City of Newburgh Council Work Session
Sesion de trabajo del Concejal de la Ciudad de Newburgh
February 10, 2022
6:00 PM

Work Session Presentations

1. NY Multi-Site PFAS Health Study Presentation
   Presentación del estudio de salud de PFAS en varios lugares en Nueva York

Engineering/Ingeniería

2. Agreement No. CSX948042 with CSX Transportation, Inc.
   Resolution authorizing the City Manager to execute Facility Encroachment Agreement No. CSX948042 with CSX Transportation, Inc. in connection with the North Interceptor Sewer Improvements and High Rate Disinfection Facility Project

   Resolución que autoriza al Gerente de la Ciudad ejecutar un Acuerdo de Invasión de Instalaciones No. CSX948042 con CSX Transportation, Inc. en conexión con las mejoras de alcantarillado para el Interceptor norte y proyecto de la facilidad de desinfección de alta tasa

3. Agreement with ARCADIS Design of Vac-Con Dewatering Area at Wastewater Treatment Plant
   Resolution accepting a proposal and authorizing the City Manager to execute a contract with Arcadis of New York Inc. for professional engineering services for design of a new and expanded vac-con dewatering area at the Wastewater Treatment Plant in the amount of $67,500.00

   Resolución para aceptar una propuesta y autorizar al Gerente de la Ciudad a ejecutar un contrato con Arcadis of New York Inc. para los servicios profesionales de ingeniería para el diseño de una nueva y ampliada área de desagüe de vacíos en la Planta de Tratamiento de Aguas Residuales por un monto de $67,500.00

Finance/Finanza

4. Budget Transfers for 2021
   Resolution amending Resolution No. 282-2020, the 2021 Budget for the City of Newburgh, New York for 2021 year end budget transfers and/or amendments to adjust for any items in excess of budget

Resolución enmendando la Resolución No. 282-2020, el Presupuesto de 2021 para la Ciudad de Newburgh, Nueva York para las transferencias y/o enmiendas del presupuesto de fin de año de 2021 para ajustar cualquier artículo en exceso del presupuesto

Planning and Economic Development/Planificación y Desarrollo Económico

5. 380 Liberty Street - Partial Release of Restrictive Covenants

   Resolution authorizing the execution of a partial release of restrictive covenants and right of re-entry from a deed issued to Luis Gualpa to the Premises known as 380 Liberty Street (Section 10, Block 1, Lot 36)

   Resolución que autoriza la ejecución de una liberación parcial de las cláusulas restrictivas y el derecho de reingreso de una escritura emitida a Luis Gualpa a las instalaciones conocidas como la 380 de la calle Liberty (Sección 10, Bloque 1, Lote 36)

6. CPL Amendment #1 for Bid Preparation and Construction Inspection for Splash Pads

   Resolution authorizing the City Manager to accept a proposal and execute Amendment No. 1 to the contract with Clark Patterson Lee for professional engineering services for the splash pads at Tyrone Crabb and Xavier Lunan Parks in the amount of $28,500.00

   Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar la Enmienda No. 1 al contrato con Clark Patterson Lee para los servicios profesionales de ingeniería para salpicaderos en los parques Tyrone Crabb y Xavier Lunan por la cantidad de $28,500.00

Grants/Contracts/Agreements / Becas /Contratos/Convenios

7. Schedule Public Hearing and Open 15-Day Public Comment Period for the City of Newburgh Community Development Block Grant (CDBG) FY2021 Consolidated Annual Performance and Evaluation Report (CAPER)

   Resolution scheduling the Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER) public hearing and opening of the 15-day public comment period for Fiscal Year 2021

   Resolución que programa la audiencia pública y abre el periodo de comentarios públicos por 15 días para el año fiscal 2021 de la Subvención para Bloques de Desarrollo Comunitario (CDBG) Informe Anual de Desempeño y Evaluación (CAPER).

8. DEC PFOS Expense Reimbursement Contract

   Resolution authorizing the City Manager to enter into a new agreement with the

New York State Department of Environmental Conservation for reimbursement of additional costs incurred by the City of Newburgh as a result of providing an alternate source of drinking water

Resolución que autoriza al Gerente de la Ciudad a entrar en un nuevo acuerdo con el Departamento de Conservación Ambiental del Estado de Nueva York para el reembolso de costos adicionales incurridos por la Ciudad de Newburgh como resultado de proporcionar una fuente alternativa de agua potable

9. NYS Office of Children and Family Services Youth Development Program Grant for $5,000 for the 2022 Youth Soccer Program

   Resolution authorizing the City Manager to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in the amount of $5,000.00 requiring no City match for the 2022 Youth Soccer Program

   Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una Subvención del Programa de Desarrollo Juvenil de la Oficina de Niños y Servicios Familiares del Estado de Nueva York por un monto de $5,000.00 que no requiere que la Ciudad iguale los fondos para el programa de fútbol juvenil de 2022

10. NYS Office of Children and Family Services Youth Development Program Grant for $6,500 for the 2022 Summer Playground

    Resolution authorizing the City Manager to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in an amount not to exceed $6,500.00 requiring no City match for the 2022 Summer Playground Program

    Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una Subvención del Programa de Desarrollo Juvenil de la Oficina de Niños y Servicios Familiares del Estado de Nueva York por un monto no superior a $6,500.00 que no requiere que la Ciudad iguale los fondos para el programa de juegos de verano de 2022

11. NYS Office of Children and Family Services Youth Development Program Grant not to exceed $10,000 for the 2022 Youth Basketball Program

    Resolution authorizing the City Manager to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in an amount not to exceed $10,000.00 requiring no City match for the 2022 Youth Basketball Program

    Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar, en caso si es otorgado, una subvención del Programa de Desarrollo Juvenil para Niños y Servicios Familiares del Estado de Nueva York por una cantidad que no exceda $10,000.00 el cual no requiere que la Ciudad

iguale los fondos para el programa de baloncesto juvenil de 2022

Boards and Commissions/Juntas y Comisiones

12. Board and Commission Appointment Policy

    Resolution adopting the City of Newburgh Board and Commission Appointment Policy and Procedure

    Resolución adoptando la Política y el Procedimiento de Nombramiento a las Juntas y Comisiones de la Ciudad de Newburgh

Ordinances/ Decretos

13. Ordinance amending Chapter 72 Police Community Relations and Review Board

    For discussion -- proposed revisions to Police Community Relations and Review Board enabling ordinance to add subpoena power; revise to include Police Commissioner; and address vacancies of more than 60 days

    Para discusión -- revisiones propuestas a la Ordenanza de la Junta de Relaciones Comunitarias y Revisión de la Policía para agregar poder de citación; revisar para incluir al Comisario de Policía; y abordar puestos vacantes de más de 60 días

Discussion Items/Temas de Discusión

14. 2022 Council Rules & Order of Procedure

    Reglamento del Consejo y Orden de Procedimiento 2022

Executive Session/ Sesión Ejecutiva

15. Proposed, pending or current litigation

    Litigio propuesto, pendiente o actual

16. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

    La propuesta de adquisición, venta o arrendamiento de bienes inmuebles o la propuesta de adquisición de valores, o la venta o intercambio de valores en poder de dicho organismo público, pero sólo cuando la publicidad afecte sustancialmente al valor de los mismos

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE FACILITY ENCROACHMENT AGREEMENT NO. CSX948042 WITH CSX TRANSPORTATION, INC. IN CONNECTION WITH THE NORTH INTERCEPTOR SEWER IMPROVEMENTS AND HIGH RATE DISINFECTION FACILITY PROJECT

WHEREAS, the City of Newburgh has undertaken the North Interceptor Sewer Improvements and High Rate Disinfection Facility Project (the "Project") as part of the Long Term Control Plan; and

WHEREAS, a portion of the Project's construction work will occur over, under or across property owned or controlled by CSX Transportation, Inc. ("CSX") which requires the City to enter into a facility encroachment agreement to perform the necessary work; and

WHEREAS, the funding for the facility encroachment agreement fee shall be derived from NYSEFC CWSRF Project Number C3-7332-11-00; and

WHEREAS, this Council finds that entering into the facility encroachment agreement with CSX in order to continue with the Project is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that the City Manager is hereby authorized to execute Facility Encroachment Agreement No. CSX948042 with CSX Transportation, Inc., as annexed hereto, in connection with the North Interceptor Sewer Improvements and High Rate Disinfection Facility Project.

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of January 18, 2022, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF NEWBURGH, NY, a municipal corporation, political subdivision or state agency, under the laws of the State of New York, whose mailing address is 83 Broadway, Newburgh, New York 12550, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) forty-eight inch (48") diameter sub-grade pipeline parallel, solely for the conveyance of raw/treated sewage, located at or near Newburgh, Orange County, New York, Albany Division, River Subdivision, at Milepost QR-56.08, Latitude N41:29:30., Longitude W74:00:30.;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes, including but not limited to Licensor’s track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus other property, or any appurtenances thereto (“Licensor’s Facilities") and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

1.4 The term Licensor Facilities, as used herein shall include Licensor's track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus other property, or any appurtenances thereto and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE THOUSAND ONE HUNDRED AND 00/100 U.S. DOLLARS ($5,100.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part. Licensee agrees that it shall not assess Licensor any stormwater fee associated with such Facilities. Furthermore, Licensee shall be responsible for any stormwater fees assessed by any County or State agency managing such systems.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any

applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives on or adjacent to Licensor's property of any type or perform or cause any blasting on or adjacent to Licensor's property without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary

field changes and Licensee shall provide Licensor with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

(A) support track(s) and roadbed in a manner satisfactory to Licensor;

(B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and

(C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

(A) Restore any track(s), roadbed and other disturbed property; and

(B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of Licensor’s Facilities; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS ($1,000,000.00).

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS ($5,000,000.00)in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS ($1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.

(iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.

(v) Such other insurance as Licensor may reasonably require.

(vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS ($5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS ($10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for

work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.

(B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. GRADE CROSSINGS; PROTECTION SERVICES:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or changes to Licensor’s Facilities shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing <u>any</u> work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 845-569-7448.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as

or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the

Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to

Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars ($100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within one hundred twenty (120) days of Licensor's verification of such overpayment.

18.10 This Agreement may be executed in any number of counterparts, and such counterparts may be exchanged by electronic transmission. Upon execution by the parties hereto, each counterpart shall be deemed an original and together shall constitute one and the same instrument. A fully executed copy of this Agreement by electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

_____

CSX TRANSPORTATION, INC.

By:_____

Print/Type Name:_____

Print/Type Title:_____

Witness for Licensee:

_____

CITY OF NEWBURGH, NY

By:_____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name:_____

Print/Type Title:_____

Tax ID No.:_____

Authority under Ordinance or

Resolution No._____,

Dated _____.

Page	1 of 1
Account/Contract No.	CSX948042
Tracking No.	1050853
Reference Number	

Invoice

Date 01/18/2022

Customer

NEWBURGH CITY OF
83 BROADWAY
NEWBURGH, NY 12550

Please submit a copy of this statement with payment submission to the "Remit To" address shown below.

Fees-At-A-Glance

Amount Due in U.S. dollars	**8350.0**

Fees Summary

Review Fee	$2,500.00
Railroad Protective Liability (Only if RPL is not provided)	$750.00
Expedited Review Fee	
License Fee	$5,100.00
Sales Tax*	
Money on File	

*Florida Sales tax applies to the license fee

Total Current Fees in U.S. dollars	**8350.0**

CSX Federal ID No.	54-6000720
CSX Canadian ID No.	105203095 RC 0001
CSX Quebec ID No.	1022434469 IC 0001

Please remit payment to:

Legal Address:
500 Water Street, J180
Jacksonville, FL 32202
Questions? Contact:

CSX Transportation, Inc.

Mailing Address:
500 Water Street, J180
Jacksonville, FL 32202
DEANNA_PAXON@CSX.COM
904-359-3145

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION ACCEPTING A PROPOSAL AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ARCADIS OF NEW YORK INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR DESIGN OF A NEW AND EXPANDED VAC-CON TRUCK DEWATERING AREA AT THE WASTEWATER TREATMENT PLANT IN THE AMOUNT OF $67,500.00

WHEREAS, the City of Newburgh Wastewater Treatment Plant ("WWTP") was constructed in the late1960s; and

WHEREAS, the City proposes to install a permanent, concrete, vacuum truck dumping pad to facilitate washdown operations, contain liquid waste that will be pumped to the WWTP head works for treatment and static screens to separate larger debris for disposal in roll off containers; and

WHEREAS, the City solicited and received a proposal from Arcadis of New York, Inc. for professional engineering services to design a new and expanded dewatering area at WWTP; and

WHEREAS, such engineering services shall include the project design, preparation bid documents and survey, and bidding services; and

WHEREAS, the cost of such proposal in the amount of $67,500.00 and the funds shall be derived from G.8130.0200; and

WHEREAS, this Council finds that entering into a contract with Arcadis of New York, Inc. based on the foregoing is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to accept a proposal and execute a contract with Arcadis of New York, Inc., for professional engineering services for a new and expanded dewatering area at the City of Newburgh Wastewater Treatment Plant in the amount of $67,500.00.

