR THE DELANO-HITCH STADIUM LOCKER ROOM RENOVATION PROJECT
AT A COST OF \$3,978.00

WHEREAS, the City of Newburgh wishes to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for pre-renovation environmental testing consisting of asbestos and lead paint surveys for the Delano-Hitch Stadium Locker Room Renovation Project; and

WHEREAS, the proposal includes evaluation and sampling and preparation of an environmental testing report; and

WHEREAS, the cost for these services will be \$3,978.00 and funding shall be derived from A.7140.0208; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for pre-renovation environmental testing for the Delano-Hitch Stadium Locker Room Renovation Project at a cost of \$3,978.00.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

May 19, 2023

City of Newburgh
83 Broadway
Newburgh, NY 12550

ATTN: Matthew Nordt – Director of Recreation

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

Re: Delano-Hitch Stadium – Locker Room
Request for Proposal – Pre-Renovation Environmental Testing Services

Dear Mr. Nordt,

Thank you for the opportunity to discuss the needs of the City of Newburgh in the environmental consulting and remediation services area. **Quality Environmental Solutions & Technologies, Inc. (QuES&T)** is pleased to submit the attached proposal to provide Pre-Renovation Environmental Testing Services to support renovation of the locker room at Delano-Hitch Stadium, located at 401 Washington Street, Newburgh, NY 12550.

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

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

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

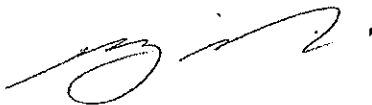
Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full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

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

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

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

Sincerely,



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

PRE-RENOVATION ENVIRONMENTAL TESTING SERVICES

for

CITY OF NEWBURGH

83 Broadway

Newburgh, NY 12550

at

DELANO-HITCH STADIUM

LOCKER ROOM RENOVATION PROJECT

401 Washington Street

Newburgh, NY 12550

QuES&T agrees to provide the following services:

Pre-Renovation Asbestos Survey

- Provide certified NYSDOL Asbestos Inspector(s) to perform a Pre-Renovation Survey for suspect Asbestos-containing Materials (ACM) potentially affected by renovation of the locker room within Delano-Hitch Stadium, located at 401 Washington Street, Newburgh, NY 12550.
- Perform collection and analysis of suspect friable Asbestos-containing Materials (ACM) using Polarized Light Microscopy (PLM) analytical protocol.
- Perform collection and analysis of suspect non-friable organically bound Asbestos-containing Materials (ACM) using both Polarized Light Microscopy-NOB (PLM-NOB) and Quantitative Transmission Electron Microscopy (QTEM) analytical protocols.
- Perform collection and analysis of vermiculite-containing surfacing materials using Surfacing Materials with Vermiculite (SM-V) analytical protocols.
- Discussion of laboratory results for all bulk samples (PLM/QTEM/SM-V).
- Documentation of all analytical laboratory certifications.
- Identify estimated quantities, locations, types and conditions of Asbestos-containing Materials (ACM) for inclusion in the environmental survey report.

Pre-Renovation XRF Lead-Based Paint Survey

- Provide Niton-certified IH Technician(s) to perform representative In-Situ measurements using a Niton XLP Model 300A XRF Meter on accessible, representative painted surfaces & immovable objects throughout accessible interiors of the locker room within Delano-Hitch Stadium, located at 401 Washington Street, Newburgh, NY 12550.
- Locations and quantity of representative In-situ measurements will be based on the observed homogeneity of painted surfaces.
- Sequential and summary reports will be provided of all surfaces tested.
- Summarize lead-based paint identified for inclusion in the environmental survey report.

PRE-RENOVATION ENVIRONMENTAL TESTING SERVICES

for

CITY OF NEWBURGH

83 Broadway

Newburgh, NY 12550

at

DELANO-HITCH STADIUM

LOCKER ROOM RENOVATION PROJECT

401 Washington Street

Newburgh, NY 12550

COST ESTIMATE

➤ **PRE-RENOVATION ENVIRONMENTAL TESTING SERVICES**

Inspection Labor	\$ 1,120.00
PLM Bulk Sample Analysis (33 samples @ \$19/layer)	\$ 627.00 ^A
PLM-NOB Bulk Sample Analysis (34 @ \$28/layer)	\$ 952.00
QTEM Bulk Sample Analysis (34 @ \$21/layer)	\$ 714.00
XRF Equipment Rental (1 Day @ \$175/day)	\$ 175.00
Pre-Renovation Environmental Testing Report	\$ 350.00
Mileage	\$ 40.00

Estimated Inspection Total \$ 3,978.00

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

If Vermiculite is detected, within surfacing materials sampled (NYS ELAP 198.1), as per the NYSDOH guidelines, samples will be analyzed in conformance with NYS ELAP 198.8. Sample analysis is \$350/sample analyzed on a one-week turnaround time.

Prior to sample analysis, the lab will notify QuES&T the number of samples containing vermiculite, who in turn will review associated costs with *City of Newburgh* for approval to move forward with analysis.

***NOTES:**

1. Estimated number of samples to be collected/analyzed. Client shall be charged for actual services rendered and samples analyzed.
2. Sample analysis turnaround (TAT) commences upon laboratory receipt of samples and excludes Weekends & Holidays.

- **QuES&T** shall perform all inspections visually; using reasonable care and judgment. Localized demolition will be performed to access representative concealed surfaces, as practicable. ***Client/Representatives*** recognize & agree that ACM/LBP concealed within structural components & accessible only through extensive mechanical or structural demolition may not be identified as part of this survey.
- **QuES&T** shall not be responsible for damage caused to building finishes, surfaces or equipment by sampling. Responsibility and cost for repair of damaged building finishes, surfaces and equipment shall be by ***Client / Representatives***.
- **QuES&T** will exercise reasonable caution to minimize disturbance of ACM/LBP during the inspection process. However, clean-up of ACM/LBP disturbed or dislodged during the inspection process shall be the responsibility of ***Client / Representatives***.
- ***Client / Representatives*** shall be responsible for providing immediate access into all inspection areas and securing same upon completion of inspection activities.
- Inspection work to be conducted upon receipt of written Notice to Proceed and/or associated Purchase Order Number.
- Inspection work to be conducted during normal weekday business hours (Mon–Fri, 8am–5pm). ***Client / Representatives*** will provide access to all respective buildings concurrently.

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

By _____
Signature *Print Name & Title* *Date*