City of Newburgh Council Work Session
Sesion de trabajo del Concejal de la Ciudad de Newburgh
July 18, 2024
6:00 PM

Engineering/Ingeniería

1. Change Order No. 11G Downing Park Pond and Third Street Stormsewer Separation Project - Elmwood Asphalt Paving

   Resolution authorizing Change Order No. 11G to the construction contract with TAM Enterprises, Inc. for the Downing Pond and Third Street Storm Sewer Project

   Resolución que autoriza la Orden de Cambio No. 11G al contrato de construcción con TAM Enterprises, Inc. para el Proyecto de Alcantarilla de Tormentas del Estanque Downing y Third Street

2. BIN No. 2223640 Little Britain Road over Quassaick Creek Contract with HVEA for Professional Engineering Services

   Resolution authorizing the City Manager to execute a professional engineering services agreement with Hudson Valley Engineering Associates, P.C. for design, right-of-way survey and construction support in the amount of $460,431.11 for the Little Britain Road Bridge over the Quassaick Creek (BIN No. 2223640) Replacement Project

   Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo de servicios profesionales de ingeniería con Hudson Valley Engineering Associates, P.C. para el diseño, el estudio del derecho de paso y el apoyo a la construcción por el monto de $460,431.11 para el proyecto de reemplazo del puente de Little Britain Road sobre el arroyo Quassaick (BIN No. 2223640)

3. BIN No. 2223630 Lake Drive Bridge Contract with HVEA for Professional Engineering Services

   Resolution authorizing the City Manager to execute a professional engineering services agreement with Hudson Valley Engineering Associates, P.C. for the Lake Drive Bridge (BIN No. 2223630) Scour Repair Project at cost of $105,500.00

   Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo de servicios profesionales de ingeniería con Hudson Valley Engineering Associates, P.C. para el Proyecto de reparación de la socavación del puente de Lake Drive a un costo de $105,500.00

4. Proposal with ARCADIS Final Design of Phase-II (LTCP) North Street Sewer Separation Project

   Resolution authorizing the City Manager to accept a proposal and enter into an agreement for final design professional engineering services with Arcadis of New York Inc. for the North Street Sewer Separation Project in an amount not to exceed $241,000.00

   Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y entrar en un acuerdo para servicios profesionales de ingeniería de diseño final con Arcadis of New York Inc. para el Proyecto de Separación de Alcantarillado de la Calle Norte en una cantidad que no exceda los $241,000.00

5. Contract with ARCADIS Phase-IV (LTCP) Combined Sewer Control Facility Construction Phase Engineering Services

   Resolution authorizing the City Manager to accept a proposal and enter into an agreement for construction phase professional engineering services with Arcadis of New York Inc. for the Floatables Control and Disinfection Facility Project as part of the Long Term Control Plan in the amount of $4,832,000.00

   Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y a entrar en un acuerdo para los servicios profesionales de ingeniería en la fase de construcción con Arcadis of New York Inc. para el Proyecto del Centro de Control y Desinfección de Floatables como parte del Plan de Control a Largo Plazo por un monto de $4,832,000.00

6. Contract with ARCADIS for Phase-II (LTCP) Planning Phase of the Reconstruction of Liberty Street Project

   Resolution authorizing the City Manager to accept a proposal and enter into an agreement for professional engineering services with Arcadis of New York Inc. for Phase II of the Long Term Control Plan for the Liberty Street Sewer Separation between Ann Street and Renwick Street Project in an amount not to exceed $215,000.00

   Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y a entrar en un acuerdo para servicios profesionales de ingeniería con Arcadis of New York Inc. para la Fase II del Plan de Control a Largo Plazo para el Proyecto de Separación de Alcantarillado de Liberty Street entre Ann Street y Renwick Street en una cantidad que no exceda los $215.000,00

7. Apply for and Accept if Awarded an ESD - Capital Improvement Grants for Pro-Housing Communities

   Resolution authorizing the City Manager to apply for and accept if awarded an Empire State Development Pro-Housing Communities Capital Improvement Program Grant not to exceed $3,000,000.00 with a 50% match for the construction of a future Long Term Control Plan Project along Liberty Street

between Renwick Street and Ann Street

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado un monto que no exceda los $3,000,000.00 con un 50% de contrapartida para la construcción de un futuro Proyecto de Plan de Control a Largo Plazo a lo largo de Liberty Street entre Renwick Street y Ann Street

8. Change Order No. 1 with J Squared Construction Corp. on the Vac-Con Dewatering Facility Project (Bid No. 20.22)

   Resolution authorizing Change Order No. 1G to the construction contract with J Squared Construction Corporation for the Wastewater Treatment Plant Vacuum Truck Unloading Facility Project

   Resolución que autoriza la Orden de Cambio No. 1G al contrato de construcción con J Squared Construction Corporation para el Proyecto de Instalación de Descarga de Camiones de Vacío de la Planta de Tratamiento de Aguas Residuales

9. Personnel Book Change in Engineering Department

   Resolution amending the 2024 Personnel Analysis Book to add one Assistant City Engineer and delete one Engineering Technician position in the Engineering Division

   Resolución que enmienda el Libro de Análisis de Personal 2024 para añadir un puesto de Asistente del Ingeniero de la Ciudad y eliminar un puesto de Técnico de Ingeniería en la División de Ingeniería

10. 2024-2028 5-Year Paving Plan Discussion

    Discusión del plan quinquenal de pavimentación 2024-2028

Finance/Finanza

11. 2024 Bond for the New Delano-Hitch Recreation Park Aquatic Center

    Bond Resolution of the City of Newburgh, New York, adopted July 22, 2024, authorizing the construction of the New Delano-Hitch Recreation Park Aquatic Center, stating the estimated maximum cost thereof is $15,426,744, appropriating said amount for such purpose, including $7,426,744 in funds of the City available for such purpose, and authorizing the issuance of not to exceed $8,000,000 Bonds of said City to finance the balance of said appropriation

    Resolución de Bonos de la Ciudad de Newburgh, Nueva York, adoptada el 22 de julio de 2024, autorizando la construcción del Nuevo Centro Acuático del Parque Recreativo Delano-Hitch, declarando que el costo máximo estimado del mismo es de $15,426,744, apropiando dicho monto para tal fin, incluyendo $7,426,744 en fondos de la Ciudad disponibles para tal fin, y autorizando la emisión de Bonos de dicha Ciudad por un monto que no

exceda los $8,000,000 para financiar el saldo de dicha apropiación

12. Apply for and Accept if Awarded a NY SWIMS Grant

    Resolution authorizing the City Manager to apply for and accept if awarded a New York Statewide Investment In More Swimming Program Grant not to exceed $8,000,000.00 with a 20% match for the construction of the Delano-Hitch Recreation Park Aquatics Center Improvements Project

    Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado un Subsidio del Programa de Inversión en Más Natación del Estado de Nueva York que no exceda los $8,000,000.00 con un 20% de los fondos igualados para la construcción del Proyecto de Mejoras del Centro Acuático del Parque Recreativo Delano-Hitch

Planning and Economic Development/Planificación y Desarrollo Económico

13. 288 Grand Street - Release of Restrictive Covenants

    Resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-Entry from a deed issued to Gregory Nato for the premises known as 288 Grand Street (Section 10, Block 2, Lot 26)

    Resolución que autoriza la ejecución de una Liberación de cláusulas restrictivas y derecho de reingreso de una escritura emitida a Gregory Nato para el local conocido como 288 Grand Street (Sección 10, Bloque 2, Lote 26)

14. 17 Johnston Street - Second Addendum to Site Development Agreement

    Resolution authorizing the City Manager to execute a Second Addendum to a Site Development Agreement with The Newburgh Ministry, Inc. for the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21)

    Resolución que autoriza al Gerente de la Ciudad a ejecutar un segundo apéndice a un acuerdo de desarrollo de área con The Newburgh Ministry, Inc. para la transferencia y nuevo desarrollo de la propiedad ubicada en el 17 Johnston Street (Sección 30, Bloque 1, Lote 21)

Grants/Contracts/Agreements / Becas /Contratos/Convenios

15. To Apply for and Accept if Awarded an Orange County Municipal Legislative Program Grant for $4,999

    Resolution authorizing the City Manager to apply for and accept if awarded an Orange County Municipal Legislative Program Grant in the amount of $4,999.00 with no City match to support City of Newburgh Recreation Department after school and intergenerational programs

    Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es

otorgado un Subsidio del Programa Legislativo Municipal del Condado de Orange por el monto de $4.999,00, el cual no requiere que la Ciudad iguale los fondos para apoyar Programas extraescolares e intergeneracionales del Departamento de Recreación de la Ciudad de Newburgh

16. Extension of Agreement with Orange County to Accept One (1) Can-Am Outlander

    Resolution authorizing the City Manager to enter into an Inter-Municipal Agreement Extension with the County of Orange as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services to provide the City of Newburgh Police Department with one white enclosed trailer and two can-am Outlander XT

    Resolución que autoriza al Gerente de la Ciudad a entrar en una Extensión de Acuerdo Intermunicipal con el Condado de Orange como parte del Programa Estatal de Prevención del Terrorismo del Año Fiscal 2018, Departamento de Seguridad Nacional y Servicios de Emergencia para proporcionar al Departamento de Policía de la Ciudad de Newburgh un remolque cerrado blanco y dos can-am Outlander XT

17. Amendment to Licensing Issuing Agent Agreement with NYSDEC

    Resolution authorizing the City Manager to execute an amendment to a Licensing Issuing Agent Agreement with the New York State Department of Environmental Conservation

    Resolución que autoriza al Gerente de la Ciudad a ejecutar una enmienda a un Acuerdo de Agente Emisor de Licencias con el Departamento de Conservación Ambiental del Estado de Nueva York

18. Agreement with Flock for Cameras and ALPR

    Resolution authorizing the City Manager to execute a contract with Flock Group, Inc. for a fixed automated license plate reader system and related technology services

    Resolución que autoriza al Gerente de la Ciudad a ejecutar un contrato con Flock Group, Inc. para un sistema automatizado fijo de lectura de matrículas y servicios tecnológicos relacionados

19. Axon Records Management System - Police Department

    Resolution authorizing the City Manager to execute a contract with Axon Enterprise, Inc. to purchase and install records management systems software and related services for the Police Department at a total cost of $823,431.00

    Resolución que autoriza al Gerente de la Ciudad a ejecutar un contrato con Axon Enterprise, Inc. para la compra e instalación de software de sistemas de gestión de registros y servicios relacionados para el Departamento de

Policía por un costo total de $823,431.00

20. Department of the Army Right of Entry Agreement

Resolution authorizing the City Manager to execute a Right of Entry Agreement with the United States Department of the Army and its contracted agents to allow access to City owned property in connection with a remedial investigation project of the Stewart Air National Guard Base area

Resolución que autoriza al Gerente de la Ciudad a ejecutar un Acuerdo de Derecho de Entrada con el Departamento del Ejército de los Estados Unidos y sus agentes contratados para permitir el acceso a la propiedad de la Ciudad en relación con un proyecto de investigación correctiva del Área de la Base de la Guardia Nacional Aérea de Stewart

21. Agreement for Professional Services for Historian relating to the African American Oral History Project

Resolution authorizing the City Manager to execute a contract with Myra Armstead to provide historical consultant and supervisory research services in connection with the National Park Service African American Civil Rights Program Grant and Oral History Project

Resolución que autoriza al Gerente de la Ciudad a ejecutar un contrato con Myra Armstead para proporcionar servicios de consultoría histórica y de supervisión de investigaciones en conexión con la Subvención del Programa de Derechos Civiles Afroamericanos del Servicio de Parques Nacionales y el Proyecto de Historia Oral

22. Agreement for Professional Services for Research Assistant for the African American Oral History Project

Resolution authorizing the City Manager to execute a contract with Marissa Brown to provide research assistant services in connection with the National Park Service African American Civil Rights Program Grant and Oral History Project

Resolución que autoriza al Gerente de la Ciudad a ejecutar un contrato con Marissa Brown para que preste servicios de asistente de investigación en conexión con la Subvención del Programa de Derechos Civiles Afroamericanos del Servicio de Parques Nacionales y el Proyecto de Historia Oral

23. Apply for and Accept if Awarded NYS Peer Network Grant

Resolution authorizing the City Manager to apply for and accept if awarded a New York State Peer Network grant from the Housing Solutions Lab and Enterprise Community Partners for technical assistance to address housing needs in the City of Newburgh

