

TABLED

RESOLUTION NO.: 156 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT
WITH DAVID HOCHFELDER, ANN PFAU AND STACY SEWELL TO PROVIDE
HISTORICAL CONSULTANT AND SUPERVISORY RESEARCH SERVICES
IN CONNECTION WITH
THE NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS
PROGRAM GRANT AND ORAL HISTORY PROJECT**

WHEREAS, by Resolution No. 303-2020 of December 14, 2020, the City Council authorized the City Manager to apply for and accept if awarded a National Park Service African American Civil Rights Program ("NPS AACR Program") grant; and

WHEREAS, the City was awarded funds from the NPS AACR Program grant; and

WHEREAS, the objective of the grant is for local governments or not-for-profit entities to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights; and

WHEREAS, David Hochfelder, Ann Pfau and Stacy Sewell, independent contractors, have applied to work with the City of Newburgh to provide historical consultant and research supervisory services in connection with the NPS AACR Program grant and oral history project; and

WHEREAS, funding for this project will derive from budget line CG.8030.0455.4400.2023; and

WHEREAS, this Council has reviewed the contract with David Hochfelder Ann Pfau and Stacy Sewell, annexed hereto, and finds that entering into said contract is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with David Hochfelder, Ann Pfau and Stacy Sewell to provide historical consultant and research supervisory services in connection with the National Park Service African American Civil Rights Program grant and oral history project.

**SUBGRANTEE AGREEMENT
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT**

This subgrantee agreement ("Agreement"), by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City") and David Hochfelder, an individual with a principal place of business at 81 S. Lake Ave., Albany, NY 12203, Ann Pfau, an individual with a principal place of business at 81 S. Lake Ave., Albany, NY 12203, and Stacy Sewell, an individual with a principal place of business at St. Thomas Aquinas College, 125 NY-340, Sparkill, NY 10976 ("Sub-grantees"), is made this dated as of _____, 2023, as follows:

RECITALS

- A. The City received an award of funds from the National Parks Service (referred to herein as "Grantor") African American Civil Rights ("AACR") program.
- B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being to research oral histories and local data in connection with the Grantor's African American Civil Rights Oral History Project.
- C. Sub-grantees have applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
- D. Sub-grantees have also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.
- E. In addition to the terms and conditions in this Agreement, Sub-grantees have agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement.
- F. The City has identified Sub-grantees as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantees to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

NOW, THEREFORE, the City, and the Sub-grantees, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE I SPECIFIC TERMS OF AGREEMENT

- 1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantees. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipients shall be an independent entity and not an employee or agent of the City.
- 2. Sub-grantees shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipients a sum not to exceed **00/100 dollars (\$0.00) at an in-kind rate of \$50.00 per hour**, said sum being a part of grant award to the City by Grantor.

ARTICLE II PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.
2. Total payment under this Contract shall not exceed **00/100 dollars (\$0.00) at an in-kind rate of \$50.00 per hour** as payment for all eligible services incurred by Sub-grantees.
3. The City may withhold any payment whenever the Sub-grantees fail to achieve its program goals for the vouchered expenditure period.

ARTICLE III METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantees eligible reimbursable costs.
2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.
3. The City shall reimburse Sub-grantees not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4th Floor, Newburgh, New York 12550.
4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date **commensurate of the project period specifically set forth in Schedule C**. The final statement of costs shall constitute Sub-grantees' final financial report.
5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

ARTICLE IV TERMINATION

1. Either party may terminate this agreement with thirty days' written notice to the parties listed below. Upon receipt of notice of termination, the Sub-grantee agrees to cancel, prior to the effective date of termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval.

If to City:

City of Newburgh
Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

If to Sub-grantees:

David Hochfelder
81 S. Lake Ave.
Albany, NY 12203

Ann Pfau
81 S. Lake Ave.
Albany, NY 12203

Stacy Sewell
St. Thomas Aquinas College
Sparkill, NY 10976

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantees under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.
3. In the event of termination, Sub-grantees shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantees, the City may withhold from any payments due the Sub-grantees for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantees.

ARTICLE V NO ASSIGNMENT

1. Sub-grantees represent that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City.

ARTICLE VI BOOKS AND RECORDS; REPORTS

1. Sub-grantees shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The City or the Grantor shall have access to the Records during normal business hours at an office within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
2. Sub-grantees shall submit a report to the City identifying prescribed activities funded under this Agreement at the termination of this Agreement. Sub-grantees shall also submit reports

identifying prescribed activities funded under this Agreement upon request by the City while this Agreement is in effect.

ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Sub-grantees, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantees shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantees agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:
 - a. was known to Sub-grantees prior to receipt from the City, as evidenced through written documentation;
 - b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantees;
 - c. is acquired from a third party entitled to disclose the information to Sub-grantees;
 - d. is developed independently by Sub-grantees;
 - e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantees shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

ARTICLE VIII INTEREST OF SUB-GRANTEES, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

1. Sub-grantees agree that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.
2. Sub-grantees further agree that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.
3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

ARTICLE IX INTEREST OF MEMBERS, OFFICERS OR EMPLOYEE THE CITY; MEMBERS OF THE COMMON COUNCIL, OR OTHER PUBLIC OFFICIALS

1. No member, officer or employee of the City or its designees or agents, no member of the Common Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities with respect to the program, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.

2. Sub-grantees shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

1. No member of the New York State Assembly or Senate, or any other member of New York State government, shall be permitted to any share or part of this Agreement or to any benefit to arise from the same.

ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

1. Sub-grantees represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

ARTICLE XII REPRESENTATIONS OF SUBGRANTEES

1. Sub-grantees acknowledge and agree that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Sub-grantees will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Sub-grantees certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

ARTICLE XIII EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out the obligation of this Agreement, Sub-grantees shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Sub-grantees shall take affirmative action to ensure that applicants for employment and employees of Sub-grantees are treated without regard to their race, color, religion, sex, national origin or handicap. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

2. Sub-grantees shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Sub-grantees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.
3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE XIV FACILITIES AND PERSONNEL

1. Sub-grantees represent that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.
2. Sub-grantees further represent that it will terminate and dismiss from further performance of work and services under this Agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to Sub-grantees by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for Sub-grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve Sub-grantees from meeting its obligations under the terms and conditions of this Agreement.

ARTICLE XV INDEMNIFICATION

1. Sub-grantees hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of Sub-grantees or its agents, sub-contractors, servants or employees.
2. If any person shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantees hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.
3. Sub-grantees shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.
 - a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.

- b. Sub-grantees shall carry Liability and Property Damage Insurance with limits of not less than:
- i. Property Damage Liability \$1,000,000 for each occurrence
 - ii. Personal Injury Liability \$1,000,000 for each person
 \$2,000,000 for each occurrence
4. The Agency, as Sub-grantees shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

SECTION XVI NOTICES

1. Notices of any nature referred to in this agreement shall be in writing by certified mail, hand delivery. Notices shall be effective on the date of receipt.

If to City:

City of Newburgh
Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

If to Sub-grantees:

David Hochfelder
81 S. Lake Ave.
Albany, NY 12203

Ann Pfau
81 S. Lake Ave.
Albany, NY 12203

Stacy Sewell
St. Thomas Aquinas College
125 NY-340
Sparkill, NY 10976

SECTION XVII MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.
2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.
3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.

4. Subrecipients have read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.
5. David Hochfelder, Ann Pfau and Stacy Sewell shall be jointly and severally responsible for the terms and conditions stated in this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

[Signature page to follow]

DRAFT

Signature Page

Subgrantee Agreement, National Parks Service, AACR Grant

City of Newburgh / David Hochfelder, Ann Pfau and Stacy Sewell

IN WITNESS WHEREOF, Sub-grantees and the City have executed this Agreement the day and year herein mentioned.

DATED: _____, 2023

CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

DATED: _____, 2023

SUB-GRANTEES

By: _____

Name: David Hochfelder

By: _____

Name: Ann Pfau

By: _____

Name: Stacy Sewell

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this _____ day of _____, in the year 2023, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On this ____ day of _____, in the year 2023, before me personally appeared David Hochfelder personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On this ____ day of _____, in the year 2023, before me personally appeared Ann Pfau personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On this ____ day of _____, in the year 2023, before me personally appeared Stacy Sewell personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SCHEDULE A

Scope of Services: Historical Consultants

Objectives:

To provide principal investigation historical consulting to the African American Civil Rights Oral History Project.

The Project, funded through the United States Department of Interior's African American Civil Rights grant program, will center the legacy of the City's African American community in the East End Historic District (EEHD) to ensure historic preservation efforts prioritize cultural significance and community preservation alongside architectural integrity. The collected stories will spotlight the destabilizing effects of 20th century government-led segregation strategies in and around the EEHD, including urban renewal, housing discrimination, anti-Black lending practices, suburbanization, and white flight.

To provide 130 hours of historical consulting services as principal investigators.

Deliverables:

- Conduct research in the records of the Newburgh Urban Renewal Agency and other relevant archival collections;
- Advise and assist oral history interviews;
- Supervise research assistant;
- Collect economic and demographic data;
- Draft oral history report;
- Others as required.

Timeline:

Immediate.

SCHEDULE B

Compensation:

The Sub-grantees make this contribution of services as an in-kind match to the Historic Preservation Fund Grants-In-Aid funds awarded to the African-American Civil Rights – City of Newburgh, Oral History Project.

DRAFT

NOTICE OF AWARD (Continuation Sheet)

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DATE ISSUED
09/19/2021

GRANT NO. P21AP11742-00

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

REMARKS

1. Grant Agreement
between
the United States Department of the Interior
National Park Service
and
the Above-Named Recipient

Articles

1. Department of the Interior Standard Terms and Conditions

Recipients must also adhere the Department of Interior Standard Terms and Conditions located at <https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

2. Legal Authority

NPS enters into this Agreement pursuant to:

1. National Historic Preservation Act (NHPA), 54 USC 300101 *et seq.*
2. Historic Preservation Fund Grants Manual, 2007 and subsequent memos and guidance
3. Further Consolidated Appropriations Act of 2020, P.L. 116-94

3. Performance Goals and Project Objectives

The objective of this Agreement is to provide Historic Preservation Funds (HPF) to a State, Tribe, local government (including Certified Local Governments), or nonprofit to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights and the transatlantic slave trade. Projects may involve a broad range of preservation projects for historic sites including: survey & inventory, National Register nominations, oral histories, collections conservation, architectural services, historic structure reports, preservation plans, and physical preservation of resources listed or eligible National Register resources.

4. Performance Goals and Project Objectives

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This grant program enables eligible grantees, as stated in the Notice of Funding Opportunity, across the nation to participate in a nationwide historic preservation program and meet the goals of 54 U.S.C. 300101 et seq., commonly known as the National Historic Preservation Act.

5. COVID-19 Provisions

Due to the COVID-19 pandemic, access to National Park Service (NPS) property, personnel, or resources may be limited at the start of the agreement. Any performance that requires access to National Park Service property, personnel, or resources shall not commence until the recipient receives confirmation from the NPS Financial Assistance Awarding Officer of the availability of those resources. The recipient shall contact the NPS Financial Assistance Awarding Officer for approval prior to incurring any costs for performance that requires access to National Park Service property or resources. Such approvals can only be provided by the NPS Financial Assistance Awarding Officer. In the event of a prolonged unavailability of resources, the period of performance may be modified to a later date, or the agreement may be cancelled, by either the National Park Service or the recipient, in its entirety. In addition, the recipient shall contact the NPS Financial Assistance Awarding Officer to coordinate any other changes to the agreement that may be needed to ensure successful performance during the COVID-19 pandemic.

6. Statement of Work

The Statement of Work to be performed in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and as determined eligible in the National Historic Preservation Act (NHPA), 54 U.S.C 300101 et. seq., and in the Historic Preservation Grant Fund Manual.

The Statement of Work is further defined in an addendum at the end of this Notice of Award.

7. Responsibilities of the Parties

1. The Recipient agrees to:

1. The Recipient shall carry out the Statement of Work in accordance with the terms and conditions stated herein, such as the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.
2. The Recipient shall adhere to all applicable Federal, state, and local laws, regulations, and codes, such as the National Historic Preservation Act.

2. No substantial involvement on the part of the NPS is anticipated for the successful completion of the statement of work detailed in this award. It is anticipated that involvement will be limited to actions related to monitoring project performance and technical assistance at the request of the recipient.

8. Cost-Share Requirement

Non-Federal cost-share is required for costs incurred under this Agreement, as identified in the attached project budget. If pre-award costs are authorized, reimbursement of these costs is limited to Federal cost share percentage identified in this agreement.

9. Pre-Award Incurrence of Costs

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The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

10. Administrative & Indirect Costs

The Recipient has chose not to use a federally approved negotiated indirect cost rate.

The federally-negotiated indirect rate plus administrative costs to be applied against this agreement, by statute 54 U.S.C. § 302902, shall not exceed 25% of the total budget.

Administrative costs are defined as: Allowable, reasonable, and allocable costs related to the overall management of activities directly related to finance (accounting, auditing, budgeting, contracting), general administrative salaries and wages (grant administration, personnel, property management, equal opportunity) and other overhead functions (general legal services, general liability insurance, depreciation on buildings and equipment, etc.) not directly attributable to specific program areas identified in the grant agreement. All administrative costs reported must be absolutely necessary for project and/or program implementation, such as the cost items identified in the final grant agreement or items otherwise approved in writing by the NPS Awarding Officer (AO).

11. Key Officials

1. **Communications.** Recipient shall address any communication regarding this Agreement to the ATR/Program Officer with a copy to the Awarding/Grants Management Officer. Communications that relate solely to technical matters may be sent only to the ATR/Program Officer.
2. **Changes in Key Officials.** Neither the NPS nor Recipient may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

12. Award and Payment

1. The NPS will provide funding to the Recipient in an amount not to exceed the figure in block 11m of the Notice of Award for the Statement of Work described in Article VI and in accordance with the NPS approved budget. The approved budget detail is incorporated herein. Any award beyond the current fiscal year is subject to availability of funds. Acceptance of a Federal financial assistance award from the Department of the Interior carries with it the responsibility to be aware of, and comply with the terms and conditions within this award document. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means.
2. Recipient shall request payment in accordance with the following:
 1. **Method of Payment.** Payment will be made by advance and/or reimbursement through the Department of Treasury's Automated Standard Application for Payments (ASAP) system.
 2. **Requesting Advances.** Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the Financial Assistance (FA) Recipient to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
 3. **Requesting Reimbursement.** Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each

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request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.

4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.
3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match.** Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

13. Prior Approval

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

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14. Insurance and Liability

Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

15. Reports and/or Outputs/Outcomes

1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.
2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIIS). Each report shall be submitted as described above.
3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.
4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

16. Property Utilization

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 applies to this Agreement.

17. Modification, Remedies for Noncompliance, Termination

1. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the NPS Awarding Officer and the authorized representative of Recipient.
2. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.339.
3. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

18. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you, as the recipient, during that period of time

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must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of \$5,000 or more; or reimbursement, restitution, or damages in excess of \$100,000; or
 4. Any other criminal, civil, or administrative proceeding if:
 1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
 2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

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- does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
 3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

19. Funding Used for the Operation of Unmanned Aircraft Systems (UAS)

If Federal funding is provided to a State, local, tribal, or territorial government for the use of UAS for their operations, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

Per the policy memorandum issued by National Park Service Director, dated June 19, 2014, the launching, landing, and operating of unmanned aircraft, that is not under the control of the Federal government, on lands and waters administered by the National Park Service is prohibited unless approval is received from the Associate Director for such purposes as: Scientific study, search and rescue operations, fire operations, and law enforcement.

Administrative use includes the use of unmanned aircraft by

- NPS personnel as operators or crew;
- cooperators such as government agencies and universities that conduct unmanned aircraft operations for the NPS pursuant to a written agreement; and
- other entities, including commercial entities, conducting unmanned aircraft operations for the NPS, provided such entities are in compliance with all applicable FAA and Department of the Interior requirements.

20. Patents and Inventions (37 CFR 401)

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the National Park Service, is hereby included in this agreement:

1. Definitions

1. *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
2. *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement

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performance.

3. *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
4. *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. *Small Business Firm* means a small business concern as defined at section 2 of Public Law. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
6. *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

2. Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

3. Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

1. The Recipient will disclose each subject invention to the National Park Service within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the National Park Service shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the National Park Service, the Recipient will promptly notify the National Park Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
2. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the National Park Service within two years of disclosure to the National Park Service. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the National Park Service to a date that is no more than 60 days prior to the end of the statutory period.
3. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory

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period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the National Park Service, be granted.

4. Conditions When the Government May Obtain Title

The Recipient will convey to the National Park Service, upon written request, title to any subject inventions

1. If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph 3, above, or elects not to retain title; provided that the National Park Service may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
2. In those countries in which the Recipient fails to file patent applications within the times specified in paragraph 3 above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph 3 above, but prior to its receipt of the written request of the National Park Service, the Recipient shall continue to retain title in that country.
3. In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

5. Minimum Rights to Recipient and Protection of the Recipient Right to File

1. The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph 3, above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the National Park Service except when transferred to the successor of that party of the Recipient's business to which the invention pertains.
2. The Recipient's domestic license may be revoked or modified by the National Park Service to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the National Park Service licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the National Park Service to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the National Park Service will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient

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will be allowed thirty days (or such other time as may be authorized by the National Park Service for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and National Park Service regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

6. Recipient Action to Protect the Government's Interest

1. The Recipient agrees to execute or to have executed and promptly deliver to the National Park Service all instruments necessary to
 1. establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and
 2. convey title to the National Park Service when requested under paragraph 4 above and to enable the government to obtain patent protection throughout the world in that subject invention.
2. The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (3)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Recipient will notify the National Park Service of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
4. The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

7. Subcontracts

The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental, developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

8. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the National Park Service may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the

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National Park Service in connection with any march-in proceeding undertaken by the National Park Service in accordance with paragraph (10) of this provision. As required by 35 U.S.C. 202(c)(5), the National Park Service agrees it will not disclose such information to persons outside the government without permission of the Recipient.

9. Preference for United States Industry

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the National Park Service upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

10. March-in Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:

1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Agreements with Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

1. Rights to a subject invention in the United States may not be assigned without the approval of the National Park Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
2. The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the National Park Service deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
3. The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the

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administration of subject inventions, will be utilized for the support of scientific research or education; and

4. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the National Park Service may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the National Park Service when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (11)(4).

12. Communication

Communications regarding matters relating to this provision shall be directed to:

Deputy Associate Solicitor
Branch of Procurements and Patents
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

21. Strengthening Buy-American Preferences for Infrastructure Projects per E.O. 13858

Per Executive Order 13858, entitled "Strengthening Buy-American Preferences for Infrastructure Projects" the Recipient shall maximize, consistent with law, the use of iron and steel goods, products, and materials produced in the United States, for infrastructure projects as defined by the Executive Order when the statement of work includes alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair.

22. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Quarterly Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act, Standards and Guidelines for detailed information (<https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>).

The following summarizes some of the requirements for preparing NPS reports in conformance with

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Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to <https://section508.gov/create>. All accessible digital content must conform to the requirements and techniques of the Web Content Accessibility Guidelines (WCAG) 2.0 or later (<https://www.w3.org/WAI/standards-guidelines/wcag/>), Level AA Success Criteria.

- **Electronic documents with images**

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

- **Electronic documents with complex charts or data tables**

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

- **Electronic documents with forms**

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

23. General and Special Provisions

1. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
2. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
3. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
4. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
5. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
6. **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS

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- employees are not agents of the Recipient and will not act on behalf of the Recipient.
7. **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
8. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
9. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
10. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
11. **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305 (5)). As allowed under 2 CFR §200.307, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.
12. **Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
13. **Conflict of Interest**
1. **Applicability.**
 1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
 2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.
 2. **Requirements.**
 1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
 2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

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3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.
3. Notification.
 1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.
4. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
5. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
6. Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

24. Signatures

Recipients are **not** required to sign the Notice of Financial Assistance Award letter or any other award document. As per DOI standard terms and conditions, the recipient's acceptance of a financial assistance award is defined as the start of work, drawing down of funds, or accepting the award via electronic means.

25. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 1. Procure or obtain;
 2. Extend or renew a contract to procure or obtain; or
 3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the secretary of defense, in consultation with the director of the

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national intelligence or the director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services and to ensure that communications service to users and customers is sustained.
3. See Public Law 115-232, section 889, for additional information.
4. See also §200.471.

Program Specific Requirements

1. NPS Oversight

The NPS will provide oversight of this grant project through the following NPS reviews:

1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;
2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;
3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;
4. Review and approval for compliance with the National Environmental Policy Act (NEPA);
5. Review and approval of project signage to notify the public of federal involvement; and
6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

2. Determination of Risk

In accordance with 2 C.F.R. § 200.205, the application for this award was subjected to a pre-award risk assessment which included a review of information contained within the application, past audits, Federal Awardee Performance and Integrity Information System (FAPIIS), and/or past performance on previous Federal financial assistance awards and other factors.

This award has been determined to be a low risk with the following requirements:

Requests for payment may be made directly from the ASAP grant account without prior NPS approval after expenses have been incurred, invoiced, and paid. All documentation of expenses must be kept on file for audit purposes and may be requested by the NPS at any time. If payments are drawn down prior to invoice and payment or in amounts larger than costs incurred, the Recipient may be determined medium or high risk and be subject to additional grant terms and conditions.

3. Eligible Costs

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Eligible costs under this award are as described in this Notice, 2 CFR 200, and the Historic Preservation Fund Grants Manual (HPF Manual).

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);
2. Administrative costs necessary to complete and administer the grant requirements;
3. Rehabilitation of properties;
 1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
 2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
 3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
 4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement
4. Survey and Inventory of historic resources to determine eligibility;
5. Cost for producing a nomination to the National Register of Historic Places (if applicable);
6. Conservation of collections;
7. Cost for any required audits or financial requests;
8. Cost for the production of project signs;
9. Costs for public notice of grant opportunities;
10. Costs associated with required training or reporting; and/
11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

4. Equipment Purchases

Each item of equipment purchased under this award must be approved specifically and in writing by the NPS prior to purchase to confirm the allowability of the costs. Approval of the application is not approval of equipment included within the application. Equipment is defined by 2 CFR 200.1 as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000.

5. Consultants & Contractors

Consultant/contractor(s) must have the requisite experience and training in historic preservation or relevant field to oversee the project work. All consultants and contractors must be competitively selected and documentation of this selection must be maintained by the grantee and be made readily available for

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examination by the NPS. Federal contracting and procurement guidance can be found in 2 CFR 200.318. Maximum rates charged to this grant may not exceed 120% of a Federal Civil Service GS-15, step 10 salary per project location. Current regional salary tables can be found on the Office of Personnel and Management website: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

6. Requirement for Project Sign & Public Notification

As stipulated in 36 CFR Part 800, public views and comments regarding all Federally-funded undertakings on historic properties must be sought and considered by the authorizing Federal agency. Therefore, the grantee is required to post a public notification regarding the undertaking under this grant in one or more of the major newspapers or news sources that cover the area affected by the project within 30 days of receiving this awarded grant agreement. A copy of the posted release must be submitted to NPS within 30 days of the posting.

HPF funded projects must create public notification of the project in the form of a project sign, website posting, and proper credit for announcements and publications as appropriate. Signage/notification must be submitted for approval by the ATR in advance. Also the sign/notification must be of reasonable and adequate design and construction to withstand weather exposure (if appropriate); be of a size that can be easily read from the public right-of-way; and be accessible to the public throughout the project term as stipulated in this agreement. At a minimum, all notifications must contain the following statement:

"[Project Name] is being supported in part by an African American Civil Rights grant from the Historic Preservation Fund administered by the National Park Service, Department of the Interior."

Additional information briefly identifying the historical significance of the property and recognizing other contributors is encouraged and permissible. The NPS arrowhead logo may only be used in conjunction with the HPF approved signage format that can be provided upon request. Any other use of the logo is prohibited.

Cost of posting, fabricating, and erecting notification are eligible grant costs.

7. Publicity & Press Releases

Press releases about this project must acknowledge the grant assistance provided by the Historic Preservation Fund and the National Park Service, and copies of the press releases must be provided to the NPS. The Recipient must transmit notice of any public ceremonies planned to publicize funded or related projects in a timely enough manner so that the NPS, Department of the Interior, Congressional or other Federal officials can attend if desired. All publicity and press releases related to activities funded with this award should include a statement that funding for the activity was provided (in part or in whole) by the Historic Preservation Fund (HPF) administered by the National Park Service.

8. Funding Acknowledgement

The grantee must include acknowledgment of grant support from the Historic Preservation Fund of the National Park Service, Department of Interior, in all deliverables and publications concerning NPS grant-supported activities as referenced in the Statement of Work.

All deliverables must contain the following disclaimer and acknowledgement:

"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number [insert grant number, block 4a of this Notice of Award's coversheet]. Any opinions, findings, and conclusions or recommendations

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expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

1. Deliverables/publications include but are not limited to grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation of events, including programs; invitations and photos; websites; mobile apps; exhibits; and interpretive signs.
2. All digital copies must follow the file naming convention described in the attached Digital Product Submission Guidelines. Refer to the attached guidance document for instructions on creating, naming and submitting digital copies of deliverables/publications.
3. All consultants hired by the grantee must be informed of this requirement.
4. Grantees, subgrantees, contractors may not use the NPS Arrowhead in any form without written permission.

9. Copyright

Per 2 CFR 200.315(b), the NPS reserves a royalty-free right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, any materials produced under this grant. All photos included as part of the interim & final reporting and deliverables/publication will be considered released to the NPS for future official use. Photographer, date, and caption should be identified on each photo, so NPS may provide proper credit for use.

A digital (preferred) or physical copy of all deliverables must be available for public access. Sensitive information may be redacted from the public access copy.

All consultants hired by the Recipient must be informed of this requirement.

10. NPS Review of Planning/Design Documents for National Historic Landmarks

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;
2. a city/county map with the site of the property clearly labeled;
3. set of plans and specifications for the project;
4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;
5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;
6. for NHL Districts include overall views of the district from the project area; and
7. any additional information that will better enable a technical review of the project to be completed.

The grantee must submit documents for the entire undertaking to the NPS for its review and approval to ensure conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, Historic Preservation Fund Grant Manual, and with the conditions listed in this Grant Agreement, **prior** to the beginning of grant-assisted work. Work that does not comply with these Standards in the judgment of the NPS will not be reimbursed, and may cause the grant to be terminated

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and funds deobligated.

Plans & specifications for the project must be marked on the cover with this statement:

The {name of property} is designated a National Historic Landmark for its architectural and historic significance. It is considered to have irreplaceable cultural, material, and aesthetic value. The work is funded in part by the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. The funding of which is subject to having all work items meet The Secretary of the Interior's Standards for the Treatment of Historic Properties.

11. Compliance with Section 106

Pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), the NPS and the grantee must complete the consultation process stipulated in the regulations issued by the Advisory Council on Historic Preservation (ACHP) in 36 CFR 800 **prior** to the commencement of all grant-assisted construction or ground disturbance on the property.

12. Compliance with Section 110

Section 110 of The National Historic Preservation Act identifies the responsibility of the federal agency in their treatment of historic properties. Section 110(f) (54 USC 306107) clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm. See this agreement for submission requirements regarding NHL properties. In addition, Section 110(k) (54 USC 306113) prohibits the NPS from funding any grantee or subgrantee that attempts to avoid the requirements of Section 106. Grantees must make every effort to fund preservation projects that do no harm or adverse effects to NHL properties. Should it be discovered a grantee has deliberately damaged a property (e.g., pre-emptive demolition) to avoid requirements, the NPS must be notified to determine, in consultation with the ACHP, if the project can proceed.

13. Requirement for NEPA Compliance

All HPF funded grants are subject to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. This Act requires Federal agencies to consider the reasonably foreseeable environmental consequences of all grant-supported activities. As part of the NPS implementation of NEPA, grantees are required to notify the NPS of any reasonably foreseeable impacts to the environment from grant-supported activities, or to certify that no such impacts will arise upon receipt of a grant award. In addition, the NPS has determined that most HPF grant funds are not expected to individually or cumulatively have a significant impact on the environment, unless the activity involves development (construction) or archeology. For construction or archeology projects, the applicant/grantee should submit an *Environmental Screening Worksheet*, in order to assist the NPS in determining if a Categorical Exclusion (found in [NPS Director's Order 12](#)) can be utilized.

14. Compliance with the Americans with Disabilities Act and the Architectural Barriers Act

The use of federal funds to improve public buildings, to finance services or programs contained in public buildings, or alter any building or facility financed in whole or in part with Federal funds (except privately owned residential structures), requires compliance with the 1990 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the Architectural Barriers Act (ABA). Work done to alter the property should be in compliance with all applicable regulations and guidance.

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15. Unanticipated Discovery Protocols

At a minimum, unanticipated discovery protocols for subgrants or contracts shall require the sub-grantee or contractor to immediately stop construction in the vicinity of the affected historic resource and take reasonable measures to avoid and minimize harm to the resource until the SHPO or THPO, sub-grantee or contractor, and Indian Tribes, as appropriate, have determined a suitable course of action within 15 calendar days. With the express permission of the SHPO and/or THPO, the sub-grantee or contractor may perform additional measures to secure the jobsite if the sub-grantee or contractor determines that unfinished work in the vicinity of the affected historic property would cause safety or security concerns.

16. NAGPRA Costs Are Unallowable

Cost related to Native American Graves Protection and Repatriation Act (NAGPRA) activities are unallowable under this agreement. Funds for NAGPRA activities are available through the NPS National NAGPRA Program.

17. GIS Spatial Data Transfer Standards

All GIS data collected with HPF funds shall be in compliance with the NPS Cultural Resource Spatial Data Transfer Standards with complete feature level metadata. Template GeoDatabases and guidelines for creating GIS data in the NPS cultural resource spatial data transfer standards can be found at the NPS Cultural Resource GIS Facility webpage:

https://www.nps.gov/crgis/crgis_standards.htm

Technical assistance to meet the NPS Cultural Resource Spatial Data Transfer Standard specifications will be made available if requested. Execution of a Data Sharing Agreement between the NPS and the Recipient shall take place prior to collection of GIS data using HPF funds.

