City of Newburgh Council Work Session
Sesion de trabajo del Concejal de la Ciudad de Newburgh
May 9, 2024
6:00 PM

Executive Session/ Sesión Ejecutiva

1. Proposed, pending or current litigation
   Litigio propuesto, pendiente o actual

2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation
   El historial médico, financiero, crediticio o laboral de una persona o empresa en particular, o asuntos que conduzcan al nombramiento, empleo, ascenso, descenso de categoría, disciplina, suspensión, despido o destitución de una persona o empresa en particular

Council Meeting Presentations/ Presentaciones de la Reunion General

3. Chief of Police Swearing-in Ceremony
   Ceremonia de juramentación del Jefe de Policía

4. Public Hearing - City of Newburgh's Round 8 NY Restore Communities Initiative Grant Application for the Demolition of Five Properties
   There will be a public hearing on Monday, May 13, 2024 to receive comments from the public concerning the City of Newburgh's Round 8 NY Restore Communities Initiative grant application for the demolition of 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street and 47 Lutheran Street

   Habrá una audiencia pública el lunes 13 de mayo de 2024 para recibir comentarios del público sobre la solicitud de subvención de la Ronda 8 de la Iniciativa para la Restauración de Comunidades de Nueva York de la Ciudad de Newburgh para la demolición de 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street y 47 Lutheran Street

Engineering/Ingeniería

5. Contract with Ramboll Silver Stream Reservoir Dam Spillway Rehabilitation Project
   Resolution authorizing the City Manager to accept a proposal and execute a

professional engineering services agreement with Ramboll Americas Engineering Solutions, Inc. for bid preparation and construction administration services for the Silver Stream Dam Spillway Improvements Project at a cost of $557,600.00

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo de servicios profesionales de ingeniería con Ramboll Americas Engineering Solutions, Inc. para la preparación de propuestas y servicios de administración de construcción para el Proyecto de Mejoramiento de Desagüe de la Represa del Silver Stream por un costo de $557,600.00

6. South Interceptor Sewer Improvements LTCP Phase-V SEQRA Resolution

Resolution of the City Council of the City of Newburgh declaring itself as Lead Agency under State Environmental Quality Review Act (SEQRA) for the Long Term Control Plan Phase V South Interceptor Sewer Improvements Project, accepting as complete the Full Environmental Assessment Form (“FEAF”) and issuing a negative declaration

Resolución del Concejo Municipal de la Ciudad de Newburgh declarándose agencia principal bajo la Ley Estatal de Revisión de Calidad Ambiental (SEQRA) para el Proyecto de Mejoras del Alcantarillado Interceptor Sur Fase V del Plan de Control a Largo Plazo, aceptando como completo el Formulario de Evaluación Ambiental Completo ("FEAF") y emitiendo una declaración negativa

Finance/Finanza

7. Donations - City Annual Events 2024

Resolution authorizing the City Manager to accept donations in support of the City of Newburgh's annual events for 2024

Resolución que autoriza al Gerente de la Ciudad a aceptar donaciones en apoyo de los eventos anuales de la Ciudad de Newburgh para 2024

8. Contracts - City Annual Events 2024

Resolution authorizing the City Manager to enter into agreements with various parties to provide performing arts and related services in connection with the City of Newburgh’s annual events for 2024

Resolución autorizando al Gerente Interino de la ciudad a entrar en varios acuerdos con diferentes entidades para proporcionar servicios de artes escénicas y demás relacionadas en conexión a los eventos anuales de la Ciudad de Newburgh para el 2024

9. DPW & Police Department Vehicles Surplus

Resolution declaring Department of Public Works and Police Department vehicles and equipment as surplus

Resolución por la que se declara excedentes el equipamiento del Departamento de Obras Públicas y del Departamento de Aguas

Planning and Economic Development/Planificación y Desarrollo Económico

10. 127 Montgomery Street - Release of Restrictive Covenants

    Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to Tyler C. Roebuck to the premises known as 127 Montgomery Street (Section 19, Block 1, Lot 8)

    Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y derecho de reingreso de una escritura emitida a Tyler C. Roebuck a las instalaciones conocidas como 127 Montgomery Street (Sección 19, Bloque 1, Lote 8)

11. 140 & 146 Montgomery Street/137 Smith Street - Amendment to Site Development Agreement

    Resolution authorizing the City Manager to execute an Amendment to a Site Development Agreement with the Kearney Realty & Development Group Inc. related to the property located at 137 Smith Street (Section 12, Block 4, Lot 4.1), 140 Montgomery Street (Section 12, Block 4, Lot 10), and 146 Montgomery Street (Section 12, Block 4, Lot 2.1)

    Resolución que autoriza al Gerente de la Ciudad a ejecutar una enmienda a un acuerdo de desarrollo de área con Kearney Realty & Development Group Inc. relacionado con la propiedad ubicada en 137 Smith Street (Sección 12, Bloque 4, Lote 4.1), 140 Montgomery Street (Sección 12, Bloque 4, Lote 10) y 146 Montgomery Street (Sección 12, Bloque 4, Lote 2.1)

12. Agreement with Placer AI for One Year of Location Based Demographic Data Software

    Resolution authorizing the City Manager to enter into a license and service agreement with Placer Labs, Inc. in the amount of $22,000.00 for Placer.AI location based data analytics software

    Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de licencia y servicio con Placer Labs, Inc. por el monto de $22,000.00 para el software de análisis de datos basado en la localización Placer.AI

13. New Courthouse Signs

    Review and discussion of new signs proposed for the Broadway Courthouse

    Revisión y discusión de nuevos letreros propuestos para la Corte de Broadway

Grants/Contracts/Agreements / Becas /Contratos/Convenios

14. A Resolution to Apply and Accept if Awarded Round 8 NY Restore Communities Initiative Grants for Demolition of Five City-Owned Properties

    Resolution to apply for and accept if awarded a Round 8 NY Restore Communities initiative grant application for the demolition of 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street and 47 Lutheran Street

    Resolución para solicitar y aceptar si es otorgado una solicitud de subvención de la Ronda 8 de la iniciativa para la Restauración de Comunidades de Nueva York para la demolición de 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street y 47 Lutheran Street

Fire Department / Departemento de Bomberos

15. 2024 Personnel Book Amendment - Bureau of Code Compliance

    Resolution amending the 2024 Personnel Analysis Book to add one Bilingual Senior Account Clerk position and delete one Bilingual Account Clerk position in the Code Compliance Bureau

    Resolución que enmienda el Libro de Análisis de Personal 2024 para añadir un puesto de Empleado Contable Superior Bilingüe y eliminar un puesto de Empleado Contable Bilingüe en el Buró de Cumplimiento del Código

Resolutions of Support/ Resoluciones de Apoyo

16. Holden Dam Removal - Riverkeeper & City partnership

    Resolution endorsing the protection of the West Trunk Sewer Line and removal of the Holden Dam by Riverkeeper and the City of Newburgh with support from the National Fish and Wildlife Foundation 2023 National Coastal Resilience Fund

    Resolución que respalda la protección de la línea de alcantarillado troncal oeste y la eliminación de la presa Holden por Riverkeeper y la Ciudad de Newburgh con el apoyo de la Fundación Nacional de Pesca y Vida Silvestre 2023 Fondo Nacional de Resiliencia Costera

RESOLUTION NO.: 90 - 2024

OF

APRIL 24, 2024

A RESOLUTION SCHEDULING A PUBLIC HEARING FOR MAY 13, 2024 TO RECEIVE PUBLIC COMMENT ON THE CITY OF NEWBURGH'S ROUND 8 NY RESTORE COMMUNITIES INITIATIVE GRANT APPLICATION FOR THE DEMOLITION OF 96 CARTER STREET, 15 SOUTH JOHNSTON STREET, 40 WILLIAM STREET, 39 LUTHERAN STREET AND 47 LUTHERAN STREET

WHEREAS, the 2023-24 State Budget provided new funding for the Restore New York's Communities Initiative to be implemented by the Empire State Development Corporation ("ESDC") purpose of revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods; and

WHEREAS, the City Council of the City of Newburgh has scheduled a public hearing for May 13, 2024 in the Council Chambers of City Hall for the purpose of receiving comments from the public related to the submission of an application to Empire State Development for financial assistance under Round 8 NY Restore Communities Initiative for a project to facilitate revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods as follows:

1. 96 Carter Street: 840 square feet, vacant residential property proposed for demolition
2. 15 South Johnston Street: 5,228 square feet, vacant commercial property, proposed for demolition
3. 40 William Street: 750 square feet, vacant residential property, proposed for demolition
4. 39 Lutheran Street: 2,739 square feet, vacant residential property, proposed for demolition
5. 47 Lutheran Street: 2,560 square feet, vacant residential property proposed for demolition

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that there is scheduled a public hearing to receive public comment on the City of Newburgh's proposed Round 8 NY Restore Communities Initiative application, including the Property Assessment List, for a normal project to facilitate revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods by proposing for demolition 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street, and 47 Lutheran Street; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 13th day of May, 2024 in the City Council Chambers, 83 Broadway, City Hall, 3rd Floor, Newburgh, New York.

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 4/24/24 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 25th day of April 2024

Katrina Cotten
Deputy City Clerk

Property Assessment List

The City of Newburgh intends to seek grant funding under the Restore NY Communities Initiative to facilitate revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods. Pursuant to the requirement of the grant application, a description of the location, size, and nature of each property, whether the property is proposed to be demolished, deconstructed, rehabilitated, or reconstructed, and the status of the property is as follows:

96 Carter Street: 840 square feet, vacant residential property, proposed for demolition.
15 South Johnston Street: 5228 square feet, vacant commercial property, proposed for demolition.
40 William Street: 750 square feet, vacant residential property, proposed for demolition.
39 Lutheran Street: 2739 square feet, vacant residential property, proposed for demolition.
47 Lutheran Street: 2560 square feet, vacant residential property, proposed for demolition.

RESOLUTION NO.: ____________ - 2024

OF

MAY 13, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND EXECUTE A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH RAMBOLL AMERICAS ENGINEERING SOLUTIONS, INC. FOR BID PREPARATION AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE SILVER STREAM DAM SPILLWAY IMPROVEMENTS PROJECT AT A COST OF $557,600.00

WHEREAS, O'Brien & Gere Engineers, Inc. previously designed improvements to Silver Stream Dam and provided construction phase services for the improvements; and

WHEREAS, by Resolution No. 321-2018 of November 13, 2018 and Resolution No. 85-2020 of April 13, 2020, the City Council authorized a professional engineering services agreement with O'Brien & Gere Engineers, Inc., now known as Ramboll Americas Engineering Solutions, Inc., for additional evaluation, rehabilitation investigation, and design of the Silver Stream Dam Spillway Improvements Project (the "Project"); and

WHEREAS, Ramboll Americas Engineering Solutions, Inc. has submitted a proposal for the services in the next phase of the Project, which includes permitting, final design, bid document preparation and assistance, and construction inspection and administration services, at a cost of $557,600.00 and funding shall be derived from the 2016 BAN; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that approving a contract for such work is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute a professional engineering services agreement with Ramboll Americas Engineering Solutions, Inc. for bid preparation and construction administration services for the Silver Stream Dam Spillway Improvements Project at a cost of $557,600.00.

PROFESSIONAL SERVICES AGREEMENT

Between
CITY OF NEWBURGH
and
RAMBOLL AMERICAS ENGINEERING SOLUTIONS, INC.
in Connection with
Silver Stream Reservoir Dam

THIS AGREEMENT is made by and between the CITY OF NEWBURGH of 83 Broadway, Newburgh, New York 12550 ("Client") and RAMBOLL AMERICAS ENGINEERING SOLUTIONS, INC. of 751 Arbor Way, Bluebell, PA 19422 ("Engineer").

In consideration of the mutual covenants and agreements contained herein, Client and Engineer agree for themselves, their successors and assigns as follows:

1. Engineer agrees to perform the Services described in "Exhibit S", Scope of Services, in accordance with the Standard Service Terms and Conditions of this Agreement and the Documents incorporated herein.

2. Client agrees to pay Engineer for performance of the Scope of Services, as provided in "Exhibit G", Basis of Fee, and in accordance with the General Terms and Conditions of this Agreement and the Documents incorporated herein.

3. A certified copy of the action(s) duly authorizing Client to enter into this Agreement and appropriating the funds for payment to Engineer for the Services contemplated by this Agreement is deemed attached and incorporated herein.

4. The following documents are attached and incorporated into this Agreement with the intent that each be binding on the parties in accordance with its terms:

- Exhibit M – Standard service Terms and Conditions
- Exhibit S – Scope of Services
- Exhibit G – Basis of Fee

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by a duly authorized officer or representative.

Signed this Day:______________________

CITY OF NEWBURGH

By:________________________________
(Signature)
Name:
Title:

Signed this Day:_________________________

RAMBOLL AMERICAS ENGINEERING SOLUTIONS, INC.

By:________________________________
(Signature)
Name: Robert Bowers
Title:

EXHIBIT M

RAMBOLL AMERICAS ENGINEERING SOLUTIONS, INC.
STANDARD SERVICE TERMS AND CONDITIONS

1. **Definitions**. As and when used in this Agreement, each of the following terms shall have the meaning set forth below:
   a) **Agreement** shall mean this Proposal, including the following: Letters of Authorization or the job specific terms on the face of any Purchase or Change Order and the other Exhibits incorporated in this Proposal.
   b) **Law** shall mean federal, state, local and other jurisdictional statutes, laws, ordinances, rules, regulations, and codes applicable to Services.
   c) **Losses** shall mean monetary damages suffered or costs and expenses incurred, including interest and reasonable attorney's fees, as a result of any demand made, cause of action asserted, judgment or decree entered, or any fine or penalty imposed, or any settlement payment consented to by both parties in connection with this Agreement.
   d) **RAMBOLL** shall mean the Ramboll company issuing the Proposal, Ramboll Americas Engineering Solutions, Inc., unless otherwise stated in the Proposal.
   e) **Project** shall mean the overall work to be performed, including Services to be performed by RAMBOLL or others on behalf of Client at or in connection with project site(s).
   f) **Reimbursable Expenses** shall mean the expenses reasonably incurred by RAMBOLL, its agents and subcontractors in performing Services, including, but not limited to, materials, supplies, use of specialized equipment, travel and subsistence costs, including mileage, cellular and non-local telephone and other communication charges, express delivery, postage and freight charges, word processing, computer processing and reproduction and printing charges required in providing Services, and technical services by others, plus permit fees, taxes, charges and assessments on Services (unless specifically included in the Scope of Services).
   g) **Services** shall mean the professional, technical and other consulting services, work or tasks to be performed by RAMBOLL and its subcontractors as described in the Proposal.
2. **Changes in Scope**. Client shall have the right within the general purpose and intent of the Project to change, add or delete items from Services in writing and subject only to the agreement of RAMBOLL with respect to the effect on cost and schedule.
3. **Payment**. Payment of RAMBOLL's monthly invoice shall be due upon receipt. Balances more than thirty (30) days past due shall accrue interest at the rate of 1% per month or part thereof until paid.
4. **Term**. Unless otherwise provided in this Agreement, the Term hereof shall be from the date this Agreement is signed by both Client and RAMBOLL until the obligations imposed hereunder are fully satisfied or this Agreement is otherwise terminated. All Services shall be deemed to have been performed during the Term hereof.
5. **Status**. Except as otherwise provided in this Agreement, RAMBOLL shall perform the Services as an independent contractor and shall have sole control over the employment, assignment, discharge and compensation of its employees. RAMBOLL shall be solely responsible for complying with all applicable, federal, state and local employment, wage, tax, and insurance laws and licensing requirements.
6. **Standard of Care**. RAMBOLL agrees to correct or re-perform, without additional cost to Client, any Service not performed in accordance with the professional standard of care prevailing at the time and in the place where such Service is performed. Client acknowledges that scientific, medical, and health and safety knowledge and expertise is always evolving, and that RAMBOLL's work, conclusions and opinions cannot fully anticipate or take into account changes in knowledge or expertise that develop after the Services are performed. The services and all deliverables are rendered based on the specific circumstances and conditions described in RAMBOLL's Proposal and are intended for use by the Client only in connection with the purpose set forth in the Proposal. RAMBOLL disclaims all warranties relating to any other use and Client shall indemnify, defend and hold harmless RAMBOLL against any and all losses relating to such other use.
7. **Third Parties.** The Services including, without limitation, related communications and deliverables/work product, and the contents of such communications and deliverables/work product, are solely for Client's benefit and may not be relied upon by or disclosed to any third party without RAMBOLL's express written consent. In addition, Client shall not attribute any statement to RAMBOLL without RAMBOLL's express written consent. RAMBOLL shall be entitled to injunctive relief preventing/prohibiting any disclosure or attribution prohibited hereunder, and Client shall release, indemnify, defend and hold harmless the RAMBOLL from any and all losses arising from or related to such unauthorized disclosure or attribution.
8. **Insurance**. Throughout the term of this Agreement, RAMBOLL shall maintain insurance in amounts not less than shown:

a) Worker's Compensation	Statutory amount where Services are performed
b) Automobile	$1,000,000
c) General Liability	$1,000,000
d) Professional Liability	$1,000,000
e) Excess Umbrella	$3,000,000 on "b" & "c"

Client agrees to require all third parties engaged by or through Client in connection with the Project to provide RAMBOLL with current Certificates of Insurance endorsed to include RAMBOLL as an additional insured on their "b," "c" and "e" policies of insurance and authorizes RAMBOLL to enforce this provision directly with all Project related third-parties.