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado una subvención de la Red de Compañeros del Estado de Nueva York del Housing Solutions Lab y Enterprise Community Partners para asistencia técnica para abordar las necesidades de vivienda en la Ciudad de Newburgh

24. Apply for and Accept if Awarded a Strategic Planning & Feasibility Studies Grant from ESD

    Resolution authorizing the City Manager to apply for and accept if awarded an Empire State Development Strategic Planning and Feasibility Studies Program Grant not to exceed $50,000.00 with a 50% match to conduct a feasibility study for a downtown business improvement district

    Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado un Subsidio del Programa de Planificación Estratégica y Estudios de Viabilidad del Empire State Development que no exceda los $50,000.00 con un 50% de contrapartida para realizar un estudio de viabilidad para un distrito de mejoramiento comercial en el centro de la ciudad

Employment and Human Resources Issues/ Temas de Empleo y Recursos Humanos

25. Police Commissioner Discussion

    Discusión sobre el Comisario de Policía

Boards and Commissions/Juntas y Comisiones

26. Arts & Cultural Commission - Adoption of Poet Laureate Program

    Resolution of the City Council of the City of Newburgh adopting a Poet Laureate Program

    Resolución del Concejo Municipal de la Ciudad de Newburgh adoptando un Programa de Poeta Laureado

27. Arts & Cultural Commission - Project Manager Agreement for Art-Biz Program

    Resolution authorizing an agreement between the City of Newburgh and Alyssa Walrad for project management services related to the Art-Biz Workshop Series of 2024

    Resolución que autoriza un acuerdo entre la Ciudad de Newburgh y Alyssa Walrad para servicios de administración de proyectos relacionados con la serie de talleres Art-Biz de 2024

Local Laws/Leys Locales

28. Chapter 240, Article III - Repealing and Replacing Prohibition of Eviction without Good Cause'

    Resolution scheduling a public hearing for August 12, 2024 to hear public

comment concerning a Local Law repealing and replacing Chapter 240 “Rental Properties”, Article III entitled “Prohibition of Eviction Without Good Cause” of the Code of Ordinances of the City of Newburgh

Resolución que programa una audiencia pública para el 12 de agosto de 2024 para escuchar comentarios públicos sobre una ley local que revoca y sustituye el Capítulo 240 "Propiedades de alquiler", Artículo III titulado "Prohibición de desalojo sin causa justificada" del Código de Ordenanzas de la Ciudad de Newburgh

Executive Session/ Sesión Ejecutiva

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

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

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING CHANGE ORDER NO. 11G TO THE CONSTRUCTION CONTRACT WITH TAM ENTERPRISES, INC. FOR THE DOWNING POND AND THIRD STREET STORM SEWER PROJECT

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

WHEREAS, additional asphalt paving on Elmwood Street and removal of excavated unsuitable fill on Third Street added $270,318.19 to the contract price increasing the contract amount to $5,285,515.55; and

WHEREAS, TAM Enterprises, Inc. has submitted Change Order No. 11G with funding for the change order to be derived from DASNY Grant (CG.5681.0208.3400.2024) and the City's allocation of EWR/CHIPS/POP/PAVE NY funds; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to execute Change Order No. 11G with the TAM Enterprises, Inc. in the amount of $270,318.19 in the Downing Pond Drain Outlet and Third Street Storm Sewer Project.

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Change Order No. 11G

Date of Issuance: June 24, 2024		Effective Date:	July____, 2024
Owner:	City of Newburgh	Owner's Contract No.:	11.21
Contractor:	TAM Enterprises Inc	Contractor's Project No.:	
Engineer:	Arcadis of New York, Inc	Engineer's Project No.:	30055884
Project:	New Drain Outlet at Downing Park and Third Street Storm Sewer	Contract Name:	General Construction

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

Description:

1. Provide 3" mill and fill asphalt pavement along with road striping on Elmwood Street as shown and indicated in Proposal Request No. 10 dated May 20, 2024. The cost of this work is $252.321.31.
2. Removal of excavated unsuitable fill on Third Street. This work was completed on October 5, 2022, and cost $17,996.88.

Attachments: *Change Proposal and Proposal Request No. 10*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: $ 3,100,000.00	Original Contract Times: Substantial Completion: 300 days Ready for Final Payment: 330 days
Increase from previously approved Change Orders $1,915,197.36	Increase from previously approved Change Orders Substantial Completion: 284 days Ready for Final Payment: 688 days
Contract Price prior to this Change Order: $ 5,015,197.36	Contract Times prior to this Change Order: Substantial Completion: 584 days Ready for Final Payment: 1018 days days
Increase of this Change Order: $ 270,318.19	Increase of this Change Order: Substantial Completion: 0 days Ready for Final Payment: 0 days
Contract Price incorporating this Change Order: $ 5,285,515.55	Contract Times with all approved Change Orders: Substantial Completion: 584 days Ready for Final Payment: 1018 days

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By:	By:	By:
Engineer (if required) A.J. Brooks, PE	Owner (Authorized Signature) Todd Venning * Res _____-2024	Contractor (Authorized Signature) Brian Cutler
Title: Senior Engineer	Title City Manager/CEO	Title
Date:	Date	Date

Approved by Funding Agency (if applicable)

By: _____ Date: _____

Title: _____

Change Request

Project Name: New Drain Outlet at Downing Park and Third Street Storm Sewer **Date:** 06/12/2024

Project Address: 275 Third St
Newburgh, NY 12550

Project #: 21042

Requestor: AJ Brooks

Requesting Company: Arcadis of New York, Inc.

98 Grand St, Newburgh, New York 12550

Description of Change:

1. Provide 3" mill and fill paving on Elmwood Street as shown on Figure SK-1, Elmwood Place Paving Scope of
Work.
a. Driveways should have up to a maximum of 10-foot aprons extending from the curb into the properties as necessary to facilitate curbing transitions into driveway. Asphalt driveways shall have a
pronounced elevation change to prevent the intrusion of street drainage into the driveway. Paving for driveway aprons with the pronounced elevation change must be completed at the same time as the roadway pavement; curbs installed with curb adhesive will not be acceptable for the elevation change at the driveways. This includes 4 driveways on the north side between Powell Avenue and Central Avenue. The driveway aprons on the south side will be paved to the concrete sidewalk, distance varies.
b. No 10-foot apron will be required for Carobene Court. New asphalt on Elmwood St will end at the
existing overlay paving line at the intersection of Elmwood St and Carobene Ct.
c. Roadway should be paved first and then curbs may be installed with curb adhesive. Curb locations
would be as per the attached Figure SK-2 with 6 – 8" of roadway asphalt behind the curbs. Curbs would be backed up with soil/topsoil and seeded.
d. Form asphalt curb around existing catch basin at the intersection of Central and Elmwood.
2. Provide unit prices for installation of asphalt base and aggregate base if the milling reveals that there is
insufficient paving thickness to receive the new asphalt overlay.
3. Coordinate with utility owners for locations of and replacement (if necessary) of valve box covers.
Contractor shall provide riser rings as necessary for all utilities.
4. Stripe Elmwood Street as shown on and highlighted on Figure SK-3.

TAM ENTERPRISES INC.

Signature: Joseph Griggs

Date: 6/12/2024

Approving Official

Signature: _____

Date: _____

Cost Total - $ 252,321.31

Please see the Estimate Summary below for Mark Up and Man Hours.

Qualifications:

1. All items assume no rock removal to be performed.
2. Rock removal, if encountered, shall be priced as additional work.
3. Assumes Backfill with native materials
4. Assume owner to handle excess spoils
5. Excludes winter conditions and dewatering.
6. Work not itemized above has not been included.
7. Excluded costs;
    - Permits Fees
    - Engineering & Surveying
    - Unsuitable soils

We have included general conditions, administration, and supervision for the work as a part of this proposal. Should we be awarded additional / multiple trades for this project we will of course adjust these costs to the owner's benefit more cost efficiently.

Very truly yours,

Joseph Griggs

Joseph Griggs

TAM ENTERPRISES INC.

Cc: Sam Paglianite
Brian Cutler
Robert Toomey
Cliff Bell
Brittney Cioffi

POTENTIAL CHANGE ORDER REQUEST / RESPONSE (PCOR)

114 Hartley Road
Goshen, NY 10924

Project : Newburgh Downing Park Change Order #10 **PCOR No:** #1

Location: 275 Third St, Newburgh, NY 12550 **Job No:**

Date: 28-May-24

Item	Description	Days EA.	Quantity EA.	Unit Cost $/Hr.	Day Rate $/D	Amount
1	**LABOR**					
3	**Maintenance and protection of traffic for pavers/millers**					
4	Flager	1.0	2.0	$90.92	$727.36	$ 1,454.72
5	**Layout for Curbs**					
6	Supervisor	1.0	1.0	$114.97	$919.76	$ 919.76
7	Laborer	1.0	1.0	$96.15	$769.20	$ 769.20
8	**Backfill Curbs, Rake and Seed**					
9	Operator B	1.0	1.0	$112.90	$903.20	$ 903.20
10	Laborer	1.0	2.0	$96.15	$769.20	$ 1,538.40
11	Flager	1.0	2.0	$90.92	$727.36	$ 1,454.72
12	Teamster Group IV	1.0	1.0	$90.70	$725.60	$ 725.60
13	Supervisor	1.0	1.0	$114.97	$919.76	$ 919.76
	Line Striping (LS)	1.0	1.0	$6,122.00	$6,122.00	$ 6,122.00
14	**EQUIPMENT**					
15	**Maintenance and protection of traffic for pavers/millers**					
16	4 Signs 30 Cones and 10 Barrels (LS)	10.0	1.0	LS	$350.00	$ 350.00
17	**Backfill Curbs, Rake and Seed**					
18	Crane Truck	5.0	1.0		$411.88	$ 2,059.40
19	Tri-Axle Dump Truck	5.0	1.0		$370.02	$ 1,850.10
20	Kubota KX80 Mini	4.0	1.0		$399.78	$ 1,599.12
21	**MATERIALS**			**Unit**		
22	Screened Top Soil		170.0	Yard	$50.00	$ 8,500.00
23	Straw Mats		6.0	Roll	$100.00	$ 600.00
24	Box's of Staples for Straw Matts		2.0	TN	$80.50	$ 161.00
25	5LB Grass Seed Bags		30.0	5 LB Bags	$125.00	$ 3,750.00
27	**Bonds and Insurance**					
28	General Liability		1.0	LS	$2,951.00	$ 2,951.00
29	Umbrella Insurance		1.0	LS	$2,951.00	$ 2,951.00
30	Homeoffice		1.0	LS	$8,853.00	$ 8,853.00
	Mobilization		1.0	LS	$9,737.76	$ 9,737.76
31	Bond From Summary Table		1.0	LS	$5,902.00	$ 5,902.00
32	**Subtotal**					$ 64,071.74
33	Overhead & Profit			15%		$ 9,610.76
34	**Subcontractors**					
35	Milling and Paving		1.0	LS	$170,132.20	$170,132.20
36	**Subtotal**					$ 170,132.20
37	Overhead & Profit			5%		$ 8,506.61
38	**GRAND TOTAL**					**$ 252,321.31**

Accepted by: _____

Authorized Client Representative

Insert Clieint Company Name

Date: _____

Insert PM Name

TAM Enterprises Inc.