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

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

Date: January 25, 2022
Our Ref: 30055884
Subject: Proposal for Engineering Services for Vacuum Truck Dump Pad

Dear Mr. Morris,

Pursuant to the City of Newburgh's request, Arcadis of New York, Inc. is pleased to provide this letter proposal for your consideration. Based on our meeting at the Water Pollution Control Plant, (WPCP) is it our understanding that the City wants to install a permanent, concrete, vacuum truck dumping pad to facilitate washdown operations, contain liquid waste that will be pumped to the WPCP head works for treatment and static screens to separate larger debris for disposal in roll off containers. We understand that this project needs to be designed, bid, and constructed during 2022 calendar year. Most of the components required to construct this project have been readily available and not subject to supply chain issues, however, Arcadis cannot predict future constraints. Our proposed scope of services, compensation and schedule are outlined herein.

Scope of Services

Task 1 Prepare Bid Documents

Arcadis will utilize the existing survey prepared for the design and construction of the sludge loadout facilities and backup generator at the WPCP. The survey will need to be updated pursuant to the civil site work that was subsequently performed by the City. Arcadis will coordinate with a local surveyor under Task 2. Arcadis will prepare a Technical Memorandum (TM) and bid documents for the project described above. The bid documents will be prepared based on a single prime contract. Arcadis will commence the design based on previous geotechnical information obtained during the design of the sludge loadout facility and backup generator, however, we have included the cost of performing a single geotechnical boring to a depth of 60-feet or refusal. Prior to construction the City will relocate the existing vacuum truck dumping pad to the DPW garage or other suitable location.

Use or disclosure of information contained on this sheet is subject to the restriction and disclaimer located on the signature page of this document.

Task 2 Survey Allowance

Arcadis will coordinate and retain the services of a New York State licensed land surveyor. The surveyor will prepare a topographical survey of the project area where new site work was performed since the construction of the sludge loadout facility at the WPCP. Arcadis has included an allowance of $5,000 that will be compensated at actual cost, plus 10 percent.

Task 3 Bidding Services

Arcadis will assist the City with bidding and awarding the project, and will perform the following services:

- Prepare electronic Bid Documents for City's use for electronic bidding.
- Prepare a bid advertisement for the City's approval and use.
- Preside at a pre-bid meeting with prospective bidders and perform a walk-through of the site.
- Respond to prospective bidders' requests for clarifications and prepare addenda as required for the City's distribution. Arcadis has included preparing one addendum as part of our scope.
- Arcadis will attend the bid opening, tabulate bids, evaluate bids and make a recommendation of award for each prime contract.
- Prepare conformed contract documents in electronic (.pdf) format for use by the City and successful bidders.

Compensation

Arcadis will complete the scope of services presented herein for a total not to exceed fee of $67,500. Task 1 will be billed as a Lump Sum and Tasks 2 through 3 will be billed for actual time and expense costs incurred in accordance with the attached rates schedule for hours worked plus other direct costs markup of 10 percent.

Task	Fee Basis	Compensation
Task 1 Prepare Bid Documents	LS	$50,000
Task 2 Survey Allowance	T&M	$7,500
Task 3 Bidding Assistance	T&M	$10,000
Total Compensation		**$67,500**

Schedule

Arcadis understands that the project needs to be designed and constructed within 2022, and therefore proposes the following schedule:

- Notice to Proceed by February 9th
- 90% Draft Bid Documents and TM by May 9th
- Bid Documents available for Bidding May 23rd

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Mr. Jason Morris, PE
City Newburgh
January 25, 2022

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

Sincerely,
Arcadis of New York, Inc.



Robert E. Ostapczuk, PE
Vice President

Email: robert.ostapczuk@arcadis.com
Direct Line: 518-250-7300
Mobile: 518-810-6872

Enclosures:
Standard Hourly Rates

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

Rate Sheet

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

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

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

In-house services not subject to handling costs are:

Transportation: $0.56/mile for vehicles; $0.66/mile for 4x4 vehicles

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

Mr. Jason Morris, PE
Commissioner of Public Works & City Engineer
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Sincerely,
Arcadis of New York, Inc.



Robert E. Ostapczuk, PE
Vice President

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RESOLUTION NO.: _____- 2022

OF

FEBRUARY 14, 2022

**RESOLUTION AMENDING RESOLUTION NO: 282-2020,
THE 2021 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
FOR 2021 YEAR END BUDGET TRANSFERS AND/OR AMENDMENTS
TO ADJUST FOR ANY ITEMS IN EXCESS OF BUDGET**

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

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

2021 Council Transfer

GL Account	Description	Decrease Budget	Increase Budget
	General Fund		
Legislative Body			
A.1010.0448	Other Services	$48,422.54	
City Comptroller			
A.1315.0101	Salary	$120,973.91	
Courthouse Officers			
A.3122.0102	Part-Time	$110,410.00	
DPW-Streets & Bridges			
A.5110.0101	Salary	$89,436.20	
Parks			
A.7110.0101	Salary	$112,833.99	
Recreation			
A.7140.0110	Temporary	$19,138.13	
City Manager			
A.1230.0106	Severance Pay		$12,216.41

GL Account	Description	Decrease Budget	Increase Budget
	General Fund		
Special Items			
A.1900.1989	Other General Gov't Support		$827.76
Fire Department			
A.3412.0103	Overtime		$107,762.43
A.3412.0106	Severance Pay		$360,628.37
DPW Administration			
A.5010.0101	Salary		$19,599.47
Historian			
A.7510.0102	Part-Time		$180.26
Installment Purchase Debt Interest			
A.9857.0700	Interest		$0.07
TOTAL GENERAL FUND:		**$(501,214.77)**	**$501,214.77**
	Sewer Fund		
Sanitary Sewer			
G.8120.0208	Construction & Major Alterations	$449,884.18	
Contractual Expenses			
G.1900.1987	Prior Year Expenditures		$449,884.18
TOTAL SEWER FUND:		**$(449,884.18)**	**$449,884.18**
	Self-Insurance Fund		
Unemployment Insurance			
M.9050.0400	Unemployment Insurance	$96,883.60	
Corporation Counsel			
M.1420.4100	General Legal Services		$24,599.40

GL Account	Description	Decrease Budget	Increase Budget
	Self-Insurance Fund		
Administration			
M.1710.0400	Administration		$28,459.19
Excess Insurance			
M.1722.0400	Excess Insurance		$31,954.64
Insurance Recoveries Revenue			
M.0000.2680.0005	Insurance Recoveries		$289,743.38
Judgments & Claims			
M.0000.2680.0005	Judgments & Claims		$289,743.38
Workers Compensation			
M.9040.0408	Workers Compensation		$11,870.37
TOTAL SELF-INSURANCE FUND:		**$(96,883.60)**	**$676,370.36**
GRAND TOTAL COUNCIL TRANSFER:		**$(1,047,982.55)**	**$1,627,469.31**

RESOLUTION NO.: _____-2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE EXECUTION OF A PARTIAL RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED ISSUED TO LUIS GUALPA TO THE PREMISES KNOWN AS 380 LIBERTY STREET (SECTION 10, BLOCK 1, LOT 36)

WHEREAS, on September 21, 2018, the City of Newburgh conveyed property located at 380 Liberty Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 10, Block 1, Lot 36, to Luis Gualpa; and

WHEREAS, Mr. Gualpa has requested a partial release of the restrictive covenants contained in said deed; and

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

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

PARTIAL 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 380 Liberty Street, (Section 10, Block 1, Lot 36) on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated September 21, 2018 from THE CITY OF NEWBURGH to LUIS GUALPA, recorded in the Orange County Clerk's Office on November 9, 2018, in Liber 14470 of Deeds at Page 1357 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. The restrictive covenant numbered 6 in said deed remains in effect as of the within date.

Dated: _____, 2022

THE CITY OF NEWBURGH

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

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

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

_____

CITY OF NEWBURGH

Department of Code Compliance

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

TO: Todd Venning, City Manager

CC: Alexandra Church, Director of Planning and Development
Michelle Kelson, Corporation Counsel

FROM: Jason W. Beeman, Code Compliance Supervisor

DATE: June 12th, 2021

SUBJECT: 380 Liberty Street, Release of Restrictive Covenants Inspection

---

I conducted an inspection of 380 Liberty Street, on June 12th, 2021. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

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

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

There are no open permits or open permit applications.

The property is owner-occupied in one unit and rented in the other unit. The property is registered as such.

There is a valid Certificate of Occupancy in the property file dated September 3rd, 2020, for a Two-Family Dwelling on the first floor, and a Single-Family dwelling on the second floor.

Thank you,

Jason W. Beeman

City of Newburgh
123 Grand Street Newburgh, NY 12550
(845) 569-7403

LICENSE NUMBER
00163-20R

RENTAL LICENSE

Date of Issue
September 03, 2020

THIS LICENSE EXPIRES
TWO (2) YEARS FROM
DATE OF ISSUANCE

PROPERTY: 10-1-36, 380 Liberty St

RENTAL UNITS/OCCUPANTS: 2nd Floor - 2 Occupants

RECEIPT #/ FEE: /.00

This license certifies that an inspection was completed by the Code Compliance Department of the City of Newburgh..

The premise listed above was found to be in good condition and meets the Minimum Housing Standards of the City of Newburgh and the State of New York Property Maintenance Code.

If there are any questions regarding this property, please feel free to contact the Code Compliance Office.

This Certificate is not valid without being Sealed by the Building Inspectors Office.

OWNER MAILING ADDRESS
Luis Gualpa
4005 Hampton St Apt 603
Elmhurst, NY 11373

THIS LICENSE MUST BE
DISPLAYED

AUTHORIZED SIGNATURE

CITY OF NEWBURGH

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

OWNER-OCCUPANT STATEMENT
(Rental Registry Certification)

I, Luis Gualpa, hereby certify that I am the owner of record of the property located at 380 Liberty Street, Newburgh, New York, also known as Section 10, Block 1, Lot 36.

I further certify that I reside at the property. In addition to my unit, there are 1 other rental units at the property.

Date: 01-21-2022

LUIS G GUALPA
Print Name

Luis Gualpa
Signature

City of Newburgh

Assessor's Office
City Hall 83 Broadway
Newburgh, New York 12550
Phone: (845) 569-7333
www.cityofnewburgh-ny.gov

Joanne M. Majewski, IAO
Assessor

Kathy Cunane, Account Clerk
kcunane@cityofnewburgh-ny.gov

CHANGE OF ADDRESS FORM

Property Information

Street Address: 380 LIBERTY ST 1FL, Newburgh, NY 12550

Section 10 Block 1 Lot 36 Assessor's Account Number _____

Change my /our Address from: (Please Print)
This Address (Where the City currently sends your mail):

Owner(s): LUIS G GUALPA

Address: 380 LIBERTY ST 1FL

City/State/Zip: NEWBURGH NY 12550

To this new Address: (Please Print)

Address: 380 LIBERTY ST 1FL

City/State/Zip: NEWBURGH NY 12550

NOTE: This request will result in a change in the address for your City, County and School Taxes, water/sewer bills, sanitation bills, and Building Inspector notices. **If you own more than one parcel, please complete one form for each parcel.** For third party notification (disabled and elderly only) please call our office.

If you have an escrow account, provide the bank's name and address:

Bank: _____

Address: _____

City/State/Zip: _____

Which bills are escrowed? Tax ✓ Water/Sewer ✓ Sanitation ✓

Owner's Signature (Required): Luis Gualpa

Print Name: LUIS G GUALPA Phone # 347994-6977

E-mail Address: gualpagerman46@gmail.com Date: 01/21/2022

For Office Use Only

Tax Collector: ____ Water/Sewer: ____ Sanitation: ____ Code Compliance: ____ GIS: ____
Fire Prevention FF Edward Diller ____

CITY OF NEWBURGH

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

OWNER-OCCUPANT STATEMENT
(Rental Registry Certification)

I, Luis Gualpa, hereby certify that I am the owner of record of the property located at 380 Liberty Street, Newburgh, New York, also known as Section 10, Block 1, Lot 36.

I further certify that I reside at the property. In addition to my unit, there are 1 other rental units at the property.