9. **Compliance with Law**. RAMBOLL shall comply with all Law applicable to Services, including federal and state Equal Opportunity Laws, orders and regulations, and further, RAMBOLL shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, physical and mental disability, or veteran status.

   RAMBOLL will not provide development, design, manufacture, assembly, testing, maintenance, repairs, instruction, advice, training, transmission of know-how, or consulting services in relation to projects involving items that are subject to applicable legal trade restrictions including restrictions on items that originated in Russia or Belarus or that have been exported from Russia or Belarus (as such restrictions are amended from time to time). Client therefore represents and warrants that the project will not require RAMBOLL to provide any of the services set out above, or any other technical services, in relation to these items. RAMBOLL may terminate this Agreement immediately on written notice if RAMBOLL has cause to suspect that the Project may involve any services relating to any of the above items. Client shall indemnify RAMBOLL against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by RAMBOLL arising out of a breach of this warranty and/or a termination by RAMBOLL. In such circumstances RAMBOLL shall be entitled to invoice the Client, and to be paid, in respect of all work carried out and all expenses incurred by RAMBOLL up to and including the date of notice of termination. Moreover, in such circumstances RAMBOLL has no liability towards the Client.

10. **Confidentiality**. Except when 1) authorized by Client in writing, 2) previously and independently known, 3) subsequently published through no fault of RAMBOLL or 4) lawfully obtained from a third party having independent knowledge, RAMBOLL shall treat as confidential all information obtained from Client. RAMBOLL shall provide Client with reasonable notice of and an opportunity to legally resist any effort by a third party to obtain disclosure of confidential information. RAMBOLL shall be permitted to comply with any judicial order. Client information marked confidential shall be returned to Client at the conclusion of Services.

11. **Patents**. Patentable ideas, products, equipment, materials or processes ("Ideas") developed, in whole or in part, with proprietary information or assistance of Client shall be the property of Client; provided, however, that RAMBOLL shall have an unlimited, royalty free, nonexclusive, nontransferable (other than to its successors), world-wide license for their use, reproduction, manufacture and sale. Ideas developed by RAMBOLL during or as part of its performance of the Services which do not depend on proprietary information or assistance provided by Client shall be the property of RAMBOLL; provided, however, that Client shall have an unlimited, royalty free, nonexclusive, nontransferable license for their use by and for Client.

12. **Client Responsibilities**. Client shall on a continuing basis throughout the term of this Agreement:

    a) maintain a designated representative, who shall be reasonably available to meet with RAMBOLL on Client's behalf;
    b) provide RAMBOLL with all relevant Project related data available to Client, and unless otherwise provided in the Scope of Services, Client shall provide RAMBOLL with accurate, current land surveys showing the location of on-site utilities and subsurface structures, test boring logs and other subsurface information necessary for performance of Services;
    c) provide all negotiation for, and acquisition of, lands, rights-of-way and easements required for performance of Services;
    d) arrange for access, entry and use of property of Client (including utilities thereon) and others, as and when reasonably required by RAMBOLL for performance of Services.

13. **Additional Cost or Delay**. RAMBOLL shall not be responsible or liable for delay or additional Project cost resulting from:

    a) the lack or insufficiency of performance by any person or entity not selected by, engaged by, and responsible to RAMBOLL,
    b) changes, delays or additional Services not necessitated by the acts or omissions of RAMBOLL,
    c) unreasonable or repeated delay in response to requests, applications or reviews by Client or third parties.
    d) damage to underground utilities or structures not accurately located on plans, maps or figures furnished to RAMBOLL.

14. **Change in Law**. Client shall bear the cost of any material change in or addition to Services resulting from a change in Law or interpretation effective after the date of this Agreement.

15. **Force Majeure**. RAMBOLL, and its affiliates, shall not be liable in any way because of any delay or failure in performance due to circumstances or causes beyond its control, which shall be deemed to include without limitation strike, lockout, embargo, epidemic, pandemic, or other outbreak of disease, quarantine restrictions, riot, war, act of terrorism, cyber-attack, flood, fire, act of God, act of the federal or state government, accident, failure or breakdown of components necessary to order completion, Client, subcontractor or supplier delay or non-performance, inability to obtain or shortages in labor, materials, protective gear, other supplies or manufacturing facilities, compliance with any Law, or circumstances or conditions which in the discretion of RAMBOLL may pose a material risk to the health or safety of the employees of RAMBOLL, its affiliates or subcontractors. In any such event, RAMBOLL shall give prompt notice to Client of the event or circumstance and RAMBOLL will be entitled to an equitable adjustment in the time for performance of the Services and to equitable compensation from Client for the time expended and expenses incurred by RAMBOLL with respect to the Project.

16. **Other Use of Results.** Client acknowledges that deliverable documents, drawings and data in whatever form (“Documents”) produced directly or indirectly through the efforts of RAMBOLL in performing Services and any analyses, recommendations, or conclusions ("Results") they contain are based upon the specific

circumstances and conditions of the Project and are intended solely for use by Client in connection with the Project.

Any change or other than agreed upon use of Documents or Results shall be at the sole risk of Client. Regardless of when delivered, Documents and Results shall become the property of Client upon RAMBOLL's receipt of payment. Client agrees to defend, indemnify and hold harmless RAMBOLL from and against any and all Losses arising from Client's direct or indirect use of Documents or Results, other than in connection with Project.

17. **Suspension of Services**.

   a) Client shall have the right to suspend all or part of the Services, provided, Client gives RAMBOLL at least seven (7) days' notice of the dates each suspension is to begin and end. In the event Client suspends Services for period(s) totaling more than ninety (90) days, Client agrees to pay reasonable costs incurred by RAMBOLL in (i) preserving and documenting Services performed or in progress, and (ii) demobilizing and remobilizing Services.

   b) In the event Client does not make timely payment of the invoiced amounts as provided herein, RAMBOLL shall in addition to its other rights, have the right, upon seven (7) days' notice, to suspend performance of all or part of the Services until (i) all past due amounts are paid, and (ii) satisfactory assurance of prompt future payment is received.

18. **Indemnification**.

   a) Subject to paragraph 20 of these Standard Service Terms & Conditions, RAMBOLL agrees to defend, indemnify and hold harmless Client, its directors, officers, employees, agents, successors and assigns from Losses to the extent and in the proportion caused by the willful misconduct or negligent acts, errors or omissions of RAMBOLL, its directors, officers, employees, and its agents, subcontractors, successors and assigns.

   b) To the extent and in the proportion not caused by the willful misconduct or negligent acts, errors or omissions of RAMBOLL, its directors, officers, employees or its agents, subcontractors, successors and assigns, Client agrees to defend, indemnify and hold said persons harmless from Losses arising in connection with Project.

19. **Limitation of Damages**. The parties waive any right they may have at law or in equity to demand or receive consequential or punitive damages.

20. **Liability**. The maximum liability of RAMBOLL, its directors, officers, employees and its agents, subcontractors, successors and assigns to Client pursuant to this Agreement, including paragraphs 6 and/or 18a of these Standard Service Terms & Conditions, shall be limited to Five (5) times the Agreement amount, but in no event more than $1,000,000.

21. **Mediation of Disputes**. The parties agree to make a good faith effort to resolve any controversy, dispute or claim arising out of, or related to, this Agreement ("Dispute") by the use of alternative dispute resolution procedures provided herein, prior to, and as a condition of, commencing any action or proceeding at law or in equity. Specifically, each party agrees to provide the other prompt written notice of the specific subject(s) and/or circumstance(s) in Dispute. If the Dispute is not resolved to the mutual satisfaction of the parties within ten (10) days of receiving notice, either party may request mediation. Mediation shall be 1) by a qualified, experienced mediator agreeable to both parties as supplied by the American Arbitration Association, Endispute, Inc., or other mutually agreeable source, 2) at the earliest available date of the mediator, and 3) in the major city closest to the Project site where RAMBOLL's Services are performed or as otherwise agreed by the parties. The cost of mediation services shall be shared equally by the parties.

22. **Termination**. Either party shall have the right to terminate this Agreement without cause upon thirty (30) days' notice.

23. **Modification**. This Agreement shall not be modified or replaced, in whole or in part, except by written amendment signed by both parties.

24. **Notice**. All notices shall be given to the other party in writing by hand delivery, by express service providing proof of delivery, by facsimile transmission and/or by registered mail, postage paid, return receipt requested, at the address appearing on the first page of this Agreement or such other address as the parties shall from time to time give notice.

25. **Interpretation**. This Agreement shall be interpreted and enforced in accordance with the Laws of the State of New York except for its choice of law rules.

26. **Severability**. If any provision of this Agreement is determined or declared by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Agreement shall be unaffected and shall be interpreted so as to give the fullest practicable effect to the original intent of the parties.

27. **Waiver**. Unless otherwise agreed in writing, neither party's waiver of the other's breach of any term or condition contained in this Agreement shall be deemed a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

28. **Integration.** This Agreement shall constitute the entire agreement between the parties. There are no representations or other agreements, oral or written, between the parties other than as set forth in this Agreement.

EXHIBIT S – SCOPE OF SERVICES

Ramboll Proposal Attached Below

RAMBOLL

WATER

Mr. Jason Morris
City Engineer
City of Newburgh
City Hall
Newburgh, NY 12550

RE: Silver Stream Reservoir Dam- Spillway Rehabilitation (Draft Proposal)
FILE: 1087484/BD

Dear Mr. Morris:

Date March 21, 2024

Ramboll Americas Engineering Solutions, Inc. (Ramboll) is pleased to present this proposal to the City of Newburgh (CNB) for supplemental design, permitting, and bid and construction phase services related to the spillway rehabilitation project at Silver Stream Reservoir Dam. Following the completion of the design and permitting phase, the project was submitted to the NYSDEC and NYCDEP for review in March 2023. The NYSDEC issued the Permit for Repairs in April 2023. Based on the NYCDEP review comments and conditions specified in the permit, final changes to the design drawings and some updates/supplements to the permitting documents were required. Also, the bid and construction phase services need to be incorporated into the contract.

Ramboll
751 Arbor Way
Suite 200
Blue Bell, PA 19422
USA

T 484-804-7200
F 215-628-9953
https://ramboll.com

Ref

Following are the proposed scope of services and fee proposal for the supplemental design and permitting services, development of bid and construction phase documents, and construction administration and inspection services for this project.

SCOPE OF SERVICES

Ramboll will undertake the following tasks for this project:

Task 1 –Supplemental Design and Permitting Assistance

This task includes supplemental work related to permitting and final coordination for the control of water plan requirements. It also includes preparation for, and attendance in, a project meeting and presentation to NYCDEP and the City of Newburgh; review of CNB water supply requirements/operations; and review of the NYSDEC Permit for Dam Repairs and evaluation of the permit conditions (including SWPPP modifications and MS4 coordination). These activities were performed in late 2022 and early 2023 and were not included in the scope or proposal fee for the design phase of the project; therefore, the additional effort has been included in this proposal.

Task 2 – Preparation of Bid Documents

Ramboll will prepare the following as part of the final design package to be submitted to the City of Newburgh and issued for bidding (IFB package):

- Final revisions to the drawings that include changes to the general plan sheets and the addition of notes specifying required construction phasing and control of water measures necessary for the contractor to maintain coordination of construction work with CNB water supply operations, including impacts due to potential changes in the operational status of the NYCDEP Catskill Aqueduct water supply and for Silver Stream conservation flows.

- Final revisions to the CNB front-end bid documents and technical specifications.

- Preparation and submittal of an NYCDEP Amendment to Land Use Permit application and any final amendment revisions based on one round of NYCDEP review comments.

- Any necessary final coordination/revisions to contract documents based on the forthcoming NYSDEC General Permit for stormwater discharges from construction or the Town of New Windsor's final MS4 review.

- Prepare final detailed cost estimate and schedule of values to aid with contract and bid planning.

- Prepare final anticipated construction timeline (Gantt type) including CNB milestone requirements and consideration of potential permit conditions that could impact construction start time or activity durations.

Task 3 – Bid Phase Assistance

Ramboll will provide the following services during the bidding phase of the project:

- Attend the pre-bid meeting.
- Provide clarifications and responses to bidder questions.
- Prepare addenda to bid documents, as necessary.
- Review bids and provide a letter of recommendation for award.

Task 4 – Construction Inspection

Construction Inspection – Ramboll will provide a full-time Resident Engineer (RE) or Construction Inspector with relevant experience in this type of construction. The RE will be responsible for the following:

- Attendance at the pre-construction and progress meetings and preparation of meeting minutes.
- Obtaining written verification of the site survey control and existing conditions from the Contractor.
- Obtaining pre-construction and progress photographs of the site.
- Daily observation of the Contractor's activities to confirm general conformance with project documents and that sound construction practices and safety procedures are being employed. Ramboll has assumed the RE will be on site nine months for this work.
- Observation of the Contractor's on-site quality control reporting and testing.

- Coordination of independent laboratory testing, if required.
- Coordination and day-to-day contact with Ramboll office support technical staff.
- Arranging appropriate site visits for Ramboll technical discipline staff as needed.
- Documentation of material deliveries and checking conformance with approved submittals.
- Maintaining records and obtaining documentation from the contractor of legal disposal for any surplus materials and construction debris.
- Maintaining an electronic field log, daily reports, photos, and correspondence files.
- Maintaining a set of updated project record documents.
- Review of design modifications and change order requests for consistency and accuracy.
- Review of Contractor's payment requisitions for accuracy of quantities and completion percentages.
- Developing and distributing a punch list at substantial completion.
- Inspection of punch list work to establish satisfactory project completion.

Task 5 – Construction Administration

The RE will be assisted by Ramboll office support staff that will perform the following tasks:

- Establish a flow diagram for all relevant project documents, including technical submittals and RFIs.
- Establish a distribution list and electronic protocol according to the flow diagram.
- Establish and maintain Submittal, Request for Information (RFI), and Cost Event Logs.
- Review Contractor's Baseline Schedule and monthly updates.
- Review Contractor's Schedule of Values.
- Review Contractor's submittals including, but not limited to, shop drawings, product data, and work plans. Ramboll has assumed 40 shop drawing and data sheet submittals as basis for estimating the task fee.
- Review Contractor's Requests for Information (RFI's). Ramboll has assumed 20 RFIs as basis for estimating the task fee.
- Design, detail and distribute Contract Modification documents.
- Review Contractor's Change Order requests.
- Make recommendations for approval of Contractor's Payment Requisitions.
- Prepare and distribute monthly progress reports to satisfy DEC Dam Safety requirements.
- Compile Close-out documents and prepare Record Drawings based on the Contractor's as-built drawings.
- Prepare and execute a Dam Completion Certificate.