Date: _____

To:	TAM Enterprises Inc.	**Contact:**	
Address:	114 Hartley Road	**Phone:**	(845) 294-8882
	Goshen, NY 10924	**Fax:**	(845) 294-8883
Project Name:	Elmwood Place Newburgh Additional Work Metra	**Bid Number:**	
Project Location:	Elmwood Place, Newburgh, NY	**Bid Date:**	3/8/2024

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
100	Driveway Aprons	10.00	EACH	$2,515.42	$25,154.20
200	Asphalt Curb	1,400.00	LF	$22.07	$30,898.00
300	Additional Mill/pave To 3"	21,750.00	SF	$4.52	$98,310.00
400	Box Out And Pave Widen Areas For Road Up To 1,000 SQFT	1,000.00	SF	$15.77	$15,770.00

Total Bid Price: $170,132.20

Notes:

- Please NOTE : pricing 3" mill and pave. 3" out pave 3" type 6 asphalt
- Material / trucking and fuel pricing based on NYS index when available for the same calendar year as bid. Pricing increases after that calendar year will be based on direct cost increase to Van Etten. March 2024
- RS-1H tack coat to be used
- Price Does NOT include applicable taxes
- Price does NOT include any base repair/ road winding/ Binder course/ additional work other than mill, top course paving, curbs
- No testing, permits, fees or licenses in bid
- No line striping in bid
- -Prevailing wage rates apply, and any increases as such, post-acceptance, will be reflected in the final price

- Traffic control by others
- If Paving is to be completed in under 40 degree, there may be an additional cost and sign off on work
- No Bond in bid. If bond is needed we can discuss that option with additional costs
- This proposal is good for 30 days.
- Cleaning between lifts is NOT the responsibility of Van Etten. Any cleaning prior to paving will be done at additional cost.
- No retainage over 10%. Retainage only to be held until Van Etten's work has been approved by engineer. All retainage to be held no longer than 6 months.
- All past due sums under this contract shall bear interest from the 30th day after due date until paid at a rate of 1.5% per month(18% annum). PLUS any late fee charged to Van Etten as a result of late payment including legal fees
- Acceptance of proposal will guarantee any notes, exclusions or terms in proposal will over ride any other terms within contract
- Rock or frost excavation is excluded.
- All permits, bonds, inspections, fees, etc. by others.
- Asphalt delivery based on non prevailing wage rate. If NYS changes this rule there will be additional charges.

ACCEPTED:	**CONFIRMED:**
The above prices, specifications and conditions are satisfactory and hereby accepted.	**Van Etten Contracting LLC**
Buyer: _____	
Signature: _____	**Authorized Signature:** _____
Date of Acceptance: _____	**Estimator:**

NEW YORK STATE OF OPPORTUNITY. Office of General Services

Design and Construction
AN ISO 9001:2008 CERTIFIED ORGANIZATION
Division of Cost Management, 35th Floor, Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12242
Phone: (518) 473-8940

LABOR RATE WORKSHEET

Project No.

Contractor Name: | County: Orange | Date:

Address:

Field order #

Telephone Number: | Eff. Dates ____ to ____ | Change order #

LABOR RATE BREAKDOWN (For T&M only. Use a separate worksheet for each employee.)

Trade: Laborer

{T&M Only} Item No.: | Notes | Union Local No.: 825

{T&M Only} Employee Name:

{T&M Only} Social Security No.:

			REGULAR BASE RATE		PREMIUM TIME BASE RATE	
					Multiplier	
					1.5	1.5
A. WAGE RATE PER HOUR			**$44.80**	**$44.80**	**$67.20**	**$67.20**
BENEFITS (* Identifies benefits paid directly to the Employee.)	*	% per hour	$ per hour			
Vacation and Holiday			$4.00	$4.00	$6.00	$6.00
Health and Welfare			$16.00	$16.00	$24.00	$24.00
Pension			$6.50	$6.50	$9.75	$9.75
Annuity			$6.00	$6.00	$9.00	$9.00
Education / Apprentice Training			$1.75	$1.75	$2.62	$2.62
Supplemental Unemployment			$1.00	$1.00	$1.50	$1.50
Security Fund						
Industtry Fund			$0.15	$0.15	$0.23	$0.23
Labor Management			$2.25	$2.25	$3.38	$3.38
B. TOTAL BENEFITS PER HOUR			$37.65	$37.65	**$37.65**	**$37.65**	**$56.48**	**$56.48**
PAYROLL TAXES AND INSURANCE						
F.I.C.A. / Social Security (up to the maximum required by law)			6.20 %	6.20	$4.17	$4.17
Medicare			1.45 %	1.45	$0.97	$0.97
Federal Unemployment (up to a maximum of $56.00 per employee per year)			6.00 %	6.00	$4.03	$4.03
State Unemployment (up to 1st $8,500 of base salary paid per employee per year)			2.53 %	2.53	$1.70	$1.70
Workers' Compensation **Code is required:** 6306 OGS 6306			14.05 %	14.05	$6.29	$6.29
Disability WC Classification: Sewer Constructi			0.34 %	0.34	$0.23	$0.23
Other			%			
C. TOTAL TAXES AND INSURANCE PER HOUR						
☐ All benefits are paid directly to	Prem Time	$67.20 $67.20	30.57 %			
☐ Only benefits identified by * are paid directly to Employee.	Reg Rate	$44.80 $44.80	x 30.57 % =	**$13.70**	**$13.70**	**$17.40**	**$17.40**
D. TOTAL LABOR RATE			(A + B + C) =	**$96.15**	**$96.15**	**$141.08**	**$141.08**

BDC 125 Rev01

NEW YORK STATE OF OPPORTUNITY. Office of General Services

Design and Construction
AN ISO 9001:2008 CERTIFIED ORGANIZATION
Division of Cost Management, 35th Floor, Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12242
Phone: (518) 473-8940

LABOR RATE WORKSHEET

Project No.

Contractor Name: | County: Orange | Date:

Address:

Field order #

Telephone Number: | Eff. Dates ____ to ____ | Change order #

LABOR RATE BREAKDOWN (For T&M only. Use a separate worksheet for each employee.)

Trade: Operator-A

{T&M Only} Item No.: | Notes | Union Local No.: 825

{T&M Only} Employee Name:

{T&M Only} Social Security No.:

			REGULAR BASE RATE		PREMIUM TIME BASE RATE	
					Multiplier 1.5	1.5
A. WAGE RATE PER HOUR			**$59.22**	$59.22	**$88.83**	$88.83
BENEFITS (* Identifies benefits paid directly to the Employee.)	*	% per hour / $ per hour				
Vacation and Holiday		$4.00			$6.00	$6.00
Health and Welfare		$16.00			$24.00	$24.00
Pension		$6.50			$9.75	$9.75
Annuity		$6.00			$9.00	$9.00
Education / Apprentice Training		$1.75			$2.62	$2.62
Supplemental Unemployment		$1.00			$1.50	$1.50
Security Fund						
Industtry Fund		$0.15			$0.23	$0.23
Labor Management		$2.25			$3.38	$3.38
B. TOTAL BENEFITS PER HOUR		$37.65	$37.65	**$37.65**	$37.65	**$56.48**	$56.48
PAYROLL TAXES AND INSURANCE						
F.I.C.A. / Social Security (up to the maximum required by law)		6.20 %	6.20		$5.51	$5.51
Medicare		1.45 %	1.45		$1.29	$1.29
Federal Unemployment (up to a maximum of $56.00 per employee per year)		6.00 %	6.00		$5.33	$5.33
State Unemployment (up to 1st $8,500 of base salary paid per employee per year)		2.53 %	2.53		$2.25	$2.25
Workers' Compensation **Code is required:** 6306 OGS 6306		14.05 %	14.05		$8.32	$8.32
Disability WC Classification: Sewer Constructi		0.34 %	0.34		$0.30	$0.30
Other		%				
C. TOTAL TAXES AND INSURANCE PER HOUR						
☐ All benefits are paid directly to	Prem Time $88.83 $88.83	30.57 %				
☐ Only benefits identified by * are paid directly to Employee.	Reg Rate $59.22 $59.22	x 30.57 % =	**$18.10**	$18.10	**$23.00**	$23.00
D. TOTAL LABOR RATE		(A + B + C) =	**$114.97**	$114.97	**$168.31**	$168.31

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Albany, New York 12242
Phone: (518) 473-8940

LABOR RATE WORKSHEET

Project No.

Contractor Name: | County: Orange | Date: 06/01/23

Address:

Field order #

Telephone Number: | Eff. Dates ____ to ____ | Change order #

LABOR RATE BREAKDOWN (For T&M only. Use a separate worksheet for each employee.)

Trade: Flagger

{T&M Only} Item No.: | Notes | Union Local No.: 825

{T&M Only} Employee Name:

{T&M Only} Social Security No.:

			REGULAR BASE RATE		PREMIUM TIME BASE RATE (Multiplier 1.5)	
A. WAGE RATE PER HOUR			**$40.80**	**$40.80**	**$61.20**	**$61.20**
BENEFITS (* Identifies benefits paid directly to the Employee.)	*	% per hour / $ per hour				
Vacation and Holiday		$4.00			$6.00	$6.00
Health and Welfare		$16.00			$24.00	$24.00
Pension		$6.50			$9.75	$9.75
Annuity		$6.00			$9.00	$9.00
Education / Apprentice Training		$1.75			$2.62	$2.62
Supplemental Unemployment		$1.00			$1.50	$1.50
Security Fund						
Industtry Fund		$0.15			$0.23	$0.23
Labor Management		$2.25			$3.38	$3.38
B. TOTAL BENEFITS PER HOUR		$37.65	**$37.65**	**$37.65**	**$56.48**	**$56.48**
PAYROLL TAXES AND INSURANCE						
F.I.C.A. / Social Security (up to the maximum required by law)		6.20 %	6.20		$3.79	$3.79
Medicare		1.45 %	1.45		$0.89	$0.89
Federal Unemployment (up to a maximum of $56.00 per employee per year)		6.00 %	6.00		$3.67	$3.67
State Unemployment (up to 1st $8,500 of base salary paid per employee per year)		2.53 %	2.53		$1.55	$1.55
Workers' Compensation **Code is required:** 6306 OGS 6306		14.05 %	14.05		$5.73	$5.73
Disability WC Classification: Sewer Constructi		0.34 %	0.34		$0.21	$0.21
Other		%				
C. TOTAL TAXES AND INSURANCE PER HOUR						
☐ All benefits are paid directly to	Prem Time	$61.20 $61.20	30.57 %			
☐ Only benefits identified by * are paid directly to Employee.	Reg Rate	$40.80 $40.80	x 30.57 % =	**$12.47**	**$15.84**	**$15.84**
D. TOTAL LABOR RATE			(A + B + C) =	**$90.92**	**$133.52**	**$133.52**

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Division of Cost Management, 35th Floor, Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12242
Phone: (518) 473-8940

LABOR RATE WORKSHEET

Project No.

Contractor Name: | County: Orange | Date: 05/01/23

Address:

Field order #

Telephone Number: | Eff. Dates ____ to ____ | Change order #

LABOR RATE BREAKDOWN (For T&M only. Use a separate worksheet for each employee.)

Trade: Teamster-Group 4

{T&M Only} Item No.: | Notes | Union Local No.: 825

{T&M Only} Employee Name:

{T&M Only} Social Security No.:

			REGULAR BASE RATE		PREMIUM TIME BASE RATE	
					Multiplier	
					1.5	1.5
A. WAGE RATE PER HOUR			**$33.69**	$33.69	**$50.54**	$50.54
BENEFITS (* Identifies benefits paid directly to the Employee.)	*	% per hour	$ per hour			
Vacation and Holiday			$4.00	$4.00	$6.00	$6.00
Health and Welfare			$16.00	$16.00	$24.00	$24.00
Pension			$6.50	$6.50	$9.75	$9.75
Annuity			$6.00	$6.00	$9.00	$9.00
Education / Apprentice Training			$1.75	$1.75	$2.62	$2.62
Supplemental Unemployment			$1.00	$1.00	$1.50	$1.50
Security Fund						
Industtry Fund			$0.15	$0.15	$0.23	$0.23
Labor Management			$2.25	$2.25	$3.38	$3.38
Diff. in Benefits pay to Empl.	* *		$6.94	$6.94	$10.41	$10.41
B. TOTAL BENEFITS PER HOUR			$44.59	$44.59	**$66.89**	$66.89
PAYROLL TAXES AND INSURANCE						
F.I.C.A. / Social Security (up to the maximum required by law)		6.20 %	6.20		$3.78	$3.78
Medicare		1.45 %	1.45		$0.88	$0.88
Federal Unemployment (up to a maximum of $56.00 per employee per year)		6.00 %	6.00		$3.66	$3.66
State Unemployment (up to 1st $8,500 of base salary paid per employee per year)		2.53 %	2.53		$1.54	$1.54
Workers' Compensation **Code is required:** 6306 OGS 6306		14.05 %	14.05		$5.71	$5.71
Disability WC Classification: Sewer Constructi		0.34 %	0.34		$0.21	$0.21
Other		%				
C. TOTAL TAXES AND INSURANCE PER HOUR						
☐ All benefits are paid directly to	Prem Time $60.95 $60.95	30.57 %				
☑ Only benefits identified by * are paid directly to Employee.	Reg Rate $40.63 $40.63	x 30.57 % =	**$12.42**	$12.42	**$15.78**	$15.78
D. TOTAL LABOR RATE		(A + B + C) =	**$90.70**	$90.70	**$133.20**	$133.20

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Albany, New York 12242
Phone: (518) 473-8940

LABOR RATE WORKSHEET

Project No.