18. Funding for Use of Unmanned Aircraft Systems (UAS) (AKA Drones)

HPF funding for unmanned aircraft systems (UAS) usage is eligible only in the contracting of an experienced, licensed contractor of UAS who possesses the appropriate license, certifications, and training to operate UAS. The contractor is required to provide proof of liability insurance in the operation of UAS for commercial use.

If HPF funding is provided to a state, tribal, local, or territorial government, or other non-profit organization for the use of UAS as part of their scope of work, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

19. Subgrant Awards

The awarding of subgrants must follow the general criteria described below in addition to the eligibility factors outlined in the Notice of Funding Opportunity, OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual.

The Grantee must publicly announce the availability of HPF funds and include the following information:

1. A summary statement of the priorities for funding;
2. Description of eligible activities for which funding is to be provided;

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3. The total amount available, or expected to be available for subgrants;
4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;
5. The deadline for submitting the completed application;
6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;
7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;
8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;
10. Notice of the requirement for easements or covenants for grant assisted preservation work.

To qualify a subgrantee as responsible, the grantee must ensure that a subgrantee will:

1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;
2. Be able to comply with the proposed or required completion schedule for the project;
3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;
4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;
2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);
4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

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5. Verification of submission of any subgrants over \$30,000 federal share to Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS);

6. Review of final executed preservation easement/covenant;

7. Additional requirements as determined for the grantee based on risk or program requirements.

20. Requirement for Training

At the direction of the National Park Service, personnel associated with management of the grant program may be required to attend trainings and/or meetings. The grantee will be provided adequate notice to plan for any required activities; expenses incurred as part of this requirement are eligible to charge towards the grant.

21. Demonstration of Effort – Performance Goals

In order to ensure the timely and successful completion of all HPF grant awards, the NPS requires acceptable demonstration of effort by the grantee on project work supported by all HPF funded grants.

Demonstration of effort means acceptable performance by undertaking meaningful progress on grant-supported activities and complying with award terms and conditions.

22. Notice of Financial Management Review

As part of government-wide efforts to improve coordination of financial management and increase financial accountability and transparency in the receipt and use of federal funding, the grantee is hereby notified that this award may be subject to higher scrutiny. This may include a requirement to submit additional reporting documentation.

23. Catalog of Federal Domestic Assistance/Assistance Listing Inclusion in Single Audit

Non-Federal entities receiving financial assistance through the Historic Preservation Fund must include the appropriate Catalog of Federal Domestic Assistance (CFDA) number in the Schedule of Expenditures of Federal Award in their Single-Audit. The CFDA number applicable to this award as identified in block 2 on the first page of this agreement document.

24. Audit Findings and Follow-Up

The Recipient is hereby informed that the NPS may withhold or suspend award funds, or may impose other related conditions, if the recipient does not satisfactorily and promptly address findings from Single or program-specific audits, investigations, or reviews of NPS programs and awards. Each year the award is active, the Recipient must require its auditors to provide status report updates of all audit findings included in the prior audit's Schedule of Findings and Questioned Costs, as required by 2 CFR 200, Subpart F ("Grants and Agreements, Audit Requirements"). Upon review of subsequent annual audits, the NPS will determine if further corrective action is warranted.

When findings exist, the Recipient must submit a status report every six months to the NPS of all steps being taken to resolve related audit findings included in the prior audit's *Schedule of Findings and Questioned Costs* to remain in good standing for all NPS grant awards. If the Recipient fails to meet these deadlines without written approval of extension from the NPS, NPS may withhold remaining and future award funds, or may impose other related requirements to ensure compliance with this condition.

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Outstanding audit findings, if any, are included in the attachments of this Agreement.

AWARD ATTACHMENTS

NEWBURGH, CITY OF

P21AP11742-00

1. Environmental Certification
2. Digital Products Submission Guidelines, AACR
3. Addenda of Budget, Scope, and Deliverables



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW

Washington, DC 20240

ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposed work, and the supporting documentation contacting in the applications, it has been determined that the proposed HPF funded work meets the criteria for categorical exclusion under the current Interim Director's Order 12 *Categorical Exclusions* (replacing DO-12 Handbook, Chapter 3, Sections 3.3, 3.4, and 3.5).

Applicable categorical exclusion(s) below apply to all proposed projects **except** development and archeological survey which must be reviewed independently: **F.1 – F.6 – Actions Related to Grant Programs**

Megan J. Brown
Chief State, Tribal, Local, Plans & Grants
National Park Service

3/25/2021

Date

Digital Product Submission Guidelines

The National Park Service's (NPS) State, Tribal, Local Plans & Grants (STLPG) Division developed these guidelines to outline the digital product submission process for grant recipients. These guidelines specify the types of products that should be submitted, supply guidance on the file names and formats grant recipients should use, and define how submissions should be made.

Products submitted digitally may be uploaded and shared with the general public through the Integrated Resource Management Application (IRMA), the NPS's digital repository system. To see grant products that have already been uploaded, use the above link, choose Historic Preservation Fund (HPF) under "Select a Park, Office, Program or Region" and select a category of featured context.

What to submit:

- Provide one digital copy of each deliverable or publication under your grant agreement. Refer to the Reports, Outputs, & Outcomes article to find the deliverables and publications specified in your grant agreement.
- Deliverables and publications include, but are not limited to, the following materials:

SUBMIT	DO NOT SUBMIT
Reports, plans and guidelines (including historic structure reports, design guidelines, economic impact studies, treatment reports, historic context statements, preservation plans)	Digital copies saved on CD/DVD-Rs or flash drives (unless arrangements have been made with your grant administrator)
Substantive event materials (including programs, proceedings, handouts, photographs)	Confidential/restricted reports that cannot be viewed by the general public (including archeological reports, architectural reports on federal buildings or restricted sites)
Professionally produced content (including books, documentaries, oral histories, presentations and PSAs)	Other documentation not intended for the general public (including survey forms, financial records, correspondence)
Interpretive products (including books, brochures, posters, interpretive tours, coloring books or other youth-focused products, lesson plans)	Ephemeral products unlikely to be of future value to the general public (including flyers, postcards, invitations, meeting minutes)
Online content (including websites, story maps, and other web-based projects)	

- **Final grant products may be made available to the general public and should, by default, feature the NPS disclaimer.** Printed products must feature a printed disclaimer when feasible. Audio products must include a spoken version of the disclaimer. Video products must include the disclaimer as an on-screen graphic. A disclaimer is not required when it would be unreasonable to do so, such as on size-restrictive publications like postcards or flyers.

"This material was produced with assistance from the African American Civil Rights grant program, administered by the National Park Service, Department of the Interior. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

- For additional questions about the required disclaimer, consult with your NPS grant manager.

Naming files for submission:

- Name each file you will be submitting using the following naming convention:
AACR_[Fiscal Year]_[Grantee's State Abbreviation]_[Legal Name of Grantee or Subgrantee]_[Grant Number]_[Short File Description]
- Do not use spaces or special characters (#, %, &, ?) in the file name.
- For "Short File Description," write a brief (less than 50 characters), unique description that would help someone easily and quickly identify the file.
- If files are part of a series, append the number 001, 002, etc. to the end of the description.
Ex: Audio files submitted under a FY2020 grants by the DC State Historic Preservation Office
AACR_20_DC_DCSHPO_P21AP00001_JohnDoeInterview001.mp3
AACR_20_DC_DCSHPO_P21AP00001_JohnDoeInterview002.mp3

Required file formats and resolution standards:

- *Reports and publications:* PDF files created at 300 ppi (pixels per inch) minimum and 100% of the original document size. Convert authoring formats to PDFs (for example, saving Word or InDesign files as PDFs). When born-digital is not available, provide high resolution scans of printed materials as PDFs. Preference is for PDF/A-1 or PDF/A-2 format over standard PDF.
- *Photos:* JPEG or TIFF files saved at a minimum resolution of 3000 x 2000 pixels (or 6 megapixels).
 - **When submitting photographs, include captions, photo credit, and a signed release form (if needed).** Photo release forms are available on the [STLPG website](#).
 - **Development (construction) grants must submit photographs of all work completed under the grant, including at least three views of the overall structure and all elements of the scope of work.** Refer to the [NPS Documenting Historic Places on Film guidelines](#) for more information on photographing a variety of historic environments and buildings.
- *Videos:* MP4 files saved at a resolution of 1280 by 720 pixels. All videos produced with HPF funding should include closed captioning. When reasonable, provide transcripts of videos as Word documents.
- *Audio:* Uncompressed WAV files. When reasonable, provide transcripts of audio files as Word documents.
- For more information about formatting deliverables, consult the [National Archives' Tables of File Formats](#).

Creating an index file for your submission:

- Include this information in the index file for each product that is being submitted:
 - Grant Number
 - Subgrant Number (if applicable)
 - Title of Product
 - Filename
 - Product Creator(s) (give full names and their roles include up to 5 names or organizations)
 - Date Completed
 - Extent (number of pages, photographs, or length of audio/video files; use when applicable)
 - Description (up to 200 words)
- Save the index file as a Microsoft Word document using the following naming convention:
AACR_[Fiscal Year]_[Grantee's State Abbreviation]_[Legal Name of Grantee or Subgrantee]_[Grant Number]_Index.docx
Ex. AACR_20_DC_DCSHPO_P21AP00001_Index.docx
- Only submit one index per submission, including all of the products in that submission

Submitting Your Files:

1. Email stlpg@nps.gov to ask to be added to your grant folder.
2. You will receive an e-mail from the Records Management Assistant's e-mail account (currently caitlin_white@partner.nps.gov) with the subject 'White, Caitlin E shared the folder "[Grant Name]" with you'. Click 'Open' in the e-mail.
3. You will be sent to a page asking you to Request Verification Code. Click 'Send Code.'
4. A second e-mail from no-reply@sharepointonline.com with the subject 'Code [Eight digit number] is your Microsoft SharePoint verification code.'
 - a. Copy the code from the e-mail and paste into the box on the 'Enter Verification Code' page that appeared after you requested a code be sent to you.
5. Click the 'Upload' button at the top of the page.
 - a. It will give you the option to either upload file(s) or a folder.
6. In the new window, click on the file you wish to upload and then 'Open'. The file should now appear on the page.
7. E-mail the stlpg@nps.gov account to notify them that the files have been submitted using the template provided in your welcome e-mail. Unlike the previous system, there is no notification given when a file is uploaded and **YOUR FILES WILL NOT BE CONSIDERED SUBMITTED UNTIL THIS EMAIL IS RECEIVED.**

Reviewing submitted files:

- When NPS receives the files, we will review your submitted products for compliance with the HPF grants manual, the Secretary of the Interior's Standards of Archeology and Historic Preservation, and any other relevant requirements.
- If there are issues with the submitted files or grants products, your grant manager will contact you and may ask for corrections and resubmission if necessary.
- NPS will also determine whether the submitted products are suitable for sharing with the general public through the Integrated Resource Management Application (IRMA), the NPS's digital repository system. If so, we will upload the files there and make them publicly available.

**Addenda
to
Grant Agreement
P21AP11742**

1. Addendum to Approved Budget

The approved budget to complete the work under this grant is further defined as follows:

Budget Item	Fed Admin	Federal Program	Recipient Share Admin	Recipient Share Program	Total
Personnel		\$ -	\$ -	\$ 30,093.50	\$ 30,093.50
Fringe Benefits		\$ -	\$ -	\$ 1,271.86	\$ 1,271.86
Travel		\$ 1,680.00	\$ -	\$ -	\$ 1,680.00
Supplies		\$ 1,820.00	\$ -	\$ -	\$ 1,820.00
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Contractual/Consultant		\$ 46,000.00	\$ -	\$ 500.00	\$ 46,500.00
Construction		\$ 500.00	\$ -	\$ -	\$ 500.00
Other		\$ -	\$ -	\$ -	\$ -
Indirect Costs	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ -	\$ 50,000.00	\$ -	\$ 31,865.36	\$ 81,865.36

2. Addendum to Article VI - Statement of Work

The **Statement of Work** is further defined to include:

1. Conduct a context study to update the City of Newburgh's East End Historic District (EEHD) nomination through the lens of African American Civil Rights history per the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, to include:
 - i. Research and Survey the historic district as per the National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation.
 - ii. Prepare a National Register Nomination Form (10-900) to include significance, description and all registration requirements as stated in the National Register Bulletin 16A: How to Complete the National Register Form.
 - iii. Nominate at least one (1) site and/or amend existing historic district nominations to the National Register of Historic Places. Such sites will be associated with African-American Civil Rights and the prepared historic context. Selected sites will comply with the National Historic Landmark theme study, Civil Rights in America, and the National Register of Historic Places, Criteria for Evaluation. Draft documentation must be submitted to NPS ATR as described in the deliverables below.

Final National Register nominations must be submitted to the appropriate State Historic Preservation Office

- iv. Hire a Historic Preservation Consultant to translate findings into an update of the EEHD National Register nomination
 - 1. Lead consultant must meet the Secretary of the Interior's Professional Qualifications for Historian or Architectural Historian.
- v. Research and conduct oral histories in accordance with the Secretary of the Interior's Standards and Guidelines for Historic Preservation and Archeology, in addition to best practices as identified by the Oral History Association and the American Folklife Center of the Library of Congress. (<http://www.oralhistory.org/about/principles-and-practices/> and <https://www.loc.gov/folklife/familyfolklife/oralhistory.html>)
 - 1. Provide research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
 - 2. Hire an oral history facilitator.
 - 3. Oral histories must be conducted and/or supervised by a qualified professional. Oral histories may also be subject to Institutional Review Board (IRB) approval, as applicable.
 - 4. Prepare a written oral history report
- vi. Select approximately ten sites significant to the African American community for the installation of historic markers.
 - 1. A letter of permission from the site owners must be submitted, as applicable, if the grantee is not the owner of the site and a letter was not submitted with the application.
- vii. Procure an educational consultant to review research findings alongside curricula benchmarks for grades K-12 and prepare recommendations for future curriculum development
- viii. Consultant service*

*Requires approval by NPS ATR prior to hire

3. Addendum to Article XV – Reports, Outcomes, & Deliverables

The Reports, Outcomes, and Deliverables are further defined to include:

- 2. **Draft documents** to be submitted digitally and reviewed as related to the Statement of Work:

- i. Draft documents including text, layout, etc., for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee, by name or title (see Department of the Interior Standard Terms and Conditions)
 - ii. Draft press release posted upon receipt of the grant funding (see Requirement for Project Sign & Public Notification)
 - iii. Draft oral history research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
 - iv. Draft proposals of the text of the historic markers at 80% to NPS. Such documentation must include any construction details related to signage installation and letters of owner consent, as applicable.
 - v. Selected consultant qualifications (prior to signing contract)
 - vi. Draft nominations or amendments should be presented to the NPS and the relevant State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) at 50% completion to ensure that the document is in keeping with the necessary requirements.
 - vii. Written oral history report and educational materials at 80% completion
3. The Final Report must be submitted digitally and include:
- i. Complete and attach the SF-428B *Tangible Personal Property Report Final Report* or SF-428C, *Tangible Personal Property Disposition Request/Report*, if applicable
 - ii. **Final project deliverables:**
 - 1. A detailed project report, which includes which includes: description of the project's process, an analysis of the data, and any conclusion that sums up the findings, plans for dissemination and next steps. The report should incorporate any special material such as photos, maps, or copies of important documents.
 - 2. Index of collected Oral Histories.
 - 3. Sample oral history transcripts or digital recordings
 - 4. Markers installed
 - 5. Publications or products (workshops, handouts, pamphlets, videotapes, etc.) produced using this grant (one digital copy), if applicable
 - 6. Final written oral history report and educational materials (digital copies)

7. Final National Register nomination amendment submitted to the SHPO

TABLED

RESOLUTION NO.: 157 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONTRACT WITH MARISSA BROWN
TO PROVIDE RESEARCH ASSISTANT SERVICES IN CONNECTION WITH
THE NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS
PROGRAM GRANT AND ORAL HISTORY PROJECT**

WHEREAS, by Resolution No. 303-2020 of December 14, 2020, the City Council authorized the City Manager to apply for and accept if awarded a National Park Service African American Civil Rights Program ("NPS AACR Program") grant; and

WHEREAS, the City was awarded funds from the NPS AACR Program grant; and

WHEREAS, the objective of the grant is for local governments or not-for-profit entities to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights; and

WHEREAS, Marissa Brown, an independent contractor, has applied to work with the City of Newburgh to provide research assistant services over the course of approximately ten (10) weeks in August 2023 through October 2023 in connection with the NPS AACR Program grant and oral history project; and

WHEREAS, funding for this project will derive from budget line CG.8030.0455.4400.2023; and

WHEREAS, this Council has reviewed the contract with Marissa Brown, annexed hereto, and finds that entering into said contract is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with Marissa Brown to provide research assistant services in connection with the National Park Service African American Civil Rights Program grant and oral history project.

SUBGRANTEE AGREEMENT
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT

This subgrantee agreement ("Agreement"), by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City") and Marissa Brown, an individual with a principal place of business at , 12 Euclid Avenue, Middletown, New York 10940 ("Sub-grantee"), is made this dated as of _____, 2023, as follows:

RECITALS

- A. The City received an award of funds from the National Parks Service (referred to herein as "Grantor") African American Civil Rights ("AACR") program.
- B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being to research oral histories and local data in connection with the Grantor's African American Civil Rights Oral History Project.
- C. Sub-grantee has applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
- D. Sub-grantee has also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.
- E. In addition to the terms and conditions in this Agreement, Sub-grantee has agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement.
- F. The City has identified Sub-grantee as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantee to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

NOW, THEREFORE, the City, and the Sub-grantee, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE I SPECIFIC TERMS OF AGREEMENT

- 1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantee. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipient shall be an independent entity and not an employee or agent of the City.
- 2. Sub-grantee shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipient a sum not to exceed **four thousand two hundred and 00/100 dollars (\$4,200.00) at a rate of \$35.00 per hour**, said sum being a part of grant award to the City by Grantor.

ARTICLE II PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.
2. Total payment under this Contract shall not exceed **four thousand two hundred and 00/100 dollars (\$4,200.00)** as payment for all eligible services incurred by Sub-grantee.
3. The City may withhold any payment whenever the Sub-grantee fails to achieve its program goals for the vouchered expenditure period.

ARTICLE III METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantee eligible reimbursable costs.
2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.
3. The City shall reimburse Sub-grantee not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4th Floor, Newburgh, New York 12550.
4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date **commensurate of the project period specifically set forth in Schedule C**. The final statement of costs shall constitute Sub-grantee's final financial report.
5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

ARTICLE IV TERMINATION

1. Either party may terminate this agreement with thirty days' written notice to the parties listed below. Upon receipt of notice of termination, the Sub-grantee agrees to cancel, prior to the effective date of termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval.

If to City:

City of Newburgh
Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

If to Sub-grantee

Marissa Brown
12 Euclid Avenue
Middletown, NY 10940

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantee under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.
3. In the event of termination, Sub-grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantee, the City may withhold from any payments due the Sub-grantee for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantee.

ARTICLE V NO ASSIGNMENT

1. Sub-grantee represents that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City.

ARTICLE VI BOOKS AND RECORDS; REPORTS

1. Sub-grantee shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The City or the Grantor shall have access to the Records during normal business hours at an office within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

2. Sub-grantee shall submit a report to the City identifying prescribed activities funded under this Agreement at the termination of this Agreement. Sub-grantee shall also submit reports identifying prescribed activities funded under this Agreement upon request by the City while this Agreement is in effect.

ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Sub-grantee, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantee shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantee agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:
 - a. was known to Sub-grantee prior to receipt from the City, as evidenced through written documentation;
 - b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantee;
 - c. is acquired from a third party entitled to disclose the information to Sub-grantee;
 - d. is developed independently by Sub-grantee;
 - e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantee shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

ARTICLE VIII INTEREST OF SUB-GRANTEE, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

1. Sub-grantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.
2. Sub-grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.
3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

ARTICLE IX INTEREST OF MEMBERS, OFFICERS OR EMPLOYEE THE CITY;
MEMBERS OF THE COMMON COUNCIL, OR OTHER PUBLIC
OFFICIALS

1. No member, officer or employee of the City or its designees or agents, no member of the Common Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities with respect to the program, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.
2. Sub-grantee shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

1. No member of the New York State Assembly or Senate, or any other member of New York State government, shall be permitted to any share or part of this Agreement or to any benefit to arise from the same.

ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

1. Sub-grantee represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

ARTICLE XII REPRESENTATIONS OF SUBGRANTEE

1. Sub-grantee acknowledges and agrees that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Sub-grantee will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Sub-grantee certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

ARTICLE XIII EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out the obligation of this Agreement, Sub-grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Sub-grantee shall take affirmative action to ensure that applicants for employment and employees of Sub-grantee are treated without regard to their race, color, religion, sex, national origin or handicap. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
2. Sub-grantee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Sub-grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.
3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE XIV FACILITIES AND PERSONNEL

1. Sub-grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.
2. Sub-grantee further represents that it will terminate and dismiss from further performance of work and services under this Agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to Sub-grantee by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for Sub-grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve Sub-grantee from meeting its obligations under the terms and conditions of this Agreement.

ARTICLE XV INDEMNIFICATION

1. Sub-grantee hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of Sub-grantee or its agents, sub-contractors, servants or employees.

2. If any person shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantee hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.
3. Sub-grantee shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.
 - a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.
 - b. Sub-grantee shall carry Liability and Property Damage Insurance with limits of not less than:
 - i. Property Damage Liability \$1,000,000 for each occurrence
 - ii. Personal Injury Liability \$1,000,000 for each person
\$2,000,000 for each occurrence
4. The Agency, as Sub-grantee shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

SECTION XVI NOTICES

1. Notices of any nature referred to in this agreement shall be in writing by certified mail, hand delivery. Notices shall be effective on the date of receipt.

If to City:

City of Newburgh
Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

If to Sub-grantee

Marissa Brown
12 Euclid Avenue
Middletown, NY 10940

SECTION XVII MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.
2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.
3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.
4. Subrecipient has read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

[Signature page to follow]

Signature Page

Subgrantee Agreement, National Parks Service, AACR Grant

City of Newburgh / Marissa Brown

IN WITNESS WHEREOF, Sub-grantee and the City have executed this Agreement the day and year herein mentioned.

DATED: _____, 2023

CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

DATED: _____, 2023

SUB-GRANTEE

By: _____

Name: Marissa Brown

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this ____ day of _____, in the year 2023, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this ____ day of _____, in the year 2023, before me personally appeared Marissa Brown personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SCHEDULE A

Scope of Services

Objectives:

To provide research assistance to the African American Civil Rights Oral History Project.

The Project, funded through the United States Department of Interior's African American Civil Rights grant program, will center the legacy of the City's African American community in the East End Historic District (EEHD) to ensure historic preservation efforts prioritize cultural significance and community preservation alongside architectural integrity. The collected stories will spotlight the destabilizing effects of 20th century government-led segregation strategies in and around the EEHD, including urban renewal, housing discrimination, anti-Black lending practices, suburbanization, and white flight.

To work under the guidance of researchers from the University of Albany, as well as City Staff, to analyze the collection of oral history audio files in relation to Urban Renewal.

Deliverables:

- Review oral histories for references to Black community leaders, social institutions, and businesses.
- Inventory archival collections as directed including scans and photographs.
- Collect textual and visual content.
- Coordinate the research agenda with research team leaders.
- Contextualize individual oral histories and the broader history of Urban Renewal in Newburgh.
- Draft introductions to the oral histories and further drafting as needed, including report findings.
- Others as required.

Timeline:

Immediate (8-10 weeks)

SCHEDULE B

Compensation:

The Subgrantee will be compensated at \$35 per hour, total cost not to exceed \$4,200.

DRAFT

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 25

DATE ISSUED
09/19/2021

GRANT NO. P21AP11742-00

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

REMARKS

1. Grant Agreement
between
the United States Department of the Interior
National Park Service
and
the Above-Named Recipient

Articles

1. Department of the Interior Standard Terms and Conditions

Recipients must also adhere the Department of Interior Standard Terms and Conditions located at
<https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

2. Legal Authority

NPS enters into this Agreement pursuant to:

1. National Historic Preservation Act (NHPA), 54 USC 300101 *et seq.*
2. Historic Preservation Fund Grants Manual, 2007 and subsequent memos and guidance
3. Further Consolidated Appropriations Act of 2020, P.L. 116-94

3. Performance Goals and Project Objectives

The objective of this Agreement is to provide Historic Preservation Funds (HPF) to a State, Tribe, local government (including Certified Local Governments), or nonprofit to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights and the transatlantic slave trade. Projects may involve a broad range of preservation projects for historic sites including: survey & inventory, National Register nominations, oral histories, collections conservation, architectural services, historic structure reports, preservation plans, and physical preservation of resources listed or eligible National Register resources.

4. Performance Goals and Project Objectives

NOTICE OF AWARD (Continuation Sheet)

PAGE 3 of 25	DATE ISSUED 09/19/2021
GRANT NO. P21AP11742-00	

This grant program enables eligible grantees, as stated in the Notice of Funding Opportunity, across the nation to participate in a nationwide historic preservation program and meet the goals of 54 U.S.C. 300101 et seq., commonly known as the National Historic Preservation Act.

5. COVID-19 Provisions

Due to the COVID-19 pandemic, access to National Park Service (NPS) property, personnel, or resources may be limited at the start of the agreement. Any performance that requires access to National Park Service property, personnel, or resources shall not commence until the recipient receives confirmation from the NPS Financial Assistance Awarding Officer of the availability of those resources. The recipient shall contact the NPS Financial Assistance Awarding Officer for approval prior to incurring any costs for performance that requires access to National Park Service property or resources. Such approvals can only be provided by the NPS Financial Assistance Awarding Officer. In the event of a prolonged unavailability of resources, the period of performance may be modified to a later date, or the agreement may be cancelled, by either the National Park Service or the recipient, in its entirety. In addition, the recipient shall contact the NPS Financial Assistance Awarding Officer to coordinate any other changes to the agreement that may be needed to ensure successful performance during the COVID-19 pandemic.

6. Statement of Work

The Statement of Work to be performed in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and as determined eligible in the National Historic Preservation Act (NHPA), 54 U.S.C 300101 et. seq., and in the Historic Preservation Grant Fund Manual.

The Statement of Work is further defined in an addendum at the end of this Notice of Award.

7. Responsibilities of the Parties

1. The Recipient agrees to:

1. The Recipient shall carry out the Statement of Work in accordance with the terms and conditions stated herein, such as the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.
2. The Recipient shall adhere to all applicable Federal, state, and local laws, regulations, and codes, such as the National Historic Preservation Act.

2. No substantial involvement on the part of the NPS is anticipated for the successful completion of the statement of work detailed in this award. It is anticipated that involvement will be limited to actions related to monitoring project performance and technical assistance at the request of the recipient.

8. Cost-Share Requirement

Non-Federal cost-share is required for costs incurred under this Agreement, as identified in the attached project budget. If pre-award costs are authorized, reimbursement of these costs is limited to Federal cost share percentage identified in this agreement.

9. Pre-Award Incurrence of Costs

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The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

10. Administrative & Indirect Costs

The Recipient has chose not to use a federally approved negotiated indirect cost rate.

The federally-negotiated indirect rate plus administrative costs to be applied against this agreement, by statute 54 U.S.C. § 302902, shall not exceed 25% of the total budget.

Administrative costs are defined as: Allowable, reasonable, and allocable costs related to the overall management of activities directly related to finance (accounting, auditing, budgeting, contracting), general administrative salaries and wages (grant administration, personnel, property management, equal opportunity) and other overhead functions (general legal services, general liability insurance, depreciation on buildings and equipment, etc.) not directly attributable to specific program areas identified in the grant agreement. All administrative costs reported must be absolutely necessary for project and/or program implementation, such as the cost items identified in the final grant agreement or items otherwise approved in writing by the NPS Awarding Officer (AO).

11. Key Officials

1. Communications. Recipient shall address any communication regarding this Agreement to the ATR/Program Officer with a copy to the Awarding/Grants Management Officer. Communications that relate solely to technical matters may be sent only to the ATR/Program Officer.
2. Changes in Key Officials. Neither the NPS nor Recipient may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

12. Award and Payment

1. The NPS will provide funding to the Recipient in an amount not to exceed the figure in block 11m of the Notice of Award for the Statement of Work described in Article VI and in accordance with the NPS approved budget. The approved budget detail is incorporated herein. Any award beyond the current fiscal year is subject to availability of funds. Acceptance of a Federal financial assistance award from the Department of the Interior carries with it the responsibility to be aware of, and comply with the terms and conditions within this award document. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means.
2. Recipient shall request payment in accordance with the following:
 1. **Method of Payment.** Payment will be made by advance and/or reimbursement through the Department of Treasury's Automated Standard Application for Payments (ASAP) system.
 2. **Requesting Advances.** Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the Financial Assistance (FA) Recipient to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
 3. **Requesting Reimbursement.** Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each

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request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.

4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.
3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match.** Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

13. Prior Approval

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

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14. Insurance and Liability

Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

15. Reports and/or Outputs/Outcomes

1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.
2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIIS). Each report shall be submitted as described above.
3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.
4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

16. Property Utilization

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 applies to this Agreement.

17. Modification, Remedies for Noncompliance, Termination

1. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the NPS Awarding Officer and the authorized representative of Recipient.
2. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.339.
3. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

18. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you, as the recipient, during that period of time

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must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of \$5,000 or more; or reimbursement, restitution, or damages in excess of \$100,000; or
4. Any other criminal, civil, or administrative proceeding if:
 1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
 2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

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- does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
 3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

19. Funding Used for the Operation of Unmanned Aircraft Systems (UAS)

If Federal funding is provided to a State, local, tribal, or territorial government for the use of UAS for their operations, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

Per the policy memorandum issued by National Park Service Director, dated June 19, 2014, the launching, landing, and operating of unmanned aircraft, that is not under the control of the Federal government, on lands and waters administered by the National Park Service is prohibited unless approval is received from the Associate Director for such purposes as: Scientific study, search and rescue operations, fire operations, and law enforcement.