FEE PROPOSAL

Ramboll proposes to perform the engineering services described in Tasks 1 through 5 for an estimated fee of $ 557,600. A task breakdown of this price proposal is presented below:

Task		Lump Sum Fee
1 – Permitting Assistance		$ 9,000
2 – Final Design & Development of Bid Documents		$54,800
3 – Bid Phase Assistance		$16,200
4 – Construction Inspection		$341,000
5 – Construction Admin. /Office Engineering Support		$136,600
	Total	**$557,600**

If you have any questions or would like to discuss our proposal in more detail, please contact Ed Drummond at (484) 804-7217 or the undersigned at (215) 499-0510.

Yours sincerely

Robert Bowers
Vice President, Dams & Water Resources
Water

D 484-804-7209
robert.bowers@ramboll.com

EXHIBIT G - BASIS OF FEE

See Exhibit S- Fee Proposal in Scope of Services

RESOLUTION NO.: __________ - 2024

OF

MAY 13, 2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH DECLARING ITSELF AS LEAD AGENCY UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) FOR THE LONG TERM CONTROL PLAN PHASE V SOUTH INTERCEPTOR SEWER IMPROVEMENTS PROJECT, ACCEPTING AS COMPLETE THE FULL ENVIRONMENTAL ASSESSMENT FORM ("FEAF") AND ISSUING A NEGATIVE DECLARATION

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

WHEREAS, pursuant to a Modification Order on Consent approving a Schedule of Compliance for Phase I through V of the LTCP**,** the City is undertaking Phase V of the LTCP consisting of the South Interceptor Improvements Project (the "Project"); and

WHEREAS, the City proposes to undertake the Project in compliance with the New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations"); and

WHEREAS, by Resolution No. 147-2023 of August 14, 2023, the City Council of the City of Newburgh declared its intent to assume Lead Agency status, classified the project as a Type I action, proposed to accept a Full Environmental Assessment Form ("FEAF") and referred the Project to other interested or involved agencies; and

WHEREAS, the Council has reviewed the information contained in the FEAF, a copy of which is annexed hereto and made part hereof, and based on the information provided in the FEAF, including the evaluation of the magnitude and importance of Project impacts and determination of significance, it is reasonable to conclude that the Project will not have a significant effect on the environment; and

WHEREAS, the reasons supporting this determination of no significant effect are set forth in the FEAF Part 3, which is annexed hereto and made part hereof;

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

1. That the City Council of the City of Newburgh hereby declares itself as Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and

2. That this Council accepts as complete the Full Environmental Assessment Form attached hereto; and

3. That this Council issues a negative declaration finding that the Project will not have a significant effect on the environment; and

BE IT FURTHER RESOLVED, by the City Council that the City Manager be and he is hereby authorized to sign and file any/and all other documents that may be necessary in connection with the SEQRA review for the Project; and

BE IT FURTHER RESOLVED, by the City Council that the Clerk of the City be and she is hereby directed to establish and maintain a file readily accessible to the public containing the SEQRA documents referred to herein, and the City's resolutions pertaining to the SEQRA aspects of the project.

The question of the adoption of the foregoing resolution was duly put to a vote, and upon roll call, the vote was as follows;

Torrance Harvey	Mayor	Voted	Yes/No
Giselle Martinez	Council Member	Voted	Yes/No
Robert McLymore	City Council Member	Voted	Yes/No
Ramona Monteverde	City Council Member	Voted	Yes/No
Omari Shaku	City Council Member	Voted	Yes/No
Robert Sklarz	City Council Member	Voted	Yes/No
Patricia Sofokles	City Council Member	Voted	Yes/No

The foregoing resolution was thereupon declared duly adopted.

Dated: _________________

I hereby certify that this resolution was adopted on _______________ and is recorded in the City of Newburgh Minute Book of the Mayor and City Council.

____
Lorene Vitek
City of Newburgh, City Clerk

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: South Interceptor Sewer Improvements (Long Term CSO Control Plan Phase-V)		
Project Location (describe, and attach a general location map): City of Newburgh, New York. Project runs along south side of the City between the CSX railway and Quassaic Creek (from Mill St to Water St).		
Brief Description of Proposed Action (include purpose or need): Replacement of the existing 36-inch reinforced concrete South Interceptor sewer with approximately 3,400 linear feet (LF) of 54-inch HOBAS® centrifugally cast, fiberglass reinforced, polymer mortar pipes as shown in Attachment B. Approximately 1,800 LF of the new South Interceptor will be constructed in the same trench as the existing South Interceptor starting at Regulator No. 2. The remainder of the upgraded South Interceptor will be constructed adjacent and run parallel to the existing interceptor, which would be abandoned in place after the new interceptor is brought on line. This project is part of the City of Newburgh Combined Sewer Overflow Long Term Control Plan implementation and the City is under an Order on Consent to complete this project. This project will increase the capacity of the South Interceptor sewer from its current 20.9 million gallons per day (mgd) capacity to 56 mgd.		
Name of Applicant/Sponsor: City of Newburgh (Todd Venning, City Manager & CEO)	Telephone: 845-569-7301 E-Mail: tvenning@cityofnewburgh-ny.gov	
Address: 83 Broadway		
City/PO: Newburgh	State: NY	Zip Code: 12550
Project Contact (if not same as sponsor; give name and title/role): Jason Morris, PE - Commissioner of Public Works and City Engineer	Telephone: (845)569-7448 E-Mail: jmorris@cityofnewburgh-ny.gov	
Address: 83 Broadway		
City/PO: Newburgh	State: NY	Zip Code: 12550
Property Owner (if not same as sponsor):	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	**If Yes: Identify Agency and Approval(s) Required**	**Application Date (Actual or projected)**
a. City Council, Town Board, or Village Board of Trustees ☑Yes ☐No	City of Newburgh City Council - SEQRA	September 2023
b. City, Town or Village Planning Board or Commission ☐Yes ☑No		
c. City, Town or Village Zoning Board of Appeals ☐Yes ☐No		
d. Other local agencies ☐Yes ☑No		
e. County agencies ☐Yes ☑No		
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSEFC(Funding), NYSDEC(Compliance), NYS Parks, Recreation and Historic Preservation	June - September 2023
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.

i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☑Yes ☐No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☑Yes ☐No

iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☐Yes ☑No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☐Yes ☑No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No

If Yes, identify the plan(s):

Remediaton Sites:E336075

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No

If Yes, identify the plan(s):

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No

If Yes, what is the zoning classification(s) including any applicable overlay district?

Park and Conservation Development District

b. Is the use permitted or allowed by a special or conditional use permit? ☑ Yes ☐ No

c. Is a zoning change requested as part of the proposed action? ☐ Yes ☑ No

If Yes,

i. What is the proposed new zoning for the site? ____________

C.4. Existing community services.

a. In what school district is the project site located? Newburgh City School District

b. What police or other public protection forces serve the project site?

City of Newburgh Police Department, Orange County Sheriff, NY State Police

c. Which fire protection and emergency medical services serve the project site?

City of Newburgh Fire Department & Mobile Life

d. What parks serve the project site?

Future Quassaick Creek Trail in development

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Industrial - Municipal Sewer

b. a. Total acreage of the site of the proposed action? 5 acres

b. Total acreage to be physically disturbed? 2 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 5 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % ____________ Units: ____________

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? ☐ Yes ☐ No

iii. Number of lots proposed? ________

iv. Minimum and maximum proposed lot sizes? Minimum ________ Maximum ________

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No

i. If No, anticipated period of construction: 18 months

ii. If Yes:

- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: ____________

f. Does the project include new residential uses? ☐Yes ☑No
If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase				
At completion of all phases				

g. Does the proposed action include new non-residential construction (including expansions)? ☐Yes ☑No
If Yes,
i. Total number of structures ___________
ii. Dimensions (in feet) of largest proposed structure: ________height; ________width; and _______ length
iii. Approximate extent of building space to be heated or cooled: ______________________ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☐Yes ☑No
If Yes,
i. Purpose of the impoundment: ________________________________
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify:
____
iii. If other than water, identify the type of impounded/contained liquids and their source.
____
iv. Approximate size of the proposed impoundment. Volume: ____________ million gallons; surface area: ____________ acres
v. Dimensions of the proposed dam or impounding structure: ________ height; _______ length
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):
____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? ☐Yes ☑No
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
If Yes:
i. What is the purpose of the excavation or dredging? ________________________________
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
- Volume (specify tons or cubic yards): ________________________________
- Over what duration of time? ________________________________

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.
____
____
iv. Will there be onsite dewatering or processing of excavated materials? ☐Yes ☐No
If yes, describe. ________________________________
____
v. What is the total area to be dredged or excavated? ________________________________acres
vi. What is the maximum area to be worked at any one time? ______________________________ acres
vii. What would be the maximum depth of excavation or dredging? __________________________ feet
viii. Will the excavation require blasting? ☐Yes ☐No
ix. Summarize site reclamation goals and plan: ________________________________
____
____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☑Yes ☐No
If Yes:
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): The project impacts a freshwater forested/shrub and riverine wetland listed on the National Wetland Inventory.
____

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:
The proposed action will include excavation for the construction of the new South Interceptor Sewer. The impacted area is approximately 0.3 acres. Site will be restored following construction to pre-existing conditions.

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☑No
If Yes, describe: ______

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☑No
If Yes:

- acres of aquatic vegetation proposed to be removed: ______
- expected acreage of aquatic vegetation remaining after project completion: ______
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): ______
- proposed method of plant removal: ______
- if chemical/herbicide treatment will be used, specify product(s): ______

v. Describe any proposed reclamation/mitigation following disturbance: ______

c. Will the proposed action use, or create a new demand for water? ☐Yes ☑No
If Yes:
i. Total anticipated water usage/demand per day: ______ gallons/day
ii. Will the proposed action obtain water from an existing public water supply? ☐Yes ☐No
If Yes:

- Name of district or service area: ______
- Does the existing public water supply have capacity to serve the proposal? ☐Yes ☐No
- Is the project site in the existing district? ☐Yes ☐No
- Is expansion of the district needed? ☐Yes ☐No
- Do existing lines serve the project site? ☐Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☐Yes ☐No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project: ______
- Source(s) of supply for the district: ______

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐Yes ☐No
If, Yes:

- Applicant/sponsor for new district: ______
- Date application submitted or anticipated: ______
- Proposed source(s) of supply for new district: ______

v. If a public water supply will not be used, describe plans to provide water supply for the project: ______

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: ______ gallons/minute.

d. Will the proposed action generate liquid wastes? ☐Yes ☑No
If Yes:
i. Total anticipated liquid waste generation per day: ______ gallons/day
ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): ______

iii. Will the proposed action use any existing public wastewater treatment facilities? ☐Yes ☐No
If Yes:

- Name of wastewater treatment plant to be used: ______
- Name of district: ______
- Does the existing wastewater treatment plant have capacity to serve the project? ☐Yes ☐No
- Is the project site in the existing district? ☐Yes ☐No
- Is expansion of the district needed? ☐Yes ☐No

- Do existing sewer lines serve the project site? ☐Yes☐No
- Will a line extension within an existing district be necessary to serve the project? ☐Yes☐No

  If Yes:
  - Describe extensions or capacity expansions proposed to serve this project: ______

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes☐No

If Yes:
- Applicant/sponsor for new district: ______
- Date application submitted or anticipated: ______
- What is the receiving water for the wastewater discharge? ______

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

______

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: ______

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☐Yes☑No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or _____ acres (impervious surface)

_____ Square feet or _____ acres (parcel size)

ii. Describe types of new point sources. ______

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

______

- If to surface waters, identify receiving water bodies or wetlands: ______
- Will stormwater runoff flow to adjacent properties? ☐Yes☐No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes☐No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☑Yes☐No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

Construction of the new sewer interceptor requires the use of heavy equipment including excavators, bulldozers, dump trucks and other light trucks

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

Temporary diesel powered bypass pumps

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

______

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes☐No

ii. In addition to emissions as calculated in the application, the project will generate:
- ___________Tons/year (short tons) of Carbon Dioxide (CO_2)
- ___________Tons/year (short tons) of Nitrous Oxide (N_2O)
- ___________Tons/year (short tons) of Perfluorocarbons (PFCs)
- ___________Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- ___________Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- ___________Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): ______

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): ______

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

______

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐ Morning ☐ Evening ☐Weekend
☐ Randomly between hours of ______ to ______.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): ______

iii. Parking spaces: Existing ______ Proposed ______ Net increase/decrease ______

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: ______

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐Yes ☑No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: ______

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): ______

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☐No

l. Hours of operation. Answer all items which apply.

i. During Construction:
- Monday - Friday: 7am to 7pm
- Saturday: ______
- Sunday: ______
- Holidays: ______

ii. During Operations:
- Monday - Friday: ______
- Saturday: ______
- Sunday: ______
- Holidays: ______

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

Typical construction activities will exceed normal ambient noise levels during construction. No sources of noise will be generated during operation.

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe: ______

n. Will the proposed action have outdoor lighting? ☐ Yes ☑ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

______

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☐ No

Describe: ______

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: ______

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored ______

ii. Volume(s) ______ per unit time ______ (e.g., month, year)

iii. Generally, describe the proposed storage facilities: ______

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

______

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: ______ tons per ______ (unit of time)
- Operation : ______ tons per ______ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: ______
- Operation: ______

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: ______
- Operation: ______

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): ______

ii. Anticipated rate of disposal/processing:

- ________ Tons/month, if transfer or other non-combustion/thermal treatment, or
- ________ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: ______ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: ______

ii. Generally describe processes or activities involving hazardous wastes or constituents: ______

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: ______

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: ______

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: ______

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☑ Industrial ☐ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)
☑ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): ______

ii. If mix of uses, generally describe:

Project is adjacent to a CSX railroad and will be in a forested area primarily, with the exception of 1 road crossing.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	+/- 0.2	+/- 0.2	0
• Forested	+/- 0.3	0	- 0.3
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)	+/- 1.5	+/- 1.8	+ 0.3
• Other Describe: ______			

c. Is the project site presently used by members of the community for public recreation? ☐ Yes ☑ No
i. If Yes: explain: ____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☑ Yes ☐ No
If Yes,
i. Identify Facilities:
Nora Cronin Presentation Academy, South Middle School, San Miguel Academy of Newburgh, Martinez Home

e. Does the project site contain an existing dam? ☐ Yes ☑ No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: ____ feet
- Dam length: ____ feet
- Surface area: ____ acres
- Volume impounded: ____ gallons OR acre-feet

ii. Dam's existing hazard classification: ____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐ Yes ☑ No
If Yes:
i. Has the facility been formally closed? ☐ Yes ☐ No
- If yes, cite sources/documentation: ____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: ____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐ Yes ☑ No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☑ Yes ☐ No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☑ Yes ☐ No
☐ Yes – Spills Incidents database Provide DEC ID number(s): ____
☑ Yes – Environmental Site Remediation database Provide DEC ID number(s): E336075
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: ____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☑ Yes ☐ No
If yes, provide DEC ID number(s): 336036, C336086, B00127, E336075, 336077, 336042, 336055, B00188, 546031

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):
See Attachment

v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☑No

- If yes, DEC site ID number: ______
- Describe the type of institutional control (e.g., deed restriction or easement): ______
- Describe any use limitations: ______
- Describe any engineering controls: ______
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: ______

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? >10 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? ______%

c. Predominant soil type(s) present on project site:

Mardin Gravelly Silt Loam (MdB)	79.8 %
Urband Land (Ur)	11.8 %
Dumps (Du)	8.4 %

d. What is the average depth to the water table on the project site? Average: Varies feet

e. Drainage status of project site soils:
☐ Well Drained: ______% of site
☑ Moderately Well Drained: 100 % of site
☐ Poorly Drained ______% of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 10 % of site
☐ 10-15%: ______% of site
☑ 15% or greater: 90 % of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: ______

h. Surface water features.
i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☑Yes ☐No
ii. Do any wetlands or other waterbodies adjoin the project site? ☑Yes ☐No
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.
iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☑Yes ☐No
iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name 862-204 Classification C
- Lakes or Ponds: Name ______ Classification ______
- Wetlands: Name Federal Waters Approximate Size ______
- Wetland No. (if regulated by DEC) ______

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐Yes ☑No
If yes, name of impaired water body/bodies and basis for listing as impaired: ______

i. Is the project site in a designated Floodway? ☑Yes ☐No

j. Is the project site in the 100-year Floodplain? ☑Yes ☐No

k. Is the project site in the 500-year Floodplain? ☑Yes ☐No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:
i. Name of aquifer: ______

m. Identify the predominant wildlife species that occupy or use the project site:

Gray Squirrel

n. Does the project site contain a designated significant natural community? ☐ Yes ☑ No

If Yes:

i. Describe the habitat/community (composition, function, and basis for designation): ______

ii. Source(s) of description or evaluation: ______

iii. Extent of community/habitat:

- Currently: ______ acres
- Following completion of project as proposed: ______ acres
- Gain or loss (indicate + or -): ______ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☑ Yes ☐ No

If Yes:

i. Species and listing (endangered or threatened): ______

Atlantic Sturgeon, Bald Eagle, Shortnose Sturgeon

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐ Yes ☑ No

If Yes:

i. Species and listing: ______

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐ Yes ☑ No

If yes, give a brief description of how the proposed action may affect that use: ______

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☑ No

If Yes, provide county plus district name/number: ______

b. Are agricultural lands consisting of highly productive soils present? ☐ Yes ☑ No

i. If Yes: acreage(s) on project site? ______

ii. Source(s) of soil rating(s): ______

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐ Yes ☑ No

If Yes:

i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature

ii. Provide brief description of landmark, including values behind designation and approximate size/extent: ______

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐ Yes ☑ No

If Yes:

i. CEA name: ______

ii. Basis for designation: ______

iii. Designating agency and date: ______

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☑ Yes ☐ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☑ Historic Building or District

ii. Name: Eligible property:Mill Steet Bridge (BIN 2223610), Eligible property:Mill Complex; 20 acres, Walsh-Havemeyer House, East End Historic

iii. Brief description of attributes on which listing is based:

This area was a regional market center and economic driver during the 19th century. It also contains Washington's Headquarters State Historic Site.