Contractor Name: | County: Orange | Date:

Address:

Field order #

Telephone Number: | Eff. Dates | to | Change order #

LABOR RATE BREAKDOWN (For T&M only. Use a separate worksheet for each employee.)

Trade: Operator- B

{T&M Only} Item No.: | Notes | Union Local No.: 825

{T&M Only} Employee Name:

{T&M Only} Social Security No.:

			REGULAR BASE RATE		PREMIUM TIME BASE RATE	
			Multiplier			
			1.5		1.5	
A. WAGE RATE PER HOUR			**$57.63**	$57.63	**$86.45**	$86.45
BENEFITS (* Identifies benefits paid directly to the Employee.)	*	% per hour	$ per hour			
Vacation and Holiday			$4.00	$4.00	$6.00	$6.00
Health and Welfare			$16.00	$16.00	$24.00	$24.00
Pension			$6.50	$6.50	$9.75	$9.75
Annuity			$6.00	$6.00	$9.00	$9.00
Education / Apprentice Training			$1.75	$1.75	$2.62	$2.62
Supplemental Unemployment			$1.00	$1.00	$1.50	$1.50
Security Fund						
Industtry Fund			$0.15	$0.15	$0.23	$0.23
Labor Management			$2.25	$2.25	$3.38	$3.38
B. TOTAL BENEFITS PER HOUR			$37.65	$37.65	**$37.65**	$37.65	**$56.48**	$56.48
PAYROLL TAXES AND INSURANCE						
F.I.C.A. / Social Security (up to the maximum required by law)			6.20 %	6.20	$5.36	$5.36
Medicare			1.45 %	1.45	$1.25	$1.25
Federal Unemployment (up to a maximum of $56.00 per employee per year)			6.00 %	6.00	$5.19	$5.19
State Unemployment (up to 1st $8,500 of base salary paid per employee per year)			2.53 %	2.53	$2.19	$2.19
Workers' Compensation **Code is required:** 6306 OGS 6306			14.05 %	14.05	$8.10	$8.10
Disability WC Classification: Sewer Constructi			0.34 %	0.34	$0.29	$0.29
Other			%			
C. TOTAL TAXES AND INSURANCE PER HOUR						
☐ All benefits are paid directly to		Prem Time $86.45 $86.45	30.57 %			
☐ Only benefits identified by * are paid directly to Employee.		Reg Rate $57.63 $57.63	x 30.57 % =	**$17.62**	$17.62	**$22.38**	$22.38
D. TOTAL LABOR RATE			(A + B + C) =	**$112.90**	$112.90	**$165.30**	$165.30

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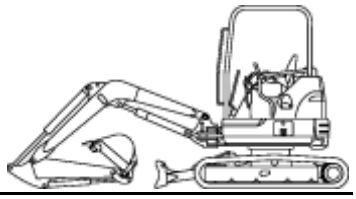
All prices shown in US dollars ($)

Adjustments for KUB057-4MINIEXC in All Saved Models

October 18, 2022

Kubota KX057-4
Crawler Mounted Compact Excavators

Size Class:
5.1 - 6.0 MTons
Weight:
12150 lbs



Configuration for KX057-4

Operating Weight	**5.5 mt**	Operator Protection	**ROPS/FOPS**
Power Mode	**Diesel**		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	**Weekly**	**Daily**	**Hourly**	**Hourly**	**Hourly**
Published Rates	USD $5,685.00	USD $1,590.00	USD $400.00	USD $60.00	USD $26.52	USD $58.82
Adjustments						
Region (100%)	-	-	-	-		
Model Year (2021: 99.94%)	(USD $3.14)	(USD $0.88)	(USD $0.22)	(USD $0.03)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	**USD $5,681.86**	**USD $1,589.12**	**USD $399.78**	**USD $59.97**	**USD $26.52**	**USD $58.80**

Non-Active Use Rates	**Hourly**
Standby Rate	USD $18.08
Idling Rate	USD $42.18

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	29%	USD $1,648.65/mo
Overhaul (ownership)	44%	USD $2,501.40/mo
CFC (ownership)	6%	USD $341.10/mo
Indirect (ownership)	21%	USD $1,193.85/mo
Fuel (operating) @ USD 5.03	37%	USD $9.90/hr

Revised Date: 4th quarter 2022

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

The equipment represented in this report has been exclusively prepared for Joe ALDEBOT (jkata@tamenterprises.com)

www.equipmentwatch.com

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Unique ID: 4gndPsliIH

Custom Rates

TO: **Joe Kata** **TAM Enterprises, Inc.**

FROM: Imani Brimah

Date: 09/02/22

As per your request, EquipmentWatch has calculated the Custom Blue Book Rates for the following equipment. The outlined Custom Blue Book rate is as follows:

2016 Freightliner M2106; Acquisition Cost: $161,141.00							
Ownership Rates				Operating Rate	FHWA Rate	Standby Rate	Idling Rate
Monthly	Weekly	Daily	Hourly	Hourly	Hourly	Hourly	Hourly
$5,884.06	$1,647.54	$411.88	$61.78	$89.30	$122.73	$16.75	$96.74

EquipmentWatch™

The above rates are based on standard Blue Book methodology and calculations using an acquisition cost and survey data. No adjustment for age is necessary as the above rates are indexed to the acquisition cost.

The above rates used the following standards:

Location Adjustment: None
Time Period: Third Quarter 2022 (July 1st - September 30th, 2022)

If we can be of further assistance please don't hesitate to call us at 800-669-3282.

Sincerely,

Imani Brimah
Sales Engineer
EquipmentWatch

Unique ID: WrRgjRrsgg

Custom Rates

TO: **Joe Kata** **TAM Enterprises, Inc.**

FROM: Imani Brimah

Date: 10/14/22

As per your request, EquipmentWatch has calculated the Custom Blue Book Rates for the following equipment. The outlined Custom Blue Book rate is as follows:

2021 Freightliner 114SD; Acquisition Cost: $193,679.49							
Ownership Rates				Operating Rate	FHWA Rate	Standby Rate	Idling Rate
Monthly	Weekly	Daily	Hourly	Hourly	Hourly	Hourly	Hourly
$5,285.93	$1,480.06	$370.02	$55.50	$39.99	$70.03	$24.66	$57.41

EquipmentWatch™

The above rates are based on standard Blue Book methodology and calculations using an acquisition cost and survey data. No adjustment for age is necessary as the above rates are indexed to the acquisition cost.

The above rates used the following standards:

Location Adjustment: New York
Time Period: Third Quarter 2022 (July 1st - September 30th, 2022)

If we can be of further assistance please don't hesitate to call us at 800-669-3282.

Sincerely,

Imani Brimah
Sales Engineer
EquipmentWatch

PROPOSAL REQUEST

Owner: City of Newburgh

Project Name: New Drain Outlet at Downing Park and Third Street Storm Sewer

Proposal Request No.: 10 Date: 5/20/24

Contract Name and No.: General Construction 11.21

Contractor: TAM Enterprises

Other Contracts Involved in Proposed Change: None

TO CONTRACTOR: Please submit a complete Change Proposal for the proposed modifications described below. If the associated Change Proposal is approved, a Change Order or allowance authorization will be issued to authorize adjustment to the scope of the Work. This Proposal Request is not a Change Order, Work Change Directive, Field Order, or an authorization to proceed with the proposed Work described below.

SCOPE OF PROPOSED WORK:

The proposed scope of work for this proposal request is as shown on the attached drawings, and includes but is not limited to the following:

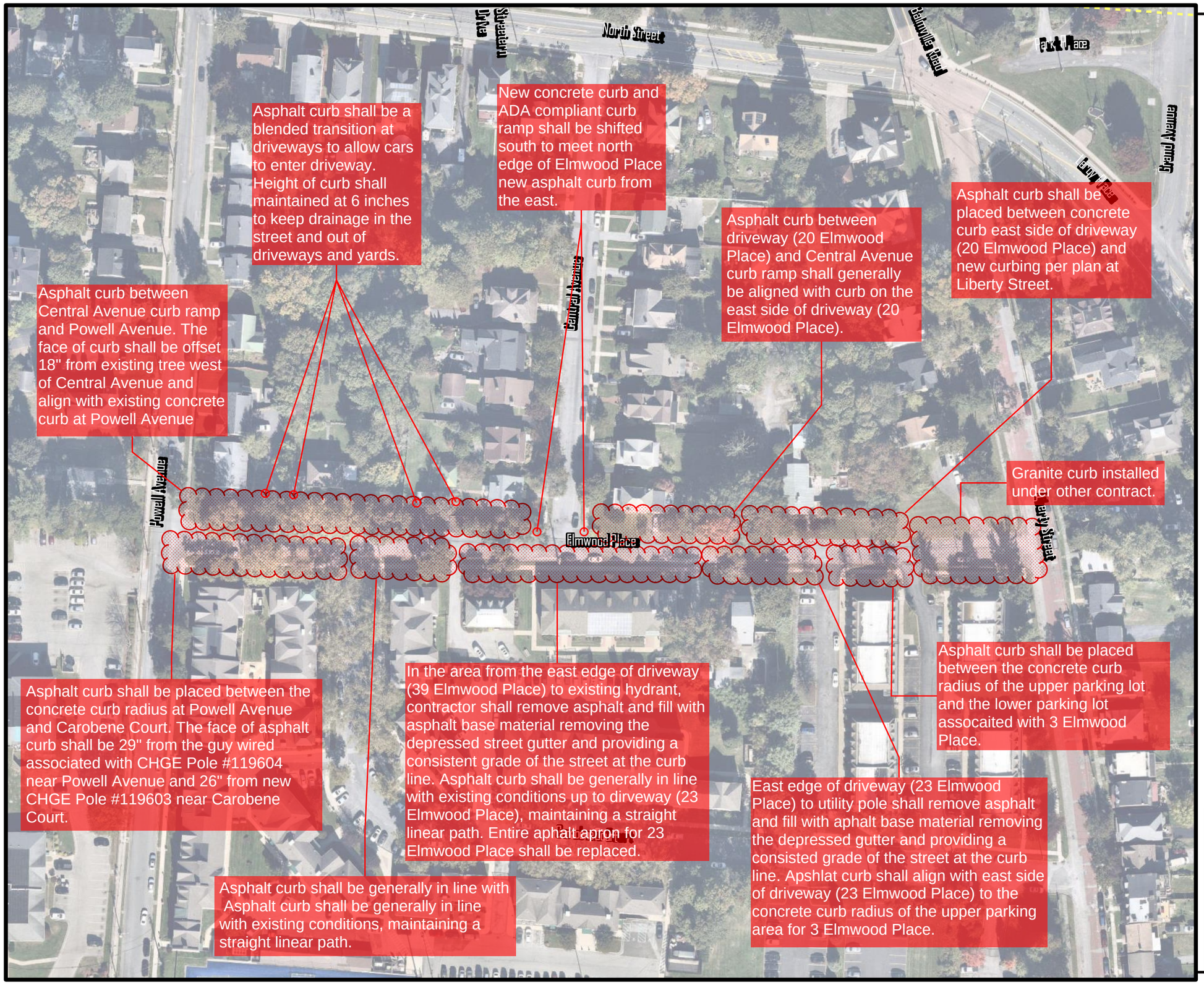
1. Provide 3" mill and fill paving on Elmwood Street as shown on Figure SK-1, Elmwood Place Paving Scope of Work.
    a. Driveways should have up to a maximum of 10-foot aprons extending from the curb into the properties as necessary to facilitate curbing transitions into driveway. Asphalt driveways shall have a pronounced elevation change to prevent the intrusion of street drainage into the driveway. Paving for driveway aprons with the pronounced elevation change must be completed at the same time as the roadway pavement; curbs installed with curb adhesive will not be acceptable for the elevation change at the driveways. This includes 4 driveways on the north side between Powell Avenue and Central Avenue. The driveway aprons on the south side will be paved to the concrete sidewalk, distance varies.
    b. No 10-foot apron will be required for Carobene Court. New asphalt on Elmwood St will end at the existing overlay paving line at the intersection of Elmwood St and Carobene Ct.
    c. Roadway should be paved first and then curbs may be installed with curb adhesive. Curb locations would be as per the attached Figure SK-2 with 6 – 8" of roadway asphalt behind the curbs. Curbs would be backed up with soil/topsoil and seeded.
    d. Form asphalt curb around existing catch basin at the intersection of Central and Elmwood.
2. Provide unit prices for installation of asphalt base and aggregate base if the milling reveals that there is insufficient paving thickness to receive the new asphalt overlay.
3. Coordinate with utility owners for locations of and replacement (if necessary) of valve box covers. Contractor shall provide riser rings as necessary for all utilities.
4. Stripe Elmwood Street as shown on and highlighted on Figure SK-3.