Administrative use includes the use of unmanned aircraft by

- NPS personnel as operators or crew;
- cooperators such as government agencies and universities that conduct unmanned aircraft operations for the NPS pursuant to a written agreement; and
- other entities, including commercial entities, conducting unmanned aircraft operations for the NPS, provided such entities are in compliance with all applicable FAA and Department of the Interior requirements.

20. Patents and Inventions (37 CFR 401)

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the National Park Service, is hereby included in this agreement:

1. Definitions

1. *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
2. *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement

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performance.

3. *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
4. *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. *Small Business Firm* means a small business concern as defined at section 2 of Public Law. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
6. *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

2. Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

3. Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

1. The Recipient will disclose each subject invention to the National Park Service within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the National Park Service shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the National Park Service, the Recipient will promptly notify the National Park Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
2. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the National Park Service within two years of disclosure to the National Park Service. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the National Park Service to a date that is no more than 60 days prior to the end of the statutory period.
3. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory

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period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the National Park Service, be granted.

4. Conditions When the Government May Obtain Title

The Recipient will convey to the National Park Service, upon written request, title to any subject inventions

1. If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph 3, above, or elects not to retain title; provided that the National Park Service may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
2. In those countries in which the Recipient fails to file patent applications within the times specified in paragraph 3 above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph 3 above, but prior to its receipt of the written request of the National Park Service, the Recipient shall continue to retain title in that country.
3. In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

5. Minimum Rights to Recipient and Protection of the Recipient Right to File

1. The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph 3, above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the National Park Service except when transferred to the successor of that party of the Recipient's business to which the invention pertains.
2. The Recipient's domestic license may be revoked or modified by the National Park Service to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the National Park Service licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the National Park Service to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the National Park Service will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient

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will be allowed thirty days (or such other time as may be authorized by the National Park Service for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and National Park Service regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

6. Recipient Action to Protect the Government's Interest

1. The Recipient agrees to execute or to have executed and promptly deliver to the National Park Service all instruments necessary to
 1. establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and
 2. convey title to the National Park Service when requested under paragraph 4 above and to enable the government to obtain patent protection throughout the world in that subject invention.
2. The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (3)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Recipient will notify the National Park Service of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
4. The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

7. Subcontracts

The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental, developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

8. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the National Park Service may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the

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National Park Service in connection with any march-in proceeding undertaken by the National Park Service in accordance with paragraph (10) of this provision. As required by 35 U.S.C. 202(c)(5), the National Park Service agrees it will not disclose such information to persons outside the government without permission of the Recipient.

9. Preference for United States Industry

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the National Park Service upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

10. March-in Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:

1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Agreements with Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

1. Rights to a subject invention in the United States may not be assigned without the approval of the National Park Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
2. The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the National Park Service deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
3. The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the

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administration of subject inventions, will be utilized for the support of scientific research or education; and

4. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the National Park Service may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the National Park Service when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (11)(4).

12. Communication

Communications regarding matters relating to this provision shall be directed to:

Deputy Associate Solicitor
Branch of Procurements and Patents
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

21. Strengthening Buy-American Preferences for Infrastructure Projects per E.O. 13858

Per Executive Order 13858, entitled "Strengthening Buy-American Preferences for Infrastructure Projects" the Recipient shall maximize, consistent with law, the use of iron and steel goods, products, and materials produced in the United States, for infrastructure projects as defined by the Executive Order when the statement of work includes alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair.

22. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Quarterly Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act, Standards and Guidelines for detailed information (<https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>).

The following summarizes some of the requirements for preparing NPS reports in conformance with

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Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to <https://section508.gov/create>. All accessible digital content must conform to the requirements and techniques of the Web Content Accessibility Guidelines (WCAG) 2.0 or later (<https://www.w3.org/WAI/standards-guidelines/wcag/>), Level AA Success Criteria.

- **Electronic documents with images**

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

- **Electronic documents with complex charts or data tables**

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

- **Electronic documents with forms**

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

23. General and Special Provisions

1. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
2. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
3. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
4. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
5. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
6. **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS

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- employees are not agents of the Recipient and will not act on behalf of the Recipient.
7. **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
8. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
9. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
10. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
11. **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305 (5)). As allowed under 2 CFR §200.307, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.
12. **Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
13. **Conflict of Interest**
1. **Applicability.**
 1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
 2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.
 2. **Requirements.**
 1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
 2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

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3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

3. Notification.

1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.
4. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
5. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
6. Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

24. Signatures

Recipients are **not** required to sign the Notice of Financial Assistance Award letter or any other award document. As per DOI standard terms and conditions, the recipient's acceptance of a financial assistance award is defined as the start of work, drawing down of funds, or accepting the award via electronic means.

25. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 1. Procure or obtain;
 2. Extend or renew a contract to procure or obtain; or
 3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the secretary of defense, in consultation with the director of the

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national intelligence or the director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services and to ensure that communications service to users and customers is sustained.
3. See Public Law 115-232, section 889, for additional information.
4. See also §200.471.

Program Specific Requirements

1. NPS Oversight

The NPS will provide oversight of this grant project through the following NPS reviews:

1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;
2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;
3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;
4. Review and approval for compliance with the National Environmental Policy Act (NEPA);
5. Review and approval of project signage to notify the public of federal involvement; and
6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

2. Determination of Risk

In accordance with 2 C.F.R. § 200.205, the application for this award was subjected to a pre-award risk assessment which included a review of information contained within the application, past audits, Federal Awardee Performance and Integrity Information System (FAPIIS), and/or past performance on previous Federal financial assistance awards and other factors.

This award has been determined to be a low risk with the following requirements:

Requests for payment may be made directly from the ASAP grant account without prior NPS approval after expenses have been incurred, invoiced, and paid. All documentation of expenses must be kept on file for audit purposes and may be requested by the NPS at any time. If payments are drawn down prior to invoice and payment or in amounts larger than costs incurred, the Recipient may be determined medium or high risk and be subject to additional grant terms and conditions.

3. Eligible Costs

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Eligible costs under this award are as described in this Notice, 2 CFR 200, and the Historic Preservation Fund Grants Manual (HPF Manual).

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);
2. Administrative costs necessary to complete and administer the grant requirements;
3. Rehabilitation of properties;
 1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
 2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
 3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
 4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement
4. Survey and Inventory of historic resources to determine eligibility;
5. Cost for producing a nomination to the National Register of Historic Places (if applicable);
6. Conservation of collections;
7. Cost for any required audits or financial requests;
8. Cost for the production of project signs;
9. Costs for public notice of grant opportunities;
10. Costs associated with required training or reporting; and/
11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

4. Equipment Purchases

Each item of equipment purchased under this award must be approved specifically and in writing by the NPS prior to purchase to confirm the allowability of the costs. Approval of the application is not approval of equipment included within the application. Equipment is defined by 2 CFR 200.1 as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000.

5. Consultants & Contractors

Consultant/contractor(s) must have the requisite experience and training in historic preservation or relevant field to oversee the project work. All consultants and contractors must be competitively selected and documentation of this selection must be maintained by the grantee and be made readily available for

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examination by the NPS. Federal contracting and procurement guidance can be found in 2 CFR 200.318. Maximum rates charged to this grant may not exceed 120% of a Federal Civil Service GS-15, step 10 salary per project location. Current regional salary tables can be found on the Office of Personnel and Management website: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

6. Requirement for Project Sign & Public Notification

As stipulated in 36 CFR Part 800, public views and comments regarding all Federally-funded undertakings on historic properties must be sought and considered by the authorizing Federal agency. Therefore, the grantee is required to post a public notification regarding the undertaking under this grant in one or more of the major newspapers or news sources that cover the area affected by the project within 30 days of receiving this awarded grant agreement. A copy of the posted release must be submitted to NPS within 30 days of the posting.

HPF funded projects must create public notification of the project in the form of a project sign, website posting, and proper credit for announcements and publications as appropriate. Signage/notification must be submitted for approval by the ATR in advance. Also the sign/notification must be of reasonable and adequate design and construction to withstand weather exposure (if appropriate); be of a size that can be easily read from the public right-of-way; and be accessible to the public throughout the project term as stipulated in this agreement. At a minimum, all notifications must contain the following statement:

"[Project Name] is being supported in part by an African American Civil Rights grant from the Historic Preservation Fund administered by the National Park Service, Department of the Interior."

Additional information briefly identifying the historical significance of the property and recognizing other contributors is encouraged and permissible. The NPS arrowhead logo may only be used in conjunction with the HPF approved signage format that can be provided upon request. Any other use of the logo is prohibited.

Cost of posting, fabricating, and erecting notification are eligible grant costs.

7. Publicity & Press Releases

Press releases about this project must acknowledge the grant assistance provided by the Historic Preservation Fund and the National Park Service, and copies of the press releases must be provided to the NPS. The Recipient must transmit notice of any public ceremonies planned to publicize funded or related projects in a timely enough manner so that the NPS, Department of the Interior, Congressional or other Federal officials can attend if desired. All publicity and press releases related to activities funded with this award should include a statement that funding for the activity was provided (in part or in whole) by the Historic Preservation Fund (HPF) administered by the National Park Service.

8. Funding Acknowledgement

The grantee must include acknowledgment of grant support from the Historic Preservation Fund of the National Park Service, Department of Interior, in all deliverables and publications concerning NPS grant-supported activities as referenced in the Statement of Work.

All deliverables must contain the following disclaimer and acknowledgement:

"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number [insert grant number, block 4a of this Notice of Award's coversheet]. Any opinions, findings, and conclusions or recommendations

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expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

1. Deliverables/publications include but are not limited to grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation of events, including programs; invitations and photos; websites; mobile apps; exhibits; and interpretive signs.
2. All digital copies must follow the file naming convention described in the attached Digital Product Submission Guidelines. Refer to the attached guidance document for instructions on creating, naming and submitting digital copies of deliverables/publications.
3. All consultants hired by the grantee must be informed of this requirement.
4. Grantees, subgrantees, contractors may not use the NPS Arrowhead in any form without written permission.

9. Copyright

Per 2 CFR 200.315(b), the NPS reserves a royalty-free right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, any materials produced under this grant. All photos included as part of the interim & final reporting and deliverables/publication will be considered released to the NPS for future official use. Photographer, date, and caption should be identified on each photo, so NPS may provide proper credit for use.

A digital (preferred) or physical copy of all deliverables must be available for public access. Sensitive information may be redacted from the public access copy.

All consultants hired by the Recipient must be informed of this requirement.

10. NPS Review of Planning/Design Documents for National Historic Landmarks

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;
2. a city/county map with the site of the property clearly labeled;
3. set of plans and specifications for the project;
4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;
5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;
6. for NHL Districts include overall views of the district from the project area; and
7. any additional information that will better enable a technical review of the project to be completed.

The grantee must submit documents for the entire undertaking to the NPS for its review and approval to ensure conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, Historic Preservation Fund Grant Manual, and with the conditions listed in this Grant Agreement, **prior** to the beginning of grant-assisted work. Work that does not comply with these Standards in the judgment of the NPS will not be reimbursed, and may cause the grant to be terminated

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and funds deobligated.

Plans & specifications for the project must be marked on the cover with this statement:

The {name of property} is designated a National Historic Landmark for its architectural and historic significance. It is considered to have irreplaceable cultural, material, and aesthetic value. The work is funded in part by the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. The funding of which is subject to having all work items meet The Secretary of the Interior's Standards for the Treatment of Historic Properties.

11. Compliance with Section 106

Pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), the NPS and the grantee must complete the consultation process stipulated in the regulations issued by the Advisory Council on Historic Preservation (ACHP) in 36 CFR 800 **prior** to the commencement of all grant-assisted construction or ground disturbance on the property.

12. Compliance with Section 110

Section 110 of The National Historic Preservation Act identifies the responsibility of the federal agency in their treatment of historic properties. Section 110(f) (54 USC 306107) clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm. See this agreement for submission requirements regarding NHL properties. In addition, Section 110(k) (54 USC 306113) prohibits the NPS from funding any grantee or subgrantee that attempts to avoid the requirements of Section 106. Grantees must make every effort to fund preservation projects that do no harm or adverse effects to NHL properties. Should it be discovered a grantee has deliberately damaged a property (e.g., pre-emptive demolition) to avoid requirements, the NPS must be notified to determine, in consultation with the ACHP, if the project can proceed.

13. Requirement for NEPA Compliance

All HPF funded grants are subject to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. This Act requires Federal agencies to consider the reasonably foreseeable environmental consequences of all grant-supported activities. As part of the NPS implementation of NEPA, grantees are required to notify the NPS of any reasonably foreseeable impacts to the environment from grant-supported activities, or to certify that no such impacts will arise upon receipt of a grant award. In addition, the NPS has determined that most HPF grant funds are not expected to individually or cumulatively have a significant impact on the environment, unless the activity involves development (construction) or archeology. For construction or archeology projects, the applicant/grantee should submit an *Environmental Screening Worksheet*, in order to assist the NPS in determining if a Categorical Exclusion (found in [NPS Director's Order 12](#)) can be utilized.

14. Compliance with the Americans with Disabilities Act and the Architectural Barriers Act

The use of federal funds to improve public buildings, to finance services or programs contained in public buildings, or alter any building or facility financed in whole or in part with Federal funds (except privately owned residential structures), requires compliance with the 1990 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the Architectural Barriers Act (ABA). Work done to alter the property should be in compliance with all applicable regulations and guidance.

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15. Unanticipated Discovery Protocols

At a minimum, unanticipated discovery protocols for subgrants or contracts shall require the sub-grantee or contractor to immediately stop construction in the vicinity of the affected historic resource and take reasonable measures to avoid and minimize harm to the resource until the SHPO or THPO, sub-grantee or contractor, and Indian Tribes, as appropriate, have determined a suitable course of action within 15 calendar days. With the express permission of the SHPO and/or THPO, the sub-grantee or contractor may perform additional measures to secure the jobsite if the sub-grantee or contractor determines that unfinished work in the vicinity of the affected historic property would cause safety or security concerns.

16. NAGPRA Costs Are Unallowable

Cost related to Native American Graves Protection and Repatriation Act (NAGPRA) activities are unallowable under this agreement. Funds for NAGPRA activities are available through the NPS National NAGPRA Program.

17. GIS Spatial Data Transfer Standards

All GIS data collected with HPF funds shall be in compliance with the NPS Cultural Resource Spatial Data Transfer Standards with complete feature level metadata. Template GeoDatabases and guidelines for creating GIS data in the NPS cultural resource spatial data transfer standards can be found at the NPS Cultural Resource GIS Facility webpage:

https://www.nps.gov/crgis/crgis_standards.htm

Technical assistance to meet the NPS Cultural Resource Spatial Data Transfer Standard specifications will be made available if requested. Execution of a Data Sharing Agreement between the NPS and the Recipient shall take place prior to collection of GIS data using HPF funds.

18. Funding for Use of Unmanned Aircraft Systems (UAS) (AKA Drones)

HPF funding for unmanned aircraft systems (UAS) usage is eligible only in the contracting of an experienced, licensed contractor of UAS who possesses the appropriate license, certifications, and training to operate UAS. The contractor is required to provide proof of liability insurance in the operation of UAS for commercial use.

If HPF funding is provided to a state, tribal, local, or territorial government, or other non-profit organization for the use of UAS as part of their scope of work, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

19. Subgrant Awards

The awarding of subgrants must follow the general criteria described below in addition to the eligibility factors outlined in the Notice of Funding Opportunity, OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual.

The Grantee must publicly announce the availability of HPF funds and include the following information:

1. A summary statement of the priorities for funding;
2. Description of eligible activities for which funding is to be provided;

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3. The total amount available, or expected to be available for subgrants;
4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;
5. The deadline for submitting the completed application;
6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;
7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;
8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;
10. Notice of the requirement for easements or covenants for grant assisted preservation work.

To qualify a subgrantee as responsible, the grantee must ensure that a subgrantee will:

1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;
2. Be able to comply with the proposed or required completion schedule for the project;
3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;
4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;
2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);
4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

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5. Verification of submission of any subgrants over \$30,000 federal share to Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS);

6. Review of final executed preservation easement/covenant;

7. Additional requirements as determined for the grantee based on risk or program requirements.

20. Requirement for Training

At the direction of the National Park Service, personnel associated with management of the grant program may be required to attend trainings and/or meetings. The grantee will be provided adequate notice to plan for any required activities; expenses incurred as part of this requirement are eligible to charge towards the grant.

21. Demonstration of Effort – Performance Goals

In order to ensure the timely and successful completion of all HPF grant awards, the NPS requires acceptable demonstration of effort by the grantee on project work supported by all HPF funded grants.

Demonstration of effort means acceptable performance by undertaking meaningful progress on grant-supported activities and complying with award terms and conditions.

22. Notice of Financial Management Review

As part of government-wide efforts to improve coordination of financial management and increase financial accountability and transparency in the receipt and use of federal funding, the grantee is hereby notified that this award may be subject to higher scrutiny. This may include a requirement to submit additional reporting documentation.

23. Catalog of Federal Domestic Assistance/Assistance Listing Inclusion in Single Audit

Non-Federal entities receiving financial assistance through the Historic Preservation Fund must include the appropriate Catalog of Federal Domestic Assistance (CFDA) number in the Schedule of Expenditures of Federal Award in their Single-Audit. The CFDA number applicable to this award as identified in block 2 on the first page of this agreement document.

24. Audit Findings and Follow-Up

The Recipient is hereby informed that the NPS may withhold or suspend award funds, or may impose other related conditions, if the recipient does not satisfactorily and promptly address findings from Single or program-specific audits, investigations, or reviews of NPS programs and awards. Each year the award is active, the Recipient must require its auditors to provide status report updates of all audit findings included in the prior audit's Schedule of Findings and Questioned Costs, as required by 2 CFR 200, Subpart F ("Grants and Agreements, Audit Requirements"). Upon review of subsequent annual audits, the NPS will determine if further corrective action is warranted.

When findings exist, the Recipient must submit a status report every six months to the NPS of all steps being taken to resolve related audit findings included in the prior audit's *Schedule of Findings and Questioned Costs* to remain in good standing for all NPS grant awards. If the Recipient fails to meet these deadlines without written approval of extension from the NPS, NPS may withhold remaining and future award funds, or may impose other related requirements to ensure compliance with this condition.

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Outstanding audit findings, if any, are included in the attachments of this Agreement.

AWARD ATTACHMENTS

NEWBURGH, CITY OF

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1. Environmental Certification
2. Digital Products Submission Guidelines, AACR
3. Addenda of Budget, Scope, and Deliverables



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW

Washington, DC 20240

ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposed work, and the supporting documentation contacting in the applications, it has been determined that the proposed HPF funded work meets the criteria for categorical exclusion under the current Interim Director's Order 12 *Categorical Exclusions* (replacing DO-12 Handbook, Chapter 3, Sections 3.3, 3.4, and 3.5).

Applicable categorical exclusion(s) below apply to all proposed projects **except** development and archeological survey which must be reviewed independently: **F.1 – F.6 – Actions Related to Grant Programs**

Megan J. Brown
Chief State, Tribal, Local, Plans & Grants
National Park Service

3/25/2021

Date

Digital Product Submission Guidelines

The National Park Service's (NPS) State, Tribal, Local Plans & Grants (STLPG) Division developed these guidelines to outline the digital product submission process for grant recipients. These guidelines specify the types of products that should be submitted, supply guidance on the file names and formats grant recipients should use, and define how submissions should be made.

Products submitted digitally may be uploaded and shared with the general public through the Integrated Resource Management Application (IRMA), the NPS's digital repository system. The see grant products that have already been uploaded, use the above link, choose Historic Preservation Fund (HPF) under "Select a Park, Office, Program or Region" and selected a category of featured context.

What to submit:

- Provide one digital copy of each deliverable or publication under your grant agreement. Refer to the Reports, Outputs, & Outcomes article to find the deliverables and publications specified in your grant agreement.
- Deliverables and publications include, but are not limited to, the following materials:

SUBMIT	DO NOT SUBMIT
Reports, plans and guidelines (including historic structure reports, design guidelines, economic impact studies, treatment reports, historic context statements, preservation plans)	Digital copies saved on CD/DVD-Rs or flash drives (unless arrangements have been made with your grant administrator)
Substantive event materials (including programs, proceedings, handouts, photographs)	Confidential/restricted reports that cannot be viewed by the general public (including archeological reports, architectural reports on federal buildings or restricted sites)
Professionally produced content (including books, documentaries, oral histories, presentations and PSAs)	Other documentation not intended for the general public (including survey forms, financial records, correspondence)
Interpretive products (including books, brochures, posters, interpretive tours, coloring books or other youth-focused products, lesson plans)	Ephemeral products unlikely to be of future value to the general public (including flyers, postcards, invitations, meeting minutes)
Online content (including websites, story maps, and other web-based projects)	

- **Final grant products may be made available to the general public and should, by default, feature the NPS disclaimer.** Printed products must feature a printed disclaimer when feasible. Audio products must include a spoken version of the disclaimer. Video products must include the disclaimer as an on-screen graphic. A disclaimer is not required when it would be unreasonable to do so, such as on size-restrictive publications like postcards or flyers.

"This material was produced with assistance from the African American Civil Rights grant program, administered by the National Park Service, Department of the Interior. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

- For additional questions about the required disclaimer, consult with your NPS grant manager.

Naming files for submission:

- Name each file you will be submitting using the following naming convention:
AACR_[Fiscal Year]_[Grantee's State Abbreviation]_[Legal Name of Grantee or Subgrantee]_[Grant Number]_[Short File Description]
- Do not use spaces or special characters (#, %, &, ?) in the file name.
- For "Short File Description," write a brief (less than 50 characters), unique description that would help someone easily and quickly identify the file.
- If files are part of a series, append the number 001, 002, etc. to the end of the description.
Ex: Audio files submitted under a FY2020 grants by the DC State Historic Preservation Office
AACR_20_DC_DCSHPO_P21AP00001_JohnDoeInterview001.mp3
AACR_20_DC_DCSHPO_P21AP00001_JohnDoeInterview002.mp3

Required file formats and resolution standards:

- *Reports and publications:* PDF files created at 300 ppi (pixels per inch) minimum and 100% of the original document size. Convert authoring formats to PDFs (for example, saving Word or InDesign files as PDFs). When born-digital is not available, provide high resolution scans of printed materials as PDFs. Preference is for PDF/A-1 or PDF/A-2 format over standard PDF.
- *Photos:* JPEG or TIFF files saved at a minimum resolution of 3000 x 2000 pixels (or 6 megapixels).
 - **When submitting photographs, include captions, photo credit, and a signed release form (if needed).** Photo release forms are available on the STLPG website.
 - **Development (construction) grants must submit photographs of all work completed under the grant, including at least three views of the overall structure and all elements of the scope of work.** Refer to the NPS Documenting Historic Places on Film guidelines for more information on photographing a variety of historic environments and buildings.
- *Videos:* MP4 files saved at a resolution of 1280 by 720 pixels. All videos produced with HPF funding should include closed captioning. When reasonable, provide transcripts of videos as Word documents.
- *Audio:* Uncompressed WAV files. When reasonable, provide transcripts of audio files as Word documents.
- For more information about formatting deliverables, consult the National Archives' Tables of File Formats.

Creating an index file for your submission:

- Include this information in the index file for each product that is being submitted:
 - Grant Number
 - Subgrant Number (if applicable)
 - Title of Product
 - Filename
 - Product Creator(s) (give full names and their roles include up to 5 names or organizations)
 - Date Completed
 - Extent (number of pages, photographs, or length of audio/video files; use when applicable)
 - Description (up to 200 words)
- Save the index file as a Microsoft Word document using the following naming convention:
AACR_[Fiscal Year]_[Grantee's State Abbreviation]_[Legal Name of Grantee or Subgrantee]_[Grant Number]_Index.docx
Ex. AACR_20_DC_DCSHPO_P21AP00001_Index.docx
- Only submit one index per submission, including all of the products in that submission

Submitting Your Files:

1. Email stlpg@nps.gov to ask to be added to your grant folder.
2. You will receive an e-mail from the Records Management Assistant's e-mail account (currently caitlin_white@partner.nps.gov) with the subject 'White, Caitlin E shared the folder "[Grant Name]" with you'. Click 'Open' in the e-mail.
3. You will be sent to a page asking you to Request Verification Code. Click 'Send Code.'
4. A second e-mail from no-reply@sharepointonline.com with the subject 'Code [Eight digit number] is your Microsoft SharePoint verification code.'
 - a. Copy the code from the e-mail and paste into the box on the 'Enter Verification Code' page that appeared after you requested a code be sent to you.
5. Click the 'Upload' button at the top of the page.
 - a. It will give you the option to either upload file(s) or a folder.
6. In the new window, click on the file you wish to upload and then 'Open'. The file should now appear on the page.
7. E-mail the stlpg@nps.gov account to notify them that the files have been submitted using the template provided in your welcome e-mail. Unlike the previous system, there is no notification given when a file is uploaded and **YOUR FILES WILL NOT BE CONSIDERED SUBMITTED UNTIL THIS EMAIL IS RECEIVED.**

Reviewing submitted files:

- When NPS receives the files, we will review your submitted products for compliance with the HPF grants manual, the Secretary of the Interior's Standards of Archeology and Historic Preservation, and any other relevant requirements.
- If there are issues with the submitted files or grants products, your grant manager will contact you and may ask for corrections and resubmission if necessary.
- NPS will also determine whether the submitted products are suitable for sharing with the general public through the Integrated Resource Management Application (IRMA), the NPS's digital repository system. If so, we will upload the files there and make them publicly available.

**Addenda
to
Grant Agreement
P21AP11742**

1. Addendum to Approved Budget

The approved budget to complete the work under this grant is further defined as follows:

Budget Item	Fed Admin	Federal Program	Recipient Share Admin	Recipient Share Program	Total
Personnel		\$ -	\$ -	\$ 30,093.50	\$30,093.50
Fringe Benefits		\$ -	\$ -	\$ 1,271.86	\$ 1,271.86
Travel		\$ 1,680.00	\$ -	\$ -	\$ 1,680.00
Supplies		\$ 1,820.00	\$ -	\$ -	\$ 1,820.00
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
Contractual/Consultant		\$ 46,000.00	\$ -	\$ 500.00	\$46,500.00
Construction		\$ 500.00	\$ -	\$ -	\$ 500.00
Other		\$ -	\$ -	\$ -	\$ -
Indirect Costs	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ -	\$ 50,000.00	\$ -	\$ 31,865.36	\$81,865.36

2. Addendum to Article VI - Statement of Work

The **Statement of Work** is further defined to include:

1. Conduct a context study to update the City of Newburgh's East End Historic District (EEHD) nomination through the lens of African American Civil Rights history per the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, to include:
 - i. Research and Survey the historic district as per the National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation.
 - ii. Prepare a National Register Nomination Form (10-900) to include significance, description and all registration requirements as stated in the National Register Bulletin 16A: How to Complete the National Register Form.
 - iii. Nominate at least one (1) site and/or amend existing historic district nominations to the National Register of Historic Places. Such sites will be associated with African-American Civil Rights and the prepared historic context. Selected sites will comply with the National Historic Landmark theme study, Civil Rights in America, and the National Register of Historic Places, Criteria for Evaluation. Draft documentation must be submitted to NPS ATR as described in the deliverables below.

Final National Register nominations must be submitted to the appropriate State Historic Preservation Office

- iv. Hire a Historic Preservation Consultant to translate findings into an update of the EEHD National Register nomination
 - 1. Lead consultant must meet the Secretary of the Interior's Professional Qualifications for Historian or Architectural Historian.
- v. Research and conduct oral histories in accordance with the Secretary of the Interior's Standards and Guidelines for Historic Preservation and Archeology, in addition to best practices as identified by the Oral History Association and the American Folklife Center of the Library of Congress. (<http://www.oralhistory.org/about/principles-and-practices/> and <https://www.loc.gov/folklife/familyfolklife/oralhistory.html>)
 - 1. Provide research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
 - 2. Hire an oral history facilitator.
 - 3. Oral histories must be conducted and/or supervised by a qualified professional. Oral histories may also be subject to Institutional Review Board (IRB) approval, as applicable.
 - 4. Prepare a written oral history report
- vi. Select approximately ten sites significant to the African American community for the installation of historic markers.
 - 1. A letter of permission from the site owners must be submitted, as applicable, if the grantee is not the owner of the site and a letter was not submitted with the application.
- vii. Procure an educational consultant to review research findings alongside curricula benchmarks for grades K-12 and prepare recommendations for future curriculum development
- viii. Consultant service*

*Requires approval by NPS ATR prior to hire

3. Addendum to Article XV – Reports, Outcomes, & Deliverables

The Reports, Outcomes, and Deliverables are further defined to include:

- 2. **Draft documents** to be submitted digitally and reviewed as related to the Statement of Work:

- i. Draft documents including text, layout, etc., for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee, by name or title (see Department of the Interior Standard Terms and Conditions)
 - ii. Draft press release posted upon receipt of the grant funding (see Requirement for Project Sign & Public Notification)
 - iii. Draft oral history research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
 - iv. Draft proposals of the text of the historic markers at 80% to NPS. Such documentation must include any construction details related to signage installation and letters of owner consent, as applicable.
 - v. Selected consultant qualifications (prior to signing contract)
 - vi. Draft nominations or amendments should be presented to the NPS and the relevant State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) at 50% completion to ensure that the document is in keeping with the necessary requirements.
 - vii. Written oral history report and educational materials at 80% completion
3. The Final Report must be submitted digitally and include:
- i. Complete and attach the SF-428B *Tangible Personal Property Report Final Report* or SF-428C, *Tangible Personal Property Disposition Request/Report*, if applicable
 - ii. **Final project deliverables:**
 - 1. A detailed project report, which includes which includes: description of the project's process, an analysis of the data, and any conclusion that sums up the findings, plans for dissemination and next steps. The report should incorporate any special material such as photos, maps, or copies of important documents.
 - 2. Index of collected Oral Histories.
 - 3. Sample oral history transcripts or digital recordings
 - 4. Markers installed
 - 5. Publications or products (workshops, handouts, pamphlets, videotapes, etc.) produced using this grant (one digital copy), if applicable
 - 6. Final written oral history report and educational materials (digital copies)

7. Final National Register nomination amendment submitted to the SHPO

RESOLUTION NO.: 158 - 2023

OF

AUGUST 14, 2023

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND NELSON POPE AND VOORHIS, LLC FOR
PROFESSIONAL CONSULTING SERVICES RELATED TO THE PREPARATION OF
THE 2023 DOWNTOWN REVITALIZATION INITIATIVE GRANT

WHEREAS, the City of Newburgh intends to apply for a 2023 Downtown Revitalization Initiative grant; and

WHEREAS, the City of Newburgh wishes to enter into the attached agreement with Nelson, Pope and Voorhis, LLC to provide professional grant consulting assistance to the City of Newburgh by working with the City staff to prepare the 2023 Downtown Revitalization Initiative grant application; and

WHEREAS, the cost of these services will not exceed \$6,000.00 and will be derived from A.8684.0448; and

WHEREAS, this Council has determined that entering into this agreement 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 agreement with Nelson, Pope and Voorhis, LLC, in substantially the same form as annexed hereto with any other provision that Counsel may require, at cost not to exceed \$6,000.00 for grant consulting services related to the preparation of the City's 2023 Downtown Revitalization Initiative grant application.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2023, by and between the City of Newburgh, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Nelson, Pope and Voorhis, LLC, a limited-liability company, an individual with an office at 156 Route 59, Suite C, Suffern, New York 10901, hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall remain the property of VENDOR, except that CITY shall have VENDOR's permission to make full use for the completion and implementation of the Project for which the material was prepared without compensation in addition to the amounts set forth in Article 3 and Schedule B of this Agreement. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of

the CITY's rights regarding same for any purpose outside the scope of the Project and its implementation.