Date: 01-21-2022

LUIS G GUALPA
Print Name

Luis Gualpa
Signature

Jul 12, 2021 at 2:03:26 PM
380 Liberty St
Newburgh NY 12550
United States

Jul 12, 2021 at 2:03:12 PM
380 Liberty St
Newburgh NY 12550
United States

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND EXECUTE AMENDMENT NO. 1 TO THE CONTRACT WITH CLARK PATTERSON LEE FOR PROFESSIONAL ENGINEERING SERVICES FOR THE SPLASH PADS AT TYRONE CRABB AND XAVIER LUNAN PARKS IN THE AMOUNT OF $28,500.00

WHEREAS, by Resolution No. 199-2021 of August 9, 2021, the Council of the City of Newburgh authorized a contract with Clark Patterson Lee, in the amount of $16,000.00 for professional design services for two stand-alone splash pads to be located at Xavier Lunan Park and Tyrone Crabb Park; and

WHEREAS, the City of Newburgh received a proposal for professional engineering services from Clark Patterson Lee for additional design, bid and construction services for two stand-alone splash pads to be located at Xavier Lunan Park and Tyrone Crabb Park; and

WHEREAS, funding for the bid and construction phase of the Xavier Lunan Park and Tyrone Crabb Park splash-pads in the amount of $28,500.00 shall be derived from CDBG: CD1.8686.0400.8125.2018; and

WHEREAS, this Council has reviewed the proposal and determined that entering into amendment no. 1 of the contract with Clark Patterson Lee is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and to execute amendment no. 1 to the contract with Clark Patterson Lee in the amount of $28,500.00 for professional engineering design, bid and construction services for two stand-alone splash pads to be located at Xavier Lunan Park and Tyrone Crabb Park.

RESOLUTION NO.: 199 - 2021

OF

AUGUST 9, 2021

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT PROPOSALS AND EXECUTE CONTRACTS WITH CLARK PATTERSON LEE FOR PROFESSIONAL ENGINEERING DESIGN SERVICES FOR DELANO-HITCH RECREATION PARK AQUATIC CENTER IMPROVEMENTS IN THE AMOUNT OF $55,00.00 AND SPLASH PADS AT TYRONE CRABB AND XAVIER LUNAN PARKS IN THE AMOUNT OF $16,000.00

WHEREAS, the City of Newburgh received a proposal for professional engineering services from Clark Patterson Lee for the design of the Delano-Hitch Recreation Park Aquatic Center Improvements Project (the "DH Project"), which includes repair and/or replacement of the pool and a new stand-alone splash pad; and

WHEREAS, such engineering services shall include preparation of plans for a stand-alone splash pad area adjacent to the existing pool complex; an existing condition survey and 5-year Master Plan including, architectural, structural, site and MEP building and systems review; attendance at up to three Project Advisory Committee meetings; and a final presentation to the public; and

WHEREAS, the City of Newburgh received a proposal for professional engineering services from Clark Patterson Lee for the design and preparation of a Concept Plan for two stand-alone splash pads to be located at Xavier Lunan Park and Tyrone Crabb Park; and

WHEREAS, funding for the design phase of the DH Project in the amount of $55,000.00 and for the design phase of the two stand-alone splash pads shall be derived from A.7181.0448 (or other) and CDBG: CD1.8686.0400.8125.2020; and

WHEREAS, this Council has reviewed the proposals and determined that entering into a contracts with Clark Patterson Lee is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and to execute a contract with Clark Patterson Lee, in the amount of $55,000.00 for professional design services in the Delano-Hitch Recreation Park Aquatic Center Improvements Project; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to accept a proposal and to execute a contract with Clark Patterson Lee, in the amount of $16,000.00 for professional design services for two stand-alone splash pads to be located at Xavier Lunan Park and Tyrone Crabb Park.

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 8/9/21 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 10th day of Aug 2021

Katrina Cotten
Deputy City Clerk

Clark Patterson Lee

50 Front Street, Suite 202 | Newburgh, NY 12550 | 845.567.6700 | clarkpattersonlee.com

January 20, 2022

Alexandra Church, AICP
Director of Planning and Development
City of Newburgh
123 Grand Street
Newburgh, NY 12550

RE: Delano Hitch Park Grant Application
Contract Amendment
Phase 2: Stand Alone Splash Pads
Contract Amendment No. 1

Dear Ms. Church:

In accordance with our proposal, dated July 27, 2021, we are submitting this Amendment #1 for the Preparation of design and construction documents for the stand-alone splash pads at Xavier Luna Park on Courtney Street as the base bid and Tyrone Crabb on South Street as an add alternative to be publicly bid to include the following:

Task #1: Preparation of Construction Documents
- Prepare technical bid specifications
- Finalize design and prepare Bidding Documents.
- The standardized forms for the front-end specifications will be supplied by the City of Newburgh. CPL will revise them to fit the project.
- Lump sum Fee: $16,000.

Task #2: During the bidding phase, CPL will
- Prepare invitations to bid
- Review and respond to RFIs and issue addenda as required.
- Evaluate bid results and make recommendations.
- Prepare conformed Contract Documents.
- Lump sum Fee: $2,500.

Task #3: During the construction phase, CPL will
- Schedule and attend pre-construction meeting
- Review Contractor Schedule of Values, Construction Progress Schedule, Submittal Schedule.
- Review material submittals, shop drawings, and samples for conformance with Contract Documents
- Construction Inspection will be provided as deemed necessary for various stages of

construction sufficient to deem the work in compliance with the construction documents. Daily logs will be provided when the inspector is on site.
- Provide final inspection and punch list items.
- Assist with project closeout including satisfactory completion of punch list items.
- Construction related services will be provided on an As-needed basis and billed at an hourly rate.
- Estimated not to exceed $10,000.

Reimbursable expenses listed below are not included in the fixed fee above and will be reimbursed at cost:

- Document reproduction.
- Postage and delivery costs.
- Mileage (IRS reimbursement rate).
- Jurisdictional permit application/review fees, if applicable (not included in the 'not-to-exceed' amount above as fees are unknown).
- Sampling and testing existing materials to determine whether they contain hazardous materials, and the preparation of abatement design documents, if needed.

Invoices will include a detailed cost breakdown for each respective task outlined above with percent complete and details of any reimbursable expenses. Please return a signed copy of this Amendment authorizing us to proceed. Should you have any questions or require additional information, please do not hesitate to call me at (845) 220-7145.

Very truly yours,

CPL



Timothy J. Moot, PG
Principal

Authorized by:

Todd Venning – City Manager, City of Newburgh Date
CPL Project #15264.02

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

**A RESOLUTION SCHEDULING
THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER)
PUBLIC HEARING AND OPENING OF
THE 15-DAY PUBLIC COMMENT PERIOD FOR FISCAL YEAR 2021**

WHEREAS, the City of Newburgh has prepared a five-year Consolidated Housing and Community Development Strategy and Plan in accordance with the planning requirements of the Housing and Community Development Act of 1974 and applicable regulations; and

WHEREAS, a jurisdiction is required to submit an annual report to the U.S. Department of Housing and Urban Development (HUD) that summarizes accomplishments and progress toward Consolidated Plan goals in the Consolidated Annual Performance and Evaluation Report (CAPER) within 90 days after the program year; and

WHEREAS, the CAPER provides the community with information regarding how HUD entitlement funds were used to address housing, community development and essential service needs; and

WHEREAS, prior to submitting the CAPER, the City publishes a draft of the report and provides the general public with an opportunity to submit comments;

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 Consolidated Annual Performance and Evaluation Report (CAPER) with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2021; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 28th day of February, 2022 in the City Council Chambers, 83 Broadway, City Hall, 3rd Floor, Newburgh, New York; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the 15-day period to receive written public comment on the City of Newburgh's proposed City of Newburgh's proposed Consolidated Annual Performance and Evaluation Report (CAPER) with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2021 shall commence on March 1, 2022 and close on March 16, 2022.

CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

Several projects placed on-hold due to the Coronavirus Pandemic in 2020, either started or restarted in 2021:

In Rem Property Program: Maintenance of the habitability of 100 residential properties returned to the City of Newburgh through the foreclosure process.

Neighborhood Services: Neighborhood Services project for the "Socially-Distanced" Summer Film Festival.

Infrastructure: Liberty St. Sidewalk Improvements Project.

Administration: Support services to the Community Development Block Grant, including publishing public notices, processing payment vouchers, report preaparation, Spanish translation and interpretation services and salary of the Director of Community Development.

In addition, the City of Newburgh received a CDBG-CV allocation. Activities funded include a food security program, Emergency Income Payments (Rent) program, COVID-19 Outreach Activities, including community outreach programs to distribute PPE and hand sanitizer, COVID vaccine events and COVID Vaccine Appointment Transportation, and CDBG-CV grant administration.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Administration	Administration	CDBG: $	Other	Other	1	1	100.00%	1	1	100.00%
Economic Development	Non-Housing Community Development Economic Development	CDBG: $	Businesses assisted	Businesses Assisted	15	0	0.00%	3	0	0.00%
Housing	Affordable Housing	CDBG: $	Public service activities for Low/Moderate Income Housing Benefit	Households Assisted	0	0		5	5	100.00%
Housing	Affordable Housing	CDBG: $	Housing Code Enforcement/Foreclosed Property Care	Household Housing Unit	100	100	100.00%			
Infrastructure Improvements	Non-Housing Community Development Infrastructure Improvements	CDBG: $	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	28000	28000	100.00%	20000	20000	100.00%
Quality of Life Improvements	Non-Housing Community Development	CDBG: $	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	28000	28000	100.00%			

Quality of Life Improvements	Non-Housing Community Development	CDBG: $	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	4000	4000	100.00%	700	700	100.00%

Table 1 - Accomplishments – Program Year & Strategic Plan to Date

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

Housing: The In Rem property team provided maintenance of the habitability of [Need Number] residential properties returned to the City of Newburgh through the foreclosure process. This project meets several goals, including preserving housing stock and reducing slum and blight.

Housing: The Emergency Home Owner Assistance Program from a previous CDBG Program Year assisted a low-income City of Newburgh homeowner with an emergency lead water service line replacement.

Quality of Life - Public Services: Neighborhood Services provided a much-needed "Socially-Distanced" Summer Film Festival. This program provides public service outreach as well activities for youth.

Quality of Life - CDBG-CV Public Services: The Emergency Income Payments Program provides a service to provide rental arrears assistance to City of Newburgh residents unable to pay for rent for issues related to the coronavirus pandemic.

Quality of Life - CDBG-CV Public Services: The City of Newburgh Community Outreach Program provides services related to Personal Protective Equipment (PPE) and hand sanitizer distribution, COVID At-Home Test Kits, and transportation to COVID Vaccine and COVID-related transportation for City of Newburgh residents.

Quality of Life - CDBG-CV Public Services: The City of Newburgh Food Security Program provides food assistance to City of Newburgh residents impacted by the coronavirus pandemic. This service includes food pantry services through various non-profit organizations in the City of Newburgh as well as support for produce production with the Downing Park Urban Farm (DPUF) Newburgh Urban Farm & Food Initiative

(NUFFI).

Infrastructure Improvements: The Infrastruture Improvements project provided the funding match for the Liberty St. Streetscape project. New sidewalks, curb ramp upgrades and bioswales were installed on Libert St. between Broadway and Ann St.

Administration: Support services to the Community Development Block Grant, including publishing public notices, processing payment vouchers, report preaparation, Spanish translation and interpretation services and salary of the Director of Community Development.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted). 91.520(a)

	CDBG
White	500
Black or African American	500
Asian	0
American Indian or American Native	0
Native Hawaiian or Other Pacific Islander	0
Total	**1,000**
Hispanic	500
Not Hispanic	500

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

The data in Table 2 is approximate. Of the families and individuals participating in the Neighborhood Services "Socially Distanced" Summer Film Festival, 70% were minorities. The City of Newburgh Summer Film Festival was open to all City of Newburgh residents. However, in order to reach as many low-income families who may have transportation restrictions, as well as provide a socially-distanced location, the festival was held at the Safe Harbors Green, located between Ann St. and Broadway, in Census Tract 5.0. This is a walkable location on the East-End of the City of Newburgh, a target area for low-income activities. The festival was attended by families and individuals, approximately 80% minority.

The In Rem Project assisted the following ethnic groups: 39% Latino or Hispanic, 61% Not-Hispanic or Latino. The racial categories assisted by the In Rem Project include: 6% Asian, 14% Black or African American, 77% White, 2% identify as Other.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	893,627	

Table 3 - Resources Made Available

Narrative

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
Census Tracts 4 & 5	70	70	In Rem Property Project, Summer Film Festival, Infrastructure Improvements
City Wide	30	30	In Rem Property Project, Summer Film Festival, Infrastructure Improvements

Table 4 – Identify the geographic distribution and location of investments

Narrative

The majority of the CDBG projects took place in Census Tracts 4 and 5, including the "Socially-Distanced" Summer Film Festival.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

Complete Streets, Liberty Street Streetscape and Sidewalk Project: The City of Newburgh was awarded a Transportation Alternatives Program (TAP) grant from the New York State Department of Transportation in the amount of $400,000.00. The funds are to be used for a (new) complete street oriented streetscape design replacement of one block of City sidewalks in the heart of the City of Newburgh's Historic downtown, along Liberty St, between Broadway and Ann Street. Community Development Block Grant (CDBG) funding is used to match the TAP funds.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	0	0
Number of Special-Needs households to be provided affordable housing units	0	0
Total	**0**	**0**

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	0	0
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	1	1
Number of households supported through Acquisition of Existing Units	0	0
Total	**1**	**1**

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

After evaluating the previous City of Newburgh CDBG-funded Emergency Homeowner Repair program, it was detemined that a previous Emergency Homeowner Repair program was not meeting home-owner needs. In 2021, the Emergency Homeowner Repair Program was re-introduced, and a Subrecipient Agreement was awarded to Habitat for Humanity of Greater Newburgh to manage an Emergency Homeowner Repair Program for income qualified homeowners in the City of Newburgh. The Emergency Homeowner Repair Program is scheduled to begin in 2022, due to delays related to the coronavirus.