The following revised Drawings are attached hereto:

- Figure SK-1, Figure SK-2, Figure SK-3

Proposal requested by: A.J. Brooks, P.E.

Signature of Requestor:

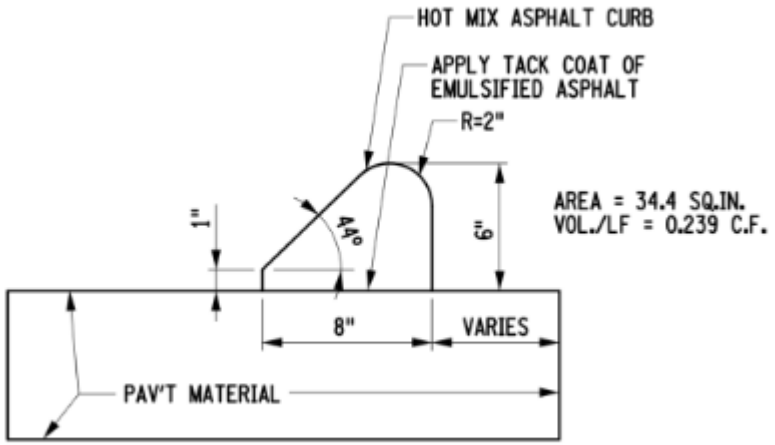


NEW DRAIN OUTLET AT DOWNING POND AND THIRD STREET STORM SEWER

ELMWOOD PLACE PAVING SCOPE OF WORK

ARCADIS

FIGURE
SK-1



MOUNTABLE TYPE

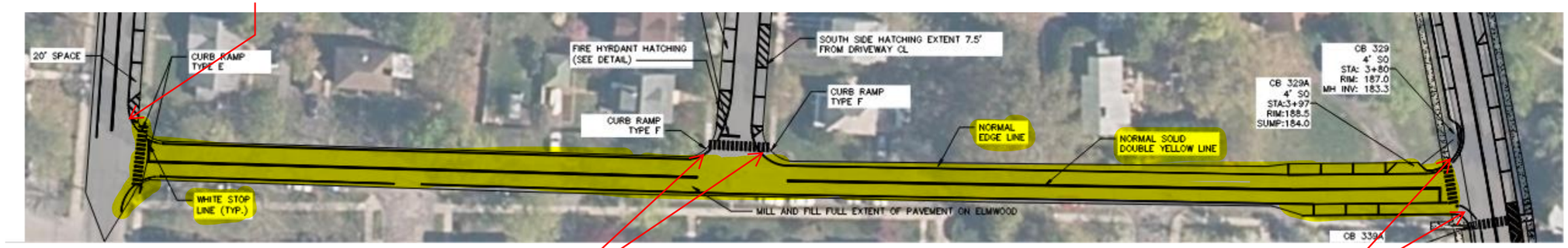
NEW DRAIN OUTLET AT DOWNING PARK AND THIRD STREET STORM SEWER

ASPHALT CURB DETAIL

ARCADIS

FIGURE
SK-2

TIE INTO WHITE LINE ON POWELL AVE



TIE INTO WHITE LINE ON CENTRAL AVE

ROAD PAVING AND STRIPING PLAN

0 40' 80' 160' 80'

SCALE 1"=80'-0"

TIE INTO WHITE LINE ON LIBERTY ST

NOTES:

1. ALL PAVEMENT MARKINGS SHALL BE PLACED IN ACCORDANCE WITH THE MUTCD AND NYS SUPPLEMENT.
2. EDGE LINES SHALL BE YELLOW ON THE LEFT SIDE AND WHITE ON THE RIGHT SIDE OF THE DIRECTION OF TRAVEL UNLESS OTHERWISE SHOWN ON THE PLANS. IF THE CURB OFFSET IS LESS THAN 2'-0", NO EDGE LINE SHALL BE APPLIED ADJACENT TO CURBS UNLESS OTHERWISE SHOWN ON THE PLANS. EDGE LINES SHALL BE PROVIDED AT THE CURB ADJACENT TO RAISED ISLANDS (SEE DETAIL).
3. WHERE MARKINGS NORMALLY FOLLOW A PAVEMENT JOINT, SINGLE LINE MARKINGS SHALL BE PLACED ALONG ONE SIDE OF THE JOINT. DOUBLE LINE MARKINGS SHALL STRADDLE THE JOINT, LANE LINES ON ROADWAYS WHICH ARE MORE THAN TWO LANES WIDE AND HAVE LONGITUDINAL JOINTS BETWEEN ADJACENT LANES SHALL BE PLACED ON THE SIDE OF THE JOINT WHICH WILL OBTAIN OPTIMUM LANE WIDTHS. AT THE JUNCTION OF SINGLE AND DOUBLE LINE MARKINGS WHICH FOLLOW A PAVEMENT JOINT, THE SINGLE LINE SHALL BE AN EXTENSION OF EITHER OF THE DOUBLE LINES AND NOT THE SPACE BETWEEN THEM. AT THE JUNCTION OF SINGLE AND DOUBLE LINE MARKINGS WHICH DO NOT FOLLOW A PAVEMENT JOINT, THE SINGLE LINE MAY BE ALIGNED WITH THE CENTER OF THE DOUBLE LINE MARKING OR EITHER LINE OF THE DOUBLE LINE.
4. ALL DIMENSIONS AND THE PLACEMENT OF ARROWS, SYMBOLS, AND TEXT SHOWN ARE TYPICAL AND SHALL APPLY UNLESS OTHERWISE INDICATED IN THE CONTRACT DOCUMENTS.
5. NORMAL PAVEMENT MARKINGS SHALL BE 4".
6. STRIPING ON NYSDOT ROADS SHALL MATCH EXISTING STRIPING.

NEW DRAIN OUTLET AT DOWNING POND AND THIRD STREET STORM SEWER

ELMWOOD PLACE
PAVEMENT STRIPING PLAN

ARCADIS

FIGURE
SK-3

5/20/2024 4:19:08 PM

TAM Enterprises, Inc
114 Hartley Road
Goshen NY 10924

License:

Service Invoice

Invoice#: 75077

Date: 10/05/2022

Billed To: City of Newburgh
83 Broadway 4th Floor- Accts Payable
Newburgh NY 12550

Project:
83 Broadway 4th Floor- Accts Payable
Newburgh NY 12550

Scheduled: 10/05/2022 **Employee:** **Order#:**
Time:

Assembly#	Part#	Description	Quantity	Price	Ext Price	Sales Tax
VAn Eten Scope		additional material removal	1.0000	16,323.360000	16,323.36	
		TAM Labor: Laborer	8.0000	93.190000	745.52	
		Profit on Sub - 5%	1.0000	816.170000	816.17	
		Overhead on TAm work: 5% Profit on TAm work: 10%	1.0000 1.0000	37.280000 ~~78.280000~~	37.28 ~~78.28~~ 74.55	

Notes:

17,996.88

A service charge of 0.00 % per annum will be charged on all amounts overdue on regular statement dates.

Thank you for your prompt payment!

Non-Taxable Amount:	~~18,000.61~~
Taxable Amount:	0.00
Sales Tax:	0.00
Amount Due	**~~18,000.61~~**

17,996.88

To:	TAM Enterprises Inc.	**Contact:**	
Address:	114 Hartley Road	**Phone:**	(845) 294-8882
	Goshen, NY 10924	**Fax:**	(845) 294-8883
Project Name:	Downing Park Sub Base Re-grade	**Bid Number:**	
Project Location:		**Bid Date:**	10/5/2022

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
200	Excavate And Truck Off Site	1.00	LS	$16,323.36	$16,323.36

Total Bid Price: $16,323.36

Notes:

- Material and fuel pricing based on NYS index as of October 2022 If index increases pricing will be adjusted
- RS-1H tack coat to be used
- Price Does NOT include applicable taxes
- No testing, permits, fees or licenses in bid
- -Prevailing wage rates apply, and any increases as such, post-acceptance, will be reflected in the final price

- Traffic control by others
- No Bond in bid. If bond is needed we can discuss that option with additional costs
- This proposal is good for 30 days.
- No retainage over 10%. Retainage only to be held till Van Ettens work has been approved NOT till end of job. All retainage to be held no longer than 6 months
- All past due sums under this contract shall bear interest from the 30th day after due date until paid at a rate of 1.5% per month(18% annum). PLUS any late fee charged to Van Etten as a result of late payment including legal fees
- Acceptance of proposal will guarantee any notes, exclusions or terms in proposal will over ride any other terms within contract
- Rock or frost excavation is excluded.
- All permits, bonds, inspections, fees, etc. by others.
- Price includes removal up to 140 cubic yards

ACCEPTED:	**CONFIRMED:**
The above prices, specifications and conditions are satisfactory and hereby accepted.	**Van Etten Contracting LLC**
Buyer: _____	
Signature: _____	**Authorized Signature:** _____
Date of Acceptance: _____	**Estimator:**

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH HUDSON VALLEY ENGINEERING ASSOCIATES, P.C. FOR DESIGN, RIGHT-OF-WAY SURVEY AND CONSTRUCTION SUPPORT IN THE AMOUNT OF $460,431.11 FOR THE LITTLE BRITAIN ROAD BRIDGE OVER THE QUASSAICK CREEK (BIN NO. 2223640) REPLACEMENT PROJECT

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

WHEREAS, by Resolution No. 106-2023 of June 12, 2023, the City Council approved an agreement with Hudson Valley Engineering Associates, P.C. for professional engineering inspection services at a cost of $6,275.00 in connection with the red flag (8B23T1W009) for the Little Britain Road over the Quassaick Creek Bridge (BIN No. 2223640); and

WHEREAS, Hudson Valley Engineering Associates, P.C. has submitted a proposal for a professional engineering services agreement in the amount of $460,431.11 for design, preliminary engineering, right-of-way survey and construction management to continue the Little Britain Road Bridge Over the Quassaick Creek (Bin No. 2223640) Replacement Project; and

WHEREAS, the cost of the professional engineering services shall be derived from the City's allocation of Touring Route Funds; and

WHEREAS, the City of Newburgh finds that authorizing the City Manager to execute a professional engineering services agreement with Hudson Valley Engineering Associates, P.C. is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that the City Manager be and he is hereby authorized to execute a professional engineering services agreement with Hudson Valley Engineering Associates, P.C. in the amount of $460,431.11 for design, preliminary engineering, right-of-way survey and construction management in the Little Britain Road Bridge Over the Quassaick Creek (Bin No. 2223640) Replacement Project.

May 30, 2024

Jason Morris, P.E.
City Hall
83 Broadway
Newburgh, New York 12550

Re: Replacement of Little Britain Road Bridge over Quassaic Creek (BIN 2223640) City of Newburgh, Orange County, New York

Dear Mr. Morris,

Enclosed please find our proposed scope and cost for engineering services for the design of the Replacement of the Little Britain Road Bridge over Quassaic Creek. Please call me at (845) 838-3600 if you need any additional information.

Thank you very much for considering us for this assignment, we look forward to continuing working with the City.

Sincerely,

HVEA Engineers

by _____
Jack Gorton, P.E.

Encs (2)

Scope of Services

Section 1 - General

1.01 Project Description and Location

Project Name: Replacement of Little Britain Road Bridge over Quassaic Creek – BIN 2223640

PIN: N/A

Project Description: The project will replace the existing bridge on the approximately existing horizontal and vertical alignment.