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): ______

ii. Basis for identification: ______

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: ______

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): ______

iii. Distance between project and resource: ______ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: ______

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

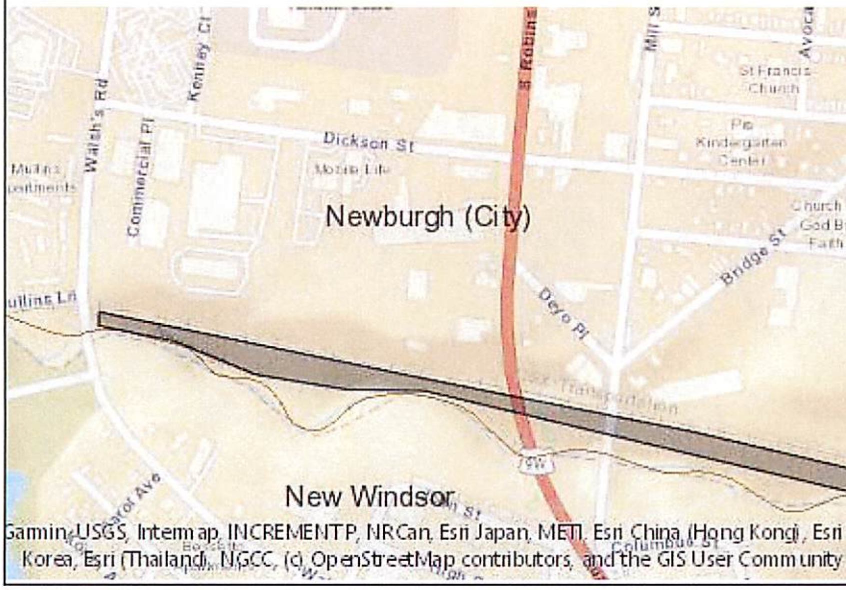
Applicant/Sponsor Name Todd Venning Date 4/26/24

Signature ______ Title City Manager & CEO

PRINT FORM

EAF Mapper Summary Report

Wednesday, March 1, 2023 2:31 PM



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

B.i.i [Coastal or Waterfront Area]	Yes
B.i.ii [Local Waterfront Revitalization Area]	Yes
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	Remediaton Sites:E336075
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Yes - Digital mapping data for Spills Incidents are not available for this location. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Yes
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Yes
E.1.h.i [DEC Spills or Remediation Site - DEC ID Number]	E336075
E.1.h.iii [Within 2,000' of DEC Remediation Site]	Yes
E.1.h.iii [Within 2,000' of DEC Remediation Site - DEC ID]	336036, C336086, B00127, E336075, 336077, 336042, 336055, B00188, 546031
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Stream Name]	862-204
E.2.h.iv [Surface Water Features - Stream Classification]	C
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters

E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	Yes
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.l. [Aquifer Names]	
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	Yes
E.2.o. [Endangered or Threatened Species - Name]	Atlantic Sturgeon, Bald Eagle, Shortnose Sturgeon
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Yes - Digital mapping data for archaeological site boundaries are not available. Refer to EAF Workbook.
E.3.e.ii [National or State Register of Historic Places or State Eligible Sites - Name]	Eligible property:Mill Street Bridge (BIN 2223610), Eligible property:Mill Complex; 20 acres, Walsh-Havemeyer House, East End Historic District
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Agency Use Only [If applicable]

Full Environmental Assessment Form
Part 2 - Identification of Potential Project Impacts

Project : South Interceptor Newburgh

Date :

Part 2 is to be completed by the lead agency. Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency **and** the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

Tips for completing Part 2:

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "**Yes**" to a numbered question, please complete all the questions that follow in that section.
- If you answer "**No**" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

1. Impact on Land

Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1) ☐ NO ☑ YES

If "Yes", answer questions a - j. If "No", move on to Section 2.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	☑	☐
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	☐	☑
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	☑	☐
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	☐	☑
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	☐	☑
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	☑	☐
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	☑	☐
h. Other impacts: ______________________________		☐	☐

2. Impact on Geological Features The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g) *If "Yes", answer questions a - c. If "No", move on to Section 3.*	☑ NO		☐ YES
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. Identify the specific land form(s) attached: ________________________________	E2g	☐	☐
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: ________________________________	E3c	☐	☐
c. Other impacts: ________________________________		☐	☐

3. Impacts on Surface Water The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h) *If "Yes", answer questions a - l. If "No", move on to Section 4.*	☐ NO		☑ YES
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. The proposed action may create a new water body.	D2b, D1h	☑	☐
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	☑	☐
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	☑	☐
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	☐	☑
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	☑	☐
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	☑	☐
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	☑	☐
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	☑	☐
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	☑	☐
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	☑	☐
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	☑	☐

l. Other impacts: ____________________		☐	☐

4. Impact on groundwater

The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. ☑ NO ☐ YES

(See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)

If "Yes", answer questions a - h. If "No", move on to Section 5.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	☐	☐
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: ____________________	D2c	☐	☐
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	☐	☐
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	☐	☐
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	☐	☐
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	☐	☐
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	☐	☐
h. Other impacts: ____________________		☐	☐

5. Impact on Flooding

The proposed action may result in development on lands subject to flooding. ☐ NO ☑ YES

(See Part 1. E.2)

If "Yes", answer questions a - g. If "No", move on to Section 6.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	☐	☑
b. The proposed action may result in development within a 100 year floodplain.	E2j	☐	☑
c. The proposed action may result in development within a 500 year floodplain.	E2k	☐	☑
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	☑	☐
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	☑	☐
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	☑	☐

g. Other impacts: ____ ____		☐	☐

6. Impacts on Air

The proposed action may include a state regulated air emission source. ☑ NO ☐ YES
(See Part 1. D.2.f., D.2.h, D.2.g)
If "Yes", answer questions a - f. If "No", move on to Section 7.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels:			
i. More than 1000 tons/year of carbon dioxide (CO_2)	D2g	☐	☐
ii. More than 3.5 tons/year of nitrous oxide (N_2O)	D2g	☐	☐
iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs)	D2g	☐	☐
iv. More than .045 tons/year of sulfur hexafluoride (SF_6)	D2g	☐	☐
v. More than 1000 tons/year of carbon dioxide equivalent of hydrochloroflourocarbons (HFCs) emissions	D2g	☐	☐
vi. 43 tons/year or more of methane	D2h	☐	☐
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	☐	☐
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	☐	☐
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	☐	☐
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	☐	☐
f. Other impacts: ____ ____		☐	☐

7. Impact on Plants and Animals

The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.) ☐ NO ☑ YES
If "Yes", answer questions a - j. If "No", move on to Section 8.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	☑	☐
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	☑	☐
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	☑	☐
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	☑	☐

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	☑	☐
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: ____________________	E2n	☑	☐
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	☑	☐
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: ____________________	E1b	☑	☐
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	☑	☐
j. Other impacts: ____________________		☐	☐

8. Impact on Agricultural Resources

The proposed action may impact agricultural resources. (See Part 1. E.3.a. and b.) ☑ NO ☐ YES

If "Yes", answer questions a - h. If "No", move on to Section 9.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	☐	☐
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, Elb	☐	☐
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	☐	☐
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	☐	☐
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	El a, E1b	☐	☐
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	☐	☐
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	☐	☐
h. Other impacts: ____________________		☐	☐

9. Impact on Aesthetic Resources The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.) *If "Yes", answer questions a - g. If "No", go to Section 10.*	☑ NO		☐ YES
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	☐	☐
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	☐	☐
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	 ☐ ☐	 ☐ ☐
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	 ☐ ☐	 ☐ ☐
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	☐	☐
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile ½ -3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	☐	☐
g. Other impacts: ____		☐	☐

10. Impact on Historic and Archeological Resources The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.) *If "Yes", answer questions a - e. If "No", go to Section 11.*	☐ NO		☑ YES
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on the National or State Register of Historical Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.	E3e	☑	☐
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	☑	☐
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source: ____	E3g	☑	☐

d. Other impacts: ______		☑	☐
e. If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	☑	☐
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	☑	☐
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	☑	☐

11. Impact on Open Space and Recreation

The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan.
(See Part 1. C.2.c, E.1.c., E.2.q.)

☑ NO ☐ YES

If "Yes", answer questions a - e. If "No", go to Section 12.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	☐	☐
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	☐	☐
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	☐	☐
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	☐	☐
e. Other impacts: ______		☐	☐

12. Impact on Critical Environmental Areas

The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d)

☑ NO ☐ YES

If "Yes", answer questions a - c. If "No", go to Section 13.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	☐	☐
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	☐	☐
c. Other impacts: ______		☐	☐

13. Impact on Transportation The proposed action may result in a change to existing transportation systems. ☑ NO ☐ YES (See Part 1. D.2.j) *If "Yes", answer questions a - f. If "No", go to Section 14.*			
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. Projected traffic increase may exceed capacity of existing road network.	D2j	☐	☐
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	☐	☐
c. The proposed action will degrade existing transit access.	D2j	☐	☐
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	☐	☐
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	☐	☐
f. Other impacts: ______________________________		☐	☐

14. Impact on Energy The proposed action may cause an increase in the use of any form of energy. ☑ NO ☐ YES (See Part 1. D.2.k) *If "Yes", answer questions a - e. If "No", go to Section 15.*			
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	☐	☐
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	☐	☐
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	☐	☐
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	☐	☐
e. Other Impacts: ______________________________			

15. Impact on Noise, Odor, and Light The proposed action may result in an increase in noise, odors, or outdoor lighting. ☐ NO ☑ YES (See Part 1. D.2.m., n., and o.) *If "Yes", answer questions a - f. If "No", go to Section 16.*			
	Relevant Part I Question(s)	**No, or small impact may occur**	**Moderate to large impact may occur**
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	☑	☐
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	☑	☐
c. The proposed action may result in routine odors for more than one hour per day.	D2o	☑	☐

d. The proposed action may result in light shining onto adjoining properties.	D2n	☑	☐
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	☑	☐
f. Other impacts: ______________________________		☐	☐

16. Impact on Human Health

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.) ☑ NO ☐ YES

If "Yes", answer questions a - m. If "No", go to Section 17.

	Relevant Part I Question(s)	No,or small impact may cccur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	☐	☐
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	☐	☐
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	☐	☐
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	☐	☐
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	☐	☐
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	☐	☐
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	☐	☐
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	☐	☐
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	☐	☐
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	☐	☐
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	☐	☐
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	☐	☐
m. Other impacts: ______________________________			

17. Consistency with Community Plans

The proposed action is not consistent with adopted land use plans. ☑ NO ☐ YES

(See Part 1. C.1, C.2. and C.3.)

If "Yes", answer questions a - h. If "No", go to Section 18.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	☐	☐
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	☐	☐
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	☐	☐
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	☐	☐
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, Elb	☐	☐
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	☐	☐
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	☐	☐
h. Other: ______________________________		☐	☐

18. Consistency with Community Character

The proposed project is inconsistent with the existing community character. ☑ NO ☐ YES

(See Part 1. C.2, C.3, D.2, E.3)

If "Yes", answer questions a - g. If "No", proceed to Part 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	☐	☐
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	☐	☐
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	☐	☐
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	☐	☐
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	☐	☐
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	☐	☐
g. Other impacts: ______________________________		☐	☐

PRINT FULL FORM

Full Environmental Assessment Form
Part 3 - Evaluation of the Magnitude and Importance of Project Impacts
and
Determination of Significance

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

Reasons Supporting This Determination:
To complete this section:
- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

See Attachment:

Determination of Significance - Type 1 and Unlisted Actions

SEQR Status: ☑ Type 1 ☐ Unlisted

Identify portions of EAF completed for this Project: ☑ Part 1 ☑ Part 2 ☑ Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information
NYSDEC Threatened and Endangered Species Database (EAF Mapper), USFWS IPaC Tool for Threatened and Endangered Species, and NYSDEC Spill and Remediation Database

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the
City of Newburgh as lead agency that:

☑ A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

☐ B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

☐ C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: South Interceptor Sewer Improvements	
Name of Lead Agency: City of Newburgh	
Name of Responsible Officer in Lead Agency: Todd Venning	
Title of Responsible Officer: City Manager	
Signature of Responsible Officer in Lead Agency:	Date:
Signature of Preparer (if different from Responsible Officer) A.J. Brooks, PE	Date: 4/23/2024

For Further Information:

Contact Person: Jason C. Morris, Commissioner of Public Works and City Engineer

Address: 83 Broadway, Newburgh, New York, 12550

Telephone Number: (845) 569-7448

E-mail: jmorris@cityofnewburgh-ny.gov

For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)
Other involved agencies (if any)
Applicant (if any)
Environmental Notice Bulletin: http://www.dec.ny.gov/enb/enb.html

ATTACHMENT A

Part III Documentation for Determination of Significance of the City of Newburgh South Interceptor Sewer Improvements

Documentation

Full EAF Part III – Determination of the Magnitude and Importance of Project Impacts and Determination of Significance

The numbers below correspond to the impact questions in FEAF Part II:

1. IMPACT ON LAND – Construction of the proposed South Interceptor Sewer will involve both the replacement of approximately half of the existing South Interceptor Sewer and construction of a second South Interceptor Sewer parallel to the existing South Interceptor sewer. The area impacted by construction is approximately 5 acres. Following construction, the site will be restored to pre-construction conditions. During construction, the use of Best Management Practices (BMPs) for erosion and sedimentation as detailed in a Stormwater Pollution Prevention Plan (SWPPP) will eliminate the potential for significant erosion.

3. IMPACTS ON SURFACE WATER – The South Interceptor route runs along the southern boundary of the City of Newburgh. It passes through a wooded area along the Quassaick Creek which is a tributary to the Hudson River. Additionally, the project area is in the vicinity of the Hudson River Estuary, which is a tidal river. To mitigate impact to surface waters during construction, the project will have an erosion and sedimentation control plan which will incorporate the New York State Department of Environmental Conservation (NYS DEC) Best Management Practices (BMPs). This may include silt fencing around the perimeter of the project and other measures to reduce the impact of the project to adjacent surface waters. Therefore, the proposed project will likely pose a small to moderate impact on adjacent surface water.