Discuss how these outcomes will impact future annual action plans.

The City of Newburgh will consider an increase in program funding to Habitat for Humanity of Greater Newburgh if the program is successful in assisting City of Newburgh homeowners with emergency home repairs.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	0	0
Low-income	1	0
Moderate-income	0	0
Total	**1**	**0**

Table 7 – Number of Households Served

Narrative Information

In 2021, the Emergency Homeowner Repair Program was re-introduced, and a Subrecipient Agreement was awarded to Habitat for Humanity of Greater Newburgh to manage an Emergency Homeowner Repair Program for income qualified homeowners in the City of Newburgh. The Emergency Homeowner Repair Program is scheduled to begin in 2022. The City of Newburgh will consider an increase in program funding to Habitat for Humanity of Greater Newburgh if the program is successful in assisting City of Newburgh homeowners with emergency home repairs.

A small amount of funding remained in a previous CDBG Program Year Homeowner Assistance Program and the CDBG program was able to assist a low-income City of Newburgh homeowner resident with an emergency lead water service line replacement.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The Newburgh Ministry provides a homeless shelter on Johnston St. Social service assistance, as well as healthcare is provided. In conjunction with the ESPRI-funded "Fragile Economies" project, the Newburgh Ministry provides financial stability assistance, as well as improved health and wellness and resiliency through peer coaching to several at-risk families in the City of Newburgh.

Addressing the emergency shelter and transitional housing needs of homeless persons

City of Newburgh partners with services such as Regional Economic Community Action Program (RECAP) and Orange County Department of Social Services to address emergency shelter and transitional housing needs of homeless persons. Other partners include Safe Harbors of the Hudson, the Newburgh Ministry and a growing number of organizations providing services to the formerly incarcerated and those affected by the criminal justice system, including Exodus Transitional Community and Osborne Assocation.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

Social service agencies and organizations in the City of Newburgh such as Exodus Transitional Community, Bridges of New York and Renwick Recovery, Inc., work to address and promote programs for vulnerable persons and families. In 2017, the NYS Governor's Office commenced the Empire State Poverty Reduction Initiative (ESPRI). ESPRI held a community listening session, as well as convened several task forces, including housing, workforce development, healthcare and wellness. The focus of ESPRI 2021 was to continue implementation of several support projects, including the "Fragile Economies Project."

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals

and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

RECAP and Orange County Department of Social Services address the housing transition needs for homeless indiviuals and families, as do a growing number of service organizations, such as Exodus Transitional Community, Bridges of New York, Renwick Recovery, Inc. and Project L.I.F.E.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

City of Newburgh staff continue to meet with the Director of the Newburgh Housing Authority (NHA) on a regular basis regarding any public housing needs. All CDBG programs and City of Newburgh jobs are advertised at the NHA site.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

The "City of Newburgh - Housing Resource Guide" and information on how to apply for an fianance a City-owned property are shared with public housing residents. The Newburgh Community Land Bank has been awarded funding through the New York State Attorney General for a “Neighbors for Neighborhoods” Affordable Rental Housing Program. The purpose of the program is to encourage neighborhood residents to rehabilitate properties in their own neighborhood, and maintain the property as affordable rental housing.

Actions taken to provide assistance to troubled PHAs

This section is not applicable.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

The City of Newburgh supports affordable housing throughout the City of Newburgh. Fees related to land use procedures have been significantly reduced and zoning relaxed to provide more accessibility. The City of Newburgh Zoning is reviewed regularly to identify barriers to affordable housing projects.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The City of Newburgh has a population in which at least 50% identify as Latinx. Spanish interpretation is provided at CDBG-related meetings (ex. Public Hearings). Spanish translation and dissemination of program materials into Spanish, as well as in English, is required by the City of Newburgh under the Language Access Plan. "La Voz" provides Spanish language announcements for City of Newburgh residents.

The City of Newburgh has contracted with Language Link to provide additional language translation and interpretation services.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

Coordination bewtween Lead Safe Orange and City of Newburgh Code Compliance of City of Newburgh-owned properties.

The City of Newburgh is planning to apply for a Lead remediation grant through HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH).

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

In 2017, the NYS Governor’s Office commenced the Empire State Poverty Reduction Initiative (ESPRI) in the City of Newburgh. The City of Newburgh ESPRI is managed by United Way of Dutchess-Orange Region.

ESPRI held a community listening session, as well as convened several task forces, including housing, workforce development, healthcare and wellness. The focus of ESPRI 2021 was to continue implementation of the Newburgh Ministry managed "Fragile Economies Project." The Fragile Economies Project aims to help low income families achieve financial goals and establish a savings cushion to help with life's unexpected events and emergencies. Families work with peer coaches to set goals, create an action plan, and stay on track. Families are connected to support where needed.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

Fees related to land use procedures have been significantly reduced and zoning relaxed to provide more accessibility. In addition, the City of Newburgh has developed a more streamlined land use board process, to enhance accessibility.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The City of Newburgh takes a lead in the Newburgh Housing Coalition, which includes Habitat for Humanity of Greater Newburgh, PathStone (HUD Homeowner training), Orange County Social Services, Safe Harbors of the Hudson and the Newburgh Community Land Bank. The City of Newburgh also participates in the Orange County Housing Planning Committee, which has even broader outreach and member organizations.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

Homeownership preparation and training through Pathstone, Independent Living and Habitat for Humanity of Greater Newburgh. Introduction of Tenants Responsiblities and accompanying public workshops are also provided.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

Activities are reviewed using the exhibits found in the CPD Monitoring Handbook. The “Guide for Review of Eligibility” as well as the guides for review of National Objectives, are used as Activities are selected and subsequently set-up. An "Activity Eligibility" form is prepared for each Activity, identifying the National Objective, as well as eligible activity category.

In order to provide better outreach to minority-owned and women-owned businesses, a Section 3 and minority/women-owned business Workshop was held in 2021. The workshop was co-sponsored by the US Department of Housing and Urban Development (HUD), Small Business Administration (SBA), General Services Administration (GSA) and Orange County government.

Additional small business workshops are planned for 2022, through the SBA/City of Newburgh Co-Sponsorship Agreement, including a continuation of the "Business Basics Bootcamp," as well as a low-income City of Newburgh resident "On-the-Job" training program.

A joint Planning and Development/Community Development/Grants Administration meeting is held bi-weekly in order to ensure that the CDBG program is in align with other City of Newburgh community needs. In addition, the whole CDBG program is monitored for “Timeliness” using a spreadsheet, which tracks Activity spending, as well as Public Service and Administration caps.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

In compliance with City of Newburgh procedures, the Notice of a 15-Day Public Comment Period for the 2020 CAPER was submitted to 4 local newspapers as well as a Spanish language publication/social media. The newspapers include the Times Herald Record, Orange County Post, Hudson Valley Press and the Times Community Papers (Mid-Hudson Times). La Voz provides Spanish language outreach for the 2020 CAPER.

The 2021 CAPER Public Hearing is scheduled for 02/21/2022. The 2021 CAPER will be available for public comment from 02/22/2022 - 03/9/2022.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There were no changes in the City of Newburgh's program objectives.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There were no changes in the City of Newburgh's program objectives.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A NEW AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR REIMBURSEMENT OF ADDITIONAL COSTS INCURRED BY THE CITY OF NEWBURGH AS A RESULT OF PROVIDNG AN ALTERNATE SOURCE OF DRINKING WATER

WHEREAS, perfluorooctane sulfonic acid (PFOS) has been detected in the City of Newburgh's water supply at levels in excess of the Environmental Protection Agency's recently released lifetime health advisory level; and

WHEREAS, there is a continuing need to provide a temporary alternate source of drinking water to residents of the City of Newburgh, which has access to New York City's Catskill Aqueduct as a backup source of drinking water; and

WHEREAS, by Resolution No. 204-2016 of August 8, 2016, the City Council of the City of Newburgh authorized Contract No. C010219 with the New York State Department of Environmental Conservation (DEC) for reimbursement for the actual cost of water purchased from the Catskill Aqueduct, which Contract term was extended by Resolution No. 326-2017 of November 27, 2017; Resolution No. 227-2018 of August 13, 2018, and Resolution No. 57-2021 of March 22, 2021; and

WHEREAS, by Resolution No. 58-2021 of March 22, 2021, the City Council authorized new Contract No. C011789 with the DEC for reimbursement for the actual cost of water purchased from the Catskill Aqueduct; and

WHEREAS, as a result of the necessity to obtain the alternate source of drinking water, the City of Newburgh has incurred and continues to incur additional costs over and above the actual cost of Catskill Aqueduct water; and

WHEREAS, by Resolution No. 105-2017 of April 24, 2017, the City Council authorized Contract No. C010563 with the DEC for reimbursement of the additional expenses incurred by the City of Newburgh associated with providing a temporary alternate source of drinking water to City residents through the Catskill Aqueduct not covered by Contract No. C010219; and

WHEREAS, by Resolution No. 137-2018 of May 29, 2018 and Resolution No. 116-2021 of May 10, 2021, the City Council authorized Amendment No. 1 and Amendment No. 2 to Contract No. C010563, extending the term and the reimbursement amount of the contract; and

WHEREAS, as a result of the continuing need of the City to provide a temporary alternate source of drinking water, the City also will continue to incur additional costs above the actual cost of the drinking water and the City and the DEC have determined that a new contract for reimbursement of those additional costs can best be accomplished through a new contract and in the best interest of the City of Newburgh and its residents; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into Contract No. C012469 with the New York State Department of Environmental Conservation for continuing reimbursement of the additional expenses incurred by the City of Newburgh associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct not covered by Contract No. C010219 and Contract No. C011789.

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CONTRACT C012469

THIS CONTRACT is entered into by and between the New York State Department of Environmental Conservation (hereinafter referred to as the Department), having offices at 625 Broadway, Albany, New York 12233 and the City of Newburgh (hereinafter referred to as Newburgh), having offices at 83 Broadway, Newburgh, New York 12550.

WITNESSETH:

WHEREAS, perfluorooctane sulfonic acid (PFOS) has been detected in Newburgh's water supply at levels in excess of the Environmental Protection Agency's (EPA) recently released lifetime health advisory level; and,

WHEREAS, it has been determined by Legislative findings under Article 15 of the Environmental Conservation Law (ECL) that the State has the sovereign power to regulate and control the water resources of the State; and,

WHEREAS, in recognition of power under ECL §15-0105.5, the use of water for domestic and municipal purposes shall have priority over all other purposes; and,

WHEREAS, in order to provide a temporary alternate source of drinking water to residents of Newburgh; Newburgh has accessed New York City's Catskill Aqueduct as a backup source of drinking water; and,

WHEREAS, reimbursement of applicable City costs related to the purchase of Catskill Aqueduct water payment are outlined in a prior contract between the Department and Newburgh, executed and approved by the New York State Comptroller's office; and,

WHEREAS, as a result of the necessity to obtain the alternate source of drinking water Newburgh has incurred additional costs over and above the payment of the actual cost of the drinking water; and

WHEREAS, The Department has determined after fully examining all of its internal capabilities and thoroughly investigating possible alternative approaches that repayment of the expenses of the City of Newburgh associated with the additional allowable costs set forth herein can best be accomplished through a Contract.

WHEREAS, the Department and Newburgh declare that it is to their mutual advantage to set forth the responsibilities of the parties as it relates to the additional costs; and

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

ARTICLE 1: SCOPE

The Department agrees to pay the Newburgh documented and Department approved actual costs of certain additional expenses incurred by the City of Newburgh in response to the PFOS contamination in the City of Newburgh drinking water as a result of the discharges from the Air National Guard at Stewart International Airport. Payment shall be based upon Article 2 of this Contract.

ARTICLE 2: PAYMENT

A. The Department shall pay to Newburgh and Newburgh shall accept from the Department as compensation for the actual costs incurred under this agreement and directly associated with the PFOS contamination in the City of Newburgh drinking water an amount not to exceed $478,384.95.

B. Newburgh shall submit invoices to the Department quarterly, with supporting documentation and certification by the appropriate financial officer of Newburgh demonstrating the actual costs incurred and paid by Newburgh during the previous quarter for the allowable costs described in the attached Schedule A Allowable Costs. The Department will review and approve the supporting documentation and reimburse Newburgh for the allowable costs incurred and paid by Newburgh.

C. The Department will authorize payment within 10 days of receipt of invoices and supporting documentation submitted per paragraph D and Schedule A of this article. The Department will make best efforts to arrange payment within 30 days of receipt of those invoices and supporting documentation.

D. All invoices must contain the proper certification of the Financial Officer of Newburgh attesting that the expenditures were properly made in accordance with all applicable laws and regulations and in accordance with Schedule A; including but not limited to procurement guidelines and cost justifications required in General Municipal Law.