The CITY recognizes VENDOR's right not to release documents until the CITY has made the account receivables current, excluding only any billed fees in dispute, providing the CITY has notified the VENDOR in writing within thirty (30) days of the invoice date identifying the portion of the fees in dispute and the reason for the dispute. All undisputed fees on the disputed invoice shall be paid in accordance with ARTICLE 3.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning August 15, 2023, and ending December 31, 2023.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the CITY an itemized invoice for SERVICES rendered, as set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within 30 days after the CITY receives Claimant's Certification form. If the Claimant's Certification form is objectionable, the CITY will notify

VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$6,000.00 has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than six (6) months after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums

otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY nor create a fiduciary relationship between the CITY and VENDOR. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds

for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period. The CITY agrees to pay a reasonable fee to the VENDOR in order to offset the VENDOR's cost of assembling and producing said materials including but not limited to staff time, and duplication and that such fee is not included in and is in addition to the fee specified in Article 3.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

The CITY agrees to pay a reasonable fee to the VENDOR in order to offset the VENDOR's cost of assembling and producing said materials including but not limited to staff time, and duplication, and that such fee is not included in and is in addition to the fee specified in Article 3.

ARTICLE 13. INSURANCE

VENDOR represents and warrants that it now has in full effect and will maintain the following insurances for the duration of this project:

VENDOR will furnish to the CITY certificates of insurance upon request. Premiums for insurance coverage in excess of these coverages, when requested by the CITY, will be charged to the CITY and such

premiums are not included in and are in addition to the fee specified in Article 3.

1. Commercial General Liability Insurance covering as insured VENDOR and as an additional insured CITY with the following limits of liability:

Personal Adv. Injury - \$1,000,000 for each occurrence

General Aggregate \$2,000,000 in the aggregate

Excess Liability-Umbrella \$5,000,000 for each occurrence and \$5,000,000 in the aggregate

2. Worker's Compensation Insurance securing compensation for the benefit of VENDORS employees as required by the Worker's Compensation Law.

3. Comprehensive Automobile Liability Insurance covering owned, non-owned, and hired vehicles will be provided upon request.

4. Professional Liability Insurance insuring against negligent acts, errors and omissions, by VENDOR, in an amount of \$2,000,000 per claim with a \$4,000,000 aggregate.

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as previously described.

Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

The CITY shall promptly report to the VENDOR any defects, negligent acts, errors, omissions or suspected defects, negligent acts, errors, omissions arising from VENDOR's work or services, in order that VENDOR may take prompt, effective measures which in

VENDOR'S opinion will minimize damaging consequences.

EACH PARTY agrees to defend, indemnify and hold harmless the OTHER PARTY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed pursuant to this Agreement which the EACH PARTY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of the OTHER PARTY, its employees, representatives, subcontractors, assignees, or agents.

EACH PARTY agrees that the aggregate liability due to any alleged negligent acts, errors, omissions and/or breach of agreement shall not exceed the total fee for services rendered on the project.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action.

The CITY shall make no claim for professional negligent acts, errors, omissions and/or alleged breach of agreement either directly or in a third-party claim, against the VENDOR unless the CITY has first provided the VENDOR with a written certification executed by a professional certified by the American Institute of Certified Planners. This certification shall: a) identify the name and certification 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 a planning

professional performing 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 the VENDOR not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

The rights and remedies of the CITY and VENDOR provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF PROPERTY

EACH PARTY shall be responsible for, any loss or damage to the property of the OTHER PARTY, including property and equipment used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the OTHER PARTY, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by THE OTHER PARTY.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

The rights and remedies of EACH PARTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR

agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publicly or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

The CITY agrees that it shall make no claim of damages, liabilities, costs or expenses for disclosure of information as described in this ARTICLE unless and until the CITY notifies the VENDOR of the confidentiality, sensitivity or proprietary nature of the information in writing. Such notice may refer to the information as information disclosed on a certain date and time so as to not endanger inadvertent disclosure.

ARTICLE 17. TERMINATION

This agreement may, by ten (10) days written notice effective upon mailing, be terminated by EITHER PARTY in whole or in part at any time (i) for EITHER PARTY's convenience, (ii) upon the failure of EITHER PARTY to comply with any of the terms or conditions of this agreement, or (iii) upon EITHER PARTY becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this

Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, EITHER PARTY shall not be relieved of liability to the OTHER PARTY for damages sustained by virtue of a breach of the Agreement or failure to perform in accordance with applicable standards and good faith.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 20. DISPUTE RESOLUTION

All disputes shall be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 23. CHANGED CONDITIONS

Certain conditions may arise during the performance of VENDOR's services which may differ significantly from those assumed to exist when this contract was executed.

If, in the opinion of VENDOR, this contract is no longer adequate in light of occurrences or discoveries that were not originally contemplated by or known to VENDOR, VENDOR may request an amendment to this agreement by first identifying the Changed Condition and informing the CITY.

The CITY and VENDOR shall promptly and in good faith enter into renegotiation of the Agreement in order to meet the CITY's needs. If renegotiated terms cannot be agreed to, the CITY agrees that VENDOR may

terminate this Agreement according to Article 17.

ARTICLE 24. MAINTENANCE OF PROFESSIONAL STANDARDS AND ETHICS

The City recognizes that VENDOR's services in all cases must be rendered in accordance with prevailing professional standards and ethics. Services performed by VENDOR under this Agreement will be conducted in a manner consistent with the code of ethics of the American Institute of Certified Planners and with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE. If a situation emerges that causes VENDOR to believe compliance with the CITY's wishes could result in VENDOR violating an applicable provision or aspect of professional standards or ethics, laws or regulations, VENDOR shall so advise the Client. The CITY and VENDOR shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing the achievement of a solution, either party may terminate this agreement according to Article 17.

ARTICLE 25. ENTIRE AGREEMENT

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

BY: _____
TODD VENNING
CITY MANAGER

DATE: _____

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 26. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum to this Agreement, which Addendum shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum.

NELSON, POPE AND VOORHIS, LLC

BY: _____
MAX STACH
PARTNER

DATE: _____

APPROVED AS TO FORM:

Michelle Kelson
Corporation Counsel

Janice Gaston
City Comptroller

SCHEDULE A

SCOPE OF SERVICES

Vendor will provide forty (40) hours of planning services to the City of Newburgh, which is believed to be adequate to complete the following tasks:

1. **Kickoff Meeting.** Vendor will attend a kickoff meeting to discuss the scope of work, DRI boundary area, and proposed projects. We anticipate this being an in person meeting at the City of Newburgh.
2. **DRI Boundary Area.** Vendor will work with the City to critically look at the DRI boundary area to determine if adjustments should be made based upon the goals of the DRI program.
3. **Proposed Projects.** Vendor will work with the City to review the proposed projects that were in the previous DRI application and work with the City to identify any new projects or suggested revisions to projects to better align with the State's goals.
4. **Narrative.** Vendor will review and provide suggested edits to the application narrative in the form of a redlined document. The edits will be based on our experience with the DRI programs and the State's goals of the program.

In completing the above-listed tasks, it is assumed that the following specific services or services of a similar nature will be provided:

- Assisting with and advising on the DRI application materials and process as needed
- Writing sections of the grant application
- Developing maps using GIS or other graphic software in support of the application.
- Preparing for and attending meetings pertaining to the preparation of the project deliverables

All services will be undertaken at the direction of the City of Newburgh. Ms. Valerie Monastra, AICP, will be project manager who will manage these services.

SCHEDULE B

FEES AND EXPENSES

Services will be invoiced to the City of Newburgh on an hourly basis subject to the Hourly Rate Schedule below.

Hourly Rate Schedule Staff Title	Billing Rate
Partner	\$165.00
Principal Planner (Valerie Monastra, AICP)	\$160.00
Principal Environmental Planner	\$155.00
Planning Analyst	\$100.00
Administrative Assistant	\$85.00

Payment of services shall be made upon receipt by the City of an invoice, which will be submitted on a monthly basis. Invoices will specify the amount of time expended and include a description of the task(s) performed. Any direct costs, e.g., printing, will be billed without markup.

RESOLUTION NO.: 159 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED A DOWNTOWN REVITALIZATION INITIATIVE GRANT
IN AN AMOUNT NOT TO EXCEED \$10,000,000.00**

WHEREAS, New York State's Downtown Revitalization Initiative (DRI) is a cornerstone of the State's economic development program to transform downtown neighborhoods into vibrant centers that offer a high quality of life and are magnets for redevelopment, business, job creation, and economic and housing diversity, and reflecting compact, walkable downtowns that are a key ingredient to supporting New York State and local economies; and

WHEREAS, Round 7 of the program will provide a \$10 million award to one community in each of the State's ten Regional Economic Development Council regions for the purpose of developing a downtown strategic investment plan and implement key catalytic projects that advance the community's vision for revitalization through larger private, mixed-use projects, adaptive reuse, new construction projects on developable properties, creating new spaces and projects that elevate urban- and employment-based downtown qualities and enhance the regional draw of the DRI area; and

WHEREAS, the City of Newburgh is a qualified applicant for the DRI program; and

WHEREAS, this Council finds that applying for and accepting funding from the DRI 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 Downtown Revitalization Initiative grant in an amount not to exceed \$10,000,000.00; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 160 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$10,000.00
WITH CHOICE FILMS, INC. FOR A FILM AND TELEVISION TRAINING PROGRAM
FOR YOUTH AND YOUNG ADULT RESIDENTS OF THE CITY OF NEWBURGH**

WHEREAS, by Resolution No. 276-2022 of November 14, 2022, the City Council of the City of Newburgh approved and adopted the Community Development Block Grant ("CDBG") the FY2023 one-year Action Plan; and

WHEREAS, one of the activities included in the CDBG FY2023 annual action was for economic development and workforce development; and

WHEREAS, by Resolution No. 175-2022 of July 11, 2022 and Resolution No. 36-2023 of March 13, 2023, the City Council approved a sub-recipient grant agreement and addendum with Choice Films, Inc. each in the amount of \$10,000.00 for a film and television training program for youth and young adult residents of the City of Newburgh; and

WHEREAS, Choice Films, Inc. proposes to add a new session for the fall of 2023 and add transportation and child care services to film production for City of Newburgh resident program participants; and

WHEREAS, funding for the fall 2023 program and transportation and child care services in the amount of \$10,000.00 will be derived from CD1.8686.0400.8040.2023; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into the sub-recipient grant agreement with Choice Films, Inc. to provide funding for said program and services;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a new sub-recipient grant agreement with Choice Films, Inc. in the amount of \$10,000.00, with all such terms and conditions as may be required by the Corporation Counsel, for a fall 2023 film and television training program for youth and young adult residents of the City of Newburgh with transportation and child care services for City of Newburgh resident participants.

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
CHOICE FILMS INC**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the _____, 2023, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Choice Films Inc, a for-profit corporation ("Subrecipient"), with an address of 9 Scobie Dr., Newburgh, NY 12550.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is February 27, 2023. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-23-MC-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in **Exhibit A** (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2024.

SECTION 2 SUBRECIPIENT OBLIGATIONS

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

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

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

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

b. Affirmative Action

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

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.

c. Employment Restrictions

- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

d. "Section 3" Clause

- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

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

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

SECTION 3 DISBURSEMENT OF FUNDS

1. **Maximum Amount of CDBG Funds.** The maximum amount of CDBG funds to be provided to Subrecipient is \$10,000.00 in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. **Maximum Amount of General Funds.** Not applicable.
3. **Termination of Fund Obligation.** The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. **Method of Payment- CDBG Funds.** Unless otherwise specified in Exhibit A, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (Exhibit B) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. **Method of Payment - General Funds, if applicable.** City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. **Program Income.** Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

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

SECTION 4 PERFORMANCE SCHEDULE

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

SECTION 5 COORDINATION OF WORK

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

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

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

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

SECTION 6 INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

- c. Professional Liability Insurance.

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

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

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

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

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

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

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

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

2. Documentation and Record-Keeping

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

program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

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

SECTION 8 ENFORCEMENT OF CONTRACT

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

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

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

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

SECTION 9 CITY OFFICERS AND EMPLOYEES

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

SECTION 10 MISCELLANEOUS PROVISIONS

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

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

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

To Subrecipient: Choice Films Inc
 9 Scobie Dr.
 Newburgh, NY 12550

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

DATED: _____, 2023

CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

DATED: _____, 2023

[SUBRECIPIENT NAME]

By: _____

Name: _____

Title: _____

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this ____ day of _____, in the year 2023, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this ____ day of _____, in the year 2023, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

EXHIBIT B -- BUDGET

EXHIBIT A
Community Development Block Grant (CDBG)

Scope of Services

Training Young People Today, for a Successful Tomorrow in the Film and Television Industry.

Below the Line Bootcamp is a not-for-profit training program dedicated to the training of underserved communities in the fundamentals of film production and giving students immediate opportunities for employment as Production Assistants. BTL Bootcamp also provides continuing mentorship to all graduates as they consider and navigate a career in the film/television sector. The program is free to students and relies heavily on grants and private funding, including recent workforce development grants from the **State of New York, The City of Newburgh**, and the **Orange County Film Office**. No prior film experience or college degree necessary. Available to all ages 18 years and up.

Now entering its fourth year, graduates have received the opportunity for immediate placement in paying transitional and then fully paid jobs on set, and of the now 75 graduates, over half of them are currently employed on fabulous jobs here in the Hudson Valley, working for **HBO, Crown Media, Netflix**, on several independent productions, and of course, with **Umbra Stages** and **Choice Films Inc.** Additionally, several of our graduates have recently joined labor unions (including **DGA, IATSE, Teamsters/Local 817**) and are receiving much needed pension and health benefits.

And that's just the beginning. With film and television opportunities in the region continuing to grow, we are thrilled to be able to continue training new students in multiple sectors, to be able to place them in jobs on the projects landing all over the Hudson Valley region.

Visit www.choicefilms.com and click on BTL Bootcamp to see our graduate testimonials.

EXHIBIT B

Community Development Block Grant (CDBG)

Line Item Budget Form – Line Item Budget Template

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

Organization/Agency Name:	CHOICE FILMS INC/ fso "Below The Line Bootcamp"
----------------------------------	---

A Budget Item	B Calculation	C CDBG Funding
	Please provide description of how you arrive at total for each line item	
Below the Line Bootcamp	\$10,000.00	
BTL	\$1000 working meals	
	\$2,500 teacher stipend	
	\$250 office supplies	
	\$2000 transportation stipend	
	\$1,000 space rental	
	\$2,000 trainee stipend pool	
	\$750 gear rental	
	\$500 childcare	
TOTAL OPERATING COSTS	\$10,000.00	

RESOLUTION NO.: 36 - 2023

OF

MARCH 13, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
SUB-RECIPIENT GRANT AGREEMENT AMENDMENT
IN THE AMOUNT OF \$10,000.00
WITH CHOICE FILMS, INC. FOR A FILM AND TELEVISION TRAINING PROGRAM
FOR YOUTH AND YOUNG ADULT RESIDENTS OF THE CITY OF NEWBURGH

WHEREAS, by Resolution No. 265-2021 of November 8, 2021, the City Council of the City of Newburgh approved and adopted the Community Development Block Grant ("CDBG") the FY2022 one-year Action Plan; and

WHEREAS, one of the activities included in the CDBG FY2022 annual action was for economic development and workforce development; and

WHEREAS, by Resolution No. 175-2022 of July 11, 2022, the City Council approved a sub-recipient grant agreement with Choice Films, Inc. in the amount of \$10,000.00 for a film and television training program for youth and young adult residents of the City of Newburgh; and

WHEREAS, Choice Films, Inc. proposes to add transportation to current film production for City of Newburgh resident program participants and add a new session for the spring of 2023; and

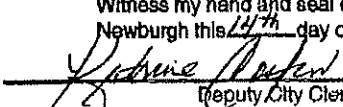
WHEREAS, funding for the transportation and the spring 2023 program in the amount of \$10,000.00 will be derived from CD1.8686.0400.8040.2022; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into an amendment to the sub-recipient grant agreement with Choice Films, Inc. to provide funding for said program additions;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into an amendment to the sub-recipient grant agreement with Choice Films, Inc. in the amount of \$10,000.00, with all such terms and conditions as may be required by the Corporation Counsel, adding transportation for City of Newburgh resident participants and a spring 2023 film and television training program for youth and young adult residents of the City of Newburgh.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held 3/13/23
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 14th day of Mar 2023


Deputy City Clerk

RESOLUTION NO.: 161 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED AN ORANGE COUNTY
MUNICIPAL LEGISLATIVE PROGRAM GRANT IN THE AMOUNT OF \$4,999.00
WITH NO CITY MATCH TO COMPLETE A TWO-PART PATHWAYS PROJECT
TO IMPROVE ACCESS TO THE CITY OF NEWBURGH WATERFRONT AND
THE DELANO-HITCH RECREATION PARK**

WHEREAS, Orange County has launched a Municipal Legislative Grant Program to provide resources to municipalities to improve public safety, parks and recreation, senior citizens services or community enhancement activities; and

WHEREAS, the City of Newburgh proposes to apply for an Orange County Municipal Legislative Program grant to complete a two-part pathways improvement project in which Phase One will consist of clearing the waterfront of brush and paving the walkway between the Wastewater Treatment Plant and Washington Street to make the waterfront walking trail accessible to bikes, skates, and walking with grant funds covering the cost asphalt and Phase Two will consist of new access sidewalks on the west side of Delano-Hitch Recreation Park connecting the Activity Center, Hall of Fame, Horseshoe Pits, and include a pad for a picnic pavilion with grant funds covering the cost of concrete; and

WHEREAS, the City Council of the City of Newburgh has determined that applying for and accepting such grant is in the best interests of the City and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept an Orange County Municipal Legislative Program grant with no City match in the amount of \$4,999.00 to complete a two-part pathways improvement project enhancing accessibility and access to the Newburgh Waterfront and the Delano-Hitch Recreation Park.

RESOLUTION NO.: 162 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL
AND ENTER INTO AN AGREEMENT WITH GREENMAN-PEDERSON, INC.
FOR ENVIRONMENTAL SERVICES IN THE AMOUNT OF \$17,600.00 IN
THE DOWNING PARK URBAN FARM BUILDING REDEVELOPMENT PROJECT**

WHEREAS, by Resolution No 147-2021 of June 14, 2021, the City Council of the Newburgh authorized the City Manager to apply for and accept if awarded for THUD - Housing and Urban Development (HUD) Economic Development Initiatives (EDI) For Economic Development Projects Program funding in the amount of \$300,000.00 (the "THUD-EDI grant") for the Downing Park Urban Farm Redevelopment Project (the "Project"); and

WHEREAS, the City was awarded the THUD-EDI grant and proposes to undertake the Project in compliance with the National Environmental Policy Act ("NEPA") and the New York State Environmental Quality Review Act ("SEQRA") and the associated regulations; and

WHEREAS, the City solicited and received a proposal from Greenman-Pederson, Inc. to perform the environmental reviews and services required under NEPA and SEQRA including the preparation and submission of environmental assessment forms, lead and asbestos testing, and a structural analysis of the building; and

WHEREAS, the services funding for the environmental services in the amount of \$17,600.00 will be derived from CD1.8686.0400.8136.2023; and

WHEREAS, the City Council has reviewed the proposal and determined that entering into a contract for such work is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Greenman-Pederson, Inc. for environmental services in the amount of \$17,600.00 for the Downing Park Urban Farm Building Redevelopment Project.



07.28.2023

Ellen Fillo | Director of Community Development
City of Newburgh
Department of Planning & Development
City Hall
83 Broadway
Newburgh, NY 12550

**RE: Environmental Review Services for the Economic
Development Initiative (EDI)/Community Project Funding (CPF) Project
RFQ "Food Security in the City of Newburgh", HUD NEPA 24 CFR Part 58**

Dear Ms. Fillo,

GPI thanks you for the opportunity to present our proposal for professional services to assist you with complying with the National Environmental Policy Act (NEPA), the U.S. Department of Housing and Urban Development implementation regulations at 24 CFR PART 50 or 24 CFR PART 58 Environmental Review Process and the New York State Environmental Quality Review Act (SEQRA) for the referenced project. This process will establish the Environmental Review Record and document the SEQRA review requirements to allow for a Request for Release of Funds for the project. The project under review is the renovation/rebuilding of the garages at the Downing Park that were used to store lawn maintenance equipment - into an indoor Farm Office, Education/Training Room, produce market and storage space for farm equipment. This proposal is presented to the City of Newburgh, Department of Planning & Development hereafter referred to as "Client".

Scope of Services:

Task 1 NEPA Environmental Review Record Support Services:

The Client needs GPI to assist in compilation of the Environmental Review Record (ERR) for the project. The ERR will support the Request of funds through NEPA compliance, under 24 CFR PART 50 or 24 CFR PART 58 Environmental Review. Note that it may be possible to present this action as a reuse of an existing facility that is in character with the historic use so that a change in use is not triggered. If this is successful it is believed that the project may be able to fall under the criteria for Categorical Exclusion subject to §58.5 (CEST) Determination for Activities Listed at 24 CFR §58.35(a).

GPI will complete a draft of the Statutory Worksheet and Statutory Checklist. It is believed that through this process the proposed project activities will be found not to require compliance with any authority under §58.5 (such as mitigation measures, additional studies, conditions, or further consultation).

Services will also include documenting compliance with the requirements of §58.6 (Compliance Checklist) related to Flood Disaster Protection; restriction on HUD assistance for a project located in Coastal Barrier Resource Areas, and determination if the projects fall within a Runway Clear Zone or Clear Zone associated with the Stewart International airport.

Submission will be coordinate with the Client and HUD through the HUD HEROS online system. The project will not likely convert to "exempt status" and therefore there will be a need to publish a Notice of Intent to Request Release of Funds (NOI/RROF).

The process will be concluded by completing a Determination Form that would be maintained in the final Environmental Review Record for the site.

Task 2 SEQRA Environmental Review Support Services:

SEQRA compliance may be as simple as defining the project as a Type 2 action since the structure already exist, or it would be an Unlisted action if the existing structures are demolished and new construction is included in the project. A Short EAF level of review is envisioned as the only review required. Assuming there are no found environmental conditions the process would be completed by drafting a resolution for the City Council to issue a Negative Declaration for the project, completing the SEQRA process.

Task 3 Structural Assessment:

GPI will perform a structural condition assessment of the existing, single-story storage buildings. The building(s) is constructed of CMU/brick masonry, wood roof framing and a concrete slab-on-ground floor. The total square footage of the building(s) is ~4,500-ft². Based on our review of available open-source imagery, the building has a rolled, flat roof system. Note that the building(s) contains various amounts of stored materials that may hinder the assessment.

Project Approach

1. Site visit preparation
 - a. Kickoff meeting with the Client
 - b. Review available relevant historic drawings / documents provided by the Client.
2. Site visit
 - a. Perform a visual assessment of the building's structural systems and roof envelope.
3. Site visit debrief.
 - a. Review field notes and discuss initial findings with the Client.
4. Report
 - a. Prepare and submit assessment report complete with observations and recommendations signed by a NYS licensed engineer.

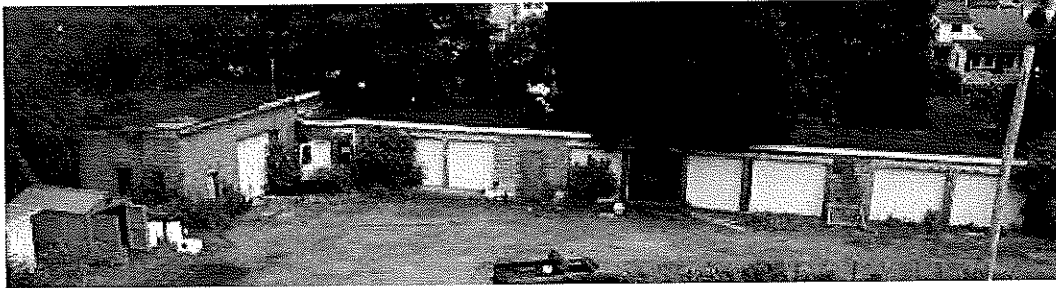
Assumptions

- Kickoff and site visit debrief meetings will be virtual.
- A single site visit is required.
- The owner will provide safe access to the building during normal business hours.
- Stored materials within the building will be moved/relocated in advance of the site visit to provide access by GPI to perform the assessment.
- Assessment of the roof will be performed via evaluation of aerial drone collected high resolution imagery.
- Probably Cost of Construction Estimate(s) excluded.
- Scope not listed above is not included.

Task 4 Asbestos and Lead Assessment:

GPI will sub-consult with Alpine Environmental Services, Inc. for the completion of Asbestos and Lead Paint Pre-Renovation Building Inspection Services.

Alpine is prepared to perform a pre-renovation asbestos and lead inspection of the below pictured buildings. Garages.



Work will include Asbestos and Lead Inspection of the Garages with the proposed fee including Labor, Materials, Samples and Report

Professional Services Fee Schedule

Invoices will be issued monthly for all services performed during that month and are payable upon receipt.

Task No.	Task Description	Professional Services Budget
1	NEPA Environmental Review Record Support Services	\$6,900
2	SEQRA Environmental Review Support Services	\$1,600
3	Structural Assessment Services	\$4,700
4	SEQRA Environmental Review Support Services	\$4,400
Total		\$17,600

Schedule

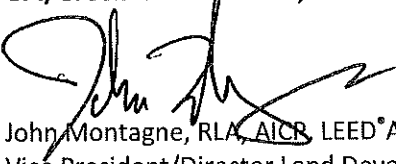
GPI is prepared to start on this work within one week of authorized to proceed. We anticipate that the studies can be completed within six weeks of authorization to proceed depending on any required FOIL requests for support documentation.

Agreement

GPI appreciates the opportunity to submit this proposal. If during your review of this proposal you should have any questions, please do not hesitate to contact me. If you agree with this proposal, please sign and date this as well as initial at the end of the following Terms and Conditions, then return a copy to me and retain a copy for your files.

Please feel free to contact me at (518) 898-9532(d) or 518-469-3722(m) if you have any questions. GPI looks forward to working with you on your project.

Sincerely,
GPI/Greenman-Pedersen, Inc.


John Montagne, RLA, AICP, LEED® AP
Vice President/Director Land Development
80 Wolf Road, Suite 300, Albany, NY 12205
518-898-9532 | jmontagne@gpinet.com

cc: File

<u>Client Authorization</u>	
Signature	Date
Print Name	

RESOLUTION NO., 147 - 2021

OF

JUNE 14, 2021

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT
IF AWARDED HOUSING AND URBAN DEVELOPMENT
ECONOMIC DEVELOPMENT INITIATIVES FOR ECONOMIC DEVELOPMENT
PROJECTS FUNDING FOR THE REDEVELOPMENT OF
THE DOWNING PARK URBAN FARM BUILDING IN THE AMOUNT OF \$300,000.00

WHEREAS, the City of Newburgh Department of Planning and Development wishes to apply for THUD - Housing and Urban Development (HUD) Economic Development Initiatives (EDI) For Economic Development Projects Program funding in the amount of \$300,000.00; and

WHEREAS, such federal funding will be used to support the "Food Security in the City of Newburgh" project and will be used specifically to assess, renovate or rebuild the building at the Downing Park Urban Farm to convert the building into an innovative and environmentally sustainable space to support the growth of programming and staff at the Downing Park Urban Farm; and

WHEREAS, any grant match would come from CDBG program funds and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded for THUD - Housing and Urban Development (HUD) Economic Development Initiatives (EDI) For Economic Development Projects Program funding in the amount of \$300,000.00 with any match to be provided by CDBG program funds; and that the City Manager is authorized to execute all such documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

I, Lorene Vitek, City Clerk of the City of Newburgh,
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held June 14, 2021
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 14 day of June 20 21

City Clerk

RESOLUTION NO.: 163 - 2023

OF

AUGUST 14, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT FOR THE PAYMENT IN LIEU OF TAXES BY AND AMONG
THE CITY OF NEWBURGH, [THE EEL] LIMITED PARTNERSHIP, AND
[THE EEL] HOUSING DEVELOPMENT FUND COMPANY, INC.