Project Limits: Little Britain Road – Ellis Avenue to Washington Terrace

Sponsor: City of Newburgh

County: Orange

The anticipated start date of preliminary design – August 1, 2024
The letting date – February 15, 2026
The construction completed date – December 31, 2026
The anticipated design costs - $0.460M
The anticipated ROW acquisition costs – N/A
The anticipated construction costs – $4M

1.02 Project Manager

The **Sponsor's** Project Manager for this project is **Jason Morris, P.E.**, who can be reached at **(845) 569-7448.**

All correspondence to the **Sponsor** should be addressed to:

Jason Morris, P.E.
City Engineer
City Hall
83 Broadway
Newburgh, New York 12550
845.569.7448

The Project Manager should receive copies of all project correspondence directed other than to the **Sponsor**.

1.03 Project Classification

This project is assumed to be a C List action under USDOT Regulations, 23 CFR 771.

Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be Type II. The City will be the lead agency.

1.04 Categorization of Work

Project work is generally divided into the following sections:

Section 1	General
Section 2	Data Collection & Analysis
Section 3	Preliminary Design
Section 4	Environmental
Section 5	Right-of-Way
Section 6	Detailed Design
Section 7	Advertising, Bid Opening and Award
Section 8	Construction Support
Section 9	Construction Inspection
Section 10	Estimating & Technical Assumptions

When specifically authorized in writing to begin work the **Consultant** will render all services and furnish all materials and equipment necessary to provide the **Sponsor** with reports, plans, estimates, and other data specifically described in Sections 1, 2, 3, 4, 5, 6, 7, 8 and 10.

1.05 Project Familiarization

The **Sponsor** will provide the **Consultant** with the following information:

- Approved project initiation document (Initial Project Proposal or similar documentation) indicating project type, project location, cost estimate, schedule, and fund source(s).
- Transportation needs.
- Plans for future related transportation improvements or development in the area of the project.
- Traffic data.
- Accident records and history.

- Most recent bridge inspection and condition report, NYSDOT weighted-average bridge condition rating, FHWA sufficiency rating, and NYSDOT Bridge Management System rating.
- Record as-built plans.
- Pavement history.
- Anticipated permits and approvals (initial determination).
- Terrain data requirements for design.
- Available project studies and reports.
- Other relevant documents pertaining to the project.

The **Consultant** will become familiar with the project before starting any work. This includes a thorough review of all supplied project information and a site visit to become familiar with field conditions.

1.06 Meetings

The **Consultant** will prepare for and attend all meetings as directed by the **Sponsor's Project Manager**. Meetings may be held to:

- Present, discuss, and receive direction on the progress and scheduling of work in this contract.
- Present, discuss, and receive direction on project specifics.
- Discuss and resolve comments resulting from review of project documents, advisory agency review, and coordination with other agencies.
- Preview visual aids for public meetings.
- Manage subconsultants and subcontractors.

The **Consultant** will be responsible for the preparation of all meeting minutes; the minutes will be submitted to meeting attendees within one (1) week of the meeting date.

1.07 Cost and Progress Reporting

For the duration of this contract, the **Consultant** will prepare and submit to the **Sponsor** on a monthly basis a Progress Report in a format approved by the **Sponsor**. The Progress Report must contain the *Cost Control Report*.[1]` The beginning and ending dates defining the reporting period must correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the **Sponsor**, this task will not be performed during the suspension period.)

[1] https://www.dot.ny.gov/plafap/view-document?id=1598

1.08 Policy and Procedures

- The design of this project will be progressed in accordance with the current version of the *NYSDOT Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual*[2] including the latest updates.
- If there are conflicts between local policies and procedures and those listed in the *PLAFAP* those listed in the *PLAFAP* take precedence.

1.09 Standards & Specifications

The project will be designed and constructed in accordance with the current edition of the NYSDOT Standard Specifications for Construction and Materials, including all applicable revisions.

1.10 Subconsultants

The **Consultant** will be responsible for:

- Coordinating and scheduling work, including work to be performed by subconsultants.
- Technical compatibility of a subconsultant's work with the prime consultant's and other subconsultants' work.

1.11 Subcontractors

Procurement of subcontractors must be in accordance with the requirements set forth in the *NYSDOT PLAFAP Manual*.

Section 2 - Data Collection and Analysis

2.01 Design Survey

A. Ground Survey

The **Consultant** will provide terrain data required for design by means of a topographic field survey of Little Britain Road, 250 feet east and west of the bridge crossing. The survey will be aligned in the state datum.

B. Stream Survey

The **Consultant** will perform field surveys necessary to provide stream cross-sections for the hydraulic analysis.

[2] https://www.dot.ny.gov/plafap

C. Supplemental Survey

The **Consultant** will provide supplemental surveys when needed for design purposes and to keep the survey and mapping current.

C. Standards

Survey will be done in accordance with the standards set forth in the *NYSDOT Land Surveying Standards and Procedures Manual*[3] and in accordance with local standards described in Section 10 of the SOS..

2.02 Design Mapping

The **Consultant** will provide the following design mapping:

- 40 scale mapping with 1 foot contour intervals from terrain data.

The **Consultant** will provide supplemental mapping when needed for design purposes and keep the mapping current for the duration of the project.

2.03 Determination of Existing Conditions

The **Consultant** will determine, obtain or provide all information needed to accurately describe in pertinent project documents the existing conditions within and adjacent to the project limits.

2.04 Accident Data and Analysis

The **Sponsor** will provide accident records for the last three years for roads within the project limits plus one-tenth of a mile immediately outside of the project limits

The **Consultant** will prepare collision diagrams and associated summary sheets for accidents involving pedestrians and bicyclists, and note any clusters of accidents or patterns implying inadequate geometrics, or other safety problems, within the project limits.

2.05 Traffic Counts

The **Consultant** will provide traffic count data for existing conditions, growth factors for forecasting, and forecast data, in accordance with the requirements

[3] https://www.dot.ny.gov/divisions/engineering/design/design-services/land-survey/repository/LSSPM09.pdf

noted in the *NYSDOT Traffic Monitoring Standards for Contractual Agreements Manual*[4].

The **Consultant** will provide flow diagrams for appropriate peak periods (e. g., am, noon, pm) showing existing and design year volumes on the mainline, on each approach of all intersections, and at major traffic generators.

2.06 Capacity Analysis

The **Consultant** will perform capacity analyses using the latest version of the Transportation Research Board's *Highway Capacity Manual* at mainline and intersection locations within the project limit to determine:

- Existing level of service.
- Design year level of service.
- Estimates of the duration of the poor level of service where it occurs during commuter travel periods.

The **Consultant** will develop project travel speed and delay estimates for the peak hour and average hour for:

- Existing traffic conditions.
- Design year traffic for the null alternative.

2.07 Future Plans for Roadway and Coordination with Other Projects

The **Sponsor** will provide a brief written statement specifying whether or not plans exist to reconstruct or widen the highway segments immediately adjacent to the project within the next twenty years.

The **Sponsor** will determine the influence, if any, of other existing or proposed projects or proposed developments in the vicinity of this project (e.g., whether a nearby highway widening would influence this project's design traffic volumes).

The **Sponsor** will provide all necessary information pertaining to the other projects or developments.

2.08 Soil Investigations

The **Consultant** will determine the soil sampling locations and sampling intervals; take the soil samples; test the samples and document the resulting information.

[4] https://www.dot.ny.gov/divisions/engineering/technical-services/hds-respository/Traffic%20Monitoring%20Standards%20for%20Contractual%20Agreements.rtf

2.09 Hydraulic Analysis

The **Consultant** will perform a hydraulic analysis.

~~2.10 Bridges to be rehabilitated~~

~~A. Inspection~~

~~The **Consultant** will perform a field inspection of each bridge to determine its condition, to establish the rehabilitation work necessary, and to prepare a Level I load rating. The intent is to supplement the inspection done as part of NYSDOT's on-going bridge inspection program, not to duplicate it.~~

~~The **Consultant** will perform and document the findings of an in-depth inspection of each bridge in accordance with the current AASHTO "Manual for Condition Evaluation of Bridges."~~

~~B. Bridge Deck Evaluation~~

~~For Bridges in which the deck will be rehabilitated, the Consultant will perform a bridge deck evaluation in accordance with NYSDOT Bridge Deck Evaluation Manual[5] and NYSDOT Bridge Inspection Manual.[6]~~

~~C. Load Rating of Existing Bridge~~

~~The **Consultant** will perform a Level 1 load rating of each existing bridge in accordance with NYSDOT's *Uniform Code of Bridge Inspection*. Immediately upon completion, the **Consultant** will transmit two copies of the load rating calculations and summary sheets to the **Sponsor** and the Regional Local Projects Liaison for filing.~~

~~2.11 Pavement Evaluation~~

~~The **Consultant** will perform a pavement evaluation in accordance with the *NYSDOT Comprehensive Pavement Design Manual*.[7] Analyses will consider thickness design.~~

~~The **Sponsor** will determine recommended pavement treatments as part of this review and will provide the **Consultant** with all comments including the recommended treatments.~~

[5] https://www.dot.ny.gov/divisions/engineering/structures/repository/manuals/br_deck_manual/bridge_deck_eval_manual_1992.pdf
[6] https://www.dot.ny.gov/divisions/engineering/structures/manuals/bridge-inspection
[7] https://www.dot.ny.gov/divisions/engineering/design/dqab/cpdm

Section 3 - Preliminary Design

3.01 Design Criteria

The **Consultant** will identify the applicable design standards to be used for this project and will establish project-specific design criteria in accordance with the "Locally Administered Federal Aid Procedures Manual."

The **Sponsor** will approve the selected project design criteria.

Based on the selected design criteria, the **Consultant** will identify all existing non-standard features that are within and immediately adjacent to the project limits. Non-standard features that correlate with a high accident rate will be noted.

3.02 Development of Alternatives

A. Selection of Design Alternative(s)

The **Consultant** will identify and make rudimentary evaluations of potential design alternative concepts that would meet the **Sponsor's** defined project objectives. These evaluations are not to be carried beyond the point of establishing the feasibility of each concept as a design alternative; only those significant environmental and geometric design constraints that bear on the feasibility should be identified.

For each concept the **Consultant** will prepare rudimentary sketches of plan, profile, and typical section views which show:

- **On plan:** proposed centerlines; pavement edges; curve radii and termini; and existing ROW limits.
- **On profile:** theoretical grade lines; critical clearances; vertical curve data; grades; and touchdown points.
- **On typical section:** lane, median, and shoulder widths; ditches; gutters; curbs; and side slopes.
- **Where necessary:** important existing features.
- **Where pertaining to feasibility:** significant environmental and geometric design constraints, labeled as such.

These sketches will include only the minimum information needed to select design alternatives to be studied in further detail.

The **Consultant** will meet with the **Sponsor** to discuss the concepts, using the sketches as discussion aids to describe the relative order-of-magnitude costs, advantages, disadvantages, and problem areas of each. From these

concepts the **Sponsor** will select one, or in some cases more, design alternative(s) for further development.

B. Detailed Evaluations of Alternative(s)

The **Consultant** will further evaluate each design alternative and the null alternative with specific engineering analyses and considerations. Analyses will be conceptual and limited to determining the relative suitability of each design alternative, and will include:

- Design geometry, including the identification and comparison of alignment constraints and (where applicable) justification for retaining nonstandard design features, per the "Locally Administered Federal Aid Procedures Manual."
- Environmental constraints and potential environmental impact mitigation measures (identified under Section 4 tasks).
- Traffic flow and safety considerations, including signs, signals, and level of service analysis for intersections.
- Pavement.
- Structures, including bridges, retaining walls, major culverts, and building alterations (limited to establishing basic concepts, accommodating clearances and stream flow, and estimating costs). Bridge investigative work (inspection, deck coring, etc.) is covered under Section 2.
- Drainage.
- Maintenance responsibility.
- Maintenance and protection of traffic during construction.
- Soil and foundation considerations.
- Utilities.
- Railroads.
- Right-of-way acquisition requirements.
- Accessibility for pedestrians, bicyclists and the disabled.
- Lighting.
- Construction cost factors.

The **Consultant** will prepare the following drawings for each design alternative analyzed:

- 100 scale plans showing (as a minimum) stationed centerlines; roadway geometrics; major drainage features; construction limits; cut and fill limits; and proposed right-of-way acquisition lines.
- Typical sections showing (as a minimum) lane, median, and shoulder widths; ditches; gutters; curbs; and side slopes.

3.03 Cost Estimates

The **Consultant** will develop, provide and maintain a cost estimate for each design alternative.

The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes.