E. Newburgh will submit requests for payment, together with supporting documentation, to the Department. Request for payment must be submitted within 45 days of the end of each State fiscal year which is March 31. Failure to comply with this request or notify the Department in writing prior to March 31st regarding billing problems shall operate as a waiver by Newburgh for reimbursement by the Department.

F. If the term of this Contract encompasses more than one State fiscal year, Newburgh shall incur no costs hereunder in subsequent fiscal years without the express written authority of the Department.

G. Payments for expenditures incurred under this contract will be rendered electronically to Newburgh unless payment by paper check is expressly authorized by the Commissioner of the Department (Commissioner), in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. Newburgh shall comply with the Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website at www.osc.state.ny.us/epay/index.htm, or by e-mail at epayments@osc.state.ny.us. Newburgh acknowledges that it will not receive payment under this Contract if it does not comply with the Office of the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

ARTICLE 3: TERM

A. The term of this Contract shall be from January 1, 2021 to May 31, 2022. The Contract shall be effective upon approval by the Office of the State Comptroller.

B. This Contract may be extended for a maximum of two one-year periods upon the mutual written consent of both parties and the approval of the Office of the State Comptroller.

C. Amendments other than exercising the term options above must be in writing and submitted to the Attorney General and the Office of the State Comptroller for approval.

ARTICLE 4: NOTICES

Wherever it is provided in this Contract that notice shall be given or other communications sent to the Department or Newburgh, such notices or communications shall be delivered or sent by First Class Mail to:

Department:

Susan Edwards, P.E.
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7013
Telephone Number: (518) 402-9779
E-Mail: Susan.Edwards@dec.ny.gov

Newburgh:

Todd Venning
City of Newburgh - City Manager
83 Broadway
Newburgh, NY 12550
Telephone Number: (845) 569-7319
E-Mail: tvennning@cityofnewburgh-ny.gov

Michelle Kelson
Corporation Counsel
City of Newburgh
83 Broadway
Newburgh NY 12550
(845) 569-7335
mkelson@cityofnewburgh-ny.gov

ARTICLE 5: LIABILITY

Newburgh shall be responsible for all damage to life and property due to activities of Newburgh, its subcontractors, agents, or employees, in connection with its Services under this Contract, and this obligation is in no way limited by the enumeration of insurance coverages hereunder. Further, it is expressly understood that Newburgh shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II.

Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against Newburgh or the State of New York beyond such as may legally exist irrespective of this Article or this Contract.

ARTICLE 6: DEFAULT AND TERMINATION

A. The Department shall have the right to postpone, suspend, abandon, or terminate this Contract, and such actions shall in no event be deemed a breach of Contract. In any of these events, the Department shall make settlement with Newburgh upon an equitable basis as determined by the Department, which shall fix the value of the work which was performed by the Newburgh prior to the postponement, suspension, abandonment, or termination of the Contract.

B. The State shall have the right to terminate this Contract for:

1) unavailability of funds

2) cause

a) If the Department determines that Newburgh has breached a material term of this Contract, it shall issue a written notice, providing Newburgh with 10 days to correct the defect. If Newburgh fails to correct the defect within this time period or fails to make a good faith effort to do so as determined by the Department, the Department may terminate this Contract for cause.

3) convenience

a) If the termination is for the convenience of the Department and is not brought about as a result of unsatisfactory performance on the part of Newburgh, the Department shall pay for the allowable costs incurred up to the date of termination.

ARTICLE 7: STANDARD CONTRACT CLAUSES

Newburgh will be required to comply with all of the mandatory New York State and Department contracting provisions contained in the following two attached documents:

Appendix A - Standard Clauses for All New York State Contracts;

Appendix B - Standard Clauses for All NYSDEC Contracts.
Appendix C - Standard Ethics Clause for All NYSDEC Contracts.

ARTICLE 8: ENTIRE CONTRACT

This Contract consists of the following documents in the following order of precedence.

1. Appendix A
2. Appendix B
3. Appendix C
4. The Contract (including Schedule A)

ARTICLE 9: AFFIRMATIVE ACTION REQUIREMENTS

Newburgh must make good faith efforts to subcontract an overall goal of 0% of the contract amount to Minority and Women Owned Business Enterprises (MWBE's). Newburgh must make good faith efforts to employ minority group members and women for a portion of any workforce hours required to perform the work under this contract. Appendix B further defines the M/WBE and EEO provisions required by Executive Law, Article 15A.

ARTICLE 10: INSURANCE CONSIDERATIONS

Newburgh agrees to procure and maintain at its own expense and without expense to the Department Worker's Compensation Insurance and Disability Benefits by insurance companies licensed to do business in the State of New York, covering all operations under this Contract.

Newburgh shall furnish a certificate or certificates showing that it has complied with the Worker's Compensation and Disability Benefits requirements of this Article detailed below. The certificate or certificates shall provide that:

- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department.
- Worker's Compensation and Disability Benefits certificates shall name the New York State Department of Environmental Conservation, Division of Environmental Remediation, Bureau of Program Management, 625 Broadway, Albany, NY 12233-7012, as certificate holder.
- This Contract shall be void and of no effect unless Newburgh procures the required insurance policies and maintains them until acceptance/completion of the work, whichever event is later.
- Newburgh shall require that any subcontractors hired, carry insurance with the same provisions as provided herein. Newburgh will maintain the certificate or certificates for all subcontractors hired as part of Newburgh's records.

The Department has reviewed the scope of work being accomplished under this contract and has determined that it will rely on the standard operating procedures and good business practices of Newburgh with respect to securing all appropriate types and amounts of liability insurance and

appropriate endorsements. The Department waives its standard requirements for liability insurance certificates, endorsements, and supporting documentation for this Contract.

The following types of insurance are required for this Contract:

1. Workers' Compensation:

For work to be performed in New York State, Newburgh shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If the agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Act policy as applicable must be provided. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
C-105.2	Certificate of Workers' Compensation Insurance (September 2007, or most current version)
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are NOT acceptable proof of New York State Workers' Compensation Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:
http:/www.wcb.ny.gov/content/main/Employers/Employers.jsp

2. Disability Benefits:

For work to be performed in New York State, Newburgh shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
DB-120.1	Certificate of Insurance Coverage under the New York State Disability Benefits Law
DB-155	Certificate of Disability Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are NOT acceptable proof of New York State Disability Benefits Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:

http:/www.wcb.ny.gov/content/main/Employers/Employers.jsp

ARTICLE 11: SEVERABILITY

If any part of this Contract is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Contract, and the remaining parts of this Contract shall be enforced as if the invalid, illegal or unenforceable part were not contained therein.

ARTICLE 12: FORCE MAJEURE

Neither party shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of lands or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes or the delay or failure to perform by any subcontractor by reason of any cause or circumstances beyond the reasonable control of such subcontractor.

ARTICLE 13: EXECUTIVE ORDER 177

A. Executive Order No. 177, Prohibiting State Contracts with Entities that Support Discrimination, orders that New York State's government will not do business with entities that promote or tolerate discrimination or infringement on the civil rights and liberties of New Yorkers. New York State is dedicated to ensuring that all individuals are treated equally, regardless of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis. To that end, New York has enacted numerous laws,

regulations, and policies, and will continue to aggressively enforce its strong protections against discrimination to the maximum extent allowable by law.

B. In order to comply with this order, Newburgh is required to complete the Executive Order No. 177 Certification which certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

ARTICLE 14: COMPLIANCE WITH LAWS

Newburgh agrees to comply with the provisions of the Labor Law and all State and Federal laws, local statutes, ordinances, and regulations that are applicable to the performance of this Contract.

SIGNATURE PAGE
Contract C012469

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereto on the day and year appearing following their respective signatures.

Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

NEWBURGH SIGNATURE
By:
Print Name:
Title:
Dated:

DEPARTMENT SIGNATURE
By:
Print Name:
Title:
Dated:

Newburgh Acknowledgement

State of _____)
) ss.:
County of _____)

On the _____day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____ Notary Public

ATTORNEY GENERAL SIGNATURE
Approved as to Form:
Dated:

COMPTROLLER SIGNATURE
Approved: Thomas P. DiNapoli State Comptroller
Dated:

Schedule A
Allowable Cost Categories

1) Legal Services (directly associated with contamination)
2) Engineering Services
3) Contractual Services
4) Labor (force account)
5) Utilities
6) Equipment
7) Other Allowable Costs including such things as public outreach costs, and costs that do not fit within the above categories but fall within legitimate Department approved expenses associated with the Article 1: Scope.

Reimbursement of all of the above costs are subject to the same documentation requirements and the Department discretion to review and approve as set forth herein.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

October 2019

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. **Postponement, suspension, abandonment or termination by the Department:**
The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. **Conflict of Interest**
(a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. **Requests for Payment** All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Bureau Director
(Name and Title)
NYS Dept. of Env. Conservation - Remediation
625 Broadway, 12th FL, Albany, NY 12233-7012
(Address)

(518) 402-9764
(Telephone)

The designated appeal individual to review decisions is:

Division Director
(Name and Title)
NYS Dept. of Env. Conservation - Remediation
625 Broadway, 12th FL, Albany, NY 12233-7011
(Address)
(518) 402-9706
(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation
Nancy W. Lussier Chair
Contract Review Committee
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**
If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

(4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(1) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVI. **Force Majeure** The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVII. **Freedom of Information Requests** The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release and to support its position.

XVIII. **Precedence** In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

XIX. **Article 15-Requirements**

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1)For purposes of this procurement, the Department hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises ("MWBE") participation, (based on the current availability of qualified MBEs and WBEs).

(2)For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

https://ny.newnycontracts.com

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3)Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

(c) Equal Employment Opportunity (EEO)

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i)Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii)The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii)If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv)The Contractor's EEO policy statement shall include the following language:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

c. The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the

implementation of the Contractor's obligations herein.

d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of **0**% Minority Labor Force Participation**, 0%** Female Labor Force Participation.

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

(2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(d) MWBE Utilization Plan

(1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.

(2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(3)Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Waivers

(1)For Waiver Requests Contractor should use Waiver Request Form.

(2)If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Liquidated Damages - MWBE Participation

(1)Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

(i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

(ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at http://www.dec.ny.gov/about/48854.html

October 2021

Appendix C

Standard Clauses for Ethics in all NYSDEC Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word “Offeror” herein refers to any party submitting an application, bid, proposal, or other documents in response to this procurement. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Conflict of Interest

A. Procurement Phase:

1. An Offeror will disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated entity, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Offeror or former officers and employees of the Agencies and their Affiliates, in connection with the Offeror rendering services enumerated in this procurement. If a conflict does or might exist, the Offeror will describe how the Offeror would eliminate or prevent it. This description will include, but not be limited to what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

2. The Offeror must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, “Commission”), and if so, a brief description must be included in the Offeror’s response indicating how any matter before the Commission was resolved or whether it remains unresolved.

3. The Offeror/Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect attached hereto), signed by an authorized executive or legal representative attesting that the Offeror’s/Contractor’s performance of the services does not and will not create a conflict of interest with, nor position the Offeror/Contractor to breach any other contract currently in force with the State of New York, that the Offeror/Contractor will not act in any manner that is detrimental to any State project on which the Offeror/Contractor is rendering services.

B. Contract Phase:

1. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this contract. The Contractor shall have a duty to notify the Department immediately of any actual or potential conflicts of interest.

2. In conjunction with any subcontract under this contract, the Contractor shall obtain and deliver to the Department, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Department a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

3. The Department and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing or establish new relationships. The Department will review the nature of any relationships and reserves the right to terminate this contract for any reason, or for cause, if, in the judgment of the Department, a real or potential conflict of interest cannot be cured.

4. In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without prior Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

5. The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid a conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be allowed by law or other applicable provisions of this contract regarding termination.

6. The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package.

7. ***If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.***

   Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

   a. The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to

represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

b. The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

II. PUBLIC OFFICERS LAW

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

III. ETHICS REQUIREMENTS

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements").

The Contractor certifies that all of its employees and those of its subcontractors who are former employees of the State and who are assigned to perform services under this contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under this contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions.

The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State

shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

IV. SUBCONTRACTING

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the Department. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Contract to be subcontracted to qualified, responsible subcontractors, subject to prior approval of the Department. If the Contractor decides to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this contract must be fully explained by the Contractor to the Department. As part of this explanation, the subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this contract.

The Contractor retains ultimate responsibility for all services performed under the contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this contract including, but not limited to, the body of this contract, Appendix A – Standard Clauses for New York State Contracts, Appendix B – Standard Clauses for All New York State Department of Environmental Conservation Contracts, Appendix C - Standard Clauses for Ethics in all New York State Department of Environmental Conservation Contracts, and the Solicitation Document.

Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Department.

The Department reserves the right, at any time during the term of the contract, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this contract. The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the contract.