WHEREAS, the City of Newburgh (the "City") encourages a sufficient supply of adequate, safe and sanitary dwelling accommodations properly planned for individuals of low and moderate income; and

WHEREAS, by Resolution No. 128-2020, the City Council selected The Kearney Realty & Development Group Inc. for the transfer and redevelopment of property located at 15 South Colden Street (Section 46, Block 3, Lot 8.2) ("Property") in order to provide low and moderate income housing; and

WHEREAS, The Kearney Realty & Development Group Inc. intends to become a partner in a housing development fund corporation ("HDFC"), a New York not-for-profit corporation organized under Article XI of the New York Private Housing Finance Law ("PHFL") and Section 402 of the New York State Not-for-Profit Corporation Law, though the HDFC has not yet been formed; and

WHEREAS, the HDFC will become the record owner of the Property, which shall be used for the purpose of providing approximately 65 residential units for individuals and families of low to moderate income, an on-site superintendent unit, and approximately 2,550 square feet of commercial space (the "Project"); and

WHEREAS, the HDFC's plan for the continued use of the Project constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the City Council to exempt the Project from real property taxes; and

WHEREAS, The Kearney Realty & Development Group Inc. seeks a PILOT agreement ("Agreement") whereby the HDFC will make annual payments in lieu of taxes to the City as set forth in the Agreement below, now presented to the City Council for approval; and

NOW THEREFORE, BE IT RESOLVED, that the members of the City Council hereby exempt the Project from real property taxes to the extent authorized by Section 577 of the PHFL and approve the proposed PILOT Agreement by and among the City of Newburgh and the HDFC providing for annual payments as set forth in such agreement; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute and deliver the foregoing PILOT Agreement, in substantially the same form with other documents as Corporation Counsel may require, on behalf of the City.

AGREEMENT FOR PAYMENT IN LIEU OF TAXES ("PILOT") BY AND AMONG THE CITY OF NEWBURGH, THE EEL LIMITED PARTNERSHIP AND EEL HOUSING DEVELOPMENT FUND COMPANY, INC.

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "PILOT Agreement" or "Agreement"), dated as of _____, 2023, by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City") and **EEL HOUSING DEVELOPMENT FUND COMPANY, INC.**, a New York not-for-profit corporation and entity organized pursuant to Article XI of the Private Housing Finance law, having its principal place of business at c/o Housing Action Council, Inc., 55 South Broadway, 2nd Floor, Tarrytown, New York 10591 (the "HDFC"), which HDFC will hold title to the Property (as hereinafter defined) for the benefit of **EEL LIMITED PARTNERSHIP**, a New York limited partnership, having its principal office located at c/o The Kearney Realty & Development Group Inc., 57 Route 6, Suite 207, Baldwin Place, New York 10505 (the "Partnership").

WHEREAS, by the First Taxable Status Date as defined in Section 2, below, the HDFC will be the bare legal or record owner, and the Partnership will be the beneficial and equitable owner, of 15 South Colden Street, located in the City of Newburgh, County of Orange, State of New York, as more specifically listed and described as Section 46, Block 3, Lot 8.2 on the Official Tax Map of the City of Newburgh (the "Property"); and

WHEREAS, the HDFC is a corporation established pursuant to Section 402 of the Not-For-Profit Corporation Law and Article XI of the Private Housing Finance Law ("PHFL"); and

WHEREAS, by the First Taxable Status Date as defined in Section 2, below, the HDFC will be the co-general partner of the Partnership; and

WHEREAS, the HDFC and the Partnership have each been formed for the purpose of providing residential rental accommodations for persons of middle and low-income; and

WHEREAS, the Partnership will develop, own, construct, maintain and operate a housing project for persons of middle income and low income on the Property (the "Project"); and

WHEREAS, the HDFC's and the Partnership's plan for the use of the Property constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project; and

WHEREAS, the Council Members of the City of Newburgh, New York, by resolution number _____-2023 adopted _____, 2023, approved and authorized the execution of this Agreement;

NOW, THEREFORE, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the City hereby exempts from local and municipal taxes, other than assessments for local improvements, one hundred percent (100%) of the value of the Property, including both land and improvements. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by Orange County ("County"), the City, and the Newburgh Enlarged City School District ("School District") or other taxing jurisdiction (collectively the "Taxing Jurisdictions").
2. This tax exemption will operate for a period of **thirty (30) years**, measured from the City's first taxable status date following the date that a permanent certificate of occupancy ("Certificate of Occupancy") is issued by the City ("First Taxable Status Date"). This Agreement shall not limit or restrict the HDFC's or Partnership's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement. The parties understand that the exemption extended pursuant to Section 577 of the PHFL and this Agreement does not include exemption from assessments for local improvements, special assessments, or special ad valorem levies. During the period of this Agreement, the Partnership shall pay any service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents which are or would be levied upon or with respect to the Project by the Taxing Jurisdictions or any other taxing authority.
3. So long as the exemption hereunder continues, the Partnership shall make annual payments in lieu of taxes ("PILOT") in the amounts set forth in section 3(a) below, measured from the First Taxable Status Date, which payments shall cover all Local and Municipal Taxes owed in connection with the Property and the Project, and which payment shall be shared by Taxing Jurisdictions on the same basis as property taxes would be shared if the Property and the Project were fully taxed. So long as the tax exemption remains in effect, tenant rental charges shall not exceed the maximum established or allowed by law, rule or regulation, and the Property shall be operated in conformance with the provisions of Article XI of PHFL.
 - a. The PILOT for the Property shall be in the amount of \$130,000.00 per year ("Minimum PILOT") for the first taxable year under the Agreement and shall not be reduced below this amount under any circumstances for the duration of this Agreement. When an increase in rents are approved by the New York State Division of Housing and Community Renewal ("DHCR"), the PILOT payment will increase on a proportionate basis to the DHCR-approved rent increase ("DHCR Approved Rent").
 - b. As soon as available, but in no event later than January 1 of the given year, the HDFC and the Partnership shall be jointly responsible for providing: (1) a copy of audited financial statement(s) and annual audit report related to the Property for the most recent fiscal year in which such reports are available, prepared on a consolidated basis, and in conformity with generally accepted accounting principles in New York State and certified by an independent certified public accountant; and (2) a list of the most recent DHCR Approved Rent.

- c. The City shall notify the HDFC and the Partnership of an increased PILOT amount based on the DHCR Approved Rent on or before **February 1** of the calendar year in which the PILOT payment applies. The City's failure to notify the HDFC or the Partnership shall not be a defense to an increase in the PILOT payment in a given year.
 - d. The first payment pursuant to this Agreement shall be made on or before February 15 of the calendar year following the first taxable year as contemplated in Section 2. Subsequent payments shall be due on or before **February 15** of the calendar year to which this Agreement applies. Payment shall be payable to the "City of Newburgh." Payments shall be mailed via first class mail through the United States Postal Service or personally delivered to the City of Newburgh, attention Tax Collector, 83 Broadway, Newburgh, New York 12550, or such other address as the City may specify in writing.
 - e. The HDFC and the Partnership agree that the PILOT under this Agreement will not be reduced on account of a depreciation factor or reduction in the Taxing Jurisdiction tax rate, nor will it seek to commence any actions to reduce the PILOT, and these factors have been considered in arriving at the payment amounts reflected in this Agreement.
 - f. The HDFC and the Partnership shall continue to pay all water, sewer, and sanitation charges in accordance with the assessments and rates established by the City.
4. The tax exemption provided by this Agreement will continue for the term described above provided that (a) the Property continues to be used as housing facilities for persons of middle and low-income in accordance with the income and rent limitations attached hereto as **Exhibit A**, and (b) any of the following occur (i) the HDFC and the Partnership operate the Property in conformance with Article XI of the PHFL; or (ii) the HDFC assumes sole legal and beneficial ownership of the Property and operates the Property in conformance with Article XI of the PHFL; or (iii) in the event an action is brought to foreclose a mortgage upon the HDFC, and the legal and beneficial interest in the Project shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, such successor in interest, such successor in interest shall operate the property in conformance with Article XI of the PHFL.
5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including but not limited to enforcement and collection of taxes to the extent permitted by law. In addition to failure to pay any amount when due, HDFC and the Partnership shall be in default of this Agreement in the event of material failure to observe and perform any other covenant, condition of agreement on its part to be observed and performed hereunder, and continuance of such failure for a period of thirty (30) days after written notice specifying the nature of such failure and requesting that it be remedied; or any warranty, representation or other statement by or on behalf of HDFC or the Partnership contained in this Agreement shall prove to have been false or untrue in any material respect on the date when made or on

the effective date of this Agreement. Any payment not received by its due date shall accrue interest and penalties at the rates provided for late payment of taxes to the Taxing Jurisdictions.

- a. Whenever any event of default under this Agreement shall have occurred and be continuing, the City shall have the following remedies: The City may terminate this Agreement and exercise all of the rights and remedies available for failure to pay property taxes as and when due had this Agreement not been in effect. The City may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of HDFC and the Partnership under this Agreement, and the Partnership shall further pay the reasonable fees and disbursements of such attorneys as the City shall engage for the enforcement of performance or observance of any obligation, covenant or agreement on the part of HDFC and the Partnership and all other expenses, costs and disbursements so incurred.
 - b. No remedy herein conferred reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.
 - c. No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. It shall not be necessary to give any notice other than as expressly required under this Agreement. In the event any provision contained in this Agreement should be breached and thereafter duly waived by the party or parties so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder.
6. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery. This provision shall not apply in the event that the HDFC, its successors or assigns, become subject to the City's procedures with respect to the collection of delinquent taxes.
 7. This Agreement shall inure to the benefit of and shall be binding upon the City the Partnership and the HDFC and their respective successors and assigns, including the successors in interest of the Partnership and the HDFC. There shall be no assignment of this Agreement except with consent of the other party, which consent shall not be unreasonably withheld. In the event that the Partnership and the HDFC seeks to assign this agreement, the Partnership and the HDFC must demonstrate to the City, at a minimum, that the assignee or its general partner is a housing development fund company subject to Article XI of the PHFL, the assignee is willing to assume the obligations of this Agreement in writing, and the assignee shall have provided such financial and other information as shall be reasonably requested by the City in order to assure the proper completion and operation of the housing project and the compliance with the terms of this Agreement and all applicable laws, regulations and covenants.

8. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.
9. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.
10. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.
11. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized by proper action of its governing body and does not require any other consent or approval for the execution thereof by such municipality, (ii) does not violate any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any agreement or instrument to which it is a party. Each such party represents that this Agreement shall constitute the legal, valid and binding agreement of such party enforceable in accordance with its terms.
12. The Partnership and HDFC jointly and severally make the following representations, warranties and covenants:
 - a. The HDFC is a "housing development fund company" under Article XI of the PHFL, and the Partnership is a limited partnership the co-general partner of which is HDFC, each of which is organized, validly existing and in good standing under the laws of the State and is authorized under the laws of the State to do business in the State, has the power to enter into this Agreement and to perform the transactions contemplated hereby and its obligations hereunder and by proper action has duly authorized the execution and delivery of this Agreement and the performance of its obligations hereunder, and the execution, delivery and performance of this Agreement does not require any other consent or approval. This Agreement shall constitute the legal, valid and binding agreement of HDFC and the Partnership enforceable in accordance with its terms.
 - b. Neither the Partnership nor HDFC is in default under, or in violation of, any indenture, mortgage, declaration, lien, lease, contract, note, order, judgment, decree or other instrument of any kind to which any of its assets are subject, and the execution, delivery and compliance by the Partnership or HDFC with the terms and conditions of this Agreement do not and will not conflict with or constitute or result in a default by the Partnership or HDFC in any material respect under or violation of, (1) the entity's organizational documents, (2) any agreement or other instrument to which such entity is a party or by which, to such entity's knowledge, it is bound, or (3) any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Partnership or HDFC or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

- c. The Partnership has provided to the City true and complete financial information with respect to the Property, including without limitation project costs, financing sources, rents and income limitations.
 - d. The Partnership covenants and agrees to operate the Property in accordance with all applicable rules and regulations of Article XI of the PFHL.
 - e. The Partnership covenants and agrees to provide to the City any information or documents reasonably requested in writing by the City in order to provide any federal, state or local entity with information or reports required under any applicable law, rule or regulation.
13. The City shall file a copy of the fully-executed Agreement with the City Assessor. The Partnership shall be responsible for taking such actions as may be necessary to ensure that the Property shall be assessed as exempt upon the assessment rolls of the respective Taxing Jurisdictions, including without limitation ensuring that any required exemption form shall be filed with the appropriate officer or officers of each respective Taxing Jurisdiction. Such exemption shall be effective as of the first taxable status date of the applicable Taxing Jurisdiction following the date of this Agreement, provided that the Partnership shall timely file any requisite exemption forms.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The Parties each consent to the jurisdiction of the New York courts in and for the County of Orange regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Accordingly, any litigation arising hereunder shall be brought solely in such courts.
15. Entire Agreement. The Parties agree that this is the entire, fully integrated Agreement between them.
16. Amendments. This Agreement may not be amended, changed, modified, altered or terminated except by an instrument in writing executed by the Parties hereto.
17. No Third Party Beneficiaries. The Parties state that there are no third-party beneficiaries to this Agreement.
18. This Agreement shall be deemed withdrawn unless fully-executed by the Parties on or before December 1, 2023.

Remainder of page intentionally left blank.

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

DATED: _____, 2023

CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

DATED: _____, 2023

EEL HOUSING
DEVELOPMENT FUND COMPANY, INC.

By: _____

Name: Rosemarie Noonan

Title: President

DATED: _____, 2023

EEL LIMITED PARTNERSHIP

By: _____

EEL Associates, LLC,
its general partner

By: _____

Name: Kenneth Kearney

Title: Manager

[illegible]

On the ____ day of _____, in the year 2023, before me personally appeared **Todd Venning**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On the ____ day of _____, in the year 2023, before me personally appeared **Rosemarie Noonan**, 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 person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On the ____ day of _____, in the year 2023, before me personally appeared **Kenneth Kearney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Exhibit A

Project

Project Name: East End Lofts

Property: 15 South Colden Street, in the City of Newburgh, County of Orange, State of New York, identified as tax parcel Section 46, Block 3, Lot 8.2

Approximately 10 Units (+/- 1 unit) of residential rental low-income housing, meeting income limits in accordance with HCR regulations applicable for low-income housing tax credit and housing trust fund projects, not exceeding 30% of applicable median income.

Approximately 41 Units (+/- 1 unit) of residential rental low-income housing, meeting income limits in accordance with HCR regulations applicable for low-income housing tax credit and housing trust fund projects, not exceeding 60% of applicable median income.

Approximately 7 Units (+/- 1 unit) of residential rental low-income housing, meeting income limits in accordance with HCR regulations applicable for low-income housing tax credit and housing trust fund projects, not exceeding 80% of applicable median income.

Approximately 7 Units (+/- 1 unit) of residential rental low-income housing, meeting income limits in accordance with HCR regulations applicable for low-income housing tax credit and housing trust fund projects, not exceeding 100% of applicable median income.

1 Unit is a superintendent's unit.

+/- 2,550 square feet of commercial space.



57 Route 6, Suite 207
Baldwin Place, New York, 10505
Phone: 845-306-7705
Fax: 845-306-7707

May 31, 2023

Alexandra Church
Director of Planning and Development
City of Newburgh
123 Grand Street
Newburgh, New York 12550

Re: Payment-In-Lieu-Of-Taxes (PILOT): 15 South Colden Street (SBL 46-3-8.2)

Director Church,

Please accept this letter as our formal request for a Payment-In-Lieu-Of-Taxes (PILOT) Agreement with the City of Newburgh for the Development, East End Lofts, located at 15 South Colden Street, as anticipated in "Schedule C – Paragraph 10" of the Site Development Agreement, dated June 30th 2020, between the City of Newburgh and The Kearney Realty & Development Group, Inc (Kearney Group).

The terms of the requested PILOT Agreement have remained unchanged throughout the development process. The terms of the PILOT Agreement were proposed in Kearney Group's response to the Request for Proposals RFP #20.19, which was reviewed and scored by the Strategic Economic Development Advisory Council (SEDAC) and recommended to the City Council. Additionally, the terms of the PILOT were laid out in the development proposal which was reviewed and approved by the City of Newburgh City Council.

The proposed PILOT Agreement would generate an annual payment to the City of Newburgh in the amount of \$130,000 per year for a term of thirty (30) years. The payment would increase proportionately anytime there is an increase to the project's revenue, i.e., a rent increase.

This payment amount was originally proposed based on the initial development proposal, which was comprised of seventy (70) residential units and one commercial space, which corresponds to \$1,857 per unit. During the development process, the project was reduced to sixty-six (66) units and one commercial space. However, the requested PILOT amount has remained the same, which now corresponds to a higher per unit payment, or \$1,970 per unit.

Please let us know if you have any questions or if it is possible for us to come before the City Council to discuss the proposed PILOT Agreement at the next Council meeting.

Thank you,

Sean Kearney

Sean Kearney
Vice President
Kearney Realty & Development Group, Inc.

Date: 9/4/19
Exhibit 3 Development Budget
 SHARS # _____

page 1
9/2/19

A. Construction Cost Basis

- | | | | |
|----|-----------|-------------|----------|
| | | | |
| | | | |
|) | \$998,000 | LIHC Pay-in | \$0.9400 |
|) | \$216,000 | SLHC Pay-in | \$0.7400 |
| it | | | |

(source codes listed in cell W1) **1. Construction Financing Sources**

2. Permanent Financing Sources

A.	B.	C.	D.	E.	F.	G.	H.
Source Code	Source Name	Amount of Funds	Assist Type	Financing Term (months)	Interest Rate %	Lien Position	Regulatory Term (years)
4002	Equity Tax Credit DHCR	\$9,380,261	Equity	N/A	N/A	N/A	50
4001	Community Preservation Corp.	3,100,000	Loan	360	5.500%	First	N/A
HTF	Middle Income Program	3,000,000	Loan	360	1.000%	Second	30
4006	Deferred Developer's Fee	147,911	Other	180	N/A	N/A	N/A
	Equity SLIHTC	1,698,240	Loan	360	1.000%	Third	30
	NYSERDA	63,800	Equity	N/A	N/A	N/A	50
	TOTAL	\$17,290,212					

Project Name: **East End Lofts**Date: **9/4/19****C. Development Budget****B. Residential Financial Sources**

page 2

A. Costs	4002	4001	HTF	4006										
	Equity Tax Credit DHCR	Community Preservation Corp.	Middle Income Program	Deferred Developer's Fee	Equity SLHHC	NYSERDA	0	0						
a. ACQUISITION												C. TOTAL	D. Ineligible Basis	E. Eligible Basis
1. Land	100,000											100,000	100,000	0
2. Structure(s)												0		0
3. Total Acquisition (lines 1+2)	100,000	0	0	0	0	0	0	0	0	0	0	100,000	100,000	0
b. SOFT COSTS														
4. Appraisal(s)	12,000											12,000		12,000
5. Market Study	12,000											12,000		12,000
6. Survey	14,000											14,000		14,000
7. Soil Borings												0		0
8. Environmental Testing	175,000											175,000		175,000
9. Architecture/Engineering Fee	595,000											595,000		595,000
10. Construction Manager Fee												0		0
11. Legal Fees	185,000											185,000		185,000
12. Developer's Allowance												0		0
13. Cost Certification Audit	12,000											12,000		12,000
14. Insurance(s)	175,000											175,000		175,000
15. Taxes	15,000											15,000		15,000
16. Interim Interest	900,000	900,000										900,000		900,000
17. Closing Costs	241,520											241,520		241,520
18. Title and Recording Fees	135,000											135,000		135,000
19. Relocation Expenses												0		0
20. Credit Application Fee	6,000	3,000										3,000	3,000	0
21. Credit Allocation Fee	97,120	122,200										122,200	122,200	0
22. Other DHCR/HCR Fees												0	0	0
23. Other Soft Costs (Tab 1.2)	157,725											157,725	0	157,725
24. Total Soft Costs (sum lines 4 through 23)	2,754,445	0	0	0	0	0	0	0	0	0	0	2,754,445	125,200	2,629,245

Project Name: **East End Lofts**Date: **9/4/19****C. Development Budget****B. Residential Financial Sources**

page 3

C. Development Budget		B. Residential Financial Sources										Page 3		
A. Costs	4002	4001	HTF	4006										
	Equity Tax Credit DIICR	Community Preservation Corp.	Middle Income Program	Deferred Developer's Fee	Equity SLIHC	NYSERDA	0	0				C. Total	D. Ineligible Basis	E. Eligible Basis
c. CONSTRUCTION														
25. Site Work	1,035,000											1,035,000		1,035,000
26. Off Site Work												0		0
27. Demolition												0		0
28. Environmental Remediation												0		0
29. Other Construction (Tab 1.2)												0	0	0
30. Subtotal Site Prep (25-29)	1,035,000	0	0	0	0	0	0	0	0	0	0	1,035,000	0	1,035,000
31. Residential	843,310	3,000,000	3,100,000		1,598,240	63,800						8,605,350		8,605,350
32. Community Service Facility												0		
33. Commercial/Civic												0		
34. General Contractor's Insurance												0		0
35. Performance Bond Premium												0		0
36. Subtotal-Contractor's Cost (sum of lines 30-35)	1,878,310	3,000,000	3,100,000	0	1,598,240	63,800	0	0	0	0	0	9,640,350	0	9,640,350
37. General Conditions	602,000											602,000		602,000
38. Builder's Overhead	220,000											220,000		220,000
39. Builder's Profit	604,249											604,249		604,249
40. Total - Construction Cost (sum of lines 36 thru 39)	3,304,559	3,000,000	3,100,000	0	1,598,240	63,800	0	0	0	0	0	11,066,599	0	11,066,599
41. Project Contingency	682,000											682,000		682,000
42. LIHC/SLIHC Developer's Fee	2,211,632			147,911								2,359,543		2,359,543
43. Total - Development Cost (sum of 3, 24, 40, 41 and 42)	9,052,636	3,000,000	3,100,000	147,911	1,598,240	63,800	0	0	0	0	0	16,962,587	225,200	16,737,387
d. WORKING CAPITAL														
44. Initial Operating Deficit	36,000											36,000		36,000
45. Supplement Mgmt Fee/Marketing	31,000											31,000		31,000
46. Maintenance/Equipment (Tab 1.2)	29,000											29,000	0	29,000
47. Other Working Capital (Tab 1.2)												0	0	0
48. Total-Working Capital (sum of lines 44-47)	96,000	0	0	0	0	0	0	0	0	0	0	96,000	0	96,000
e. PROJECT RESERVES														
49. Capitalized Operating Reserve	169,625											169,625	169,625	0
50. Capitalized Replacement Reserve	62,000											62,000	62,000	0
51. Reserve for Adapting Units														
52. Other Project Reserves												0		0
53. Total - Reserves (sum of lines 49-52)	231,625	0	0	0	0	0	0	0	0	0	0	231,625	231,625	0
54. Total Project Cost (sum of lines 43, 48 and 53)	9,380,261	3,000,000	3,100,000	147,911	1,598,240	63,800	0	0	0	0	0	17,290,212	456,825	16,833,387
55. Syndication/Partnership Costs												0	0	0
56 Total	9,380,261	3,000,000	3,100,000	147,911	1,598,240	63,800	0	0	0	0	0	17,290,212	456,825	16,833,387

Exhibit 4 - Rents/Maintenance Fees & Affordability

page 1

Project Name: **East End Lofts**
 Project County: **Orange** SHARS # (if assigned)

Date: **09/04/19**

Median Income ²⁰¹⁸ **\$94,600**
 Apr-2018

This Exhibit must be completed by all applicants proposing to assist residential units. All residential units in the project must be recorded on this Exhibit, including those not funded by DHCR/HTFC, and building superintendent's/resident manager's units.

A. Tenant Affordability Plan for Rental Units

1. Do you anticipate that any units in the project will receive a rental subsidy?

2. If yes, enter the number of units that you expect to receive the subsidy from, by source

	a. DSS Housing Allowance - No. of units to receive subsidy	
	b. HTFC Section 8 - No. of units to receive subsidy	
	c. Section 8 Other - No. of units to receive subsidy	
	d. DHCR RRAP - No. of units to receive subsidy	
	e. USDA - RD Section 521 - No. of units to receive subsidy	
	f. Other (specify) 	

Total number of units to receive subsidy **0**

3. If the project includes a non-rent bearing unit to be occupied by a building superintendent/resident manager, complete the following table:

A. Unit Size	B. # of Units	C. # of Occupants in Unit	D. Monthly Utilities	E. Total Monthly Housing Cost	F. Total Annual Cost
2 br	1		\$150	\$150	\$1,800
Total Units	1		Total \$	\$150	\$1,800

Comments:

revised: 10/12/18

Table A2 - Monthly Housing Cost and Affordability for Rental Units With Project Based Vouchers

Total Units 0

\$0

3

\$68,555

62

\$4,154

n. Heat

b. Hot Water

c. Electricity

NOTE - The Rents listed in the above table represent the maximum allowable rent to be collected from all sources, including the tenant rent payment and rental assistance payments from any source, unless HTFC's Asset Management staff issues a written approval of a rent increase.

Exhibit 5 - Project Income and Operating Budget

Project Name **East End Lofts**

Date: **9/4/19**

SHARS # (if assigned)

Table 1 -Total Effective Income		
Section A. Effective Residential Income		
Income/Vacancy & Arrears		\$ Amount
1. Total Residential Monthly Income/Maintenance Fees:		\$68,555
2. Annual Gross Residential Income (Line 1 x 12):		822,660
3. Residential Vacancy & Arrears (Line 2) x %	5.00%	41,133
4. Net Residential Income (Line 2 minus Line 3):		781,527
5. Ancillary Residential Income:		
a. Laundry:		6,000
b. Parking:		0
c. Other (specify):		0
6. Total Ancillary Residential Income (Sum of Lines 5a through 5c):		6,000
7. Effective Residential Rental Income (Sum of Lines 4 and 6):		\$787,527
8. Residential Debt Service Subsidy (specify):		
9. Total Residential Operating Income:		\$787,527
Section B. Effective Non-Residential Income		
Income/Vacancy & Arrears		\$ Amount
10. Gross Annual Commercial/Civic/CSF Income:		\$0
11. Estimated % of Commercial/Civic/CSF Vacancy and Arrears		10.00%
12. Total Commercial/Civic/CSF Vacancy and Arrears		0
13. Net Non-Residential Income		0
13a. Will the income for this portion of the project be guaranteed through a master lease and/or developer guarantee?		
14. Total Effective Income – Residential & Non-Residential (Add Lines 9 + 13):		\$787,527

Exhibit 5 Project Income and Operating Budget

Project Name: **East End Lofts**

SHARS # (if assigned)

Residential Base

Date: **9/4/19**

Table 2 - Basis for Projection of Operating Budget for Years 1 – 15

A. Expense				B. Year 1 Cost		C. Type - % Increase		D. Rationale for Estimate and Source	
								default expense Type	Variable
1a. Effective Residential Rental Income				\$787,527		Variable		2.00%	default expense % change
1b. Residential Debt Service Subsidy				\$0		Fixed			3.00%
1c. Total Effective Residential Income				\$787,527					
2. Manager				40,000		Variable		3.00%	Salary standards set by the Kearney Realty Group
3. Management Fee (enter %) 6.00%				47,251		Variable		2.00%	Six Percen Net Rent Income
4. Accounting & Audit				12,000		Variable		3.00%	Based on Budget Standards established by KRG
5. Legal				2,000		Variable		3.00%	Based on Budget Standards established by KRG
6. Advertising				2,200		Variable		3.00%	Based on Budget Standards established by KRG
7. Office Supplies & Equipment				3,500		Variable		3.00%	Based on Budget Standards established by KRG
8. LIHC Monitoring Fee				4,154		Variable		2.00%	DHCR Formula
9. Other Admin. (specify in column D)				4,800		Variable		3.00%	Based on Budget Standards established by KRG
11. Janitor and Cleaning Payroll				8,000		Variable		3.00%	Based on Budget Standards established by KRG
12. Janitor and Cleaning Supplies				6,000		Variable		3.00%	Based on Budget Standards established by KRG
13. Exterminating				4,000		Variable		3.00%	Based on Budget Standards established by KRG
14. Garbage and Trash Removal				16,000		Variable		3.00%	Based on Budget Standards established by KRG
15. Security						Variable		3.00%	
16. Ground Expense				10,000		Variable		3.00%	Based on Budget Standards established by KRG
17. Maintenance and Repair Payroll				28,000		Variable		3.00%	Based on Budget Standards established by KRG
18. Maintenance and Repair Materials				12,000		Variable		3.00%	Based on Budget Standards established by KRG
19. Maintenance and Repair Contracts						Variable		3.00%	
20. Elevator				6,000		Variable		3.00%	Based on Letter from Elevator Company
21. Snow Removal				18,000		Variable		3.00%	Based on Budget Standards established by KRG
22. Painting and Decorating				10,000		Variable		3.00%	Based on Budget Standards established by KRG
23. Other M & O (specify in column D)						Variable		3.00%	
25. Fuel Oil						Variable		3.00%	
26. Lighting/Electricity				16,000		Variable		3.00%	Based on Budget Standards established by KRG
27. Water and Sewer				26,500		Variable		3.00%	Based on Budget Standards established by KRG
28. Gas				18,000		Variable		3.00%	Based on Budget Standards established by KRG
29. Other Utilities (specify in column D)						Variable		3.00%	
31. Real Estate Taxes				130,000		Variable		3.00%	
32. Payroll Taxes						Variable		3.00%	
33. Other Taxes (specify)						Variable		3.00%	
34. Property and Liability Insurance				46,000		Variable		3.00%	
35. Fidelity Bond Insurance						Variable		3.00%	
36. Other Insurance (specify in column D)						Variable		3.00%	
38. Operating Reserve				24,678		Variable		2.00%	DHCR Formula
39. Replacement Reserve				21,350		Fixed			
40. Total Expenses				\$516,433					
41. Net Operating Income				\$271,095					
42. Debt Service List <u>All</u> Sources of Permanent Financing with Debt Service				B. Year 1 Cost		C. Type % Increase		D. Source Name	
4001	3,100,000	5.500%	30	230,206	Fixed			The Community Preservation Corporation	
	3,000,000	0.500%	30	15,000	Fixed			Middle Income Program	
					Fixed				
		0.000%			Fixed				
		0.000%			Fixed				
		0.000%			Fixed				
		0.000%			Fixed				
		0.000%			Fixed				
		0.000%			Fixed				
		0.000%			Fixed				
43. Total Debt Service				\$245,206					
44. Cash Flow				\$25,889					
45. Repayment of Deferred Dev's. Fee						Fixed			

RESOLUTION NO.: 128 - 2020

OF

JUNE 8, 2020

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A SITE DEVELOPMENT AGREEMENT WITH
THE KEARNEY REALTY & DEVELOPMENT GROUP INC.
FOR THE TRANSFER AND REDEVELOPMENT OF PROPERTY LOCATED AT
15 SOUTH COLDEN STREET (SECTION 46, BLOCK 3, LOT 8.2)

WHEREAS, the City of Newburgh wishes to redevelop the City-owned property located at 15 South Colden Street (the "Property"); and

WHEREAS, the City issued a Request For Proposals ("RFP") for the development of the Property and received two (2) responses from developers interested in pursuing development projects on the Property; and

WHEREAS, a review committee has reviewed the responses to the RFP and recommended to City Council that the Kearney Realty & Development Group Inc. be selected to develop the Property; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh that the City Manager be and he is hereby authorized to execute on behalf of the City of Newburgh the site development agreement with Kearney Realty & Development Group Inc., in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the transfer and redevelopment of the property at 15 South Colden Street.