5. IMPACT ON FLOODING – The overall goal of this project is to enable more combined sewer flows to be conveyed to the City of Newburgh Water Pollution Control Plant (WPCP) and a Combined Sewer Control Facility (CSCF) that will be constructed prior to the South Interceptor improvements. When the WPCP and CSCF are operating at capacity, automated controls will modulate a gate at Combined Sewer Overflow (CSO) Regulator No. 2, diverting flows that cannot be accommodated at the City's treatment facilities to overflow at a permitted CSO outfall. The proposed South Interceptor Sewer is located within and adjacent to the 500-year floodplain but should not result in additional flooding impacts. Where necessary, watertight, bolted manhole covers can be utilized to mitigate risks related to flooding. The impact to flooding related to this project is anticipated to be small to moderate.

7. IMPACT ON PLANTS AND ANIMALS – Review of the NYS DEC Environmental Resource Mapper (ERM) indicates that the project area is in the vicinity of animals listed as endangered or threatened, including the Atlantic Sturgeon, Bald Eagle, and Shortnose Sturgeon. The project site does not contain any species of plants and animals that are listed by the New York State as rare or special concern. In

addition, the United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) tool for threated and endangered species was consulted. The IPaC identified the following species that may be impacted by the project: Indiana, Northern Long-eared, and Tricolored bats, Monarch butterfly, Small Whorled Pogonia, and 11 bird species protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act including the Black-billed Cuckoo, Black-capped Chickadee, Bobolink, Canada Warbler, Chimney Swift, Prothonotary Warbler, Red-headed Woodpecker, Rusty Blackbird, Wood Thrush and the Bald Eagle and Golden Eagle. IPaC also indicated that there are no critical habitats or wetlands within the areas of the project.

It is important to note that the areas identified in the ERM are considered generalized locations and does not mean that the flora and fauna of concern in these areas will be negatively impacted. A noise assessment could be completed prior to construction to analyze the potential impact of construction activities to animals.

10. IMPACT ON HISTORIC & ARCHEOLOGICAL RESOURCES – The area of proposed work is near to buildings and locations of historical significance. However, the work will not impact the identified historical sites as the work will be located within the bounds of roadways, right of ways, and cleared areas along the shoulder of roadways. The NYS State Historic Preservation Office (SHPO) issued a letter on August 9, 2023, indicating that no historic properties, including archaeological and/or historic resources will be affected by this project. Therefore, no, or small impact may occur.

15. IMPACT ON NOISE, ODOR, & LIGHT – Construction operation may result in temporary noise increase due to the use of construction equipment and increased activity levels related to construction. However, once construction is completed, noise levels will return to pre-construction levels found in and around the project site. No permanent impact for noise, light, or odors are anticipated during operation. A noise assessment will be completed prior to construction to analyze the potential impact of construction activities to animals.

RESOLUTION NO.: 147 - 2023

OF

AUGUST 14, 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH DECLARING ITS INTENT TO BE LEAD AGENCY UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) FOR THE LONG TERM CONTROL PLAN PHASE V SOUTH INTERCEPTOR SEWER IMPROVEMENTS PROJECT, DECLARING THE PROJECT TO BE A TYPE I ACTION, CONSIDERING A FULL ENVIRONMENTAL ASSESSMENT FORM ("FEAF") AND REFERRING THE SAME TO OTHER INTERESTED OR INVOLVED AGENCIES

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

WHEREAS, pursuant to a Modification Order on Consent approving a Schedule of Compliance for Phase I through V of the LTCP, the City is undertaking Phase V of the LTCP consisting of the South Interceptor Improvements Project (the "Project"); and

WHEREAS, the City proposes to undertake the Project in compliance with the New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations"); and

WHEREAS, in compliance with SEQRA, the City Council of the City of Newburgh wishes to declare its intent to assume Lead Agency status, classify the project as a Type I action, proposes to accept a Full Environmental Assessment Form ("FEAF") and refer the Project to other interested or involved agencies; and

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

1. That the City Council of the City of Newburgh hereby declares its intent to assume Lead Agency status for the environmental review of the action pursuant to 6 NYCRR 617.6; and

2. That this Council classifies the action as a Type I Action; and

3. That this Council proposes to accept Part I of the Full Environmental Assessment Form ("FEAF") attached hereto; and

4. That this Council authorizes the City Manager to circulate the FEAF to other "Interested Agencies" or "Involved Agencies".

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 8/14/23 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 15 day of Aug 2023

City Clerk

RESOLUTION NO.: __________-2024

OF

MAY 13, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT DONATIONS IN SUPPORT OF THE CITY OF NEWBURGH'S ANNUAL EVENTS FOR 2024

WHEREAS, the City of Newburgh holds and sponsors several annual events, including but not limited to, Memorial Day and Fourth of July Observances, National Night Out, the Annual International Festival over the Labor Day holiday, and the Back to School, Halloween and Christmas Events; and

WHEREAS, various businesses, firms and individuals have made and are willing to make contributions of money and in-kind assistance to support these 2024 events and additional events as may be approved under the Public Special Events Sponsorship Policy and Procedure; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donations;

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 said donations with the appreciation and thanks of the City of Newburgh on behalf of its children, families and citizens, for their support and sponsorship of the City of Newburgh's 2024 events authorized by City Council approval of the 2024 Budget, and additional 2024 events as approved under the Public Special Events Sponsorship Policy and Procedure.

RESOLUTION NO.: ____________ - 2024

OF

MAY 13, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES TO PROVIDE PERFORMING ARTS AND RELATED SERVICES IN CONNECTION WITH THE CITY OF NEWBURGH'S ANNUAL EVENTS FOR 2024

WHEREAS, the City of Newburgh annually holds City-sponsored events, including events approved under the Public Special Events Sponsorship Policy and Procedure; and

WHEREAS, it is appropriate and necessary to authorize the City Manager to enter into agreements by which performing artists, production services and necessary equipment and facilities shall be provided; and

WHEREAS, there is funding available in Trust and Agency Accounts for those events and in the 2024 City budget; and

WHEREAS, such agreements shall not exceed the funds in the Trust and Agency Accounts and the 2024 Budget; and

WHEREAS, this Council has determined that entering into agreements in connection with these annual and approved events is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into agreements with terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the City-sponsored annual events and events approved under the Public Special Events Sponsorship Policy and Procedure for 2024, with the net cost to the City of such agreements not to exceed the Trust and Agency Account proceeds and 2024 Budget.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this ______ day of __________, 2024, 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 ___________________________________, a firm with principal offices at ___________________________________, hereinafter referred to as **"VENDOR."**

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or 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").

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning __________________, 2024, and ending __________________, 2024.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods 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 A, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY an itemized invoice for SERVICES rendered during the event as otherwise set forth in Schedule A, 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 sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

Any bills or invoices sent by VENDOR to the CITY more than one (1) year 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/or supplying goods 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. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods 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 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.

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.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, and to the extent practicable and if required by law, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Except for Workers' Compensation and professional liability, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

Type of Coverage	Limit of Coverage
Worker's Compensation	Statutory
Employer's liability or similar insurance	$1,000,000 each occurrence
Automobile liability	$1,000,000 aggregate
Bodily Injury	$1,000,000 each occurrence
Property Damage	$1,000,000 each occurrence
Comprehensive General Liability, including	$1,000,000 aggregate
Broad form contractual Liability, bodily injury and property damage	$2,000,000 each occurrence
Professional liability (If commercially available for your profession)	$1,000,000 aggregate $2,000,000 **each claim**

If available, VENDOR shall attach to this Agreement applicable certificates of insurance evidencing VENDOR'S compliance with these requirements.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, 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 and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

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 rights and remedies of the CITY 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 CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

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.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

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 by this Agreement.

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods 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 publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS 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.

ARTICLE 17. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR 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, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

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 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 19. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 20. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manger of the CITY, but must instead only 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. ENTIRE AGREEMENT

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 24. 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 or Change Order to this Agreement, which Addendum or Change Order 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 or Change Order.

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
Per Resolution No.

DATE: ___________________________

VENDOR

BY: ___________________________

NAME:
TITLE:

DATE: ___________________________

SCHEDULE A

SCOPE OF SERVICES AND FEES AND EXPENSES

RESOLUTION NO.: ________ - 2024

OF

MAY 13, 2024

A RESOLUTION DECLARING DEPARTMENT OF PUBLIC WORKS AND POLICE DEPARTMENT VEHICLES AND EQUIPMENT AS SURPLUS

WHEREAS, the City of Newburgh Department of Public Works possesses one Friegt. Street Sweeper, one International garbage truck, three International dump trucks, one Ford sander, one Ford E350 van, one Giant DI/RE chassis, four 315/80R22.5 caps, and two chain hoists, which are no longer of use to the City; and

WHEREAS, the City of Newburgh Police Department possesses two 2010 Dodge Chargers and one 2008 Dodge Charger vehicle door, which are no longer of use to the City; and

WHEREAS, the City Departments have requested that the vehicles and equipment be designated as surplus and sold; and

WHEREAS, the City Council has determined that declaring the vehicles and equipment as surplus is in the best interests of the City of Newburgh; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the vehicles and equipment identified on the schedule attached hereto and made part hereof are hereby declared to be surplus and of no further use or value to the City of Newburgh; and

BE IT FURTHER RESOLVED, that the City Manager and/or City Comptroller be and they are hereby authorized to execute any required documents and conduct all necessary transactions to dispose of said surplus vehicles in accordance with the City of Newburgh's Surplus Property Disposition Policy and Procedure adopted by Resolution No. 174-2014 of July 14, 2014.

RESOLUTION NO.: ________-2024

OF

MAY 13, 2024

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED ISSUED TO TYLER C. ROEBUCK TO THE PREMISES KNOWN AS 127 MONTGOMERY STREET (SECTION 19, BLOCK 1, LOT 8)

WHEREAS, on May 1, 2014, the City of Newburgh conveyed property located at 127 Montgomery Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 19, Block 1, Lot 8, to Tyler C. Roebuck; and

WHEREAS, Mr. Roebuck has requested a release of the restrictive covenants contained in the aforementioned deed; and

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

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN ($10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 127 Montgomery Street, Section 19, Block 1, Lot 8 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, 5, and 6 in a deed dated May 1, 2014, from THE CITY OF NEWBURGH to TYLER C. ROEBUCK, recorded in the Orange County Clerk's Office on May 5, 2014, in Book 13746, Page 1816 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: ___________________________, 2024

THE CITY OF NEWBURGH

By: ______________________________________
Todd Venning, City Manager
Pursuant to Res. No.: _____-2024

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

On the ____ day of _________________________ in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

____
Notary Public

CITY OF NEWBURGH

Department of Code Compliance
123 Grand Street, Newburgh, New York 12550
Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Todd Venning, City Manager

CC: Alexandra Church, Director of Planning and Development
Jeremy Kaufman, Assistant Corporation Counsel

FROM: Francis J. Spinelli, Fire Chief/Interim Building Inspector

DATE: April 11, 2024

SUBJECT: 127 Montgomery Street, Release of Restrictive Covenants Inspection

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I conducted an inspection of 127 Montgomery Street (19-1-8) on February 23, 2024. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

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

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

There are no open permits or open permit applications.

The property contains a Two-Family Residence. It has a valid Rental License.

There is a valid Certificate of Occupancy, dated January 21, 2015, in the property file for a two-family residence.

Thank you,

____

Francis J. Spinelli
Fire Chief/Interim Building Inspector


FOR SALE

RESOLUTION NO.: ________ - 2024

OF

MAY 13, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO A SITE DEVELOPMENT AGREEMENT WITH THE KEARNEY REALTY & DEVELOPMENT GROUP INC. RELATED TO PROPERTY LOCATED AT 137 SMITH STREET (SECTION 12, BLOCK 4, LOT 4.1), 140 MONTGOMERY STREET (SECTION 12, BLOCK 4, LOT 10), AND 146 MONTGOMERY STREET (SECTION 12, BLOCK 4, LOT 2.1)

WHEREAS, by Resolution Number 249-2022, the City Council of the City of Newburgh entered into a Site Development Agreement with The Kearney Realty & Development Group Inc. for the redevelopment of City-owned properties located at 137 Smith Street (Section 12, Block 4, Lot 4.1), 140 Montgomery Street (Section 12, Block 4, Lot 10), and 146 Montgomery Street (Section 12, Block 4, Lot 2.1) (collectively the "Properties"); and

WHEREAS, the developer, The Kearney Realty & Development Group Inc. (by Sean Kearney) has requested an amendment to the Site Development Agreement in order to enter into the New York State Department of Environmental Conservation's Brownfield Cleanup Program; and

WHEREAS, this Council finds that approving such an amendment to the 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 an amendment to the site development agreement with The Kearney Realty & Development Group Inc., in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, related to the redevelopment of the properties located at 137 Smith Street, 140 Montgomery Street, and 146 Montgomery Street.

AMENDMENT TO SITE DEVELOPMENT AGREEMENT

THIS AMENDMENT to a Site Development Agreement ("Amendment"), made as of this ______ day of May, 2024, by and between the City of Newburgh, a New York municipal corporation, with offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City") and The Kearney Realty & Development Group Inc., a domestic business corporation having an address of 57 Route 6, Baldwin Place, New York 10505 ("Developer").

W I T N E S S E T H:

WHEREAS, the City and Developer executed a Site Development Agreement on October 24, 2022 for the redevelopment of City-owned properties located at 137 Smith Street (Section 12, Block 4, Lot 4.1), 140 Montgomery Street (Section 12, Block 4, Lot 10), and 146 Montgomery Street (Section 12, Block 4, Lot 2.1) (collectively the "Properties"); and

WHEREAS, the Developer requested an amendment to the Site Development Agreement in order to enter into the New York State Department of Environmental Conservation's Brownfield Cleanup Program; and

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

1. Section 9.05, entitled "Environmental and Soil Investigation and Testing" shall be replaced in its entirety and shall now read:

SECTION 9.05 Environmental and Soil Investigation and Testing.

(a) City 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 an Governmental Authority which must approve any aspect of the development of the Project. Developer shall provide a copy of any such report(s) to City (which obligation shall not extend to attorney-client privileged materials or other confidential materials).

(b) Such investigation and testing may include, without limitation, (i) site inspection; (ii) drilling, core sampling, taking of samples for analysis, installing, monitoring and testing devices; (iii) interviews of present occupants of the Property; (iv) a review of public records concerning the Property and other properties in the vicinity of the Property; and (v) a review of aerial photographs of the Property and other evidence of historic land uses.

(c) 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. City shall have the right to be present during all testing and sampling and survey work.

(d) Developer shall be permitted to perform investigation and remediation activities pursuant to any requirements of the New York State Department of Environmental Conservation's ("DEC") Brownfield Cleanup Program ("BCP").

(e) Developer shall pay all costs and expenses of such investigation, testing, and remediation. Developer shall indemnify and hold City 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 unknown pre-existing conditions, the negligence or misconduct of City, 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 City prior to having access to the site.

2. All other terms and conditions set forth in the Site Development Agreement shall remain in full force and effect.

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

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

Seller: City of Newburgh

By: ______________________________
Todd Venning, City Manager
Per Resolution No.: ____-2024

Developer: The Kearney Realty & Development Group Inc.

By: ______________________________________
Kenneth Kearney, President

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

On the _______ day of May in the year 2024 before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

____
Notary Public

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

On the ________ day of May in the year 2024 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

KEARNEY
GROUP

57 Route 6, Suite 207
Baldwin Place, New York 10505
Telephone: 845.306.7705
Fax: 845.306.7707

March 1, 2024

Todd Venning, J.D., M.S.
City Manager/CEP & CAO
City of Newburgh
83 Broadway
Newburgh, New York 12550

Re: The Green (140 & 146 Montgomery Street and 137 Smith Street)

City Manager Venning,

We are requesting an addendum to our Site Development Agreement for the properties located at 140 & 146 Montgomery Street and 137 Smith Street that would allow for not only access, but also remediation pursuant to New York State Department of Environmental Conservation's (DEC) Brownfield Cleanup Program (BCP). The DEC requires specific language to show evidence of site access for any sites seeking to enter the BCP. Evidence of site access is a prerequisite to being accepted into the BCP. This addendum, and subsequent site access letter, will enable us to finalize our BCP application and enter this site into the BCP.