If at any time during performance under this contract total compensation to a subcontractor exceeds or is expected to exceed $100,000, or as otherwise requested by the Department that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Entity offering to provide services pursuant to this Procurement/Contract, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Procurement/Contract does not and will not create a conflict of interest with nor position the Entity to breach any other contract currently in force with the State of New York.

Furthermore, the Entity attests that it will not act in any manner that is detrimental to any State project on which the Entity is rendering services. Specifically, the Entity attests that:

1. The fulfillment of obligations by the Entity, as proposed in the response, does not violate any existing contracts or agreements between the Entity and the State;

2. The fulfillment of obligations by the Entity, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Entity has with regard to any existing contracts or agreements between the Entity and the State;

3. The fulfillment of obligations by the Entity, as proposed in the response, does not and will not compromise the Entity's ability to carry out its obligations under any existing contracts between the Entity and the State;

4. The fulfillment of any other contractual obligations that the Entity has with the State will not affect or influence its ability to perform under any contract with the State resulting from this Procurement;

5. During the negotiation and execution of any contract resulting from this Procurement, the Entity will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

6. In fulfilling obligations under each of its State contracts, including any contract which results from this Procurement, the Entity will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

7. No former officer or employee of the State who is now employed by the Entity, nor any former officer or employee of the Entity who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The Entity has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Entities responding to this Procurement/Contract should note that the State recognizes that conflicts may occur in the future because a Entity may have existing or new relationships.

The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Signature: _____
Date: _____
Name: _____
Title: _____

This form must be signed by an authorized executive or legal representative and returned with the Bid/Proposal/Contract.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES YOUTH DEVELOPMENT PROGRAM GRANT IN THE AMOUNT OF $5,000.00 REQUIRING NO CITY MATCH FOR THE 2022 YOUTH SOCCER PROGRAM

WHEREAS, the City of Newburgh Recreation Department has advised that the Orange County Youth Bureau is accepting a Request for Proposals for grant funding available from New York State Office of Children and Family Services Youth Development Program (YDP); and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a YDP Grant in an amount not to exceed $5,000.00 for a Youth Soccer Program which includes soccer training and recreational leagues conducted in the summer and fall of 2022; and

WHEREAS, funds will be utilized for the costs of referees, uniforms, and trophies; and

WHEREAS, no City matching funds are required; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in the amount of $5,000.00 requiring no City match for the 2022 Youth Soccer Program; and to execute all necessary documents to receive and comply with the terms of such grant and to carry out the program funded thereby.

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES YOUTH DEVELOPMENT PROGRAM GRANT IN AN AMOUNT NOT TO EXCEED $6,500.00 REQUIRING NO CITY MATCH FOR THE 2022 SUMMER PLAYGROUND PROGRAM

WHEREAS, the City of Newburgh Recreation Department has advised that the Orange County Youth Bureau is accepting a Request for Proposals for grant funding available from the New York State Office of Children and Family Services Youth Development Program (YDP); and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a YDP Grant in an amount not to exceed $6,500.00 for the 2022 Summer Playground Program which is a 6-week day camp for boys and girls in grades 1st through 6th; and

WHEREAS, funds will be used to purchase supplies, such as food, water, snacks, and books, and to pay vendors; and

WHEREAS, no City matching funds are required; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in the amount of $6,500.00 requiring no City match for the 2022 Summer Playground Program; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES YOUTH DEVELOPMENT PROGRAM GRANT IN AN AMOUNT NOT TO EXCEED $10,000.00 REQUIRING NO CITY MATCH FOR THE 2022 YOUTH BASKETBALL PROGRAM

WHEREAS, the City of Newburgh Recreation Department has advised that the Orange County Youth Bureau is accepting a Request for Proposals for grant funding available from New York State Office of Children and Family Services Youth Development Program (YDP); and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded an YDP Grant in an amount not to exceed $10,000.00 for the 2022 Basketball Program; and

WHEREAS, funds will be utilized for the costs of referees, security guards, and a scorekeeper; and

WHEREAS, no City matching funds are required; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program Grant in an amount not to exceed $10,000.00 requiring no City match for the 2022 Youth Basketball Program in the City of Newburgh; and to execute all necessary documents to receive and comply with the terms of such grant and to carry out the program funded thereby.

RESOLUTION NO.: _____ - 2022

OF

FEBRUARY 14, 2022

A RESOLUTION ADOPTING THE CITY OF NEWBURGH BOARD AND COMMISSION APPOINTMENT POLICY AND PROCEDURE

BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby adopts the City of Newburgh Board and Commission Appointment Policy and Procedure, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that the City of Newburgh Board and Commission Appointment Policy and Procedure shall take effect on February 15, 2022.

CITY OF NEWBURGH
BOARD AND COMMISSION APPOINTMENT POLICY AND PROCEDURE

I. Purpose

To implement a uniform policy and procedure for the appointment of individuals to serve on the City's boards and commissions.

II. General

Consistent with New York State Law and the Newburgh City Charter and Code of Ordinances, the City Council and the City Manager have the authority to appoint members of the City's boards and commissions for terms prescribed therein. The City's boards and commissions are listed in Appendix A.

The Executive Office, the City Clerk and the Corporation Counsel are responsible for administering this policy.

No member of City staff, either full-time, part-time, seasonal or temporary, may be appointed to serve as a voting member of a City board or commission unless specifically provided in the board or commission enabling legislation.

Each year, on or before December 31, the Executive Office in consultation with the City Clerk will prepare and provide to the City Council a list of all board and commission members in the City. The appointment list will include list of all current City board and commission vacancies which will expire during the next calendar year with the name of the incumbent appointee, the date of appointment, and the date the term expires. The appointments list will be made available to members of the public on the City's website.

III. Appointment Process

A. The Executive Office will advertise any vacancy or expiring term of any City board or commission for the purpose of soliciting applications or letters of intent for such positions at least 30 days but not more than 60 days before filling any such vacancy. Such advertisement will be made in the newspapers of record, City website, and City social media during the notice period and include the board or commission name, minimum qualifications (if applicable), current date/time/place/frequency of meetings, term of office, date by which applications or letters of intent are due, and directions to submit such applications and letters to the Executive Office. The City Manager will include an announcement of any vacancy or term expiration during the City Manager's Update at each Council meeting that occurs in the month before term expiration and as soon as practicable after a vacancy occurs.

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B. Applications will be accepted from applicants in the form attached or in the form of a letter of intent containing answers to the questions on the attached form. Such applications or letters of intent shall be directed to the Executive Office.

All incumbent board and commission members seeking re-appointment to a new term must submit an application form or a letter of intent containing answers to the questions in the application form.

The Executive Office will retain the applications received for boards and commissions appointed by the City Manager.

The Executive Office will receive, compile and distribute copies of applications for boards and commissions appointed by the City Council to the City Council.

C. The Review Process

1. City Council appointments

The City Council will review all applications and letters of interest at a work session but may conduct such review in an executive session. The City Council may select candidates for interviews. The Council may conduct interviews in an executive session. The Council may discuss applications following the conduct of any interviews and may conduct those discussions in an executive session. The vote to appoint a candidate to any board or commission shall be by resolution at a public meeting of the City Council.

2. City Manager appointments

The City Manager will review all applications and letters of interest. The City Manager may select candidates for interviews. The City Manager's appointment of a candidate to a board or commission shall be confirmed by a letter as provided in Section III(D).

3. The City Council and/or the City Manager may decide not to appoint or reappoint any of the candidates and instead direct the Executive Office to re-advertise for applications and letters of intent with a new deadline for submission. The City Council and/or City Manager may retain applications received from any solicitation for subsequent consideration for future vacancies for up to one year, at which time such applications shall be considered expired.

D. Notification

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1. Each appointee shall be notified by letter. The Executive Office is responsible for preparing letters of appointment for the City Manager and letters confirming appointments by City Council which will be signed by the City Manager.

2. Each notification letter shall include the name of the board or commission to which the appointment is made; a copy of the resolution of the City Council, where the appointment is made by City Council; the term of the appointment, including expiration date; oath requirements and procedure; training requirements; a copy of the board or commissions enabling law; and a copy of the City's Ethics Code located in Chapter 34 of the City Code of Ordinances.

3. The Executive Office will be responsible for notifying other applicants that the position has been filled. This notification may be made by mail or e-mail.

IV. Schedule of Boards and Commissions

The Schedule of Boards and Commissions will be reviewed annually and updated to include boards and/or commissions created by law or ordinance; to delete boards and/or commissions repealed by law or ordinance; and to modify based on amendments made by law or ordinance.

Name of Board or Commission	Method of Appointment	Term	Number of Members	Legal Reference
Architectural Review Commission	City Manager	7 years	7 2 alternates	NYS General Municipal Law, Article 5-K City Code Chapter 300
Arts and Cultural Commission	Council	3 years	No fewer than 9 and no more than 15	City Code Chapter 14
Board of Assessment Review	Council	5 years	no fewer than 3 and no more than 5	NYS Real Property Tax Law Article 5 City Charter Section C7.30
Board of Electrical Examiners	City Manager	serve until successors appointed and qualified	5	City Code Chapter 30
Board of Ethics	Council	At the pleasure of the Council	5	NYS General Municipal Law Article 18

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				City Code Chapter 34
Conservation Advisory Council	Council	2 years	7	NYS General Municipal Law Article 5 & Article 12-F, NYS Executive Law City Code Chapter 159
Citizens Advisory Committee	Council	2 years	7	City Code Chapter 12
Civil Service Commission	Council	7 years	3	NYS Civil Service Law City Charter Section C15.10
Districting Commission	Council	Date of appointment to 60 days after map is filed	7	City Charter Section C1.21
Examining Board of Plumbers	City Manager	3 years	5	NYS General City Law Article 4 City Code Chapter 230
Human Rights Commission	Council	3 years	7	NYS General Municipal Law Article 12-D City Code Chapter 51
Newburgh Housing Authority	City Manager	5 years	7 5 appointed 2 tenant-elected	NYS Public Housing Law Article III; Section 453
Newburgh Industrial Development Agency	Council	At the pleasure of the Council	not less than 3 or more than 7	NYS General Municipal Law Article 18-a; Section 913
Police Community Relations and Review Board	Council	3 years	7 – one from each ward & 3 at large	City Code Chapter 72
Planning Board	City Manager	7 years	7 2 alternates	NYS General City Law Article 3

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				City Code Chapter 76 and Chapter 300
Strategic Economic Development Committee	Mayor	At the pleasure of the Mayor		Community Advisory
Transportation Advisory Committee	Council	2 years	9 – 6 residents; 1 representing an agency advocating for persons with disabilities; 2 City employees from Engineering; Planning & Development or Public Works	City Code Chapter 71
Zoning Board of Appeals	Council	7 years	7 2 alternates	NYS General City Law Article 5-a City Code Chapter 300

V. This policy is effective February 1, 2022.

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General Application for
City of Newburgh Commission/Board

Name of Commission/Board/Advisory Committee: _____

Applicant name: _____ Date of application: _____

Address: _____

Telephone (home): _____ (work): _____

Age: _____

Length of residence in City (if resident): _____

E-Mail Address: _____

Occupation(s)/place of business: _____

Education: (*schools/degrees/specialties)*

_____
_____
_____
_____
_____

Why are you interested in this position?

_____
_____
_____
_____
_____
_____

What particular strengths would you bring to this position?

_____
_____
_____
_____
_____

Experience and community affiliations:

_____
_____
_____

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_____
_____

Please attach any other information you believe would be relevant:
_____
_____
_____

Forms should be returned to City of Newburgh Executive Office, attn: City Manager, 83 Broadway, Newburgh, NY 12550 or e-mail to _____@cityofnewburgh-ny.gov.

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ORDINANCE NO.: _____ - 2022

OF

_____, 2022

AN ORDINANCE AMENDING CHAPTER 72 ENTITLED "POLICE COMMUNITY RELATIONS AND REVIEW BOARD" OF THE CODE OF THE CITY OF NEWBURGH

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 72, entitled "Police Community Relations and Review Board," of the Code of Ordinances of the City of Newburgh be and is hereby amended to read as follows:

SECTION 1. Amendment

§ 72-1 Findings and purpose.

A. The City Council of the City of Newburgh finds that it is in the public interest of the citizens of the City of Newburgh have an effective forum to improve the relationship between the community and the City of Newburgh Police Department through the exchange of ideas and discussion of problems within the City relating to crime and crime prevention and other law enforcement objectives.

B. The City Council further finds that it is important to have a method by which City residents can make requests for law enforcement related services.

C. The City Council further finds that an effective program to improve the relationship between the community and the City of Newburgh Police Department requires an independent authority to review the conduct of law enforcement officials.

D. The purpose of Chapter 72 of the City Code of Ordinances is to create an independent, non-exclusive body to review complaints of misconduct by members of the City of Newburgh Police Department. The goals of this Chapter are to improve the communication between the City of Newburgh Police Department and the community, to increase police accountability and credibility with the public and to create a fair and impartial complaint process.

§ 72-2 Definitions.

For purposes of this Chapter, the following words and phrases shall have the meaning described in this section:

~~Strikethrough~~ denotes deletions
Underlining denotes additions

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CHIEF – The Police Chief of the City of Newburgh Police Department.