3.04 Preparation of Draft Design Approval Document

For this project, the Design Approval Document (DAD) will be an **"Initial Project Proposal / Final Design Report (IPP/FDR)."**

The **Sponsor** will make all determinations not specifically assigned to the **Consultant** which are needed to prepare the Draft DAD.

The **Consultant** will prepare a Draft DAD, which will include the results of analyses and/or studies performed in other Sections of this document. The DAD will be formatted as specified in the NYSDOT *Project Development Manual (PDM)*.[8]

The **Consultant** will submit 2 copies of the Draft DAD and 8 sets of preliminary plans to the **Sponsor** for review. The **Sponsor** will review the Draft DAD and provide the **Consultant** with review comments. The **Consultant** will revise the Draft DAD to incorporate the comments.

3.06 Public Information Meeting(s) and/or Public Hearing(s)

A Public Information Meeting(s)
The **Sponsor** will hold public information meeting(s) with advisory agencies, local officials, and citizens. The **Consultant** will prepare a discussion of the project and conduct the meeting. The **Sponsor** will arrange for the location of public information meeting(s). The **Sponsor** will be responsible for providing appropriate notification.

3.07 Preparation of Final Design Approval Document (DAD)

The **Sponsor** will obtain all necessary approvals and concurrences and will publish all applicable legal notices.

The **Consultant** will prepare the Design Recommendation, and will modify the DAD to include the Design Recommendation, re-title the DAD in accordance with the *PDM* Manual, and update existing conditions and costs as necessary. The

[8] https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm

Consultant will incorporate changes resulting from the advisory agency review and all public information meetings and public hearings.

The **Consultant** will submit 2 copies of the Final DAD to the **Sponsor** for review. The **Sponsor** will review the Final DAD and provide the **Consultant** with review comments. The **Consultant** will revise the Final DAD to incorporate the comments.

The **Sponsor** will submit 1 copy of the Final DAD to NYSDOT for a Final Environmental Determination. NYSDOT will make the determination or obtain FHWA's determination. If necessary, NYSDOT will transmit the Final DAD to FHWA for final review and concurrence. The **Consultant** will again revise the Final DAD to incorporate changes (assumed minor) resulting from the NYSDOT and/or FHWA review.

The **Sponsor** will grant or obtain, from or through NYSDOT, Design Approval.

Section 4 – Environmental

4.01 NEPA Classification

The **Consultant** will verify the anticipated NEPA Classification.

If the project is assumed to be a Class II action, then the **Consultant** will complete the Federal Environmental Approval Worksheet (FEAW), and forward the completed worksheet to the **Sponsor** for forwarding to NYSDOT (with the Final DAD) for a final NEPA determination. The FEAW need not be completed for projects assumed to be Class I or III actions.

The Lead Agency for NEPA is the Federal Highway Administration (FHWA).

4.02 SEQRA Classification

The **Consultant** will assist the **Sponsor** in complying with SEQRA (6 NYCRR Part 617). The **Sponsor** is the Lead Agency. Consultant tasks include, but are not limited to:

- The **Consultant** will document the results of SEQRA processing in the body of the Design Approval Document (DAD) and will include documentation of the final SEQRA determination in the Appendix of the DAD.

4.03 Screenings and Preliminary Investigations

The **Consultant** will screen and perform preliminary investigations to determine potential impacts resulting from the design alternative(s) for:

- General Ecology and Endangered Species
- Ground Water
- Surface Water
- State Wetlands
- Federal Jurisdictional Wetlands
- Floodplains
- Coastal Zone Management
- Navigable Waterways
- Historic Resources
- Parks
- Hazardous Waste
- Asbestos
- Noise
- Air Quality
- Energy
- Farmlands
- Invasive Species
- Visual Impacts
- Critical Environmental Areas
- Smart Growth
- Environmental Justice
- 4(f) / 6(f)

Work will be performed, as summarized in the PLAFAP Manual and detailed in the PDM and the TEM, to determine whether further detailed analysis or study is required. The results of these screenings and preliminary investigations will be summarized in the appropriate sections of the DAD.

4.05 Permits and Approvals

The **Consultant** will obtain all applicable permit(s) and certification(s), including but not necessarily limited to:

- NYSDOT Highway Work Permit
- Article 24 Freshwater Wetlands Permit
- Article 25 Tidal Wetlands Permit
- FHWA Executive Order 11990 Wetlands Finding
- U.S. Coast Guard Section 9 Permit
- U.S. Army Corps of Engineers Section 10 Permit (Individual or

Nationwide)
- U.S. Army Corps of Engineers Section 404 Permit (Individual or Nationwide)
- NYSDEC Section 401 Water Quality Certification
- NYSDEC State Pollution Discharge Elimination System (SPDES) Permit
- NYSDEC Article 15 Protection of Waters Permit
- Safe Drinking Water Act Section 1424(e)
- Migratory Bird Treaty Act
- Coastal Zone Consistency
- Scenic, Wild and Recreational Rivers

Section 5 - Right-of-Way

5.02 Right-of-Way Survey

The **Consultant** will perform survey needed to accurately determine existing right-of-way limits and establish side property lines.

Section 6 - Detailed Design

6.01 Preliminary Bridge Plans

A. New and Replacement Bridges

The **Consultant** will prepare and submit to the **Sponsor** a Preliminary Bridge Plan in accordance with the *NYSDOT Bridge Manual*.[9] For each bridge, the **Consultant** will prepare and submit to the **Sponsor** a Structure Justification Report. The format and content of the Structure Justification Report will be as outlined in the *NYSDOT Bridge Manual*.

C. Selected Structural Treatment

The **Consultant** will modify the Structure Justification Report, Preliminary Bridge Plan and/or Preliminary Bridge Rehabilitation Plan to incorporate **Sponsor** review comments.

The **Sponsor** will approve the selected structural treatment and will obtain NYSDOT concurrence (either by a written submission or at a meeting).

6.02 Advance Detail Plans (ADP)

[9] https://www.dot.ny.gov/divisions/engineering/structures/repository/manuals/brman-usc/2011_nysdot_Br_Man_repl_pgs.pdf

The **Consultant** will develop the approved design alternative to the ADP stage. At this stage all plans, specifications, estimates and other associated materials will be **90%** complete.

As part of this task the **Consultant** will prepare templated cross sections at 50 foot intervals.

Advance Detail Plans will be in accordance with Chapter 21 of the NYSDOT Highway Design Manual.[10]

The **Consultant** will prepare and submit 8 copies of the ADP's to the **Sponsor** for review. The **Consultant** will modify the design to reflect the review of the ADP package.

6.03 Contract Documents

The **Consultant** will prepare a complete package of bid-ready contract documents. The package will include:

- Instructions to bidders.
- Bid documents.
- Contract language, including applicable federal provisions and prevailing wage rates.
- Special notes.
- Specifications.
- Plans.
- A list of supplemental information available to bidders (i.e., subsurface exploration logs, record as-built plans, etc.).
- Other pertinent information.

The **Consultant** will submit the contract documents to the **Sponsor** for approval. Upon approval, the **Sponsor** will submit 3 copies of the contract bid documents to NYSDOT as described in the *PLAFAP Manual*.

6.04 Cost Estimate

The **Consultant** will develop, provide, and maintain the construction cost estimate for the project. The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes, and will develop and provide the final Engineer's Estimate, including all quantity computations.

6.05 Utilities

[10] https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/Chapt_21.pdf

The **Consultant** will coordinate with affected utility companies and Municipal utilities to ensure the timely relocation of utility poles and appurtenances. The **Consultant** will assist the **Sponsor** in preparing any necessary agreements with utility companies and/or Municipal utilities. Any agreements containing reimbursable relocations must be approved and signed by the Design Support Section of the NYSDOT Design Quality Assurance Bureau (see PLAFAP Manual Appendix 10-8).

6.07 Bridge Inventory and Load Rating Forms

The **Consultant** will complete and provide the **Sponsor** and NYSDOT with:

- Inventory Update forms, per the current NYSDOT Bridge Inventory Manual for Bridge Inventory and Inspection System, reflecting all proposed physical changes resulting from construction.
- Level 2 Load Rating Data Input forms, per NYSDOT User Manual for Structural Rating Program for Bridges and current NYSDOT guidance on the "Procedure for Inventorying, Inspecting, and Level 2 Load Rating, New, Replacement and Reconstructed or Rehabilitated Bridges".

6.08 Information Transmittal

Upon completion of the contract documents, the **Consultant** will transmit to the **Sponsor** all project information, including electronic files. The electronic information will be in the format requested by the **Sponsor**.

Section 7 - Advertisement, Bid Opening and Award

7.01 Advertisement

The **Consultant** will prepare the advertisement for bids to be placed in the NYS Contract Reporter and any other newspaper or publication identified by the **Sponsor**. The **Consultant** will submit the ad(s) to the **Sponsor** for review and will revise the ad(s) to reflect comments generated by that review. Upon approval, the **Sponsor** will place the advertisements.

Advertisements must not be placed until authorization is granted to the **Sponsor** by the NYSDOT.

7.02 Bid Opening (Letting)

The **Sponsor** will hold the public bid opening.

7.03 Award

The **Consultant** will analyze the bid results. The analysis will include:

- Verifying the low bidder.
- Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, etc.).
- Breaking the low bid into fiscal shares, if necessary.
- Determining whether the low bid is unbalanced.
- For pay items bid more than 25% over the Engineer's Estimate:
  Checking accuracy of quantity calculations.
  Determining appropriateness of price bid for work in the item.
  Determining whether the low bidder is qualified to perform the work.

The **Consultant** will assist the **Sponsor** in preparing and compiling the package of information to be transmitted to the NYSDOT.

The **Sponsor** will award the contract and will transmit the award package to the NYSDOT as described in the Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual.

Section 8 - Construction Support

8.01 Construction Support

The **Consultant** will provide design response to unanticipated or changed field conditions, analyze and participate in proposed design changes, and interpret design plans.

Work under this section will always be in response to a specific assignment from the **Sponsor** under one of the tasks below:

- In response to unanticipated and/or varying field conditions or changes in construction procedures, the **Consultant** will conduct on-site field reconnaissance and, where required, prepare Field Change Sheets modifying pertinent contract plan sheets.
- The **Consultant** will analyze and make recommendations on the implementation of changes proposed by the **Sponsor** or the construction contractor. This includes the Traffic Control Plan.
- The **Consultant** will interpret and clarify design concepts, plans and specifications.
- The **Consultant** will review and approve shop drawings for construction.

Not reimbursable under this Section are:

- Corrections of design errors and omissions
- Straightforward interpretations of plans and designer intentions

Section 9 - Construction Inspection - To be added to the Consultant Agreement by Supplemental Agreement.

Section 10 - Estimating and Technical Assumptions

10.01 Estimating Assumptions

The following assumptions have been made for estimating purposes:

Section 1

Estimate 9 meetings during the life of this agreement. Assume 2 hours per meeting.

Estimate 18 cost and progress reporting periods will occur during the life of this agreement. Assume 1 hour per report.

Section 2

Assume that GPS methods and equipment will be used to establish local control points.

Survey will be based on NAD-83 NY State Plane East, Survey Feet and NAVD-88.

Maintenance and Protection of Traffic for survey operations will be limited to static signs.

Asbestos testing will not be performed during design, any identified need for asbestos testing will be done during construction by the contractor.

Estimate 50 accidents will require analysis.

Traffic data will be supplied by the City

Estimate 4 soil borings will be taken.

Estimate 0 concrete cores will be taken.

Estimate 0 pavement cores will be taken.

Section 3

Estimate 3 concepts will be evaluated.

Estimate 2 design alternatives will be analyzed in addition to the null alternative.

Estimate 2 cost estimate plus 2 updates will be required.

Estimate 0 bridges will be rehabilitated, 1 bridge will be replaced.

Estimate 1 public meeting will be held.

Section 4 Assume project is a NEPA "C List" requiring the Federal Environmental Approval Worksheet

Project will be a SEQR Type II Action and will not require an EAF.

Estimate 3 permits will be required.

A Section 106 (SHPO) determination package will be required. Coordination with SHPO will be required however a Memorandum of Agreement will not be required.

A 4(f) / 6(f) analysis will not be required.

USFWS Section 7 and NYSDEC Heritage Program consultation will be required.

A Habitat Assessment will be required. Detailed habitat studies will not be required.

Section 5 Estimate 0 properties will require title searches.

Estimate 0 taking maps will be required.

Estimate 0 appraisals and reviews

Estimate acquiring 0 temporary easements

Estimate 0 public hearings.