I, Lorena Vitek, City Clerk of the City of Newburgh,
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held June 8, 2020
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 9 day of June 2020

[Signature]
City Clerk

The City of Newburgh Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-7335
Fax: (845) 569-7338

Jeremy Kaufman
Assistant Corporation Counsel

June 30, 2020

Dale J. Lois, Esq.
Levine & Levine, PLLC
2 Jefferson Plaza
Suite 100
Poughkeepsie, NY 12601

Re: Site Development Agreement with Kearney Realty & Development Group Inc.
15 South Colden Street (Section 46, Block 3, Lot 8.2)

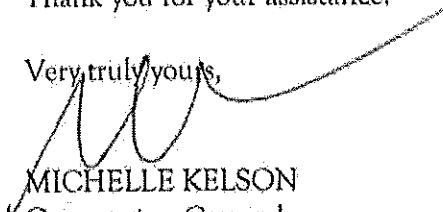
Dear Mr. Lois:

Enclosed herewith is an original fully executed Site Development Agreement relative to the above-referenced, which was executed by the City Manager on this date, June 30, 2020.

By copy of this letter I am forwarding the duplicate original to the City Clerk for filing in her office.

Thank you for your assistance.

Very truly yours,



MICHELLE KELSON
Corporation Counsel

MK/dt
Enclosure

cc: Lorene Vitek, City Clerk
William Horton, Assistant Chief/Building Inspector
George Garrison, Superintendent of Public Works
Alexandra Church, Director of Planning & Development

6/9/20 FOR SIGNATURE

SITE DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWBURGH

AND

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

DATED AS OF JUNE 30, 2020

Regarding:
15 South Colden Street, Tax ID 46-3-8.2
City of Newburgh, Orange County, New York

6/9/20 FOR SIGNATURE

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SITE DEVELOPMENT AGREEMENT

SITE DEVELOPMENT AGREEMENT ("Contract") dated _____, 2020 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 Kearney Realty & Development Group Inc., a New York corporation having an address at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505, NY (together with an assignee permitted pursuant to Article 12 hereof, the "Developer").

WITNESSETH:

WHEREAS, the City is the owner of the property located at 15 South Colden Street in the City of Newburgh, more accurately described as Section 46, Block 3, Lot 8.2 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 for mixed commercial and residential uses; and

WHEREAS, pursuant to a request for proposals, based on their representations as to qualifications, experience and financial capacity, the Seller selected the Developer to redevelop the Property; and

WHEREAS, the Developer has proposed to acquire the Property from the Seller for the purposes of redeveloping the Property, 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 on dollar by the Developer to Seller, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

SECTION 1.01 Definitions. 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, easement and franchise agreements, building permits, certificate of occupancy, certificate of appropriateness, and all applications for licenses, permits

6/9/20 FOR SIGNATURE

and permission to construct and maintain all on-site and off-site improvements, curbcuts, roadway, mediate cuts and utility lines and services.

"Architect" shall mean a professional architect or professional engineer or firm of professional architects or professional engineers licensed by the State of New York, and reasonably acceptable to Seller.

"Area Median Income" or "AMI" shall mean the area median income for the County of Orange to determine the maximum allowable household family income eligible to rent a Housing Unit.

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

"Certificate of Occupancy" shall mean a permanent certificate of occupancy issued by the City of Newburgh Code Compliance 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 3.03.

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

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

"Developer" shall mean The Kearney Realty & Development Group Inc. or its successors and assigns to the extent permitted under Section 12.01 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; insurrection, civil disturbances, or riots; or impossibility of procuring materials.

6/9/20 FOR SIGNATURE

"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.

"Housing Units" shall mean apartment units intended to be occupied by a single person or family other than on a transient basis.

"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.

"Minimum Commercial Improvements" shall mean the Housing Units, non-residential uses, and community benefits described at Schedule C.

"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 a New York Stated Licensed Architect or Professional Engineer, 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 development project which shall include a mixed use redevelopment of the Property consisting of no more than 75,000 square feet of commercial and residential uses and no more than 73 Housing Units for residential use a portion of which shall be reserved for

6/9/20 FOR SIGNATURE

artists and a portion of which shall be offered on a scale of percentage of AMI as described in Schedule "C".

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

"Project Mortgage" shall mean one or more mortgages on Developer's interest in the Property and Improvements obtained from a Lending Institution, the proceeds of which are used for the acquisition and development of the Property and 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.

"Public improvement" shall mean the construction, enlargement, extension or other construction of a facility intended for dedication to the City, including but not limited to a street, curb and gutter, sidewalk, cross drain, catch basin, traffic control and street name sign, or other roadway appurtenance other than a driveway.

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

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

"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.

"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 such title insurance company as shall be mutually acceptable to the Seller and the Developer for the issuance of policies of title insurance to Developer and its Lending Institution, effective as of the Closing Date.

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.

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ARTICLE 2 DEVELOPER'S REPRESENTATIONS

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

- (a) Developer is, and its assignee (as permitted pursuant to Article 12 shall be) a corporation or other legal business entity duly formed and in good standing under the laws of the State of New York; duly qualified to transact business in the State of New York; and has or shall have the requisite corporate power and authority to enter into this Contract, a Project Mortgage, and the closing documents to be signed by Developer and/or such assignee. The execution, delivery and performance by Developer and/or such assignee of such documents does not conflict with or result in a violation of Developer's and/or such assignee's organizing documents or any judgment, order or decree of any court or arbiter to which Developer and/or such assignee is a party or by which either or both of them is/are bound. Such documents are or shall be valid and binding obligations of Developer and/or such assignee, enforceable in accordance with their terms. There is and shall be no suit, action, proceeding or litigation pending or, to the best of Developer's knowledge, threatened, against or affecting the Developer and/or such assignee 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 or such assignee to perform its obligations under this Contract.
- (b) Developer intends to proceed to seek the Approvals and Permits for the construction, by Developer or its permitted assignee, of the Project promptly following the execution of this Contract.
- (c) Developer has, or its permitted assignee shall have, the requisite financial capacity and technical expertise and is or shall be in all respects capable of constructing the Project prior to the Completion Deadline.
- (d) The Project will be constructed to meet all requirements of Permits and Approvals and applicable requirements of any Governmental Authority having jurisdiction over the Developer and its permitted assignee, 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 and/or its permitted assignee in connection with the transaction contemplated hereby are and shall be true and complete in all material respects.

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

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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 Improvements constructed or situated on the Land as of the date of Closing;
- (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 the Improvements referred to in 3.01(b); and
- (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 referred to in 3.01(b) (collectively referred to in the Contract as the "Equipment").

SUBJECT TO any further easements and any other rights 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 rights reserved herein; and
- (c) such other matters as the Title Insurer shall be willing, without special premium, to omit as exceptions to coverage.

SECTION 3.03 Closing. Except as otherwise provided in this Contract (including but not limited to Section 9.04(b)), 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, or more than thirty (30) days from the date of expiration of any appeal periods for Project Approvals and Permits, whichever is later, at the offices of the Corporation Counsel at City Hall, 83 Broadway, Newburgh, NY, or at such other date or location as may be required by counsel for the Lending Institution or as otherwise 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 \$100,000.00, payable as follows:

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- (a) The Developer shall pay to the Seller a down payment of \$10,000.00 (the "Earnest Money") upon the execution of this Contract, which Earnest Money shall be non-refundable, except to the extent provided in Section 5.01 and Section 7.02.
- (b) The Earnest Money shall be applied as a credit toward the Purchase Price at Closing.
- (c) The balance of the Purchase Price shall be paid to the Seller 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; or
- (c) Wire transfer to an account specified by 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 obligation to purchase the Property shall be contingent upon the following conditions:

- (a) Prior to conveyance of the Property, the Developer shall have the option to terminate this Contract, and receive a refund of the Earnest Money, on or before the Closing Date if despite Developer's commercially reasonable efforts, Developer is unable to obtain all Approvals and Permits (including but not limited to approval from New York State Homes and Community Renewal's Environmental Justice analysis), necessary to receive a building permit for the Project. In the event the Property does not receive approval from New York State Homes and Community Renewal's Environmental Justice analysis and this Contract is terminated, the Developer shall, for a period of three (3) years beginning on the date of such termination and ending on the day immediately preceding the third anniversary of such date (the "ROFR Period"), have the a right-of-first-refusal if the Property is thereafter offered for sale, redevelopment, or marketed for sale, as follows: In the event that Seller shall, during the RORF Period, receive a bona fide offer to purchase the Property, Developer shall have the right of first refusal to meet any bona fide written offer of purchase on the same terms and conditions of such offer. Upon Developer's failure to meet such bona fide offer within twenty (20) days after notice thereof from Seller, Seller shall be free to sell the Property to such third person in accordance with the terms and conditions of the offer (or substantially similar terms and conditions). If the third party offer does not close, then this right of first refusal shall revive for the remainder of the ROFR Period. Commercially reasonable efforts shall include, but not be limited to, Developer's reasonable efforts to obtain, on or before twenty-four (24) months after the date of this Contract, a complete site plan approval for the Project from the City of Newburgh Planning Board, any variances (if applicable) from the City of Newburgh

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Zoning Board of Appeals, and any approvals (if applicable) from the City of Newburgh Architectural Review Commission. At the request of Developer, a notice of the Developer's right of first refusal shall be prepared and recorded in the Orange County Clerk's Office.

- (b) Developer shall be deemed to have waived such contingency if written notice of termination of this Contract is not given to Seller no fewer than 30 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, if any, required by this Contract.
- (c) Developer shall have furnished the Seller with a certified statement of the total estimated 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 together with a certificate from such Architect that such Plans and Specifications are consistent with all Approvals and Permits.
- (e) The Developer shall not be in default 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 5.02 have not been satisfied by the Closing Deadline. Seller shall use reasonable discretion in determining whether any of said conditions have (or have not) been satisfied.

SECTION 5.04 Termination of Contract. Upon termination by either party pursuant to this Contract, 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 Seller's land use boards in what Developer or the Architect reasonably believes to be sufficient time for review and approval prior to the Closing Deadline.

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- ii. Developer will use commercially reasonable efforts to obtain land use board approval(s) for the Project at least 60 days prior to the Closing Deadline and obtain Approvals and Permits for the Project at least 30 days prior to the Closing Deadline.

(b) Completion Deadline:

- i. Subject to events of force majeure, Developer will complete the construction of the Project not later than the Completion Deadline.

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

- i. Shall at its own cost and expense use commercially efforts to obtain all Approvals and Permits;
- ii. Shall comply with all requirements of Governmental Authorities applicable to the construction and installation of the Improvements which shall comprise the Project;
- iii. Shall have received Seller's prior written approval, not to be unreasonably withheld, conditioned or delayed, 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. Seller hereby approves Coppola Associates as the Project architect, Insite Engineering, Surveying, P.C. as the Project engineers, and Tern Construction & Development as the Project general contractor; provided that Developer shall have the right to select alternatives to any or all of the foregoing, subject to Seller's approval right as stated above.
- 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 contracts to which it has entered into relating to the construction of the Project.
- vi. Shall, 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, forthwith upon Developer's receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) 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

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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, 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 Seller or Developer or against any of the 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) the 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, 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 the Developer shall provide to the Seller such security as the Seller may reasonably require.

- vii. Shall, at the written request of the Seller, 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, which may be granted or withheld in the Developer's sole discretion. Seller shall deliver the Property to Developer at Closing free of leases, occupants and tenancies.
- (b) The Seller shall allow for Developer or Developer's representatives access to the Property upon reasonable prior notice pursuant to Section 9.05 of this Contract.
- (c) 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 consistent with this Contract (including but not limited to the Approvals and Permits), subject to Section 9.04.

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SECTION 6.03 Indemnity. Developer shall at all times indemnify and hold the Seller harmless from and against and all Claims, including reasonable attorneys' fees, which may be imposed upon, incurred by or asserted against the Seller, its officers, employees, and agents (the "Indemnified Parties"), arising during the term of this Contract upon or about the Property by reason of the acts or omissions of Developer or its Permittees, as defined below, or resulting from, arising out of, or in any way connected with (1) breach of the representations set forth in Section 2.01, whether prior to or after the Closing; (2) the funding of the costs of the Project; (3) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation, or completion of the Project or any part thereof or the effecting of any work done in or about the Property; (4) any defects, whether latent or patent, in the Improvements constructed or renovated by Developer; (5) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Improvements or any portion thereof; or (6) any act or omission of Developer or any of its agents, concessionaires, contractors, servants, employees, tenants, or invitees ("Permittees"), including without limitation any failure by Developer to perform or comply with any of the covenants, agreements, terms, conditions or limitations of this Contract, but excluding, in all events, Claims and liabilities to the extent caused by or resulting from the negligence or intentional misconduct of the Indemnified Parties. The Developer shall require any of its Permittees who perform construction work on the Property to agree to indemnify the Indemnified Parties and Developer for Claims with respect to the Permittee's scope of work, excluding negligence or willful misconduct of the party to be indemnified. If any action or proceeding is brought against Seller because of any one or more of the Claims, Developer, at its sole cost and expense, upon written notice from Seller, shall defend (or cause to be defended by insurance counsel) 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 a 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 noted in such title report and any other defects or objection which may be disclosed on or prior to the Closing Date. Developer shall be deemed to have waived any objections to title if not made within twenty (20) days after receiving the title report, or within twenty (20) days after receiving an update to the title report with respect to exceptions contained in such update which were not raised in any prior report. Seller hereby acknowledges that a fence currently encroaches on a portion of the Property from a contiguous property owned or operated by R.I.M. Plumbing & Heating Supply. Prior to Closing, Seller may, at its election, cause such encroachment to be removed in a manner that ensures that the owner of such contiguous property has no claim or right relating to the encroachment, and no exception to title insurance coverage is taken for such encroachment or any claim or right relating thereto. If Seller does not elect to so remove the encroachment and the closing occurs, Developer shall accept title subject to the encroachment, in which event Seller agrees to provide reasonable assistance and cooperation to Developer to defend any claim of adverse possession or prescriptive easement which may be made by the owner of such contiguous property based in

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whole or in part upon the presence, during the Seller's period of ownership of the Property, of the encroachment. The provisions of this Section 7.01 shall survive the closing.

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 6.03 shall survive the closing.

ARTICLE 8 DESTRUCTION, DAMAGE OR CONDEMNATION

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

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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) The Developer anticipates that the development of the Project as presently contemplated will not require an amendment to the zoning code and/or 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 is to 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, six (6) months. Any additional request(s) thereafter shall be made in writing and placed before the City Council for its consideration. The foregoing notwithstanding, in the event the Developer has not received unconditional commitments for the tax credits and/or financing that the Developer intends to seek for the acquisition and development of the Property, Developer shall have the right to obtain a one-year extension of the Closing Date.

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 survey, 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 which obligation shall not extend to attorney-client privileged materials or other confidential materials.
- (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

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- (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. 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, but expressly excluding losses, costs and expenses arising out of latent defects, the displacement or disturbance of pre-existing conditions, the negligence or misconduct of Seller, or any diminution in value in the Property arising from, or related to, matters discovered by Developer during its investigation of the Property. 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.
- (b) A bill of sale conveying, transferring and selling to Developer all right, title and interest of the Seller in and to any Equipment.
- (c) A non-foreign 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 leases, tenancies, judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the Seller's name.
- (e) A designation agreement designating the "reporting person" for purposes of completing IRS Form 1099-S
- (f) Subject to Permitted Exceptions, exclusive possession of the property in the condition required by this Contract.

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

- (a) Developer shall deliver to Seller the portion of Purchase Price payable at Closing.
- (b) Developer shall cause the deed to be recorded, duly complete all required real property transfer tax returns (such returns to be countersigned by Seller where applicable) and cause all such returns and check in payment of such taxes to be delivered to the appropriate officers promptly after Closing.
- (c) Developer shall deliver a designation agreement designated the "reporting person" for purposes of completing IRS Form 1099-S.

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

ARTICLE 11 DEFAULTS AND REMEDIES

SECTION 11.01 Remedies on Default.

- (a) Termination of Contract by Seller. Upon the occurrence of any default under this Contract by Developer 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, unless such default is cured prior to the end of such notice period. Unless so cured, upon the date specified in the notice, this Contract and all rights of Developer under this Contract shall terminate. The termination of this Contract does not relieve Developer of its liability and obligations under Section 9.05(e) and Section 6.03 of this Contract, which shall survive. Upon such termination Seller will retain the Earnest Money as liquidated damages, time being of the essence of this Contract. 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 6.03 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 but Developer shall have no right to seek damages from Seller for Seller's defaults hereunder.

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SECTION 11.02 Force Majure. 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 Majure, performance of that act shall be excused for the period of the delay (but not exceeding ninety (90) days) and the period for the performance of the act shall be extended for a period equivalent to the excusable period of the delay (but not to exceed ninety (90) days), provided the party delayed shall give the other party notice and full particulars of the Force Majure within a reasonable time after the event occurs. The provisions of this Section shall not excuse Developer from the prompt payment of amounts due under this 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 Proof of Guarantees. Developer represents to Seller that one or more principals of Developer will be obligated to issue a guarantee of completion to the Lending Institution and/or investor(s) for the Project. At the request of Seller, Developer shall furnish Seller with true and complete copies of each such guarantee.

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. Seller hereby consents to the assignment of this Contract to any assignee owned or controlled by Developer, or under common control with Developer. Notwithstanding, any such assignment, Developer shall remain responsible for the covenants set forth in Article 6. Developer or one of its officers 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.

6/9/20 FOR SIGNATURE

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.

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 U.S. First Class certified mail, postage prepaid, return receipt requested, addressed to the following addresses. Notices shall be deemed effective on the earlier of the date of receipt or three business days after the date of mailing. Any party may change its address for the service of notice to the other parties as provided herein.

Developer as follows:

The Kearney Realty & Development Group Inc.
34 Clayton Boulevard, Suite A,
Baldwin Place, New York 10505

with a copy to:

Levine & Levine, PLLC
2 Jefferson Plaza, Suite 100
Poughkeepsie, New York 12601
Attn.: Dale J. Lois, Esq.

6/9/20 FOR SIGNATURE

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

or as Developer or Seller shall otherwise have given notice as herein provided.

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 Project Mortgage. At or in connection with the Closing, the Developer intends to obtain a Project Mortgage on the Property provided by a Lending Institution for the acquisition of the Property and construction of the Project.

SECTION 12.12 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 a to new, specifically defined legal relationship.

SECTION 12.13 Obligations of Governmental Agencies. Notwithstanding any statement or representation to the contrary contained herein or in any of the other implementing agreements, the obligations and agreements of the Seller contained herein and in the other implementing agreements and in any other instrument or document executed in connection therewith and any instrument or document supplemental thereto shall be deemed the obligations and agreements of the Seller, and not of any member, officer, agent or employee of the Seller in 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.

6/9/20 FOR SIGNATURE

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 August 9, 2020 (approximately 60 days from City Council approval).

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

Seller: CITY OF NEWBURGH

By:

Its: City Manager
Per Resolution No. 128-2020

Developer: THE KEARNEY REALTY & Development
Group, Inc.

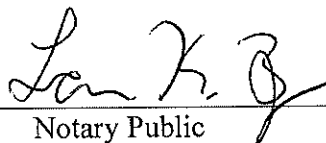
By:

Its: Kenneth Kearney
President.

6/9/20 FOR SIGNATURE

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

On the 30 day of JUNE in the year 2020 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.

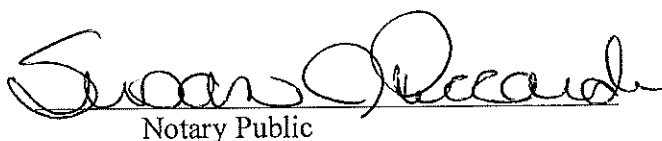


Notary Public

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



On the 24th day of June in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.



Notary Public

SUSAN J. RICCARDI
Notary Public, State of New York
No. 01RI6062831
Qualified in Orange County
Commission Expires November 4, 20 22

6/9/20 FOR SIGNATURE

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 15 South Colden Street, being more accurately described as Section 46, Block 3, Lot 8.2 on the Official Tax Map of The City of Newburgh, bounded and described as follows:

6/9/20 FOR SIGNATURE

SCHEDULE "B"
PERMITTED ENCUMBRANCES

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

SCHEDULE "C"
MINIMUM IMPROVEMENTS AND DEVELOPMENT DEADLINES

1. Minimum improvements shall include a mixed use redevelopment of the Property consisting of no more than 75,000 square feet of commercial and residential uses and approximately 73 Housing Units for residential use. No fewer than 40 of such Housing Units shall have a preference for those involved in artistic or literary activities; no fewer than 5 of such Housing units shall be offered to residents making a maximum of 40% of the AMI; and approximately 68 of such Housing Units shall be offered to residents making a maximum of 100% of AMI.
2. Workforce Development: The Developer will incorporate a workforce development plan into the Project consisting of an internship with the Developer's construction firm to a local individual; recruitment and the potential training and hiring of City of Newburgh residents during the construction phase of the Project; identification and outreach to local subcontractors and suppliers to invite them to bid, and encouraging subcontractors to use local employment; and the development of continuous work force development training on the Project site in collaboration with existing local workforce training providers such as SUNY Orange and RUPCO.
3. Artist Certification Committee: The Developer will establish a Project Artist Certification Committee of which two (2) seats can be made available to individuals from the City of Newburgh community.
4. The Developer will use best efforts to comply with the One Percent for Public Art Program established by Article II of Chapter 14 of the Code of Ordinances of the City of Newburgh.
5. Within one hundred fifty (150) days of the execution of this Contract, the Developer shall submit a site plan application to the City of Newburgh Planning Board for the Project meeting the requirements of this Contract.
6. Closing Deadline: No longer than twenty-four (24) 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 all Governmental Authorities with jurisdiction and power of approval over the Property required to construct the Project. The Closing shall take place at such time as is set forth in Sections 3.03 and 9.04(b).
7. Commencement Deadline: No longer than three (3) months from the Closing Date, the Developer shall have commenced construction of the Project.

6/9/20 FOR SIGNATURE

8. Completion Deadline: No longer than twenty-two (22) months from the Closing Date, Developer shall have completed construction of the Project and Developer shall have applied to the Building Inspector and Code Compliance Office of the City of Newburgh for a Certificate of Occupancy and no longer than twenty-six (26) months from the Closing Date shall have obtained a Certificate of Occupancy for the entire Project.
9. Developer will diligently pursue funding from NYS Homes and Community Renewal to support construction of the Housing Units that are restricted by AMI and will be governed under a regulatory agreement with NYS Homes and Community Renewal.
10. Developer will provide to the Seller a financing plan for the Project which may include a proposal for payment in lieu of taxes (PILOT) and/or reliance on an available statutory tax exemption, provided however that the Seller makes no representation as to the availability of any exemption or PILOT agreement, and any such agreement shall remain subject to discretionary approval of any Governmental Authority with jurisdiction.
11. Ownership of the Property for development shall be taken in such form as shall be required by Developer's Lending Institution, the NYS Homes and Community Renewal and/or Developer's investors. Without limiting the foregoing, ownership may be taken in a for profit entity subject to approval by the Seller as to financial and administrative capacity for completion, maintenance and operation and meeting the requirements of Section 12.01.

6/9/20 FOR SIGNATURE

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 _____,
_____, New York _____, party of the second part.

WITNESSETH, that the party of the first part, in consideration of \$100,000.00 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 15 South Colden Street, in the City of Newburgh and being more accurately described as Section 46, Block 3, Lot 8.2 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 _____, 20____, and recorded in the Orange County Clerk's Office on _____, 20__ 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.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the

6/9/20 FOR SIGNATURE

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.

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

IN PRESENCE OF:

THE CITY OF NEWBURGH

BY: _____
_____, City Manager
Pursuant to Resolution No.:

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 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.

ENTITY

BY: _____

STATE OF NEW YORK)

) ss:

COUNTY OF ORANGE)

6/9/20 FOR SIGNATURE

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 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.

RECORD & RETURN TO:

RESOLUTION NO.: 164 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AMENDMENT NO. 2 TO CONTRACT NO. C011789 WITH THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
FOR REIMBURSEMENT OF THE COST OF WATER PURCHASED FROM
THE NEW YORK CITY CATSKILL AQUEDUCT**

WHEREAS, perfluorooctane sulfonic acid (PFOS) has been detected in the City of Newburgh's water supply at levels in excess of the Environmental Protection Agency's lifetime health advisory levels, and there is a need to provide a temporary alternate source of drinking water to residents of the City of Newburgh, which has access to New York City's Catskill Aqueduct as a backup source of drinking water; and

WHEREAS, by Resolution No. 204-2016 of August 8, 2016, the City Council of the City of Newburgh authorized Contract No. C010219 with the New York State Department of Environmental Conservation for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct, and by Resolution No. 326-2017 of November 27, 2017, Resolution No. 227-2018 of August 13, 2018, and Resolution No. 57-2021 of March 22, 2021, the City Council authorized Amendments No. 1, No. 2 and No. 3 to Contract No. C010219 because the need for the temporary alternate source of drinking water extended past the original end date of Contract No. C010219; and

WHEREAS, by Resolution No. 58-2021 of March 22, 2021, the City Council authorized Contract No. C011789 for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct because the need for the temporary alternate source of drinking water was anticipated to extend past the expiration of the terms of Amendments No. 1, No. 2, and No. 3 to Contract No. C010219 and by Resolution No. 198-2022 of August 8, 2022, the City Council authorized Amendment No. 1 to Contract No. C011789 because the need for the temporary alternate source of drinking water extended past the original end date of Contract C011789; and

WHEREAS, the need to for the temporary alternate source of drinking water is anticipated to extend past the original end date of Amendment No. 1 to Contract No. C011789 and the parties have determined that extending the term of Contract No. C011789 and increasing the funding for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct is necessary, appropriate, and in the best interest of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into Amendment No. 2 to Contract No. C011789 with the New York State Department of Environmental Conservation for a 1-year extension and additional funding for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct.

AMENDMENT TO CONTRACT
between
CITY OF NEWBURGH
and
STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

THIS AMENDMENT, entered into by and between the State of New York Department of Environmental Conservation (hereinafter referred to as the Department), having offices at 625 Broadway, Albany, New York 12233, and the City of Newburgh (hereinafter referred to as Newburgh), having offices at 83 Broadway, Newburgh, New York 12550 is hereby attached to and becomes incorporated into the above referenced contract.

WITNESSETH:

WHEREAS, the parties entered into a prior Contract which was duly assigned Contract Number C011789 (and amended on September 29, 2022) which said Contract the parties now desire to extend; and as amended

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

WHEREAS, it has been determined by Legislative findings under Article 15 of the Environmental Conservation Law (ECL) that the State has the sovereign power to regulate and control the water resources of the State; and

WHEREAS, in recognition of power under ECL §15-0105.5, the use of water for domestic and municipal purposes shall have priority over all other purposes; and

WHEREAS, there is a need to continue to provide a temporary alternate source of drinking water to residents of Newburgh; and

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

NOW THEREFORE, the parties hereto agree as follows:

1. Article 3 TERM is revised by extending the end date of the Contract from May 31, 2023, to May 31, 2024.
2. Article 2 A. PAYMENT is revised to increase the not to exceed amount payable under this Contract by \$3,905,732 for a new not to exceed amount payable of \$7,705,732.
3. Appendix A, dated October 2019, is hereby deleted and Appendix A, dated June 2023, is attached hereto.
4. All other terms and conditions of Contract C011789, as amended will remain in full force and effect.

SIGNATURE PAGE

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto on the day and year appearing following their respective signatures.

Department Certification "In addition to the acceptance of this Contract Amendment, I also certify that original copies of this signature page will be attached to all other exact copies of the subject Contract."