COMMISSIONER – The Police Commissioner of the City of Newburgh Police Department.

COMPLAINT – A written statement concerning police conduct which is submitted to the Police Community Relations and Review Board or filed directly with the City of Newburgh Police Department.

IMMEDIATE FAMILY – spouse, domestic partner, child, step-child, mother, father, mother-in-law, father-in-law, grandparent.

MEDIATION – a structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences.

OFFICER – sworn member of the City of Newburgh Police Department.

PCRRB – Police Community Relations and Review Board.

~~PROFESSIONAL STANDARDS – Administrative Lieutenant of the City of Newburgh Police Department~~

§ 72-3 Composition, appointment, removal and vacancy.

A. There is hereby established a Police Community Relations and Review Board comprised of seven members.

B. Appointment to the PCRRB shall be made as follows:

1. One member from each of the four wards shall be appointed by the Council member elected from each ward.
2. Three members shall be appointed by the City Council and the City Council shall designate one such member as the Chair of the PCRRB.
3. If a Council member fails or refuses to appoint a member to the PCRRB under Section 72-3(B)(1) and a vacancy exists for more than sixty days from the date the notice of vacancy is provided to the City Council by the PCRRB Chair, then the City Council as a whole may make such appointment.
4. When a PCRRB vacancy has existed for at least 60 days from the date the notice of vacancy is provided to the City Council by PCRRB Chair and the City Council has not acted to make an appointment to fill such vacancy, the PCRRB, by a simple majority, shall have the right to nominate person(s) for review and appointment by the City Council without regard to the person's ward of residence.

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C. Terms.

1. Members shall be appointed for three year terms.
2. No member of the PCRRB shall serve for a period which exceeds two full consecutive terms; provided, however, that a member may be considered for reappointment after one year of non-membership.
3. Members shall continue to serve on the PCRRB until their successors are appointed.

§ 72-4 Members.

A. Qualifications of members:

1. Members of the PCRRB shall reside in the City of Newburgh and be at least eighteen years old at the time of appointment.
2. Members of PCRRB shall possess a reputation for fairness, integrity and responsibility and have demonstrated an active interest in public affairs and service.
3. The City Council shall endeavor to reflect the City's diverse community with respect to age, disability, ethnicity, race, gender, sexual orientation, income level and experience in making their appointments.
4. Members of the PCRRB or members of their immediate family shall not be employed by the City of Newburgh Police Department or any local, state or federal law enforcement agency.
5. Members of the PCRRB shall not be members of the immediate family of any incumbent elected official of the City of Newburgh nor have any financial ties with either members of the City of Newburgh Police Department or any incumbent elected official of the City of Newburgh.
6. No practicing attorney or member of his or her firm, or the immediate family of an attorney or member of his or her firm who represents a plaintiff or defendant in a police misconduct lawsuit initiated against the City of Newburgh Police Department, the Police Chief of the City of Newburgh or the Newburgh PBA or a plaintiff or any family member of a plaintiff in such case shall be a member of the PCRRB.

B. Member Responsibilities: PCRRB members shall:

1. Obey all laws respecting individuals' rights of privacy and confidentiality of records.
2. Recuse themselves from participating in the review of any complaint in which they have a personal, professional or financial conflict of interest.
3. Conduct themselves at all times in a manner that will maintain public confidence in the fairness, impartiality, integrity of the PCRRB and refrain from making any prejudicial comments with respect to the PCRRB, complainants or police officers.

§ 72-5 Powers and duties.

A. Training**.** The PCRRB shall seek and participate in a broad and independent range of training necessary to pursue the duties and responsibilities of the PCRRB as approved and funded by the City Council.

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B. Meetings and administration.

1. The PCRRB shall adopt and the City Council shall approve, rules and bylaws for the transaction of PCRRB affairs, including the manner of calling and giving notice of special meetings and the appointment and duties of any special committees.
2. The PCRRB shall hold regular monthly business meetings.
3. Four members of the PCRRB shall constitute a quorum. A quorum must be present to conduct business. Four votes shall be required for any action by the PCRRB.
4. The PCRRB shall hold its initial meeting within sixty (60) days after the initial appointments are made. At its initial meeting, the PCRRB shall fix the time and place for its regularly scheduled meetings.
5. The PCRRB may conduct both public and closed meetings as allowed or required by the New York State Public Officers Law, Article 7, known as the Open Meetings Law.

C. Recommendations, reports.

1. The PCRRB may make recommendations to the City Council and the Police Department regarding law enforcement, crime, crime prevention and improved relations with the community.
2. The PCRRB shall file annual reports with the City Council, City Manager, the Police Commissioner and the Police Chief which contain statistics and summaries of citizen complaints, including a comparison of the PCRRB's findings with the final determination of the City of Newburgh Police Department.

D. Community outreach and education. In addition to regular monthly business meetings, the PCRRB shall hold public meetings in each ward a minimum of once each year for the purposes of inviting and facilitating public discussion between the City of Newburgh Police Department and City residents regarding law enforcement and services, crime and crime prevention and community relations within the City of Newburgh.

E. Filing of complaints. Complaints concerning police conduct shall be filed with the PCRRB and the City of Newburgh Police Department as provided in this subsection.

1. Complaints shall be lodged in writing on the City of Newburgh Citizen Complaint Form as reviewed and approved by the PCRRB for such purpose and shall be signed by the complainant. Complaints shall be filed with the PCRRB at the Executive Office, City Hall, 83 Broadway, Newburgh NY or with the City of Newburgh Police Department, 55 Broadway, Newburgh, NY. Complaint forms shall be printed in English and Spanish and shall be available at the City of Newburgh Police Department, the City Hall Executive Office and the City Clerk's Office.
2. A copy of each complaint filed with the PCRRB shall be forwarded to the City of Newburgh Police Department within five working days of its receipt. A copy of each complaint filed

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Underlining denotes additions

with the City of Newburgh Police Department shall be provided to the PCRRB within five working days of receipt by the Police Department.

3. Complaints shall be filed within six months of the date of the alleged incident giving rise to the complaint. Complaints filed after six months from the date of the alleged incident or filed in a format other than on the City of Newburgh Citizen Complaint Form may ~~shall~~ be returned or the PCRRB may accept and review such complaint upon an affirmative vote of four ~~five~~ members of the PCRRB.

F. Investigation and r~~R~~eview of complaints. Complaints shall be investigated by the Police Commissioner, or upon referral, by the PCRRB tor an independent investigation as provided in this subsection. ~~A review~~ The PCRRB shall review the investigations of complaints conducted by the Police Commissioner and/or an independent investigator ~~of a complaint shall proceed~~ as provided in this subsection.

1. Investigation of complaints.

a. The City of Newburgh Police Commissioner~~Chief~~ or his designee will~~shall~~ investigate every complaint filed with the City of Newburgh Police Department except for complaints the PCRRB determines to assign the investigation to an independent investigator as provided in Section 72-5(F)(1)(c). ~~The Chief shall file with the PCRRB quarterly reports on the status of the investigation of each complaint.~~

b. Investigations by the Police Commissioner. The Police Commissioner~~Chief~~ or his designee shall begin its investigation of each complaint immediately upon receipt of the complaint.

i. If the Police Commissioner~~Chief~~ or his designee fails to conclude the investigation within sixty (60) days of the receipt of the complaint, he shall advise the PCRRB in writing of the status of the investigation and the estimated time for the conclusion of the investigation. Thereafter, the Police Commissioner~~Chief~~ or his designee shall advise the PCRRB in writing of the status of the investigation every thirty (30) days until the conclusion of the investigation.

ii. The Police Commissioner or his designee shall submit a preliminary report of his findings to the PCRRB at the next regular meeting of the PCRRB after the conclusion of the investigation.

iii. After review and deliberation of the preliminary findings of the Police Commissioner, the PCRRB shall:

1. render its findings pursuant to Section 72-5(F)(2); or
2. request that the Police Commissioner or his designee conduct further investigation of the complaint; or

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3. obtain additional case-specific information from the Police Commissioner, including but not limited to written materials, audio or video tapes and related documents, and compel the testimony of witnesses and/or documents provided in Section 72-5(F)(1)(d), in order to complete its review and render findings pursuant to Section 72-5(F)(2); or
4. refer the complaint to mediation as provided in Section 72-6.

c. Investigations by Independent Investigator. The PCRRB, on the recommendation of Corporation Counsel, may determine to assign an investigation of a complaint to an independent investigator.
   i. The PCRRB will request the Corporation Counsel to refer the complaint to an investigator ~~is dissatisfied with the extent and/or quality of the Chief's investigation, it shall promptly inform the City Council in writing of the specific deficiency of the investigation. In such event, the PCRRB may seek authorization from the City Council to conduct an investigation with the services of an outside independent investigator. The investigator shall be selected on a rotating basis from a panel of investigators comprised of certified investigators, attorneys, retired judges and similarly~~ qualified to conduct the investigation ~~individuals who are approved by the City Council~~. The use of an outside independent investigator shall be limited to complaints alleging use of excessive force, or civil rights violations, or creates a personal, professional or financial conflict of interest for a City official or employee.
   ii. The independent investigator may request that the PCRRB issue a subpoena as provided in Section 72-5(F)(1)(d) to compel the production of written materials, audio or video tapes and related documents, and/or compel the testimony of witnesses if necessary to complete the investigation.
   iii. The independent investigator shall submit a report of his findings to the PCRRB at the next regular meeting of the PCRRB after the conclusion of the investigation.
   iv. After review and deliberation of the preliminary findings of the independent investigator, the PCRRB shall render its findings pursuant to Section 72-5(F)(2).

d. Subpoenas.
   i. The PCRRB, by majority vote of its members, may authorize the issuance of a subpoena. Such subpoenas may compel the attendance of witnesses and/or persons and require the production of such records and other materials as are necessary for the investigation and review of a complaint including records of the Police Department, other persons, or other agencies. A copy of any subpoena served upon a City of Newburgh police officer shall also be delivered to the Police Commissioner and Police Chief. PCRRB subpoenas

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Underlining denotes additions

are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules. The Police Commissioner and Police Chief will use the authority applicable to them by City Charter, law, or regulation to promulgate new general orders or rules or modify existing general orders or rules to ensure compliance by sworn police officers with the PCRRB procedure in accordance with applicable law. City of Newburgh police officers and employees shall be notified of their rights against self-incrimination under Garrity v. New Jersey, 385 U.S. 493 (1967) before any testimony is given.

ii. Complainants, witnesses and City of Newburgh police officers subject to an investigation pursuant to subpoena shall have the right to obtain counsel or other representation. City of Newburgh police officers and employees shall be afforded all applicable New York State Civil Service Law Section 75 due process rights.

2. Findings of the PCRRB.

a. The PCRRB, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the complaint:

i. Sustained – where the review disclosed sufficient facts to prove the allegations made in the complaint.

ii. Not Sustained – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

iii. Exonerated – where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper.

iv. Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.

v. Ineffective Policy or Training – where the matter does not involve guilt or lack thereof but rather ineffective departmental policy or training to address the situation.

vi. No Finding – where the complaint failed to produce information to further the investigation; where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; where the complainant withdrew the complaint; where the complainant is unable to clarify the complaint; or where the officer is no longer employed by the City.

vii. Mediated – where the complaint is resolved by mediation.

b. If the PCRRB fails to render any finding referenced above within sixty (60) days of its receipt of the preliminary report of the Chief's findings, the complaint file shall be returned to the Chief for disposition of the matter, unless the PCRRB shall advise the Chief, the complainant and the affected officer(s) in writing of the reason for the delay in rendering its finding. In such case, the PCRRB shall provide the Chief, the

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complainant and the affected officer(s) with monthly updates on the status of the complaint. In any event, if the PCRRB fails to render a finding referenced above within 120 days of its receipt of the preliminary report of the Chief's findings, the complaint file shall be returned to the Chief for disposition of the matter.

§ 72-6 Mediation.

A mediation process shall be established and coordinated by the PCRRB in accordance with this section.

A. Mediation shall be conducted at no cost to the complainant or officer by highly trained and experienced mediators selected from a list approved by the City Council. The list of mediators shall reflect community diversity. Mediators shall be required to complete an appropriate training curriculum and continuing education on issues related to the interaction between civilians and police officers from the perspective of both the citizen and police officer.
B. After a complaint is filed under Section 72-5 of this Chapter, the complainant and the officer(s) may at any time in the review process utilize the mediation process herein to resolve the complaint by submitting a written request for mediation to the PCRRB. The mediation process also may be utilized after the complaint is referred to mediation by the PCRRB pursuant to Section 72-5(G)(1)(d) of this Chapter. In either case, the mediation shall proceed as promptly as possible after a request for mediation or a referral to mediation is made. Mediation may proceed only on the agreement of the officer with the approval of the Chief and the agreement of the complainant.
C. Every reasonable effort shall be made to schedule mediation during an officer's normal working hours.
D. Mediators shall conduct mediation sessions with officers and complainants at times and places agreed upon by the parties.
E. In conducting the mediation sessions, the mediators may not impose an outcome on the parties.
F. Mediation sessions shall be closed to the public. Matters discussed shall be confidential unless both parties agree otherwise as part of a written mediation settlement.
G. Statements and records disclosed during mediation may not be disclosed or introduced in evidence during any judicial or administrative proceeding and mediators may not be compelled by subpoena to give testimony or produce anything related to the mediation.
H. The PCRRB and The Commissioner~~Chief~~ will be informed whether the mediation sessions result in a resolution of the dispute. If the mediation sessions do not result in a resolution of the dispute, the PCRRB review process referenced in this Chapter shall continue to conclusion. If the mediation sessions do result in a resolution of the dispute, the PCRRB shall issue a finding of "mediated" and the allegations shall be deleted form the officer's PCRRB history.