Thank you for your consideration and should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Sean Kearney

Sean Kearney
Vice President
Kearney Realty & Development Group

RESOLUTION NO.: 249 - 2022

OF

OCTOBER 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SITE DEVELOPMENT AGREEMENT WITH THE KEARNEY REALTY & DEVELOPMENT GROUP INC. FOR THE TRANSFER AND REDEVELOPMMENT OF PROPERTIES LOCATED AT 137 SMITH STREET (SECTION 12, BLOCK 4, LOT 4.1), 140 MONTGOMERY STREET (SECTION 12, BLOCK 4, LOT 10), AND 146 MONTGOMERY STREET (SECTION 12, BLOCK 4, LOT 2.1)

WHEREAS, the City of Newburgh wishes to redevelop City-owned properties located at 137 Smith Street (Section 12, Block 4, Lot 4.1), 140 Montgomery Street (Section 12, Block 4, Lot 10), and 146 Montgomery Street (Section 12, Block 4, Lot 2.1) (collectively the "Properties"); and

WHEREAS, the City of Newburgh issued Request for Proposals ("RFP") No. 6.21 to solicit for plans to redevelop the Properties; and

WHEREAS, the Mayor's Strategic Economic Development Advisory Committee ("SEDAC") reviewed all of the proposals submitted in connection with the RFP and recommended the proposal to redevelop the Properties set forth by The Kearney Realty & Development Group Inc. to the City Council; and

WHEREAS, the City Council caused a public hearing to be duly noticed and convened and completed a public hearing on September 12, 2022; 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 Properties are 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 The Kearney Realty & Development Group Inc. (by Kenneth Kearney, as president), in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the transfer and redevelopment of the properties located at 137 Smith Street, 140 Montgomery Street, and 146 Montgomery Street.

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 10.11.2022 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 12 day of Oct. 2022

City Clerk

SITE DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWBURGH

AND

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

DATED AS OF OCTOBER 24, 2022

Regarding:
137 Smith Street, Tax ID 12-4-4.1
140 Montgomery Street, Tax ID 12-4-10
146 Montgomery Street, Tax ID 12-4-2.1
City of Newburgh, Orange County, New York

TABLE OF CONTENTS

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT ("Agreement") dated _______________, 2022 between the City of Newburgh, a municipality of the State of New York, having a principal office at City Hall, 83 Broadway, Newburgh, NY 12550 ("City") and The Kearney Realty & Development Group Inc., a domestic business corporation having an address of 57 Route 6, Baldwin Place, New York 10505 ("Developer").

W I T N E S S E T H:

WHEREAS, the City is the owner of three (3) parcels of property, all located in the City of Newburgh, and more accurately referred to as: (1) 137 Smith Street [Section 12, Block 4, Lot 4.1]; (2) 140 Montgomery Street [Section 12, Block 4, Lot 10]; and (3) 146 Montgomery Street [Section 12, Block 4, Lot 2.1] on the official tax map of the City of Newburgh, (collectively referred to herein as the "Property"); and

WHEREAS, the City desires to provide for the redevelopment of the Property for residential and commercial (i.e. mixed-use) uses; and

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

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

WHEREAS, the Developer acknowledges that the City 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 Agreement; and

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

ARTICLE 1
DEFINITIONS

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

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

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

"Awards" shall mean grants, loans, or any other funding from a Governmental Authority, as Governmental Authority is further defined herein.

"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, New York 12550, its successors and/or assigns.

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

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

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

"Developer" shall mean **The Kearney Realty & Development Group Inc.**, its successors and/or assigns to the extent permitted under Section 12.01 of this Agreement.

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

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

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

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

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

"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 but not limited to a site plan that includes a landscaping plan, a drainage plan, pedestrian and vehicle ingress and egress, a floor plan, mark-outs for water, sewer and utilities, exterior materials, colors and elevations, parking, and signage, including all amendments and modifications thereof made in accordance with the terms hereof.

"Project" shall mean the development project, which shall include new construction permitted in the applicable zone(s) in accordance with all state and local code requirements, and as further set forth in this Agreement.

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

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

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

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

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

"Taxes" shall mean all taxes, assessments, water and sewer rents, rates and charges, vault license fees or rentals, levies license and permit fees and all other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, which shall be charged, levied, laid, assessed, imposed upon, become due and payable out of or in respect of, or become liens upon the whole or any part of the Property or Improvements, together with all interest and penalties, under all present or future laws, ordinances, requirements, orders, directives, rules or regulations 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 City and the Developer for the issuance of the policies of title insurance referred to in Section 3.02.

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

ARTICLE 2
DEVELOPER'S REPRESENTATIONS

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

(a) Developer is a domestic business corporation duly formed and in good standing under the laws of the State of New York; is duly qualified to transact business in the State of New York; and has the requisite corporate power and authority to enter into this Agreement and any other documents required by the Parties to effectuate this Agreement including. The execution, delivery and performance by Developer of such documents does not conflict with or result in a violation of Developer's organizing documents or any judgment, order or decree of any court or arbiter to which Developer is a party or by which it is bound. Such documents are valid and binding obligations of Developer, enforceable in accordance with their terms. There is no suit, action, proceeding or litigation pending or, to the best of Developer's knowledge, threatened, against or affecting the Developer by or before any court, arbitrator, administrative agency or other Governmental Authority which might have material effect on the validity of the transaction contemplated hereby or the ability of the Developer to perform its obligations under this Agreement.

(b) Developer intends to proceed to seek the Approvals and Permits for the construction of the Project promptly following the execution of this Agreement.

(c) Developer has the requisite financial capacity and technical expertise and is in all respects capable of constructing the Project.

(d) Developer's financial capacity to complete the project relies, in whole or in part, on an Award from a Governmental Authority. As such, Developer shall provide the name of the Award(s) and the Governmental Authority(ies) charged with review and issuance of the Award(s) contemporaneous with the signing of this Agreement. Developer represents to the best of its knowledge that it is qualified to apply for and receive said Award(s), and the Award(s) may be used to fund the Project. Unless already awarded or received, Developer shall promptly apply for said Award(s) and provide the City with timely updates on application deadlines, expected Award determination dates, and actual Award funding dates.

(e) The Project will be constructed to meet all requirements of Permits and Approvals and applicable requirements of any Governmental Authority having jurisdiction over the Developer, the Property, the Improvements or their use or operation.

(f) All certificates or statements furnished to the City by or on behalf of the Developer in connection with the transaction contemplated hereby are true and complete.

(g) Additional Developer representations unique to this Project are annexed hereto as "Schedule E," are jointly and severally material to inducing the City into entering into this agreement, are fully incorporated into this Agreement and made part hereof, and shall survive closing of title as contemplated in Section 3.

ARTICLE 3
CONVEYANCE OF PROPERTY AND ACCEPTABLE TITLE

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

(a) the real property located in Orange County and described in Schedule "A" attached hereto and made part hereof (the "Land");
(b) all Improvements constructed or situated on the Land as of the date of Closing;
(c) all right, title and interest currently held by the City, 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) all appurtenances and all the estate and rights currently held by the City in and to the Land.
(e) the appurtenances and all the estate and rights currently held by the City in and to the Land and Improvements; and
(f) all right, title and interest currently held by the City, if any, in and to the furniture, machinery, fixtures, equipment attached to or located on the Land or the Improvements (collectively referred to in the Agreement as the "Equipment")

SUBJECT TO the any easements or rights-of-way of record.

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

(a) the matters set forth in Schedule "B" attached hereto;
(b) statutory liens for current taxes, assessments or other governmental charges not yet delinquent; and
(c) zoning, entitlement and other land use and environmental regulations by the City, provided that such regulations have not been violated.

SECTION 3.03 Closing. Except as otherwise provided in Schedule C, the closing of title pursuant to this Agreement (the "Closing") shall take place at 10:00 a.m. on a specific date determined by the parties, but in no event later than 24 months from the date of this Agreement, at the offices of the Corporation Counsel at City Hall, 83 Broadway, Newburgh, NY, or at such other date or location as may be agreed to by the parties (the actual date of the Closing being herein referred to as the "Closing Date").

ARTICLE 4
PURCHASE PRICE; ACCEPTABLE FUNDS

SECTION 4.01 Purchase Price; Down Payment. The purchase price (the "Purchase Price") to be paid by Developer for the Property shall be $200,000.00, payable as follows:

(a) The Developer shall pay to the City a down payment of $20,000.00 (the "Earnest Money") upon the execution of this Agreement, which Earnest Money shall be non-refundable, except to the extent provided in Section 7.02.
(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 City at Closing.

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

(a) Certified checks of the Developer on behalf of the Developer or any person making a purchase money loan to the Developer drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, payable to the order of the City;
(b) Official bank checks drawn by any such banking institution, payable to the order of the City; 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 obligations to purchase shall be contingent upon the following conditions:

(a) Prior to conveyance of the Property, the Developer shall have the option to terminate this Agreement, but without the right to receive a refund of the Earnest Money and any costs incurred by Developer in connection with the Project.

(b) Developer shall be deemed to have waived all contingencies if written notice is not given to City on or prior to the Closing Date.

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

(a) Developer shall have paid the Purchase Price as provided in Article 3 of this Agreement.
(b) Developer shall have deposited all Required Guarantees, if any, required by this Agreement.
(c) Developer shall have obtained all required Approvals and Permits for the Project.

(d) Developer shall not be in default under this Agreement.

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

SECTION 5.04 Termination of Agreement. Upon termination by either party pursuant to this Agreement, this Agreement shall be null and void, and no action, claim or demand may be based on any term or provision of this Agreement, other than Sections 6.03 (Indemnity) and 9.05(e) (Environmental Indemnity).

ARTICLE 6
COVENANTS

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

(a) Design and Approvals:

i. Developer will cause to be prepared by an Architect a project design for the Project and submit Plans and Specifications to the City's land use boards in what Developer's Architect reasonably believes is sufficient time for review and approval prior to the Closing Deadline, provided the same does not conflict with or surpass the Closing Deadline.

ii. Developer shall use commercially reasonable efforts to obtain all necessary Approvals and Permits at least 30 days prior to the Closing Deadline.

iii. Developer shall receive City's prior written approval, not to be unreasonably withheld or delayed, of all architects, engineers and general contractors to be engaged in the planning, design, and construction of any Public Improvements. The City may reasonably withhold prior written approval, apart from any other considerations, unless and until (1) Developer provides an insurance company bond to the City for the City's estimated value of any public improvements, plus 20 percent; and (2) any of Developer's architects, engineers, and contractors specifically agree to complete work for City, at City's request, in the event of Developer's default. City hereby approves the following, should Developer desire to engage any or all of them for the Project: Coppola Architectural, P.C. (for architectural services), Insite Engineering, Surveying & Landscape Architecture, P.C. (for civil engineering and related services), and Tern Construction & Development, LLC (as general contractor).

iv. 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, as a result of any act or omission of Developer, or any person or entity claiming by, through or under Developer, and made against the Property or any part thereof in the interest therein of the City, or the interest therein of a Party under this Agreement, 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, then Developer, upon receipt of notice of the filing, assertion, entry or issuance of such lien (regardless of the source of such notice) shall give written notice thereof to City within 5 business days and, except where the validity of such Lien is being contested in accordance with the provisions of this Section, take all action (including the payment of money and/or the securing of a bond) at its own expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the City for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against City's interest in the Property. The Developer may, at its sole expense contest, after prior written notice to the City, by appropriate action conducted in good faith and with due diligence in the amount or validity or application, in whole or in part, of any Lien, if (1) 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 Agreement, of the Sell or Developer or against any of the rentals or other amounts payable under this Agreement, (2) neither the Property or Improvements nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) City 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 (4) the Developer shall have furnished such security, if any, as may be required in such proceedings; if such proceeding could result in the City 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 City that the Developer shall indemnify and hold the City harmless from any claims, liabilities, costs or expenses as may derive with respect thereto, and the Developer shall provide to the City such security as the City may reasonably require.

v. At the written request of the City, the Developer shall provide all reasonable information as may be requested with respect to any Lien, the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Developer in connection therewith.

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

i. Shall at its own cost and expense use commercially reasonable 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;

iii. Shall perform the construction and installation of the Project expeditiously, in compliance with the Plans and Specifications, in a good and workmanlike manner and in accordance with the provisions of this Agreement.

iv. Shall pay all proper accounts for work done or materials furnished under all Agreement which it has entered into relating to the construction of the Project.

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

(a) The City shall not encumber the Property or enter into any lease or other occupancy agreement therefor, without the prior written consent of the Developer. The City shall deliver the Property to Developer at Closing free of leases, occupants and tenancies.

(b) The City shall allow for Developer or Developer's representatives access to the Property upon reasonable prior notice pursuant to Section 9.05 of this Agreement.

(c) City hereby agrees that it will issue consents in its capacity as owner when reasonably requested by Developer, at Developer's expense, to any application for planning or other regulatory approvals necessary in connection with the contemplated use of the Property for the Project consistent with this Agreement (including but not limited to the Approvals and Permits), subject to Section 9.04.

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

ARTICLE 7
OBJECTION TO TITLE, FAILURE TO PERFORM

SECTION 7.01 Developer to Deliver Title Report. Developer shall cause a copy of an updated title report from the Title Insurer to be forwarded to City within sixty (60) days of the date of this Agreement. Service of the updated title report shall constitute notice of the Developer's objections to title, as said objections might be outlined in a Schedule B or Schedule B-1. City 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. Developer shall be deemed to have waived any objections to title if not made within (10) days after furnishing the title report to the City, or within ten (10) 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.

SECTION 7.02 Developer's Right to Terminate. If City is unable to cause title to the Project to be conveyed at the Closing in accordance with the provisions of this Agreement, Developer may elect to accept such title as City may be able to cause to be conveyed. If Developer shall not so elect, Developer may terminate this Agreement upon thirty (30) days' notice to City. Upon such termination, the Agreement shall be null and void and the parties hereto shall be relieved of all further obligations and liability except that the provisions of Section 9.05(e) and Section 6.03 shall survive the closing.

ARTICLE 8
DESTRUCTION, DAMAGE OR CONDEMNATION

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

ARTICLE 9
SITE CONDITIONS; INVESTIGATIONS; APPROVALS

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

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

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

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

SECTION 9.05 Environmental and Soil Investigation and Testing.

(a) City 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 an Governmental Authority which must approve any aspect of the development of the Project. Developer shall provide a copy of any such report(s) to City (which obligation shall not extend to attorney-client privileged materials or other confidential materials).

(b) Developer may terminate this Agreement on or before 180 days after the date of this Agreement, but without the right to receive a refund of the Earnest Money, in the event such report indicates the presence of any objectionable material as contemplated in paragraph (a).

(c) Such investigation and testing may include, without limitation, (i) site inspection; (ii) drilling, core sampling, taking of samples for analysis, installing, monitoring and testing devices; (iii) interviews of present occupants of the Property; (iv) a review of public records concerning the Property and other properties in the vicinity of the Property; and (v) a review of aerial photographs of the Property and other evidence of historic land uses.

(d) The investigation and testing any be performed at any time or times, except that entry upon the Property shall be on reasonable notice, and under reasonable conditions. 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. City 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. Developer shall indemnify and hold City 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 unknown pre-existing conditions, the negligence or misconduct of City, 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 City prior to having access to the site.

ARTICLE 10
CLOSING OBLIGATIONS; APPORTIONMENTS

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

(a) A quitclaim deed, including the covenant required by Section 13 of the Lien Law, properly executed and in proper form for recording so as to convey the title required by this Agreement.
(b) A bill of sale conveying, transferring and selling to Developer all right, title and interest of the City in and to any Equipment on the Property, if any.
(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 judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the City's name.
(e) A designation agreement designating the "reporting person" for purposes of completing IRS Form 1099-S
(f) Subject to Permitted Exceptions, possession of the property in the condition required by this Agreement.
(g) Exclusive possession of the Property in the condition required by this Agreement, subject to the Permitted Exceptions.

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

(a) Developer shall deliver to City 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 and cause all such returned 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 date of Closing Date. Water and sewer charges and sanitation fees will be paid by the City to the Closing Date.

ARTICLE 11
DEFAULTS AND REMEDIES

SECTION 11.01 Remedies on Default.