NEWBURGH SIGNATURE	DEPARTMENT SIGNATURE
By:	By:
Print Name:	Print Name: Nancy Lussier
Title:	Title: Director, Management & Budget Services
Dated:	Dated:

Newburgh Acknowledgement
State of _____) County of _____) ss.:
On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.
_____ Notary Public

ATTORNEY GENERAL'S SIGNATURE	COMPTROLLER'S SIGNATURE
	Approved: Thomas P. DiNapoli State Comptroller
Dated:	Dated:

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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

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

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

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

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

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

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

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

RESOLUTION NO.: 165 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED A 2023-2024 NEW YORK STATE DIVISION OF
CRIMINAL JUSTICE SERVICES LIVESCAN EQUIPMENT GRANT
IN THE AMOUNT OF \$60,000.00 WITH NO CITY MATCH**

WHEREAS, the City of Newburgh Police Department proposes to apply for a 2023-2024 New York State Division of Criminal Justice Services LIVESCAN Equipment program grant to purchase 2 new Livescan Fingerprint Scanners and maintenance agreements for the City of Newburgh Police Department and for City Court; and

WHEREAS, the grant funding in the amount of \$60,000.00 requires no City match; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a 2023-2024 New York State Division of Criminal Justice Services Livescan Equipment program grant in the amount of \$60,000.00 with no City match for the purchase of equipment and maintenance agreements by the City of Newburgh Police Department for use in the Police Department and in City Court; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 166 - 2023

OF

AUGUST 14, 2023

A RESOLUTION AUTHORIZING AN ADDENDUM TO
THE FEDERAL BUREAU OF INVESTIGATION
HUDSON VALLEY SAFE STREETS TASK FORCE
MEMORANDUM OF UNDERSTANDING RELATING TO PARKING AND TRAFFIC
TICKETS BY FEDERALLY DEPUTIZED TASK FORCE OFFICERS

WHEREAS, the Federal Bureau of Investigation (FBI) and the City of Newburgh are parties to the Hudson Valley Safe Streets Task Force Memorandum of Understanding (SSTF MOU); and

WHREAS, pursuant to the SSTF MOU, FBI owned or leased vehicles may be used by federally deputized Task Force Officers (TFOs) in accordance with applicable FBI rules and regulations including the FBI Government Vehicle Use Policy Guide; and

WHEREAS, the City of Newburgh Police Department proposes to enter into an Addendum to the SSTF MOU relating to parking tickets and traffic citations associated with FBI owned or leased vehicles consistent with the FBI Government Vehicle Use Policy Guide; and

WHEREAS, said Addendum is annexed hereto and made part hereof and it is deemed to be in the best interests of the City of Newburgh to enter into the Addendum;

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 Addendum to the Federal Bureau of Investigation Hudson Valley Safe Streets Task Force Memorandum of Understanding related to parking tickets and traffic citations associated with FBI owned or leased vehicles used by federally deputized task force officers.

TICKET ADDENDUM BY FEDERALLY-DEPUTIZED TASK FORCE OFFICERS
WHILE DRIVING FBI OWNED OR LEASED VEHICLES

1. Employees of the participating agency shall be personally responsible for all parking tickets and traffic citations associated with FBI owned or leased vehicles, unless it is determined that a violation or infraction was necessary for the performance of official duties (as described in the FBI Government Vehicle Use Policy Guide (1093PG)). If a ticket or citation is incurred, employees of the participating agency shall report the ticket or citation as soon as possible to the FBI task force supervisor, and personally resolve all outstanding or active fines. If an incurred ticket or citation is not resolved, and an outstanding or active fine persists, the employee of the participating agency may be denied use of FBI owned or leased vehicles.

SIGNATORIES:

Todd Venning, City Manager/CEO
City of Newburgh

Date: _____

Michael A. Brodack
Special Agent In Charge
New York Field Office
Federal Bureau of Investigation

Date: _____

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FEDERAL BUREAU OF INVESTIGATION
HUDSON VALLEY SAFE STREETS TASK FORCE
MEMORANDUM OF UNDERSTANDING

PARTIES

1. This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the City of Newburgh Police Department. Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between these agencies.

AUTHORITIES

2. Authority for the FBI to enter into this agreement can be found at Title 28, United States Code (U.S.C.), Section (§) 533; 42 U.S.C. § 3771; Title 28, Code of Federal Regulations (C.F.R.), § 0.85; and applicable United States Attorney General's Guidelines.

PURPOSE

3. The purpose of this MOU is to delineate the responsibilities of the Hudson Valley Safe Streets Task Force (HVSSTF) personnel, formalize relationships between participating agencies for policy guidance, planning, training, public and media relations; and maximize inter-agency cooperation. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof.)

MISSION

4. The mission of the HVSSTF is to identify and prosecute individuals and/or conspiracies to include but not limited to: violent gang members and individuals committing Crimes Against Children. The task force will enhance the effectiveness of federal/state/local law enforcement resources through a well-coordinated initiative seeking the most effective investigative/prosecutive avenues by which to apprehend and prosecute the above-mentioned individuals.

SUPERVISION AND CONTROL

A. Supervision

5. Overall management of the task force shall be the shared responsibility of the participating agency heads and/or their designees.

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6. The Special Agent in Charge (SAC) of the Criminal Division shall designate one Supervisory Special Agent (Squad C32) to supervise the HVSSTF. The HVSSTF Supervisor may designate a Special Agent to serve as the HVSSTF Task Force Coordinator (Task Force Coordinator). Either the Squad C32 Supervisor or the Task Force Coordinator shall oversee day-to-day operational and investigative matters pertaining to the HVSSTF.
7. Conduct undertaken outside the scope of an individual's HVSSTF duties and assignments under this MOU shall not fall within the oversight responsibility of the HVSSTF Supervisor or Task Force Coordinator. As stated in paragraph 74, below, neither the United States nor the FBI shall be responsible for such conduct.
8. HVSSTF personnel will be subject to the laws, regulations, policies, and personnel rules applicable to their respective agencies. FBI employees will continue to adhere to the Bureau's ethical standards, including Department of Justice (DOJ)/FBI regulations relating to outside employment and prepublication review matters, and will remain subject to the Supplemental Standards of Ethical conduct for employees of the DOJ.
9. HVSSTF personnel will continue to report to their respective agency heads for non-investigative administrative matters not detailed in this MOU.
10. Continued assignment of personnel to the HVSSTF will be based on performance and at the discretion of appropriate management. The FBI SAC and Squad C32/HVSSTF Supervisor will also retain discretion to remove any individual from the HVSSTF.

B. Case Assignments

11. The FBI Squad C32/HVSSTF Supervisor will be responsible for opening, monitoring, directing, and closing HVSSTF investigations in accordance with existing FBI policy and the applicable United States Attorney General's Guidelines.
12. Assignments of cases to personnel will be based on, but not limited to, experience, training and performance, in addition to the discretion of the Squad C32/HVSSTF Supervisor.
13. For FBI administrative purposes, HVSSTF cases will be entered into the relevant FBI computer system.
14. HVSSTF personnel will have equal responsibility for each case assigned. HVSSTF personnel will be responsible for complete investigation from predication to resolution.

C. Resource Control

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15. The head of each participating agency shall determine the resources to be dedicated by that agency to the HVSSTF, including personnel, as well as the continued dedication of those resources. The participating agency head or designee shall be kept fully apprised of all investigative developments by his or her subordinates.

OPERATIONS

A. Investigative Exclusivity

16. It is agreed that matters designated to be handled by the HVSSTF will not knowingly be subject to non-HVSSTF law enforcement efforts by any of the participating agencies. It is incumbent on each agency to make proper internal notification regarding the HVSSTF's existence and areas of concern.
17. It is agreed that there is to be no unilateral action taken on the part of the FBI or any participating agency relating to HVSSTF investigations or areas of concern. All law enforcement actions will be coordinated and cooperatively carried out.
18. HVSSTF investigative leads outside of the geographic areas of responsibility for FBI Criminal Division will be communicated to other FBI offices for appropriate investigation.

B. Confidential Human Sources

19. The disclosure of FBI informants, or Confidential Human Sources (CHSs), to non-HVSSTF personnel will be limited to those situations where it is essential to the effective performance of the HVSSTF. These disclosures will be consistent with applicable FBI guidelines.
20. Non-FBI HVSSTF personnel may not make any further disclosure of the identity of an FBI CHS, including to other individuals assigned to the HVSSTF. No documents which identify, tend to identify, or may indirectly identify an FBI CHS may be released without prior FBI approval.
21. In those instances where a participating agency provides a CHS, the FBI may, at the discretion of the SAC, become solely responsible for the CHS's continued development, operation, and compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.
22. The United States Attorney General's Guidelines and FBI policy and procedure for operating FBI CHSs shall apply to all FBI CHSs opened and operated in furtherance of HVSSTF investigations. Documentation of, and any payments made to, FBI CHSs shall be in accordance with FBI policy and procedure.
23. Operation, documentation, and payment of any CHS opened and operated in furtherance of an HVSSTF investigation must be in accordance with the United States Attorney

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General's Guidelines, regardless of whether the handling agency is an FBI HVSSTF participating agency. Documentation of state, county, or local CHSs opened and operated in furtherance of HVSSTF investigations shall be maintained at an agreed upon location

C. Reports and Records

24. All investigative reporting will be prepared in compliance with existing FBI policy. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by HVSSTF personnel will be made available for inclusion in the respective investigative agencies' files as appropriate.
25. HVSSTF reports prepared in cases assigned to HVSSTF personnel will be maintained at an FBI approved location; original documents will be maintained by the FBI.
26. Records and reports generated in HVSSTF cases which are opened and assigned by the FBI SSA with designated oversight for investigative and personnel matters will be maintained in the FBI investigative file for OCTF.
27. HVSSTF investigative records maintained at the New Field Office of the FBI will be available to all HVSSTF personnel, as well as their supervisory and command staff subject to pertinent legal, administrative and/or policy restrictions
28. All evidence and original tape recordings (audio and video) acquired by the FBI during the course of the HVSSTF investigations will be maintained by the FBI. The FBI's rules and policies governing the submission, retrieval and chain of custody will be adhered to by HVSSTF personnel
29. All HVSSTF investigative records will be maintained at an approved FBI location. Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies, subject to SSA approval.
30. Classified information and/or documents containing information that identifies or tends to identify an FBI CHS shall not be placed in the files of participating agencies unless appropriate FBI policy has been satisfied.
31. The Parties acknowledge that this MOU may provide HVSSTF personnel with access to information about U.S. persons which is protected by the Privacy Act of 1974 and/or Executive Order 12333. The Parties expressly agree that all such information will be handled lawfully pursuant to the provisions thereof. The Parties further agree that if this access to information by HVSSTF personnel requires a change in privacy compliance documents, those changes will be accomplished prior to access being granted.

INFORMATION SHARING

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32. No information possessed by the FBI, to include information derived from informal communications between HVSSTF personnel and FBI employees not assigned to the HVSSTF, may be disseminated by HVSSTF personnel to non-HVSSTF personnel without the approval of the Squad C32/HVSSTF Supervisor and in accordance with the applicable laws and internal regulations, procedures or agreements between the FBI and the participating agencies that would permit the participating agencies to receive that information directly. Likewise, HVSSTF personnel will not provide any participating agency information to the FBI that is not otherwise available to it unless authorized by appropriate participating agency officials.
33. Each Party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.
34. The FBI is providing access to information from its records with the understanding that in the event the recipient becomes aware of any inaccuracies in the data, the recipient will promptly notify the FBI so that corrective action can be taken. Similarly, if the FBI becomes aware that information it has received pursuant to this MOU is inaccurate, it will notify the contributing Party so that corrective action can be taken.
35. Each Party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing Party, and that information is only made available to the receiving Party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing Party.
36. Each Party will immediately report to the other Party each instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).
37. The Parties agree that either or both may audit the handling and maintenance of data in electronic and paper recordkeeping systems to ensure that appropriate security and privacy protections are in place.

PROSECUTIONS

38. HVSSTF investigative procedures, whenever practicable, are to conform to the requirements which would allow for either federal or state prosecution.
39. A determination will be made on a case-by-case basis whether the prosecution of HVSSTF cases will be at the state or federal level. This determination will be based on the evidence obtained and a consideration of which level of prosecution would be of the greatest benefit to the overall objectives of the HVSSTF.
40. In the event that a state or local matter is developed that is outside the jurisdiction of the FBI or it is decided to prosecute a HVSSTF case at the state or local level, the FBI

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agrees to provide all relevant information to state and local authorities in accordance with all applicable legal limitations.

A. Investigative Methods/Evidence

41. For cases assigned to an FBI Special Agent or in which FBI CHSs are utilized, the parties agree to conform to federal standards concerning evidence collection, processing, storage, and electronic surveillance. However, in situations where the investigation will be prosecuted in the State Court where statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by FBI case agents shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.
42. In all cases assigned to state, county, or local law enforcement participants, the parties agree to utilize federal standards pertaining to evidence handling and electronic surveillance activities as outlined in the Domestic Investigations and Operations Guide to the greatest extent possible. However, in situations where the statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by state and local law enforcement agencies shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.
43. The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policies and procedures of the FBI.

B. Undercover Operations

44. All HVSSTF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. All participating agencies may be requested to enter into an additional agreement if an employee of the participating agency is assigned duties which require the officer to act in an undercover capacity.

USE OF LESS-THAN-LETHAL-DEVICES¹

45. The parent agency of each individual assigned to the HVSSTF will ensure that while the individual is participating in FBI-led task force operations in the capacity of a task force officer, task force member, or task force participant, the individual will carry only less-

¹ Pursuant to Section VIII of the DOJ Less-Than-Lethal Devices Policy dated May 16, 2011, all state/local officers participating in joint task force operations must be made aware of and adhere to the policy and its limits on DOJ officers.

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lethal devices that the parent agency has issued to the individual, and that the individual has been trained in accordance with the agency's policies and procedures.

46. The parent agency of each individual assigned to the HVSSTF will ensure that the agency's policies and procedures for use of any less-lethal device that will be carried by the task force officer, task force member, or task force participant are consistent with the DOJ policy statement on the Use of Less-Than-Lethal Devices.

DEADLY FORCE AND SHOOTING INCIDENT POLICIES

47. HVSSTF personnel will follow their own agencies' policies concerning firearms discharge and use of deadly force.

DEPUTATIONS

48. Local and state law enforcement personnel designated to the HVSSTF, subject to a limited background inquiry, may be sworn as federally deputized Special Deputy United States Marshals with the FBI securing the required deputation authorization. These deputations should remain in effect throughout the tenure of each investigator's assignment to the HVSSTF or until the termination of the HVSSTF, whichever comes first.
49. Deputized HVSSTF personnel will be subject to the rules and regulations pertaining to such deputation. Administrative and personnel policies imposed by the participating agencies will not be voided by deputation of their respective personnel.

VEHICLES

50. In furtherance of this MOU, employees of the City of Newburgh Police Department may be permitted to drive FBI owned or leased vehicles for official HVSSTF business and only in accordance with applicable FBI rules and regulations, including those outlined in the FBI Government Vehicle Policy Directive (0430D) and the Government Vehicle Policy Implementation Guide (0430PG). The assignment of an FBI owned or leased vehicle to the City of Newburgh Police Department HVSSTF personnel will require the execution of a separate Vehicle Use Agreement.
51. The participating agencies agree that FBI vehicles will not be used to transport passengers unrelated to HVSSTF business.
52. The FBI and the United States will not be responsible for any tortious act or omission on the part of the City of Newburgh Police Department and/or its employees or for any liability resulting from the use of an FBI owned or leased vehicle utilized by the City of Newburgh Police Department HVSSTF personnel, except where liability may fall under the provisions of the Federal Tort Claims Act (FTCA), as discussed in the Liability Section herein below.

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53. The FBI and the United States shall not be responsible for any civil liability arising from the use of an FBI owned or leased vehicle by the City of Newburgh Police Department task force personnel while engaged in any conduct other than their official duties and assignments under this MOU.
54. To the extent permitted by applicable law, the City of Newburgh Police Department agrees to hold harmless the FBI and the United States, for any claim for property damage or personal injury arising from any use of an FBI owned or leased vehicle by the City of Newburgh Police Department HVSSTF personnel which is outside the scope of their official duties and assignments under this MOU.

SALARY/OVERTIME COMPENSATION

55. The FBI and the City of Newburgh Police Department remain responsible for all personnel costs for their HVSSTF representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency, except as described in paragraph 56 below.
56. Subject to funding availability and legislative authorization, the FBI will reimburse to the City of Newburgh Police Department the cost of overtime worked by non-federal HVSSTF personnel assigned full-time to the HVSSTF, provided overtime expenses were incurred as a result of the HVSSTF-related duties, and subject to the provisions and limitations set forth in a separate Cost Reimbursement Agreement to be executed in conjunction with this MOU. A separate Cost Reimbursement Agreement must be executed between the FBI and the City of Newburgh Police Department for full-time employee(s) assigned to the HVSSTF, consistent with regulations and policy, prior to any reimbursement by the FBI. Otherwise, overtime shall be compensated in accordance with applicable City of Newburgh Police Department overtime provisions and shall be subject to the prior approval of appropriate personnel.

PROPERTY AND EQUIPMENT

57. Property utilized by the HVSSTF in connection with authorized investigations and/or operations and in the custody and control and used at the direction of the HVSSTF, will be maintained in accordance with the policies and procedures of the agency supplying the equipment. Property damaged or destroyed which was utilized by the HVSSTF in connection with authorized investigations and/or operations and is in the custody and control and used at the direction of the HVSSTF, will be the financial responsibility of the agency supplying said property.

FUNDING

58. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties hereto of the

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tasks and methods for performing the tasks described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate funds for such expenditures.

FORFEITURES

59. The FBI shall be responsible for processing assets seized for federal forfeiture in conjunction with the HVSSTF operations.
60. Asset forfeitures will be conducted in accordance with federal law, and the rules and regulations set forth by the FBI and DOJ. Forfeitures attributable to the HVSSTF investigations may be equitably shared with the agencies participating in the HVSSTF.

DISPUTE RESOLUTION

61. In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the HVSSTF's objectives.
62. The participating agencies agree to attempt to resolve any disputes regarding jurisdiction, case assignments, workload, etc., at the field level first before referring the matter to supervisory personnel for resolution.

MEDIA RELEASES

63. All media releases and statements will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.
64. Press releases will conform to DOJ Guidelines regarding press releases. No release will be issued without FBI final approval.

SELECTION TO HVSSTF AND SECURITY CLEARANCES

65. If a City of Newburgh Police Department candidate for the HVSSTF will require a security clearance, he or she will be contacted by FBI security personnel to begin the background investigation process prior to the assigned start date.
66. If, for any reason, the FBI determines that a City of Newburgh Police Department candidate is not qualified or eligible to serve on the HVSSTF, the participating agency will be so advised and a request will be made for another candidate.
67. Upon being selected, each candidate will receive a comprehensive briefing on FBI field office security policies and procedures. During the briefing, each candidate will execute

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non-disclosure agreements (SF-312 and FD-868), as may be necessary or required by the FBI

68. Before receiving unescorted access to FBI space identified as an open storage facility, HVSSTF personnel will be required to obtain and maintain a "Top Secret" security clearance. HVSSTF personnel will not be allowed unescorted access to FBI space unless they have received a Top Secret security clearance.
69. Upon departure from the HVSSTF, each individual whose assignment to the HVSSTF is completed will be given a security debriefing and reminded of the provisions contained in the non-disclosure agreement to which he or she previously agreed.

LIABILITY

70. The participating agencies acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel assigned to the HVSSTF.
71. The participating agency shall immediately notify the FBI of any civil, administrative, or criminal claim, complaint, discovery request, or other request for information of which the agency receives notice, concerning or arising from the conduct of personnel assigned to the HVSSTF or otherwise relating to the HVSSTF. The participating agency acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the HVSSTF remains vested with his or her employing agency. In the event that a civil claim or complaint is brought against a state or local officer assigned to the HVSSTF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.
72. For the limited purpose of defending against a civil claim arising from alleged negligent or wrongful conduct under common law under the FTCA, 28 U.S.C. § 1346(b), and §§ 2671-2680: An individual assigned to the HVSSTF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request to be certified by the Attorney General or his designee as having acted within the scope of federal employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). Upon such certification, the individual will be considered an "employee" of the United States government for the limited purpose of defending the civil claim under the FTCA, and the claim will proceed against the United States as sole defendant. 28 U.S.C. § 2679(d)(2). Once an individual is certified as an employee of the United States for purposes of the FTCA, the United States is substituted for the employee as the sole defendant with respect to any tort claims. Decisions regarding certification of employment under the FTCA are made on a case-by-case basis, and the FBI cannot guarantee such certification to any HVSSTF personnel.

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73. For the limited purpose of defending against a civil claim arising from an alleged violation of the U.S. Constitution pursuant to 42 U.S.C. § 1983 or Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971): An individual assigned to the HVSSTF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request individual-capacity representation by DOJ to defend against the claims. 28 C.F.R. §§ 50.15, 50.16. Any such request for individual-capacity representation must be made in the form of a letter from the individual defendant to the U.S. Attorney General. The letter should be provided to Chief Division Counsel (CDC) for the FBI Criminal Division, who will then coordinate the request with the FBI Office of the General Counsel. In the event of an adverse judgment against the individual, he or she may request indemnification from DOJ. 28 C.F.R. § 50.15(c)(4). Requests for DOJ representation and indemnification are determined by DOJ on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation or indemnification to any HVSSTF personnel.
74. Liability for any conduct by HVSSTF personnel undertaken outside of the scope of their assigned duties and responsibilities under this MOU shall not be the responsibility of the FBI or the United States and shall be the sole responsibility of the respective employee and/or agency involved.

DURATION

75. The term of this MOU is for the duration of the HVSSTF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.
76. Any participating agency may withdraw from the HVSSTF at any time by written notification to the SSA with designated oversight for investigative and personnel matters or program manager of the HVSSTF at least 30 days prior to withdrawal.
77. Upon termination of this MOU, all equipment provided to the HVSSTF will be returned to the supplying agency/agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agencies will return to a withdrawing agency any unexpended equipment supplied by the withdrawing agency during any HVSSTF participation.

MODIFICATIONS

78. This agreement may be modified at any time by written consent of all involved agencies.
79. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

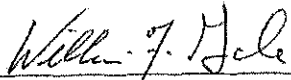
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SIGNATORIES



Special Agent in Charge
Federal Bureau of Investigation

06/03/2019
Date



Chief Doug Solomon
City of Newburgh Police Department

4/15/19
Date

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RESOLUTION NO.: 167 - 2023

OF

AUGUST 14, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE A CONTRACT WITH AXON ENTERPRISE, INC.
TO PURCHASE AND INSTALL PROFESSIONAL STANDARDS SOFTWARE
AND RELATED SERVICES FOR THE POLICE DEPARTMENT
AT A TOTAL COST OF \$59,524.00

WHEREAS, by Resolution No. 177-2022 of July 11, 2022, the City Council approved a contract with Axon Enterprise, Inc. to provide body worn cameras, along with technology, cloud, and other services for the Police Department; and

WHEREAS, the City has received a proposal from Axon Enterprise, Inc. to provide professional standards software and related services for the Police Department for a term of 44 months; and

WHEREAS, funding for the software and related services shall be derived from A.3120.0448; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with Axon Enterprise, Inc. to provide professional standards software and related services to the City of Newburgh Police Department at a total cost of \$59,524.00.

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-433199-45097.715CG

Issued: 06/20/2023

Quote Expiration: 06/30/2023

Estimated Contract Start Date: 01/01/2024

Account Number: 132800

Payment Terms: N30

Delivery Method:



SHIP TO	BILL TO	SALES REPRESENTATIVE	PRIMARY CONTACT
City of Newburgh Police Dept.-55 Grand Street 55 GRAND ST NEWBURGH, NY 12550-4611 USA	City of Newburgh Police Dept - NY 83 Broadway, 4th Floor Newburgh NY 12550-5617 USA Email:	Christian Gardner Phone: (480) 502-6209 Email: cgardner@axon.com Fax:	Anthony Geraci Phone: 845-569-7566 Email: ageraci@cityofnewburgh-ny.gov Fax:

Quote Summary

Program Length	44 Months
TOTAL COST	\$59,524.00
ESTIMATED TOTAL W/ TAX	\$59,524.00

Discount Summary

Average Savings Per Year	\$4,369.08
TOTAL SAVINGS	\$16,019.96

Payment Summary

Date	Subtotal	Tax	Total
Dec 2023	\$19,841.34	\$0.00	\$19,841.34
Aug 2025	\$19,841.33	\$0.00	\$19,841.33
Aug 2026	\$19,841.33	\$0.00	\$19,841.33
Total	\$59,524.00	\$0.00	\$59,524.00

Quote Unbundled Price: \$75,543.96
 Quote List Price: \$75,543.96
 Quote Subtotal: \$59,524.00

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
A la Carte Software									
73840	EVIDENCE.COM BASIC ACCESS LICENSE	23	44		\$15.83	\$0.00	\$0.00	\$0.00	\$0.00
73893	STANDARDS LICENSE, NON-SWORN	19	44		\$5.00	\$5.00	\$4,180.00	\$0.00	\$4,180.00
73538	STANDARDS ACCESS LICENSE	64	44		\$9.00	\$9.00	\$25,344.00	\$0.00	\$25,344.00
A la Carte Services									
73896	STANDARDS IMPLEMENTATION SERVICE	1			\$30,000.00	\$30,000.00	\$30,000.00	\$0.00	\$30,000.00
Total							\$59,524.00	\$0.00	\$59,524.00

Delivery Schedule

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
A la Carte	73538	STANDARDS ACCESS LICENSE	64	01/01/2024	08/31/2027
A la Carte	73840	EVIDENCE.COM BASIC ACCESS LICENSE	23	01/01/2024	08/31/2027
A la Carte	73893	STANDARDS LICENSE, NON-SWORN	19	01/01/2024	08/31/2027

Services

Bundle	Item	Description	QTY
A la Carte	73896	STANDARDS IMPLEMENTATION SERVICE	1

Payment Details

Dec 2023						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	73638	STANDARDS ACCESS LICENSE	64	\$8,448.00	\$0.00	\$8,448.00
Year 1	73840	EVIDENCE.COM BASIC ACCESS LICENSE	23	\$0.00	\$0.00	\$0.00
Year 1	73893	STANDARDS LICENSE, NON-SWORN	19	\$1,393.33	\$0.00	\$1,393.33
Year 1	73896	STANDARDS IMPLEMENTATION SERVICE	1	\$10,000.01	\$0.00	\$10,000.01
Total				\$19,841.34	\$0.00	\$19,841.34

Aug 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	73638	STANDARDS ACCESS LICENSE	64	\$8,448.00	\$0.00	\$8,448.00
Year 2	73840	EVIDENCE.COM BASIC ACCESS LICENSE	23	\$0.00	\$0.00	\$0.00
Year 2	73893	STANDARDS LICENSE, NON-SWORN	19	\$1,393.33	\$0.00	\$1,393.33
Year 2	73896	STANDARDS IMPLEMENTATION SERVICE	1	\$10,000.00	\$0.00	\$10,000.00
Total				\$19,841.33	\$0.00	\$19,841.33

Aug 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	73638	STANDARDS ACCESS LICENSE	64	\$8,448.00	\$0.00	\$8,448.00
Year 3	73840	EVIDENCE.COM BASIC ACCESS LICENSE	23	\$0.00	\$0.00	\$0.00
Year 3	73893	STANDARDS LICENSE, NON-SWORN	19	\$1,393.33	\$0.00	\$1,393.33
Year 3	73896	STANDARDS IMPLEMENTATION SERVICE	1	\$10,000.00	\$0.00	\$10,000.00
Total				\$19,841.33	\$0.00	\$19,841.33

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

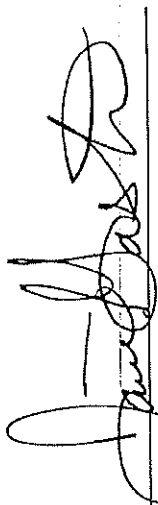
This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.


Signature

6/20/2023
Date Signed

6/20/2023



**STATEMENT OF WORK FOR
THE IMPLEMENTATION OF
AXON STANDARDS FOR
NEWBURGH POLICE
DEPARTMENT ("SOW")**

Submitted By:

Axon Enterprise, Inc. (Axon)

17800 North 85th Street

Scottsdale, AZ 85255



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1. PROJECT OVERVIEW:

1.1 SOFTWARE

The software detailed in this SOW includes, but is not limited to, the listed functionality:

AXON STANDARDS	➤ Use of Force	➤ Internal Affairs
	➤ Vehicle Pursuit	Investigative Case
	➤ Vehicle Collision	Management
	➤ Internal Complaint	➤ Configurable Forms and
	➤ Citizen Complaint	Fields
	➤ Attachments	➤ Restrictions

1.2 DEFINITIONS

TERM	DEFINITION
PARTIES	
Agency	Newburgh Police Department who is Identified within this SOW
End-Users	Specific agency groups who will use the system
Professional Services	The services that Axon will provide within the scope of this SOW
SYSTEMS	
Axon Systems	Software solutions and agency-specific integrations developed by Axon
CJIS	The Federal Bureau of Investigation's criminal justice information system
DataStore	The database Axon provides allowing Agency to query data
Product	The software solutions being implemented as part of this SOW
Production Environment	The operational environment where the product will be accessed
Service Portal	An online portal provided by Axon where issues identified are entered and triaged
PROJECT & MILESTONES	
Project	Scope of this SOW as defined by the work to be completed described herein
Project Change Order (PCO)	Change order form outlined in Attachment B to be executed between Axon and the agency if a material change in scope is required to this SOW
Milestone Completion Report	The report outlined in Attachment A to be executed at key Milestones between Agency and Axon to approve completion of Project phases
Go-Live	End-users are activated, and the agency is actively using the product
ACCEPTANCE	



TERM	DEFINITION
Blocker	Issue impacting 50% or more users
Functional Acceptance Testing	Testing the functionality of the system as configured for the agency

1.3 OUT OF PROJECT SCOPE

Axon is only responsible for performing the professional services described within this SOW. Any additional professional services that are not defined explicitly by this SOW shall be done so through a Project Change Order. The following are considered outside the scope of this project:

- Administration, management, or support of any internal city, county, state, federal, or agency IT network or Infrastructure

- Third-party products and services costs related to the vendors or agency's side of the integration

- Changes made by the agency or the agency's vendors



2. PROFESSIONAL SERVICES:

2.1 GENERAL

The agency will provide a master charge table that Axon will load. Axon will provide the appropriate structure to the agency.

2.2 DATASTORE

Axon will configure and make available to the agency a MS SQL DataStore containing all field and form data from the Axon Suite that allows the agency to utilize available data for reporting and analytical purposes.

Axon will provide the agency with a data dictionary and/or other appropriate documentation.

If Axon provides reports for specific purposes as indicated, it is the responsibility of the agency to maintain them after Go-Live.

2.3 READINESS

Axon will conduct functional acceptance testing via use cases approved by Axon and the agency.

All issues discovered during and after training will be entered into the service portal for triage and follow-up.