§ 72-7 Suspension of proceedings.

Upon the written recommendation of the Corporation Counsel, the City Council may suspend the PCRRB review of any complaint where a separate criminal investigation is underway or where a civil

~~Strikethrough~~ denotes deletions
Underlining denotes additions

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action against the City is underway or pending. Upon the conclusion of such separate proceedings, the PCRRB may resume or undertake its review.

§ 72-8 Construction of chapter.

No report, finding or determination made pursuant to this Chapter shall in any way conflict with or abridge the rights of complainants or officers guaranteed by the United States Constitution, the New York State Constitution or any federal or state law, rule, regulation or administrative order.

§ 72-9 Severability.

If any clause, sentence, paragraph, section or part of this Chapter shall be adjudged by any court of competent jurisdiction to be invalid or otherwise unenforceable, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 2. Severability.

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

SECTION 3. Codification.

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

SECTION 4. Validity

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

SECTION 5. This ordinance shall take effect _____.

~~Strikethrough~~ denotes deletions
Underlining denotes additions

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MEMORANDUM

TO: Council Member Anthony Grice
Council Member Giselle Martinez
Council Member Ramona Monteverde
Council Member Omari Shakur
Council Member Robert Sklarz
Council Member Patricia Sofokles
Mayor Torrance Harvey

FROM: Michelle Kelson, Corporation Counsel

RE: 2022 Council Rules and Order of Procedure – Re-adoption
Draft amendment version 2 incorporating City Charter Section C4.01(A)

CC: Todd Venning, City Manager

DATE: February 2, 2022

Attached for your consideration and review is a second draft of the proposed 2022 Council Rules and Order of Procedure based on comments received at the January 6, 2022 work session and by email through February 2, 2022. The amendments proposed are as follows:

- Rule 1(D) – amended to permit a motion to adjourn after the City Manager's report, which is the point in the meeting where the business of the body is complete but permits the Presiding Officer to adjourn a meeting without a motion in an emergency that endangers the public health, safety, and welfare.
- Rule 1(H) – amended to permit the Presiding Officer to call a recess to address a situation where a Council Member may be out of order or in violation of the rules which will provide an opportunity to de-escalate/resolve and permit resumption of the meeting without a formal adjournment.
- Rule 1(K) – new rule which incorporates by reference City Charter Section C4.01(A) which was amended by local law adopted April 12, 2021 and approved by mandatory referendum at the November 2, 2021 election.

- Rule VII(B)(2) – amended for speakers during public comment to step to a "designated speaking area" which may or may not be at the front of the room in which the meeting is taking place.
- Rule VII(B)(6) – amended to permit Council Members to request permission from the Presiding Officer to respond to a speaker's remarks after the speaker is finished or time expires for the purpose of correction/clarification, rather than interrupting the speaker during the allotted time.

Other considerations and further information:

- Rule VII(B)(5) – Council must determine whether to amend this rule to permit speakers to yield unused time to another speaker during the public comment portion of the meeting.
- Rule III(D) – already requires resolutions, ordinances, and local laws to be presented at a work session before being listed on a regular meeting agenda and contains an exception for emergencies that endanger the public health, safety, and welfare.
- Rule 1(H) – already permits a Council Member to appeal the Presiding Officer's direction to leave a meeting where the Member is disruptive or failing to follow the rules; the appeal requires a vote of the Council and, in effect, a vote that results in rejecting the appeal serves the same purpose as a vote of the Council to remove.

The proposed amendments are presented for Council consideration and discussion and not required by law. The Council is free to accept, reject or modify the amendment or any of the Rules and Order of Procedure in its discretion.

_____
MICHELLE KELSON
Corporation Counsel

MK/bhs
Attachments

City of Newburgh City Council
Rules of Order and Procedure

Rule I: General Rules of Procedure

A. The presiding officer shall preserve order and decorum and shall decide questions of order, subject to an appeal by motion to the City Council; the appeal to be taken without debate**.** The presiding officer may, if (s)he so desires, present motions and resolutions to the City Council, and (s)he may debate on any question which is being considered by it.

B. When a question is under consideration, no motion shall be entertained except as herein specified, which shall have precedence in the following order:

1. Motion for clarification, or to request reversal of ruling of the presiding officer, or limiting or extending discussion;
2. Recess the session;
3. Lay on table;
4. Postpone to a meeting of a certain date;
5. Refer to work session;
6. Amend;
7. Call the previous question, to be asked as follows: "Shall the main question be put now?" If answered in the negative, the main question remains before the Council.

C. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone shall be decided without debate.

D. A motion to adjourn may be made at the conclusion of the City Manager's Report~~shall always be in order~~ and shall be decided without debate. The Presiding Officer may adjourn a meeting in an emergency which endangers the public health, safety or welfare.

E. Every member desiring to speak shall address the presiding officer. All council members shall confine him/herself to the question under debate and avoid personalities. A member once recognized shall not be interrupted when speaking.

F. No question or motion shall be debated or put, unless it is seconded. It shall then be stated by the presiding officer.

G. A motion to reconsider any action taken by the Council may be made on the day such action was taken, either immediately during the session or at a recessed or adjourned session. Such motion must be made by a member on the prevailing side, but may be seconded by any member. The motion is subject to debate. This rule shall not prevent any member of the Council from making or re-making the same or any other motion at a subsequent meeting of the Council.

H. No member of the Council shall by conversation or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to comply with these rules, or the orders of its presiding officer. The Presiding Officer, subject to appeal by motion to the Council, may direct a member who is acting in violation of this section to leave the meeting or call for a recess ~~or adjournment~~.

I. As the sergeant-at-arms of the meetings, the Police Chief shall carry out all order and instructions given by the presiding officer, for the purpose of maintaining order and decorum at the meetings, subject to an appeal by motion, to the Council.

J. Any motion may be withdrawn by the maker before it has been amended or voted upon, but in such case any other member may renew the motion at that time.

~~J.~~K. Council Member absence, violation of rules or disorderly behavior may be addressed by City Charter Section C4.01(A).

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Rule II. Order of Business

A. The Order of Business shall be in conformity with section 20-3 of the Code of Ordinances. Further comments from the Council shall be limited to 3 minutes for each Council Member.

B. The Order of Business may be departed from by majority vote of the members present.

Rule III. Voting

A. The order of voting shall be by alphabetical order of the last name of each Council member with the Mayor voting last.

B. All votes shall be by roll call. It shall be the duty of the City Clerk to enter on the minutes the names of the members voting for or against the question. Once a question has been put and the vote is being taken, the members of the Council shall confine themselves to voting and shall not resume discussion or make further comments on the question.

C. Every resolution or motion must be seconded before being put to a vote. An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

D. No resolution, ordinance or local law may be introduced at a meeting unless the resolution, ordinance or local law has been considered at a work session of the Council prior to the Council meeting or is listed on the written agenda for said meeting. No resolution, ordinance or local law may be introduced at a meeting if it will result in exceeding the maximum number of work session items set forth in Rule X. Notwithstanding the foregoing, by majority vote, an emergency item concerning the public health, safety or welfare not discussed at work session or appearing on the written agenda may be introduced, considered, and voted upon.

Rule IV. Executive Session

Whenever the Council shall determine to transact business in an executive session, it shall do so in accordance with the provisions of the New York State Open Meetings Law. All executive sessions shall be commenced at the public meeting. Proposals, discussions, statements and transactions in executive session are intended to be and shall be held and maintained in confidence and shall not be disclosed. The presiding officer shall direct all persons except members and designated officers and employees of the City to withdraw.

Rule V. Participation of City Manager and Staff

The City Manager shall be permitted to address the Council and participate in discussions. Heads of Departments shall be permitted to address the Council. Any other City officer or employee shall be permitted to address the Council with permission of the presiding officer, subject to an appeal by motion to the City Council, the appeal to be taken without debate.

Rule VI. Suspension of the Rules

In order to hear persons other than members of the City Council, the Mayor, and members of City staff, it shall be necessary to pass a motion suspending the rules of order. A motion to suspend the rules may be made at any time during the meeting and shall be decided without debate. Any such person speaking shall confine himself-herself to the subject and shall spend not longer than three (3) minutes, unless the time is extended by the presiding officer. This rule shall not apply to public hearings.

Rule VII. Guidelines for Public Comment

A. The public shall be allowed to speak only during the Public Comment period of the meeting or at such other time as the presiding officer may allow, subject to appeal by motion to the Council.

B. Speakers must adhere to the following guidelines:

1. Speakers must be recognized by the presiding officer.
2. Speakers must step to the designated speaking area in~~front of~~ the room.
3. Speakers must give their name, street name without number and organization, if any.
4. Speakers must limit their remarks to 3 minutes. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
5. Speakers may not yield any remaining time they may have to another speaker.
6. Council members may, with the permission of the presiding officer, request to respond to a speaker's remarks after the speaker has concluded remarks or the speaker's time has expired~~interrupt a speaker during their remarks~~, but only for the purpose of clarification or information.

Commented [KM1]: Council must decide whether to permit speakers to yield remaining time to another speaker.

7. All remarks shall be addressed to the Council as a body and not to any specific member or to staff. All speakers addressing the City Council at a public meeting shall speak from the public microphone with employees and agents of the City having the option to speak from the head table using a microphone. In no circumstances shall any speaker sit in front of the head table with his or her back to the public.
8. Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste. No profanities shall be used. No personal, slanderous, boisterous remarks shall be made. Council members, the Mayor and staff shall be treated with respect. The presiding officer, subject to appeal by motion to the Council, or the Council, may, by majority vote, request that the presiding officer direct that a speaker violating this provision or any other rule yield the floor and in the event the speaker fails to obey, (s)he may be escorted from the meeting by the sergeant-in-arms.
9. Interested parties or their representatives may address the Council by written communications. Written communications shall be delivered to the Clerk or their designee. Speakers may read written communications verbatim.

C. Members of the public not speaking shall observe commonly accepted rules of courtesy and decorum. They shall not annoy or harass others or speak when another speaker is being heard by the Council.

Rule VIII. Use of Recording Equipment

All members of the public and all public officials are allowed to audio or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer, subject to appeal by motion to the Council, may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Council, size of the equipment, and the ability of the public to still participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, (s)he may request an accommodation to avoid the interference and if not complied with, may ask the individual to leave the meeting room.

Rule IX. Rules for Public Hearings

The following rules shall apply to a legally required public hearing held before the City Council:

(a) The Presiding Officer shall recognize each speaker when the hearing is commenced. Speakers shall identify themselves, their street name and organization, if any, prior to the remarks.

(b) Speakers must limit their remarks to five (5) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another

speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.

(c) All remarks shall be addressed to the Council as a body and not to any individual member thereof.

(d) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.

(e) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.

(f) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.

Rule X. Work Sessions

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions. Work Session items requiring the preparation of a resolution, ordinance or local law shall be submitted to the City Manager's office no later than close of business on Wednesday in the week before the work session. Discussion items for work sessions shall be submitted to the City Manager's office no later than noon on the Friday immediately preceding the work session. The number of work session items and presentations shall be limited to 20. Presentations shall be limited to 10 minutes. Priority shall be given to those items which require the action of the City Council before the next regularly scheduled work session. Items considered in Executive Session shall be excluded from the maximum number of work session items.

Rule XI. Robert's Rules of Order

In the event any question in procedure shall arise that is not provided for by these rules, then, in that event, Robert's Rules of Order, Newly Revised, 10th Edition, shall be followed.

Rule XII. Adoption of Ordinances

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on agenda items before Council

action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

This rule shall not be construed to prevent the Council from holding a public hearing on any ordinance at its discretion, provided a majority of the members of the Council in attendance at a meeting, upon a motion or resolution duly introduced, vote to conduct such public hearing.

Date Adopted: May 14, 2001
Amended: February 25, 2002 (Rule XII added)
January 10, 2014 (Rule IV)
February 22, 2016
April 24, 2017 (Rule VII(B) amended)
January 22, 2018 (Rule II, Rule VII(B), Rule IX amended)
October 22, 2018 (Rule III(D) and Rule X amended)
_____, 2022 (Rule I(K) added, Rule 1(D), Rule 1(H), VII(B)(2), VII(b)(6) amended)

Approved: _____ ~~January 27~~, 202~~0~~2