(a) Termination of Agreement by Seller. Upon the occurrence of any default under this Agreement by Developer, Seller may, at its option, or any time thereafter, give written notice to Developer specifying the default and stating that this Agreement shall terminate on the date specified in such notice, which shall be not less than fifteen (15) days after the date of such notice. Upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement shall terminate, unless such default is cured prior to the end of such notice period. The termination of this Agreement does not relieve Developer of its liability and obligations under Section 9.05(e) and Section 6.03 of this Agreement, which shall survive. Upon such termination Seller will retain the Earnest Money as liquidated damages. The termination of this Agreement and the retention of the Earnest Money will be the sole remedy available to Seller for such default by Developer will not be liable for additional damages or for specific performance.

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

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

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

ARTICLE 12
MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

Developer as follows:

Kearney Realty & Development Group, Inc.
57 Route 6
Baldwin Place, New York 10505

with a copy to:

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

Seller as follows:

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

With a copy to:

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

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

SECTION 12.11 Project Mortgage. Not applicable.

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

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

SECTION 12.14. All Terms Material. All of the terms contained in this Agreement are individually and collectively material to this transaction, with the City and Developer having relied on each and every term in entering into this Agreement. Any terms not contained in this Contract have been deliberately excluded and are not material to this transaction.

SECTION 12.15 Withdrawal of Offer. This Agreement shall be deemed withdrawn unless accepted by Seller and a fully executed counterpart of this Agreement returned to Developer on or before November 28, 2022, said date being approximately 45 days from the date of this Agreement is authorized for execution by the City Council of the City of Newburgh.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
[Signature Page, Acknowledgments, and Exhibits A through E to follow]

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

Seller: City of Newburgh

By: ______________________

Todd Venning, City Manager
Per Resolution No.: 249-2022

Developer: The Kearney Realty & Development Group Inc.

By: ______________________

Kenneth Kearney, President

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

On the 24 day of October in the year 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

Jeremy Kaufman
Notary Public, State of New York
Registration No. 02KA6202389
Qualified in Dutchess County
Commission Expires: March 16, 2025

____
Notary Public

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

On the 14th day of October in the year 2022 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.

JUSTIN A LEIGH
NOTARY PUBLIC
NO. 01LE6432524
My Comm. Expires
May 2, 2026
Qualified in Westchester County
STATE OF NEW YORK

____
Notary Public

SCHEDULE A
DESCRIPTION OF THE PROPERTY

ALL THOSE TRACTS OR PARCELS 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:

1. 137 Smith Street, being more accurately described as Section 12, Block 4, Lot 4.1 on the Official Tax Map of the City of Newburgh.

2. 140 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 10 on the Official Tax Map of the City of Newburgh.

3. 146 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 2.1 on the Official Tax Map of the City of Newburgh.

SCHEDULE B
PERMITTED ENCUMBRANCES

1. Any and all easements for utilities, both public and private, sewers, water lines, streets, and rights-of-way of record as of the date of this Agreement;

2. Such easements, covenants, reservations, encumbrances or restrictions as are of record as of the date of this Agreement;

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 Agreement.

SCHEDULE C
PROJECT AND DEVELOPMENT DEADLINES

1. Within ninety (90) days of the execution of this Agreement, the Developer shall submit a Request for Informational application to the City of Newburgh for the Project that described the development proposal in accordance with this Agreement.

2. Closing Deadline: Twenty-four (24) months from the date of this Agreement. By the Closing Deadline, Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.

    a. Developer may make a written request to the City Manager for an extension of the twenty-four (24) month Closing Deadline period. Such request shall be accompanied by a non-refundable fee of $750.00 ($250.00 per parcel), payable to the "City of Newburgh." The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close up to, but not to exceed, six (6) months, as measured from the end of the original Closing Deadline. Developer's diligent pursuit of Approvals and Permits, Awards and a Project Mortgage shall constitute good cause for the City Manager to grant such extension.

SCHEDULE D
SAMPLE DEED

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

BETWEEN:

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

THE KEARNEY REALTY & DEVELOPMENT GROUP INC., a domestic business corporation company having an address of 57 Route 6, Baldwin Place, New York 10505, party of the second part.

WITNESSETH, that the party of the first part, in consideration of two hundred thousand and 00/100 dollars ($200,000.00) 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 those certain plots, pieces or parcels 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:

1. 137 Smith Street, being more accurately described as Section 12, Block 4, Lot 4.1 on the Official Tax Map of the City of Newburgh.

2. 140 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 10 on the Official Tax Map of the City of Newburgh.

3. 146 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 2.1 on the Official Tax Map of the City of Newburgh.

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

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

BEING the same premises as indicated in a deed from ______________________________, Director of Finance and Enforcing Officer of the City of Newburgh, to the City of Newburgh, dated ________________________, and recorded in the Orange County Clerk's Office on ____________________________, in Liber __________ of Deeds at Page ______________.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to such premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part forever.

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

IN PRESENCE OF: THE CITY OF NEWBURGH

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

RECORD & RETURN TO:

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

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

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

____

SCHEDULE E
ADDITIONAL DEVELOPER REPRESENTATIONS

1. Developer's is fully familiar with the City's zoning laws and requirements. Developer's plan does not contemplate requests for use variances or area variances, with the exception of an area variance for off-street parking.

2. Developer's plan shall include a central greenway and courtyard, community garden, rain garden, and community garden which comprise a minimum of approximately 2,000 square feet of space on the Premises.

3. Developer's plan shall include a permanent, on-site property manager to address residential and commercial tenant concerns.

4. Developer's plan shall include free wi-fi access for residential tenants.

5. Developer's plan shall include two (2) retail spaces comprising approximately 2,488 square feet and 2,829 square feet, respectively, subject to changes requested or required by City land use boards in connection with Developer's pursuit of the Approvals and Permits.

6. Developer's plan shall include a third retail space comprising approximately 1,580 square feet. Developer shall be responsible for obtaining a Certificate of Occupancy for a proposed retail use and renting said retail space to a minority or woman-owned business, where the principal operator of said business is a resident of the City of Newburgh, and rent is fixed at no greater than $10,400.00 annually ($866.67 monthly) for a period of 3 years. Thereafter, provided that said retail tenant is otherwise compliant in all respects with the lease in effect at the end of the third year, Developer shall offer subsequent renewal leases term(s) no less than one (1) year in length and rent increases (for the fourth and fifth years only) of no greater than four percent (4%) of the prior year's annual lease amount.

7. Developer's plan shall include approximately 101 residential units, serving households earning 40%, 60%, 80%, and approximately 110% of the then current Average Median Income for Orange County. Developer shall, subject to the review and approval by New York State Homes and Community Renewal's Fair and Equitable Housing Office, develop and administer an application process that gives primary priority rental preference to prospective tenants who:

   a) Currently reside within three (3) square miles of the project area; <u>and</u>

   b) Can demonstrate that he/she/they had one or more ancestor(s) in a direct line of descendancy (i.e. parent, grandparent, great grandparent, etc.) who owned property that was later acquired by the Newburgh Urban Renewal Agency <u>or</u> was the subject of an "Urban Renewal Land Disposition Agreement."

   and gives secondary priority rental preference to prospective tenants who meet either of the above criteria.

8. Developer's final plan shall include a certification from Developer and Developer's Architect that its plan complies with both the New York State Energy Code and Leadership in Energy and Environmental Design ("LEED") minimum requirements.

9. Supplementing Section 2.01(d), should Developer fail to receive a Governmental Award, Developer shall have one additional opportunity to apply for such Governmental Award at the next available award cycle. Should said Governmental Award no longer be available, Developer fail to timely apply, or Developer not receive said Governmental award at the next available award cycle, the City may cancel this Agreement its sole discretion, and the Parties shall owe no further obligations to each other.

10. Developer shall comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), as follows:

   a) Developer agrees to comply with federal regulations in 24 CFR part 75, which implements Section 3. Developer certifies that it is under no contractual or other impediment that would prevent it from complying with the Part 75 regulations.

   b) Developer agrees to agrees to notify potential contractors and subcontractors that are associated with Section 3 covered projects and activities about the requirements of Section 3, to include this Section 3 clause in every contract and subcontract subject to compliance with regulations in 24 CFR Part 75, and to ensure that any subcontractors also include this Section 3 clause in their subcontracts for work performed on the project.

   c) Developer will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

   d) Developer agrees to maintain hiring and contracting practices to the greatest extent feasible so that <u>25 percent of the total labor hours expended on the project are by Section 3 Workers, of which 5 percent are by Targeted Section 3 Workers as defined in 24 CFR part 75</u>. As part of these practices, Developer agrees to provide priority consideration to eligible residents and businesses in accordance with 24 CFR Part 75, and eligible residents who reside within one (1) square mile of the Project Premises. If Developer is not able to meet this benchmark goal, it must provide a narrative of efforts taken and supporting documentation explaining why it was unable to meet that goal, despite greatest extent feasible efforts taken.

   e) Developer shall offer opportunities to Section 3 Workers to attend social and networking events related to the Project, opportunities to attend project management meetings, and opportunities to meet and interact with Developer's senior management team throughout the course of the Project. Said efforts shall be documented in accordance with this paragraph (9).

   f) Developer agrees to comply with all monitoring, reporting, recordkeeping, and other procedures specified by the City. Developer is responsible for providing Section 3 performance metrics and supporting documentation for all its subrecipients, contractors, and subcontractors, as applicable. At a minimum, Developer shall complete and submit to City a "New York State Homes and Community Renewal Section 3 Sub Reporting Form & Greatest Extent Feasible Efforts Checklist" within the first six (6) months of the Project start and every six (6) months thereafter until Project completion. Developer shall also submit a final report at the completion of the Project.

g) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, penalties, and/or termination of this contract for default.

RESOLUTION NO.: _____________ - 2024

OF

MAY 13, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AND SERVICE AGREEMENT WITH PLACER LABS, INC. IN THE AMOUNT OF $22,000.00 FOR PLACER.AI LOCATION BASED DATA ANALYTICS SOFTWARE

WHEREAS, Placer is a location analytics software powered by mobile data that monitors mobile devices to provide data on any physical location; and

WHEREAS, the City has identified the Placer software which can analyze visitor demographics, measure event impacts and marketing strategies, support local business and monitor park and attraction attendance to examine infrastructure, transportation, economic and revitalization plans and programs to improve future planning and decisions; and

WHEREAS, the City received from Placer Labs, Inc. an agreement and price quote for a one year agreement with funding in the amount of $22,000.00 shall be derived from Budget Code CD1.8686.0400.8000.2023 and CD1.8686.0400.8000.2024; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into this agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into an agreement with Placer Labs, Inc. in the amount of $22,000.00 for Placer.ai location analytics software.

PLACER LABS, INC.

ORDER FORM

The City of Newburgh	(“**Customer**”)	Placer Labs, Inc.	(“**Placer**”)
Address:	83 Broadway Newburgh, NY 12550	Address:	440 N Barranca Ave., #1277 Covina, CA 91723
Contact Person:	Ali Church	Contact Person	Rodney Fraser
Email:	achurch@cityofnewburgh-ny.gov	Billing Contact Person:	Jason Tsui
Phone:	845-565-3230	Billing Email*:	billing@placer.ai
Billing Contact Email:		Billing Phone*:	415-228-2444 ext 806
		*Not for use for official notices.	

1. Services.

The services provided under this Order Form (the “**Services**”) include:

- Chain Report Expanded which displays chain-level demographic and psychographic data.
- Access, via Placer Venue Analytics Platform (“Placer’s Platform”), to all major venues within the following U.S. state(s): US-NY
- Customer may not provide access to any third party agents acting on its behalf (including any consultants, contractors, or other agents of Customer) without prior written consent from Placer. Any such approved access may be subject to an additional fee pursuant to a written amendment to this Order Form
- Access, via Placer’s Platform, to reports, including Visits, Trade Areas, Customer Journey, Customer Insights, Dwell Times, and Visitation by Hour/Day
- Actionable insights include:
    - Foot traffic counts and dwell time
    - True Trade Areas displaying frequent-visitors-density by home and work locations
    - Customers’ demographics, interests, and time spent at relevant locations
    - Where customers are coming from and going to, and the routes they take
    - Benchmarking of Foot Traffic, Market Share, Audiences, and other key metrics
    - Competitive insights
    - Void Analysis Reports
- Access to Xtra reports per ad hoc needs; in Excel, KML, Tableau, and other formats: Quarterly Maximum of 26 credits; Annual Maximum of 104 credits
- Premier Customer Support
    - Regular meetings with Placer's Customer Success Team
    - Live, Virtual Training support as reasonably needed
- Access to STI Demographics Bundle + Mosaic Data Set, and AGS CrimeRisk. The applicable Advanced Demographics and Psychographics are generated using the Input Datasets from the data vendors as set forth below:

Description	Input Datasets Used
STI Demographics Bundle	PopStats
	Spending Patterns
	Workplace
	Market Outlook
Experian Mosaic	Mosaic Segmentation
AGS CrimeRisk	CrimeRisk

2. Permitted Uses

The data, information and materials accessible via the Services are referred to as "**Placer Data**". Customer may use Placer Data solely for the following purposes ("**Permitted Uses**"): (a) Customer may use Placer Data for Customer's internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

"**Research Data**" means datasets and other materials created by Customer that result in any part from Customer's use of Placer Data. The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information (for such purpose only, Placer grants Customer the rights to use the Placer.ai name and logo, provided that any such use of the Placer.ai name and logo must clearly indicate that Placer is the provider of data only, and is not involved in any analysis, conclusion, recommendation). Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

3. Term and Termination.

Initial Term: The initial term of this Order Form will begin as of the last signature date set forth below, and will continue for 12 consecutive months thereafter (the "**Initial Term**"). Each renewal or additional term, if any, is referred to as "**Additional Term,**" and the Initial Term and any Additional Terms are referred to collectively as the "**Term.**"

Additional Term: Following expiration of the Initial Term, this Order Form shall be automatically renewed for additional periods of the same duration as the Initial Term, unless either party provides written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

Termination: Either party may terminate this Order Form upon thirty (30) days' notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days. In addition, Placer may immediately suspend Customer's access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.

4. Fees.

$22,000/year invoiced: in full upon signing this Order Form.

Invoice sent electronically to Customer's billing contact email via NetSuite.

Customer shall pay the fees set forth above in this Order Form.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer's net income.

If Customer believes that Placer has billed Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer's customer support department at support@placer.ai.

Placer may increase the Fees any time following the Initial Term (but not more frequently than once in any twelve (12) month period).The amount of such annual increase will equal the greater of CPI or five percent (5%) per annum.

In the event of any termination, Customer will pay in full for the Services.

All billing will be sent via electronic invoice to the Customer contact indicated above. Customer shall pay all fees within thirty (30) days of the invoice date.

5. Support.

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, please contact us at support@placer.ai.

6. Mutual NDA.

Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.

7. Miscellaneous.

All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

<u>Trial Offering</u>. If Placer provides Customer with additional Services or Placer Data during the Term and identifies such Services or Placer Data as for evaluation or trial purposes only (a "Trial Offering"), access to the Trial Offering is permitted only during the period designated by Placer (or if not designated, 30 days from receipt of access) ("Trial Subscription Term"), unless the Trial Offering is earlier terminated as provided below. During the Trial Subscription Term, Customer may only use the Trial Offering for internal evaluation purposes and may not otherwise use or distribute the Trial Offering for any other purposes. Notwithstanding any provision included in this Order Form or the Agreement to the contrary, in respect of the Trial Offering Customer acknowledges and agrees that: (i) either

party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (ii) any Trial Offering is provided "as is"; (iii) Placer provides no warranty, service levels or indemnity for any Trial Offering and (iv) Placer's liability related to any TrialOffering will not exceed USD $100. Notwithstanding the foregoing, the Services and Placer Data provided in this Order Form is not considered a Trial Offering.

Customer grants Placer the right to use Customer's company name and company logo, for Placer's promotional purposes, with Customer prior written approval.

This Order Form is entered into by and between Customer and Placer effective as of the date of the last signature below. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement attached hereto as Exhibit A (the "**Agreement**"); provided, however, that in the event of any conflict between this Order Form and the Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

"Customer"	"**Placer**"
The City of Newburgh	Placer Labs, Inc.
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT A
PLACER LABS, INC.
LICENSE AGREEMENT

This License Agreement (this "**Agreement**") is entered into by and between Placer Labs, Inc., a Delaware corporation ("**Placer**"), and the customer ("**Customer**") listed on the order form (the "**Order Form**") entered into by and between Placer and Customer, effective as of the last signature date set forth on the Order Form (the "**Effective Date**"). Unless otherwise defined in this Agreement, capitalized terms herein have the same meaning as in the Order Form.