2.4 TRAINING

Axon will work in partnership with the agency to design an appropriate Training Plan and schedule to ensure affected agency members are adequately trained and prepared to administer and use Axon Records. The agency will receive a lesson plan that outlines the topics to be covered, intended audience, facility needs, and duration of the training.

FORMAT

Axon will provide the agency with all the necessary training materials and digital assets to facilitate any of the training formats listed below. Training sessions will be conducted in an environment containing necessary configurations, forms, and workflows.



TRAIN-THE-TRAINER: Axon trains system administrators and/or "super users" in full system functionality that is role agnostic.

Axon's Train-the-Trainer approach provides the agency with at least one user group that is fully equipped to provide system expertise to any user and provide agency-led training to other users.

Note: It will be the responsibility of the agency to update the training materials to include agency policies and procedures.

HYBRID MODEL: Axon trains all agency end users in role-specific system functionality via a hybrid model that can include a combination of on-site instructor-led training, eLearning, and/or remote live instruction facilitated by Axon trainers.

Axon's hybrid training model allows the agency and Axon to develop a customized and flexible training program that is suitable to the specific needs and concerns of the agency.

Note: It will be the responsibility of the agency to deliver any training sessions specific to the agency policies and procedures.

SCHEDULE

The training plan will contain an agreed-upon schedule that makes efficient use of time and resources to avoid undue staffing impacts on the agency. Training sessions exclusive to the Functional Acceptance Testing (FAT) will only occur after FAT has been successfully completed and documented.

Training sessions provided by Axon are conducted on consecutive weekdays (Tuesday-Friday) during normal business hours (8am-6pm).



3. PROJECT MANAGEMENT:

3.1 MANAGEMENT RESOURCES

Both parties will assign a project manager to ensure completion of deliverables.

Axon's project manager will ensure all team members from Axon and the agency are continually updated on the status of the project.

3.2 REQUIREMENTS PLANNING

All project requirements will be documented during the kick-off and discovery phases of the project.

Once the agency and Axon agree on all requirements, Axon's project manager will work with the agency's project manager to develop a project plan for Axon's implementation.

3.3 CHANGE CONTROL

If any changes in the project cause a material increase or decrease in fees, as determined by Axon, an adjustment in the fees will be agreed upon between the agency and Axon. All PCO forms must be approved and signed by the agency authority (Attachment B).

The agency acknowledges a proposed change request might have an impact on both scheduling and cost for the project that will be outlined in the PCO form.

3.4 MILESTONE COMPLETION REPORT ("MCR")

Axon will submit an MCR to the agency for approval upon completion of a milestone. Milestone Completion Report included (Attachment A).

Upon receiving an MCR, the agency has 14 calendar days to approve the milestone completion. If the agency has issues related to the milestone completion, the expectation is that the agency will respond in writing to Axon with any issues related to the MCR within the 14 calendar-day window.



4. AGENCY COMMITMENTS:

Ensure the reasonable availability for meetings, phone or email of knowledgeable staff and personnel to provide timely and accurate documentation and information to Axon.

Identify holidays, non-workdays, or major events that may impact the project.

Ensure agency desktop, mobile systems, and devices can access the product.

Make available relevant systems if needed for assessment by Axon (including making these systems available to Axon via remote access, if possible).

Provide Axon with remote access to the agency's Axon Evidence account when required.

The agency agrees to pay for licenses upon completion of Go-Live.



5. SUPPORT:

Axon will provide updates and enhancements to the product, which the agency will automatically receive.

Axon will provide the agency's end users with access to the help.axon.com support portal to submit and review service tickets.

Following final acceptance, the agency will utilize Axon support via my.axon.com for any further modifications to the product.

For technical support assistance, the agency may contact a technical support representative at 800-978-2737, or via email at Support@Axon.com. Online, email-based support and remote-location troubleshooting are included on an ongoing basis as part of the agency's investment in the Axon ecosystem. Phone support is available 24/7.



6. TERMS AND CONDITIONS:

This SOW is governed by the Master Services and Purchasing Agreement executed by the Parties.

AXON ENTERPRISE, INC.

AGENCY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



ATTACHMENT A - MILESTONE COMPLETION REPORT TEMPLATE

By signing for the items in this Milestone Completion Checklist, I agree that Axon's Professional Services Organization has reached the following milestone for the Project agreed upon in the SOW between Axon and Newburgh Police Department:

☐ Final Acceptance

Date Services were completed on:

_____ day of _____, 20__

Today's Date: _____

Agency Name: _____

Signature: _____

Printed Name: _____

Title: _____

Email: _____



ATTACHMENT B - PROJECT CHANGE ORDER TEMPLATE

Date:
Description of change to Axon product or service:
Justification for change:
Effects on schedule:
Effect on project pricing (attach quote for reduction or increase in costs):

AXON ENTERPRISE, INC.

AGENCY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

RESOLUTION NO.: 168 - 2023

OF

AUGUST 14, 2023

RESOLUTION SCHEDULING A PUBLIC HEARING FOR SEPTEMBER 11, 2023
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW ADDING ARTICLE IX,
ENTITLED "EXEMPTION FOR DISABLED PERSONS WITH LIMITED INCOMES"
TO CHAPTER 270 ENTITLED "TAXATION" OF THE CITY CODE
OF THE CITY OF NEWBURGH

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law adding Article IX, entitled 'Exemption for Disabled Persons with Limited Incomes' to Chapter 270 entitled 'Taxation' of the Code of Ordinances of the City of Newburgh"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 11th day of September, 2023 in the Council Chambers, 3rd Floor, City Hall, 83 Broadway, Newburgh, New York.

LOCAL LAW NO.: _____ - 2023

OF

_____, 2023

A LOCAL LAW ADDING ARTICLE IX,
ENTITLED "EXEMPTION FOR DISABLED PERSONS WITH LIMITED INCOMES"
TO CHAPTER 270 ENTITLED "TAXATION" OF THE CITY CODE
OF THE CITY OF NEWBURGH

BE IT ENACTED, by the Council of the City of Newburgh, New York that

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law adding Article IX, entitled 'Exemption for Disabled Persons with Limited Incomes' to Chapter 270 entitled 'Taxation' of the Code of Ordinances of the City of Newburgh".

SECTION 2 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Article IX entitled "Exemption for Disabled Persons with Limited Incomes" to Chapter 270 entitled "Taxation" of the Code of Ordinances of the City of Newburgh to read as follows:

Chapter 270 Taxation

Article IX. Exemption for Disabled Persons with Limited Incomes

§ 270-101. Legislative intent.

This real property tax exemption for persons with disabilities and limited incomes is adopted pursuant to the authorization for same in § 459-c of the New York State Real Property Tax Law.

§ 270-102. Definitions.

As used in this article, the following terms shall have the meanings indicated:

INCOME – the adjusted gross income for federal income tax purposes as reported on the applicant's federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions, plus any social security benefits not included in such federal adjusted gross income; provided that if no such return was filed for the applicable income tax year, the applicant's income shall be determined based on the amounts that would have so been reported if such a return

had been filed and any losses that were applied to reduce the applicant's federal adjusted gross income shall be subject to the following limitations:

- a. the net amount of loss reported on federal Schedule C, D, E, or F shall not exceed three thousand dollars per schedule,
- b. the net amount of any other separate category of loss shall not exceed three thousand dollars, and
- c. the aggregate amount of all losses shall not exceed fifteen thousand dollars.

INCOME TAX YEAR – the second most recent calendar year for which the owner or owners filed a federal personal income tax return, except for owners who file on the basis of a fiscal year, the applicable tax year shall be the most recent fiscal year for which an income tax return has been filed.

PERSON WITH A DISABILITY – one who has a physical or mental impairment, not due to current use of alcohol or illegal drug use, which substantially limits such person's ability to engage in one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and who:

- a. is certified to receive social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal Social Security Act, or
- b. is certified to receive Railroad Retirement Disability benefits under the federal railroad Retirement Act, or
- c. has received a certificate from the state commission for the blind stating that such person is legally blind, or
- d. is certified to receive a United States Postal Service disability pension, or
- e. is certified to receive a United States Department of Veterans Affairs disability pension pursuant to 38 U.S.C. § 1521.

SIBLINGS – A brother or a sister, whether related through half blood, whole blood or adoption.

§ 270-103. Required proof.

An award letter from the Social Security Administration or the Railroad Retirement Board or a certification from the State Commission for the Blind and Visually Handicapped shall be submitted as proof of disability when making application for the exemption.

§ 270-104. Exemption granted.

Pursuant to the provisions of § 459-c of the New York State Real Property Tax Law, and as therein provided, the real property owned by one or more persons with disabilities, or real property owned by a person with a disability, or by one spouse, or both spouses, or by siblings, at least one of whom has a disability, or whose income, as hereinafter defined, is limited by reason of such disability, shall be exempt from taxation by the City of Newburgh to the extent of 50% of the assessed valuation thereof, as hereinafter provided.

§ 270-105. Amount of exemptions.

The percentage of exemption shall be based on the annual income ranges as specified herein, as follows:

Annual Income	Percentage of Assessed Valuation Exempt from Taxation
\$3,000 but less than \$29,000.00	50%
\$29,000.01 but less than \$29,999.99	45%
\$30,000.00 but less than \$30,999.99	40%
\$31,000.00 but less than \$31,999.99	35%
\$32,000.00 but less than \$32,899.99	30%
\$32,900.00 but less than \$33,799.99	25%
\$33,800.00 but less than \$34,699.99	20%
\$34,700.00 but less than \$35,599.99	15%
\$35,600.00 but less than \$36,499.99	10%
\$36,500.00 but less than \$37,399.99	5%

§ 270-106. Computation.

Any exemption provided by this article shall be computed after all other partial exemptions allowed by law have been subtracted from the total amount assessed; provided, however, that no parcel may receive an exemption for the same municipal tax purpose pursuant to both this article and § 467 of the New York State Real Property Tax Law.

§ 270-107. Exemption not granted under certain circumstances.

- A. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.
- B. No exemption shall be granted:
 1. If the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the sums authorized by the provisions of § 459-c of the New York State Real

Property Tax Law. Where title is vested in either spouse, their combined income may not exceed such sum, except that, where one spouse, or ex-spouse, is absent from the property due to divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum.

2. Unless the property is used exclusively for residential purposes; provided, however, that in the event any portion of such property is not so used exclusively for residential purposes, but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this article.
3. Unless the real property is the legal residence of and is occupied in whole or in part by the disabled person; except where the disabled person is absent from the residence while receiving health - related care as an inpatient of a residential health-care facility, as defined in § 2801 of the New York State Public Health Law, provided that any income accruing to that person shall be considered income for purposes of this section only to the extent that it exceeds the amount paid by such person or spouse or sibling of such person for care in the facility.

§ 270-108. Application process.

- A. Application for such exemption must be made annually by the owner or all of the owners of the property, on forms prescribed by the State Board, and shall be filed in the Assessor's office on or before March 1, the appropriate taxable status date; provided, however, that proof of a permanent disability need be submitted only in the year exemption pursuant to this article is first sought or the disability is first determined to be permanent.
- B. At least 60 days prior to March 1, the taxable status date, the Assessor shall mail, to each person who is granted exemption pursuant to this section on the latest complete assessment roll, an application form and a notice that such application must be filed on or before the taxable status date and be approved in order for the exemption to continue to be granted. Failure to mail such application form or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

§ 270-109. Property held in trust.

Notwithstanding any other provision of law to the contrary, the provisions of this article shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption pursuant to this article.

§ 270-110. Effective date.

This article shall take effect on November 1, 2023 after the filing of same with the Secretary of State and shall apply to assessment rolls completed on or after such effective date.

SECTION 3 - SEVERABILITY

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

SECTION 4 - CODIFICATION

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

SECTION 5 - VALIDITY

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

SECTION 6 - EFFECTIVE DATE

This Local Law and shall be effective on November 1, 2023 after the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-a. Of the Consolidated Laws
Article 4. Exemptions
Title 2. Private Property

McKinney's RPTL § 459-c

§ 459-c. Persons with disabilities and limited incomes

Effective: May 3, 2023
Currentness

1. (a) Real property owned by one or more persons with disabilities, or real property owned by a married person or a married couple, or by siblings, at least one of whom has a disability, or real property owned by one or more persons, some of whom qualify under this section and the others of whom qualify under section four hundred sixty-seven of this title, and whose income, as hereafter defined, is limited by reason of such disability, shall be exempt from payments in lieu of taxes (PILOT) to the battery city park authority or from taxation by any municipal corporation in which located to the extent of fifty per centum of the assessed valuation thereof as hereinafter provided. After a public hearing, the governing board of a county, city, town or village may adopt a local law and a school district, other than a school district subject to article fifty-two of the education law, may adopt a resolution to grant the exemption authorized pursuant to this section.

(b) Any local law or resolution adopted pursuant to paragraph (a) of this subdivision may be amended, or a local law or resolution may be adopted, to provide an exemption so as to increase the maximum income eligibility level of such municipal corporation as provided in subdivision five of this section (represented in the hereinbelow schedule as M), to the extent provided in the following schedule:

ANNUAL INCOME

**PERCENTAGE ASSESSED VALUATION
EXEMPT FROM TAXATION OR PILOT**

More than (M) but

less than (M+ \$1,000)

45 per centum

(M+ \$1,000 or more) but

less than (M+ \$2,000)

40 per centum

(M+ \$2,000 or more) but

less than (M+ \$3,000)

35 per centum

(M+ \$3,000 or more) but

less than (M+ \$3,900)

30 per centum

(M+ \$3,900 or more) but less than (M+ \$4,800)	25 per centum
(M+ \$4,800 or more) but less than (M+ \$5,700)	20 per centum
(M+ \$5,700 or more) but less than (M+ \$6,600)	15 per centum
(M+ \$6,600 or more) but less than (M+ \$7,500)	10 per centum
(M+ \$7,500 or more) but less than (M+ \$8,400)	5 per centum

2. For purposes of this section: (a) the term “sibling” shall include persons whose relationship as siblings has been established through either half blood, whole blood or adoption.

(b) a person with a disability is one who has a physical or mental impairment, not due to current use of alcohol or illegal drug use, which substantially limits such person's ability to engage in one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and who (i) is certified to receive social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal Social Security Act, or (ii) is certified to receive Railroad Retirement Disability benefits under the federal railroad Retirement Act, or (iii) has received a certificate from the state commission for the blind stating that such person is legally blind, or (iv) is certified to receive a United States Postal Service disability pension, or (v) is certified to receive a United States department of veterans affairs disability pension pursuant to 38 U.S.C. § 1521.

An award letter from the Social Security Administration or the Railroad Retirement Board, or a certificate from the state commission for the blind, or an award letter from the United States Postal Service, or an award letter from the United States department of veterans affairs shall be submitted as proof of disability.

3. Any exemption provided by this section shall be computed after all other partial exemptions allowed by law, excluding the school tax relief (STAR) exemption authorized by section four hundred twenty-five of this title, have been subtracted from the total amount assessed; provided, however, that no parcel may receive an exemption for the same PILOT or municipal tax purpose pursuant to both this section and section four hundred sixty-seven of this title.

4. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education; unless the governing board of the school district in which the property is located, after public hearing, adopts a resolution providing for such exemption; provided that any such resolution shall condition such exemption upon satisfactory proof that the child was not brought into the residence in whole or in substantial part for the purpose of attending a particular school within the district. The procedure for such hearing and resolution must be conducted separately from the procedure for any hearing and local law, ordinance or resolution conducted pursuant to paragraph (a) of subdivision one of this section.

5. No exemption shall be granted:

(a)(i) if the income of the owner or the combined income of the owners of the property for the applicable income tax year exceeds the sum of three thousand dollars, or such other sum not less than three thousand dollars nor more than fifty thousand dollars, as may be provided by the local law or resolution adopted pursuant to this section.

(ii) Where the taxable status date is on or before April fourteenth, the applicable income tax year shall be the second most recent calendar year. Where the taxable status date is on or after April fifteenth, the applicable income tax year shall be the most recent calendar year. Provided, however, that for taxpayers whose income tax returns are filed on the basis of a fiscal year rather than a calendar year, the applicable income tax year shall be the most recent fiscal year for which an income tax return has been filed.

(iii) Where title is vested in a married person, the combined income of such person and such person's spouse may not exceed such sum, except where one spouse or ex-spouse is absent from the property due to divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum.

(iv) The term "income" as used herein shall mean the "adjusted gross income" for federal income tax purposes as reported on the applicant's federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions, plus any social security benefits not included in such federal adjusted gross income; provided that if no such return was filed for the applicable income tax year, the applicant's income shall be determined based on the amounts that would have so been reported if such a return had been filed; and provided further, that when determining income for purposes of this section, the following conditions shall be applicable:

(1) the governing body of a municipal corporation, after a public hearing, may adopt a local law, ordinance or resolution providing that any social security benefits that were not included in the applicant's federal adjusted gross income shall not be considered income;

(2) distributions received from an individual retirement account or individual retirement annuity that were included in the applicant's federal adjusted gross income shall not be considered income unless the governing body of a municipal corporation, after a public hearing, adopts a local law, ordinance or resolution providing otherwise;

(3) the applicant's income shall be offset by all medical and prescription drug expenses actually paid that were not reimbursed or paid for by insurance, if the governing body of a municipal corporation, after a public hearing, adopts a local law, ordinance or resolution providing therefor;

(4) any tax-exempt interest or dividends that were excluded from the applicant's federal adjusted gross income shall be considered income; and

(5) any losses that were applied to reduce the applicant's federal adjusted gross income shall be subject to the following limitations:

(A) the net amount of loss reported on federal Schedule C, D, E, or F shall not exceed three thousand dollars per schedule,

(B) the net amount of any other separate category of loss shall not exceed three thousand dollars, and

(C) the aggregate amount of all losses shall not exceed fifteen thousand dollars;

(b) unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation or PILOT and the remaining portion only shall be entitled to the exemption provided by this section;

(c) unless the real property is the legal residence of and is occupied in whole or in part by the disabled person; except where the disabled person is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section twenty-eight hundred one of the public health law, provided that any income accruing to that person shall be considered income for purposes of this section only to the extent that it exceeds the amount paid by such person or spouse or sibling of such person for care in the facility.

6. (a) If so provided in the local law or resolution adopted pursuant to this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides, and which is represented by the tenant-stockholder's share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder.

(b) That proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant-stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation or PILOT pursuant to this section and any exemption so granted shall be credited by the appropriate taxing authority against the assessed valuation of such real property; the reduction in real property taxes or PILOT realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes or PILOT otherwise payable by or chargeable to such tenant-stockholder.

7. Application for such exemption must be made annually by the owner, or all of the owners of the property, on forms prescribed by the commissioner, and shall be filed in such assessor's office on or before the appropriate taxable status date; provided, however, proof of a permanent disability need be submitted only in the year exemption pursuant to this section is first sought or the disability is first determined to be permanent.

7-a. Notwithstanding the provisions of this section or any other provision of law, in a city having a population of one million or more, applications for the exemption authorized pursuant to this section shall be considered timely filed if they are filed on or before the fifteenth day of March of the appropriate year and in such city all references in this section to taxable status date shall be deemed to refer to the fifteenth day of March of the appropriate year.

8. At least sixty days prior to the appropriate taxable status date, the assessor shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application

must be filed on or before the taxable status date and be approved in order for the exemption to continue to be granted. Failure to mail such application form or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes or PILOT on property owned by such person.

9. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax or PILOT exemption, pursuant to subdivision one of this section, were such person or persons the owner or owners of such real property.

Credits

(Added L.1997, c. 315, § 1, eff. Jan. 2, 1998. Amended L.1998, c. 488, § 3, eff. July 29, 1998; L.1999, c. 238, § 1, eff. July 13, 1999; L.2000, c. 222, § 1, eff. Aug. 16, 2000; L.2000, c. 421, § 1, eff. Sept. 20, 2000; L.2002, c. 83, pt. E, § 10, eff. May 29, 2002; L.2002, c. 201, § 1, eff. July 30, 2002; L.2003, c. 462, § 1, eff. Sept. 9, 2003; L.2004, c. 753, § 1, eff. Jan. 28, 2005; L.2005, c. 72, § 1, eff. Jan. 28, 2005; L.2006, c. 174, § 2, eff. Jan. 1, 2007; L.2006, c. 187, § 1, eff. July 26, 2006; L.2006, c. 252, § 1, eff. July 26, 2006; L.2006, c. 531, § 10, eff. Aug. 16, 2006; L.2007, c. 348, § 2, eff. July 18, 2007; L.2009, c. 353, § 1, eff. Nov. 24, 2009; L.2010, c. 56, pt. W, § 1, subd. (b), eff. June 22, 2010; L.2013, c. 265, § 17, eff. July 31, 2013; L.2017, c. 131, § 2, eff. July 25, 2017; L.2022, c. 488, § 2, eff. Aug. 8, 2022; L.2022, c. 686, pt. B, § 2, eff. Dec. 15, 2022; L.2023, c. 59, pt. K, §§ 7 to 9, eff. May 3, 2023.)

Notes of Decisions (7)

McKinney's R. P. T. L. § 459-c, NY RP TAX § 459-c

Current through L.2023, chapters 1 to 208. Some statute sections may be more current, see credits for details.

RESOLUTION NO.: 169 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION
REGARDING THE FORECLOSURE OF TAX LIENS IN REM
FOR THE YEARS 2019 AND 2020 RELATED TO PROPERTY KNOWN AS
547 SOUTH STREET (SECTION 14, BLOCK 3, LOT 9.2)**

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such actions being designated as Orange County Index Numbers EF009722-2019 and EF007445-2020; and

WHEREAS, Hidalberto DeJesus, by and through his attorney, filed an Answer to both tax foreclosure proceedings on July 26, 2023 with respect to the property known as 547 South Street (Section 14, Block 3, Lot 9.2); and

WHEREAS, the property owner indicated that he is prepared to withdraw his Answers and settle the actions as they applies to the subject property; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer is hereby authorized to withdraw the liens on the property located at 547 South Street (Section 14, Block 3, Lot 9.2), City of Newburgh, from the List of Delinquent Taxes and remove the property from the 2019 *In Rem* tax foreclosure action (Index Number EF009722-2019) and the 2020 *In Rem* tax foreclosure action (Index Number EF007445-2020) as the sum of Ten Thousand Six Hundred and 43/100 dollars (\$10,600.43), representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, water charges, sewer charges, and sanitation charges, have been tendered to the City of Newburgh in full by certified check and is ready for acceptance.

RESOLUTION NO.: 170 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION
REGARDING THE FORECLOSURE OF TAX LIENS IN REM
FOR THE YEARS 2019 AND 2020 RELATED TO PROPERTY KNOWN AS
76 HENRY AVENUE (SECTION 48, BLOCK 12, LOT 18.1)**

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such actions being designated as Orange County Index Numbers EF009722-2019 and EF007445-2020; and

WHEREAS, Thien Nguyen, by and through his attorney, filed an Answer to both tax foreclosure proceedings on July 7, 2023 with respect to the property known as 76 Henry Avenue (Section 48, Block 12, Lot 18.1); and

WHEREAS, the property owner indicated that he is prepared to withdraw his Answers and settle the actions as they applies to the subject property; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer is hereby authorized to withdraw the liens on the property located at 76 Henry Avenue (Section 48, Block 12, Lot 18.1), City of Newburgh, from the List of Delinquent Taxes and remove the property from the 2019 *In Rem* tax foreclosure action (Index Number EF009722-2019) and the 2020 *In Rem* tax foreclosure action (Index Number EF007445-2020) as the sum of Twenty-Two Thousand Seven Hundred Twenty-Three and 06/100 dollars (\$22,723.06), representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, water charges, sewer charges, and sanitation charges, have been tendered to the City of Newburgh in full by certified check and is ready for acceptance.

RESOLUTION NO.: 171-2023

OF

AUGUST 14, 2023

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDINGS AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NOS. EF007882-2018, EF005988-2019, EF004009-2020, EF005252-2021 and EF004218-2022 INVOLVING SECTION 3, BLOCK 7, LOT 21.1 (CHADWICK GARDENS ASSOCIATION, LLC)

WHEREAS, Chadwick Gardens Association, LLC has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2018, 2019, 2020, 2021 and 2022 tax years bearing Orange County Index Nos. EF007882-2018, EF005988-2019, EF004009-2020, EF005252-2021 and EF004218-2022; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski, and Kelly M. Naughton, Esq. of Naughton & Torre, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, Chadwick Gardens Association, LLC is willing to settle these proceedings without interest, costs or disbursements, and the imminent 2023 proceeding, in the following manner:

1. That the real property of Petitioner described on the City of Newburgh tax roll for the 2018 tax year as tax map number 3-7-21.1 be reduced to a market value of \$7,700,000.00.
2. That the real property of Petitioner described on the City of Newburgh tax roll for the 2019 tax year as tax map number 3-7-21.1 be reduced to a market value of \$7,700,000.00.
3. That the real property of Petitioner described on the City of Newburgh tax roll for the 2020 tax year as tax map number 3-7-21.1 be reduced to a market value of \$7,700,000.00.
4. That the real property of Petitioner described on the City of Newburgh tax roll for the 2021 tax year as tax map number 3-7-21.1 be reduced to a market value of \$8,300,000.00.
5. That the real property of Petitioner described on the City of Newburgh tax roll for the 2022 tax year as tax map number 3-7-21.1 be reduced to a market value of \$8,300,000.00.
6. That the real property of Petitioner described on the City of Newburgh tax roll for the 2023 tax year as tax map number 3-7-21.1 be reduced to a market value of \$8,500,000.00.

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

BE IT FURTHER RESOLVED, that Todd Venning, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; Kelly M. Naughton, Esq. on behalf of Naughton & Torre, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

ORDER AND JUDGMENT

Chadwick Gardens Association, LLC,

Petitioner,

Index No. EF007882-18

- against -

EF005988-19

EF004009-20

Newburgh, City of

EF005352-21

EF004218-22

Respondent,

-23

Newburgh Enlarged City School District,

Intervenor-Respondent,

For Review of the Assessment of Certain Real
Property in the City of Newburgh, New York
-----X

The petitioner, having duly filed and served the Notice and Petition to review property tax assessments fixed by the City of Newburgh for the Assessment Years 2018, 2019, 2020, 2021, 2022 and 2023, for purposes of taxation upon certain real property located at 379 Powell Avenue, City of Newburgh, and known as Section 3, Block 7 Lot 21.1, on the Official Assessment Map of the City of Newburgh, and

The issues of these proceedings having been duly assigned and scheduled for trial before the Tax Certiorari Part of the Supreme Court, Orange County, and the petitioner having appeared by Watkins & Watkins, by Liane V. Watkins, Esq., and the respondents having appeared by their Attorney, Kelly M. Naughton, Esq., of Naughton & Torre, LLP, and the intervenor-respondents having appeared by their Attorney, Ira S. Levy, Esq., of Shaw, Perelson, May & Lambert, LLP and the parties having agreed as set forth in this Order, it is

ORDERED, ADJUDGED and DECREED that the assessment of the petitioner's property upon the assessment roll of the City of Newburgh, be and hereby is reduced, corrected and fixed as follows:

Assessment Year	<u>Assessed Valuation</u>		Assessment Reduction
	Reduced from	Reduced to	
2018	\$8,000,000	\$7,700,000	\$300,000
2019	\$8,000,000	\$7,700,000	\$300,000
2020	\$8,000,000	\$7,700,000	\$300,000
2021	\$8,800,000	\$8,300,000	\$500,000
2022	\$8,800,000	\$8,300,000	\$500,000
2023	\$9,130,000	\$8,500,000	\$630,000

and it is further,

ORDERED, ADJUDGED and DECREED that the allocations between land and improvements of said assessment, as reduced, shall be left to the sole discretion of the Assessor of the said municipality, and it is further

ORDERED, ADJUDGED and DECREED that the officer or officers having custody of the assessment roll upon which the above-mentioned assessment and any taxes levied thereon is entered shall correct said entry in conformity with this Order and Judgment and shall note upon the margin of said roll, opposite said entry, that the same has been corrected by the authorization of this Order and Judgment, and it is further

ORDERED, ADJUDGED and DECREED that there shall be audited, allowed and paid to the petitioner by the City of Newburgh and/or the County of Orange, the amounts paid by petitioner if any, of State, County, Town, Judiciary, Sewer District, Highway, Fire, Library, Light and all other ad valorem taxes, as appropriate, against the original assessment in excess of what the taxes would have been if said assessment made in the aforesaid year had been made as determined by this Order and Judgment, together with the proportionate share of any interest or penalty paid by reason of delinquent payment of said excess taxes, and interest as provided by Section 726 of the Real Property Tax Law, and it is further

ORDERED, ADJUDGED and DECREED that there shall be audited, allowed and paid to the petitioner by the Newburgh Central School District, the amount paid by the petitioner as School and/or Library taxes against the original assessment in excess of what the taxes would have been if the assessment made in the aforesaid year had been made as herein determined by this Order and Judgment, together with interest as provided by Section 726 of the Real Property Tax Law, and it is further

ORDERED, ADJUDGED and DECREED that all payments hereinabove directed to be made by respondents, the County of Orange, and/or any of the various taxing authorities, be made by check or draft, payable to the Order of Watkins & Watkins, as attorney for the petitioner, who are to hold the proceeds as trust funds for appropriate distribution, and who are to remain subject to the further jurisdiction of this Court in regard to their attorney's lien, pursuant to Judiciary Law Section 475 and it is further

ORDERED, ADJUDGED and DECREED that interest required to be paid hereby shall be waived in the event that payment is made within sixty (60) days from the date of service of this Order and Judgment with notice of entry upon the respective taxing districts and proof of payment of County taxes, and it is further

ORDERED, ADJUDGED and DECREED that this Order and Judgment hereby constitutes and represents full settlement of the tax review proceedings herein, and that there are

no costs or allowances awarded to, by or against any party and that upon compliance with the terms of this Order and Judgment the above entitled proceedings be and the same are settled and discontinued with prejudice.

Dated:

White Plains, New York

HON. TIMOTHY P. MCEL DUFF, J.S.C.

SIGNING AND ENTRY OF THE WITHIN
ORDER IS HEREBY CONSENTED TO:

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