1. LICENSE

Subject to the terms of this Agreement and the Order Form (including, without limitation, the payment of fees by Customer), Placer hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Services (as set forth in the Order Form) solely for the Permitted Uses (as set forth in the Order Form).

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly, or allow any third party to (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or Placer Data or any software, documentation or data related to the Services or Placer Data; (b) attempt to re-identify any anonymized, aggregated, deidentified, obfuscated, or statistical Placer Data, (c) modify, translate, or create derivative works based on Placer Data (except to the extent expressly set forth as Permitted Use in the Order Form), (d) share Placer Data with, or disclose Placer Data to, or use Placer Data for the benefit of, a third party (except to the extent expressly set forth as Permitted Use in the Order Form), (e) remove any proprietary notices or labels, (f) circumvent any security control or access mechanism for the Services or Placer Data, (g) perform systematic and/or bulk downloads of Placer Data, or web scraping of Placer Data/from the Services, or systematic API calling beyond the minimal amount needed for Permitted Uses, or attempt to reconstruct any portion of Placer Data, (h) use the Services or Placer Data in connection with any products, services, or activities that compete with Placer, or (i) attempt to build a user profile for a given individual or device based on Placer Data, or attempt, facilitate, or encourage others to identify a given individual or user or reconstruct user profiles based on Placer Data. Customer shall not, directly or indirectly, resell, distribute, sublicense, display, or otherwise provide to third parties the Services or any Placer Data or any derivatives of Placer Data, except that Customer may display Placer Data as part of Research Data during the Term. For the avoidance of doubt, and without limiting any other restrictions or obligations set forth in this Agreement, Customer shall not use, license, sub-license or distribute Placer Data or any data derived from Placer Data, for any of the following purposes: (I) in connection with establishing eligibility for employment, health care, credit or insurance; (II) for making decisions solely by automatic means where the decision has a significant effect on the individual to whom the data relates; (III) for any unlawful tracking or unlawful surveillance purposes; or (IV) to market or sell to law enforcement agencies or to any governmental agency to be used for a law enforcement purpose.

2.2 Customer represents, covenants, and warrants that Customer will use the Services and Placer Data and only in compliance with applicable laws and regulations. Furthermore, Customer will ensure all access to Placer ("log in") shall be done using email addresses of Customer's email domain, and never any personal email addresses. Although Placer has no obligation to monitor Customer's access to and use of the Services or Placer Data Placer may do so and may prohibit any access or use it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services and Placer Data, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Access Equipment**"). Customer shall also be responsible for maintaining the security of the Access Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Access Equipment with or without Customer's knowledge or consent.

2.4 Customer shall maintain information security measures to safeguard Customer's Access Equipment and Placer Data in Customer's possession, including appropriate physical, technical, and organizational measures to ensure the security of such data. Such measures shall include, but not be limited to, the highest degree of care that Customer utilizes to safeguard its own sensitive data, which shall be no less than industry standard security measures in any event.

2.5 Customer shall maintain accurate and complete records relating to its use of Placer Data during the Term and for a period of one (1) year thereafter. Placer or its designee(s) may, at any time upon not less than ten (10) business days' notice to Customer, examine such records of Customer (and its affiliates and contractors, if any are permitted to use Placer Data) related to Customer's and any such parties' use of Placer Data ("**Audit**"). Customer will cooperate fully, and cause its affiliates and contractors to cooperate fully, with any such Audit(s) and will provide all records, data, documentation, and other information reasonably requested by Placer. The Audit(s) will be conducted during normal business hours, and at Placer's expense; provided however if such Audit reveals misuse of Placer Data by Customer, then Customer will bear the cost of such Audit, without limiting any other rights or remedies that Placer may have with respect to any such misuse of Placer Data.

3. PROPRIETARY RIGHTS

3.1 Placer shall own and retain all right, title and interest in and to (a) the Services and Placer Data, and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with supporting the foregoing, and (c) all intellectual property rights related to any of the foregoing. No licenses are granted by estoppel or by implication.

3.2 Customer may provide feedback to Placer in respect of the Services or Placer Data. Feedback may include, without limitation, updates to or corrections of Placer Data (e.g., a retail store may have moved or may have been closed). Placer may use any such feedback to improve the Services or for other purposes, without any obligation to Customer.

3.3 In the course of using the Services, Customer may upload data (e.g., Customer's customer data) to the Services. Such uploaded data is referred to herein as "**Customer Data**". Customer hereby grants Placer a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable and transferable right to use, modify, reproduce, distribute, prepare derivative works of, display and perform Customer Data (including all related intellectual property rights) in an aggregated and de-identified format ("**Anonymized Customer Data**") in connection with the Services. Customer also hereby grants each user of the Services a non-exclusive license to access Anonymized Customer Data through the Services, and to use, modify, reproduce, distribute, prepare derivative works of, display and perform such Anonymized Customer Data as permitted through the functionality of the Services. For clarity, the foregoing license grant to Placer and users of the Services does not affect Customer's ownership of Customer Data. Placer reserves the right to remove any Customer Data and/or Anonymized Customer Data from the Services at any time for any reason. Customer, not Placer, remains solely responsible for all Customer Data that Customer uploads, posts, emails, transmits, or otherwise disseminates using, or in connection with, the Services, and Customer represents and warrants that Customer possesses all rights necessary to provide such Customer Data to Placer and to grant the rights to use such Customer Data as provided herein.

4. WARRANTY AND DISCLAIMER

4.1 Placer shall use reasonable efforts consistent with prevailing industry standards to provide access to the Services and Placer Data. Access may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Placer or by third-party providers, or because of other causes beyond Placer's reasonable control, but Placer shall use reasonable efforts to provide advance notice, by posting in the Services, email, or otherwise, of any scheduled service disruption. PLACER DOES NOT WARRANT THAT ACCESS TO THE SERVICES OR PLACER DATA WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR PLACER DATA.

4.2 Placer Data shall not include (i) any personally identifiable data, including but not limited to, name, email address, address or any other personal identifier ("**Personal Data**"), nor (ii) any sensitive data, including but not limited to Personal Data relating to social security numbers and other government identifiers, information relating to health or medical conditions, and information relating to sex life or sexual orientation, political opinions, and financial account numbers ("**Sensitive Data**").

4.3 Placer represents and warrants that to its knowledge the Services and Placer Data do not infringe the intellectual property rights of any third party and comply with applicable laws and regulations. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4, THE SERVICES AND PLACER DATA ARE PROVIDED "AS IS" AND PLACER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PLACER DATA ARE COMPILED BASED ON PROPRIETARY ALGORITHMS, AND PLACER DOES NOT WARRANT THAT ALL DATA SHALL BE COMPLETE AND ACCURATE. FURTHER, PLACER MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR PLACER DATA. Without limiting the foregoing disclaimer, Customer acknowledges and agrees that Placer Data consist of and represent the result of statistical inferences. Placer is not a backup service, and Customer is solely responsible for creating any backups of data provided by Placer. Placer is not responsible for decisions made by Customer based on Placer Data.

5. INDEMNITY

5.1 Placer shall defend, indemnify and hold Customer harmless from liability to third parties resulting from infringement by Placer's provision of Placer Data of any United States patent or any copyright or misappropriation of any trade secret. The foregoing obligations do not apply with respect to any portions or components of Placer Data (i) that are created, compiled, or modified by any party other than Placer, (ii) combined with other products, processes, data, or materials where the alleged infringement relates to such combination, (iii) where Customer continues allegedly infringing activity after being notified thereof or after being informed of alternatives that would have avoided the alleged infringement, or (iv) where Customer's use of Placer Data is not strictly in accordance with this Agreement. If, due to a claim of infringement, Placer Data are held by a court of competent jurisdiction to be or are believed by Placer to be infringing, Placer may, at its option (a) obtain for Customer a license to continue using Placer Data or (b) terminate the Order Form and Customer's rights thereunder and provide Customer a refund of any prepaid, unused fees for Placer Data.

5.2 Customer shall defend, indemnify and hold Placer harmless from liability to third parties, including any claims of government agencies or regulators, resulting from or arising out of either (a) the provision of any data by Customer not in compliance with applicable law, or (b) the use by or on behalf of Customer of any Placer Data not in compliance with applicable laws and regulations.

5.3 The obligations of either party to provide indemnification hereunder is subject to the party seeking indemnification (a) providing the indemnifying party with prompt written notice of any claim, (b) providing the indemnifying party with sole control over the defense and settlement of the applicable claim and (c) reasonably cooperating with the indemnifying party in defending such claim. Subject to the foregoing, the indemnified party may be represented in any proceeding by counsel of its own choosing at its own expense.

6. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THE ORDER FORM, THIS AGREEMENT, THE SERVICES OR PLACER DATA, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR NON-PAYMENT OF FEES, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE ORDER FORM, THIS AGREEMENT, THE SERVICES OR PLACER DATA OR FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY WILL NOT EXCEED THE FEES PAID TO PLACER UNDER THE ORDER FORM DURING THE

PREVIOUS TWELVE (12) MONTHS PRECEDING ANY CLAIM GIVING RISE TO ANY LIABILITY HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISIONS, THE FOREGOING LIMITATIONS WILL NOT APPLY TO BREACH OF CONFIDENTIALITY OBLIGATIONS OR BREACH OF LICENSING RESTRICTIONS.

7. EXPORT CONTROL

Customer may not remove or export from the United States or allow the export or re-export of Placer Data, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

8. MISCELLANEOUS

This Agreement includes and incorporates Placer's privacy policy located at https://www.placer.ai/privacy-policy/platform-services-privacy-policy/ (the "**Privacy Policy**"). The Order Form, the Privacy Policy, and all other referenced documents, if any, are integral parts of this Agreement. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Placer's prior written consent. Placer may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Placer in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. This Agreement shall have the same Term as, and shall terminate or expire concurrently with, the Order Form. The following will survive any termination of this Agreement and Order Form: Sections 2.1, 2.4, 2.5, 3.1, 3.2, 4 through 8 of this Agreement.


SEAL OF THE CITY OF NEWBURGH, N.Y.
INCORPORATED 1865
CITY OF NEWBURGH
COURTHOUSE
300 BROADWAY

RESOLUTION NO.: _________ - 2024

OF

MAY 13, 2024

A RESOLUTION TO APPLY FOR AND ACCEPT IF AWARDED A ROUND 8 NY RESTORE COMMUNITIES INITIATIVE GRANT APPLICATION FOR THE DEMOLITION OF 96 CARTER STREET, 15 SOUTH JOHNSTON STREET, 40 WILLIAM STREET, 39 LUTHERAN STREET AND 47 LUTHERAN STREET

WHEREAS, the 2023-24 State Budget provided new funding for the Restore New York's Communities Initiative to be implemented by the Empire State Development Corporation ("ESDC") purpose of revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods; and

WHEREAS, the City of Newburgh is eligible for grant funding under Round 8 of the Restore NY Communities Initiative Municipal Grant Program (the "Program"); and

WHEREAS, the City Council considered a proposal that qualifies for funding under the Program to be included in an application that will be submitted to ESDC as follows:

1. 96 Carter Street: 840 square feet, vacant residential property proposed for demolition
2. 15 South Johnston Street: 5,228 square feet, vacant commercial property, proposed for demolition
3. 40 William Street: 750 square feet, vacant residential property, proposed for demolition
4. 39 Lutheran Street: 2,739 square feet, vacant residential property, proposed for demolition
5. 47 Lutheran Street: 2,560 square feet, vacant residential property proposed for demolition

WHEREAS, this project is consistent with all existing local plans, the proposed financing is appropriate for the project, the project will facilitate effective and efficient use of existing and future public resources so as to promote both economic development and preservation of community resources and the project develops and enhances infrastructure and/or other facilities in a manner that will attract, create and sustain employment opportunities in the City of Newburgh; and

WHEREAS, the City of Newburgh duly convened and completed a public hearing to receive comment on its Restore NY application and Property Assessment List on May 13, 2024; and

WHEREAS, the required $500.00 application fee shall be paid from A.8684.0462 and the City Council finds that applying for and accepting such grants if awarded is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby supports and will sponsor an application for Round 8 NY Restore Communities Initiative grant funding on the Property Assessment List for a project to facilitate revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods by proposing for demolition 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street, and 47 Lutheran Street and will administer the grant in accordance with all applicable rules and regulations established by ESDC; and

BE IT FURTHER RESOLVED, by the City Council of the City of Newburgh that the City Manager be and he hereby is authorized to sign the applications and any agreements required by ESDC for grant funding that results from the application; 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 participate in and administer the programs funded thereby.

RESOLUTION NO.: ________-2024

OF

MAY 13, 2024

A RESOLUTION AMENDING THE 2024 PERSONNEL ANALYSIS BOOK TO ADD ONE BILINGUAL SENIOR ACCOUNT CLERK POSITION AND DELETE ONE BILINGUAL ACCOUNT CLERK POSITION IN THE CODE COMPLIANCE BUREAU

WHEREAS, the Fire Chief proposes to delete one Bilingual Account Clerk position and add one Bilingual Senior Account Clerk position to promote efficiency in the Code Compliance Bureau; and

WHEREAS, the change in job titles of such positions requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2024; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2024 be amended to delete one Bilingual Account Clerk position and add one Bilingual Senior Account Clerk position in the Code Compliance Bureau.

RESOLUTION NO.: _____- 2024

OF

MAY 13, 2024

A RESOLUTION ENDORSING THE PROTECTION OF THE WEST TRUNK SEWER LINE AND REMOVAL OF THE HOLDEN DAM BY RIVERKEEPER AND THE CITY OF NEWBURGH WITH SUPPORT FROM THE NATIONAL FISH AND WILDLIFE FOUNDATION 2023 NATIONAL COASTAL RESILIENCE FUND

WHEREAS, the National Fish and Wildlife Foundation awarded more than $144 million in grants for planning, design, and implementation of natural and nature-based solutions that will create and restore natural systems to increase protection for communities from current and future coastal hazards and improve habitats for fish and wildlife species; and

WHEREAS, Riverkeeper is committed to the restoration of free-flowing waters on the Quassaick Creek by supporting habitat restoration projects that remove dams without functional purpose because dams contribute to the decline of migratory and freshwater fishes and other forms of aquatic life and dam removal also helps mitigate human impacts caused by climate change; and

WHEREAS, Riverkeeper is committed to advancing community resiliency by protecting an environmental justice community and enhancing protection around critical infrastructure at risk due to climate impacts by removing obsolete barriers to reduce flooding impacts and further ramifications posed by aging dams in an era of climate change and to enhance coastal and climate resiliency, which will support the City of Newburgh's efforts to becoming a climate smart community; and

WHEREAS, Riverkeeper was awarded a National Fish and Wildlife Foundation 2023 National Coastal Resilience Fund grant to fund the removal of the Holden Dam along the Quassaick Creek, a site located partially within the territorial jurisdiction of the City of Newburgh; and

WHEREAS, the City of Newburgh is committed to protecting the West Trunk Sewer Line and removing the Holden Dam, and fully supports Riverkeeper's efforts to reverse the effects of climate change, protect a vital component of the City's sewer infrastructure, advance community resilience in an environmental justice community, and for dam removal across the Hudson River Estuary and in the Quassaick Creek to provide the highest biological and ecological benefit to the river's aquatic species and habitat, particularly river herring and eel;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby endorses Riverkeeper's joint participation in the removal of Holden Dam as part of a larger project with the City of Newburgh under a National Fish and Wildlife Foundation 2023 National Coastal Resilience Fund grant for the Holden Dam Removal Project subject to a memorandum of understanding (MOU) between both parties which grants Riverkeeper and its agents and employees access to the City property; allows Riverkeeper joint participation and cooperation with the City of Newburgh to accomplish protection of the West Trunk Sewer Line and the removal of the dam; and details joint participation, project tasks, disbursement of funds, and grant deliverables for the entire project.