Estimate 0 administrative settlements.

Estimate 0 condemnations.

Section 6 Detailed Design or Final Design

Final Design will include but not be limited to:

- Development bridge, sidewalk, and drainage plans.
- Highway design.
- Maintenance and protection of traffic during construction.
- Preparation and submission of final Plans, Specifications, and Estimate (PS&E) for the project.

Estimate 1 cost estimate(s) plus 2 updates will be required.

Estimate 1 bridge will be replaced and 0 will be rehabilitated.

Estimate 4 utility companies and 0 railroad agencies will be affected.

Section 7 Estimate 3 copies of the final contract bid documents will be needed for Sponsor and NYSDOT. The Sponsor shall be responsible for additional paper copies to bidders. The Consultant will provide CD's containing the project documents.

Design Services for
Replacement of Little Britain Road Bridge (BIN 2223640)
HVEA Engineers

Design Cost		
HVEA's Design Cost	$	414,431.11
Topographic and Right-of-Way Survey	$	18,000.00
Soil Borings	$	28,000.00
Total Lump Sum Fee	**$**	**460,431.11**

Hours By Task

Phase	Task	Principal in Charge	Project Manager	Project Engineer	Design Engineer	Staff Engineer	CAD Operator
SECTION 1	1.05 Project Familiarization		8	8	8		
General	1.06 Meetings		18	18	18		
	1.07 Cost and Progress Reporting		18				
	Subtotal, Section 1	0	44	26	26	0	0
SECTION 2	2.01 Design Survey		4	16	16		
Data Collection & Analysis	2.02 Design Mapping						24
	2.03 Determination of Existing Conditions			8	8		
	2.04 Accident Data and Analysis			4	16		
	2.05 Traffic Counts			2	8		
	2.06 Capacity Analysis			2	8		
	2.08 Soil Investigations		24	40	40		
	2.09 Hydraulic Analysis		24	60	80		
	Subtotal, Section 2	0	52	132	176	0	24
SECTION 3	3.01 Design Criteria			4	8		
Preliminary Design	3.02a Selection of Design Alternatives		16	80	120		60
	3.02b Detailed Evaluation of Alternatives		16	80	120		60
	3.03 Cost Estimates		8	40	80		
	3.04 Preparation of Draft Design Approval Document		8	40	80		
	3.06 Public Informational Meeting		8	8	8		
	3.07 Preparation of Final Design Approval Document		4	8	16		
	Subtotal, Section 3	0	60	260	432	0	120
SECTION 4	4.01 SEQRA Classification		8	8	8		
Environmental	4.02 NEPA Classification		2	8	16		
	4.03 Screenings and Preliminary Investigations		8	40	80		
	4.04 Detailed Studies and Analyses						
	4.05 Permits and Approvals		24	80	80		
	Subtotal, Section 4	0	42	136	184	0	0
SECTION 5	5.01 Abstract/ Title Search	To be added by supplemental					
Right of Way	5.02 Right of Way Survey		8				
	5.03 Right of Way Mapping	To be added by supplemental					
	5.04 Right of Way Cost Estimates						
	5.06 Property Appraisal						
	5.07 Negotiations and Acquistion						
	Subtotal, Section 5	0	8	0	0	0	0
SECTION 6	6.01 Preliminary Plans		24	100	200		80
Detailed Design	6.02 Advance Detail Plans		24	100	200		80
	6.03 Contract Documents		8	24	40		
	6.04 Cost Estimate		4	24	40		
	6.05 Utilities		4	20	20		
	6.06 Bridge Inventory and Load Rating		4	24			
	6.07 Information Transmittal						
	Subtotal, Section 6	0	68	292	500	0	160
SECTION 7	7.01 Advertisement				2		
Advertisement, Bid Opening, and Award	7.02 Bid Opening						
	7.03 Award		2	2			
	Subtotal, Section 7	0	2	2	2	0	0
SECTION 8	8.01 Construction Support		4	16	16		
Construction Support Opening, and Award							
	Subtotal, Section 8	0	4	16	16	0	0
SECTION 9	9.01 Construction Inspection	BY SUPPLEMENTAL AGREEMENT					
Construction Inspection							
	Subtotal, Section 9	0	0	0	0	0	0

2023 Rate	$90.00	$78.00	$62.26	$50.60	$37.99	$36.00
Overhead	140%					
Fixed Fee	12%					

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH HUDSON VALLEY ENGINEERING ASSOCIATES, P.C. FOR THE LAKE DRIVE BRIDGE (BIN No. 2223630) SCOUR REPAIR PROJECT AT A COST OF $105,500.00

WHEREAS, in connection with a federal-aid project funded through the Federal Emergency Management Agency ("FEMA") identified as the Lake Drive Bridge (BIN No. 2223630) Scour Repair Project (the "Project") and in accordance with required consultant selection procedures, including applicable requirements of FEMA, the New York State Department of Transportation and/or the Federal Highway Administration, the City of Newburgh has received a proposal from Hudson Valley Engineering Associates, P.C. for professional engineering inspection services; and

WHEREAS, the cost of the services will be $105,500.00 with funding to be derived from the FEMA Severe Storm Public Assistance Disaster Relief Program Grant DR4723NY with a local match to be derived from the City's allocation of NYSDOT Touring Route funds; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute a professional engineering services agreement with Hudson Valley Engineering Associates, P.C. at a cost of $105,500.00 in the Lake Drive Bridge (BIN No. 2223630) Scour Repair Replacement Project.

May 30, 2024

Jason Morris, P.E.
City Hall
83 Broadway
Newburgh, New York 12550

Re: Lake Drive Bridge over Quassaic Creek Scour Repair, City of Newburgh, Orange County, New York

Dear Mr. Morris,

Enclosed please find our proposed Agreement for engineering services for design of the scour repair of the Lake Drive Bridge. Please call me at (845) 838-3600 if you need any additional information.

Thank you very much for considering us for this assignment, we look forward to continuing working with the City.

Sincerely,

HVEA Engineers

by _____
Jack Gorton, P.E.

Enc

Architectural/ Engineering Consultant Contract

PIN (s) Municipal Contract No. _____

Agreement made this _____ day of _____, _____ by and between

City of Newburgh
(Municipal Corporation)
Having its principal office at 83 Broadway, Newburgh, New York 12550
(the *"**Municipality**"* or "***Sponsor***")

and

HVEA Engineers with its office at 560 Route 52, Beacon, New York 12508
(to be known throughout this document as the ***"Consultant")***

WITNESSETH:

WHEREAS, in connection with a federal-aid project funded through the Federal Emergency Management Agency ("FEMA") identified for the purposes of this contract as the **Lake Drive Bridge Scour Repair** (as described in detail in Attachment A annexed hereto, the "Project") the Sponsor has sought to engage the services of a Consultant Engineer) to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of FEMA, the New York State Department of Transportation ("NYSDOT") and/or the Federal Highway Administration ("FHWA"), the Sponsor has selected the Consultant to perform such services in accordance with the requirements of this Contract; and

WHEREAS, _____ , is authorized to enter this Contract on behalf of the Sponsor,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS CONTRACT

This contract consists of the following:

- **Agreement Form** - this document titled "Architectural/Engineering Consultant Contract";
- **Attachment "A"** - Project Description and Funding;
- **Attachment "B"** – Scope of Services;
- **Attachment "C"** - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS

2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the Sponsor with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The CONSULTANT shall ascertain the applicable practices of the Sponsor, FEMA, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Contract shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the Sponsor.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Sponsor shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described in Attachment C.

(Continued next page)

ARTICLE 4. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the FEDERAL EMERGENCY MANAGEMENT AGENCY, NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 5. AUDITS

5.1 Payment to the Consultant is subject to the following audit rights of the Sponsor:

A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.

B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than $300,000, an audit may be waived by the Sponsor.

C. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than $300,000, an audit may be waived by the Sponsor.

5.2 In order to enable the Sponsor to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.

A. Records of Direct Non-Salary Costs;

B. Copies of any subcontracts relating to said contract;

C. Location where records may be examined; and

D. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

6.1 The Sponsor will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the Sponsor from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Contract or for any part thereof except as otherwise provided herein.

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Contract within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Sponsor of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Sponsor on a monthly basis or such alternative interval as the Sponsor directs in writing.

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Contract and constitutes extra work, the CONSULTANT shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole judge as to whether or not such work is in fact beyond the scope of this Contract and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT CONTRACT, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the CONSULTANT for execution after approvals have been obtained from necessary Sponsor officials, and, if required from the Federal Highway Administration.

7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the Sponsor all assistance required by the Sponsor. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Contract for the additional services above described, the Sponsor's directions shall be exercised by the issuance of a separate Contract, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Contract.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the Sponsor from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against the Sponsor beyond such as may legally exist irrespective of this Article or this Contract.

The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars ($1,000,000) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Contract. The CONSULTANT shall supply any certificates

of insurance required by the Sponsor and adhere to any additional requirements concerning insurance.

ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this contract. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this contract in the sum of at least $1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the Sponsor or existing in the offices of the CONSULTANT shall be made available to the other party to this Contract without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Sponsor, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Sponsor may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Sponsor of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this contract.

ARTICLE 13. TERMINATION

The Sponsor shall have the absolute right to terminate this Contract, and such action shall in no event be deemed a breach of contract:

A. for convenience of the Sponsor - if a termination is brought about for the convenience of the Sponsor and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.

B. for cause - if the termination is brought about as a result of the Sponsor's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Sponsor, of the total amount of work contemplated by the PROJECT CONTRACT.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Contract, and the Sponsor shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Sponsor or his duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the Sponsor for any damages it may sustain by reason thereof. Upon the delivery of all such data to the Sponsor, the Sponsor will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

The CONSULTANT specifically agrees that this Contract may be canceled or terminated if any work under this Contract is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The CONSULTANT, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the Sponsor by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Sponsor, including but not limited to Worker's

Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Sponsor shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees, that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Contract or of his right, title or interest therein, or his power to execute such Contract, to any other person, company or corporation, without the previous consent in writing of the Sponsor.

If this provision is violated, the Sponsor may revoke and annul the Contract and the Sponsor shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Contract without such consent in writing of the Sponsor.

ARTICLE 19. PROPRIETARY RIGHTS

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the Sponsor.

ARTICLE 20.1 PROMPT PAYMENT. While federal regulation (49 CFR 26.29) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed

when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Contract, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
C. does not have a proposed debarment pending; and
D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier

subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Sponsor may in certain circumstances, provide compensation for such work.

B. Neither the Sponsor's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the Sponsor in accordance with applicable law for all damages to the Sponsor caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.

C. The rights and remedies of the Sponsor provided for under this contract are in addition to any other rights and remedies provided by law.

D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with 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 CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. 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 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, CONSULTANT agrees that neither it nor its SUBCONSULTANTS 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. CONSULTANT 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.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Contract, being duly sworn, certifies that its company and any person

associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

a. an existing contract for the PROJECTs ROW incidental work or construction engineering; or

b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS *(unless more restrictive municipal laws apply)*

For all contracts other than personal services in excess of $5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of $20,000 except printing contracts in excess of $10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. 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 Consultant'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, Consultant and its subconsultants 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.

ARTICLE 28. 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 Consultant agrees, as a material condition of the contract, that neither the Consultant 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 Consultant, or any of the aforesaid affiliates of Consultant, 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 Sponsor and the New York State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (see 2 NYCRR 105.4).

ARTICLE 29. SERVICE OF PROCESS

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

ARTICLE 30. **DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA.** At the time of completion of the work, the Consultant shall make available to the Sponsor all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the Sponsor. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Consultant shall make available to the Sponsor all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the Sponsor by the Consultant shall bear thereon the endorsement of the Consultant. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the Sponsor.

ARTICLE 31. MISCELLANEOUS

31.1 ***Executory Contract***. This Contract shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Sponsor beyond the monies legally available for the purposes hereof.

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

Reference: Sponsor Contract # _____

Sponsor	Consultant
by: _____	by: _____
Date:	Date:

For the Sponsor:
STATE OF NEW YORK
ss:
COUNTY OF ORANGE

On this ___day of _____, _____ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the _____, New York; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Sponsor.

_____

Notary Public, _____ County, N.Y.

For the Consultant:
STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS
On this ___day of _____, _____ before me, Mia K. Nadasky, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the _____, New York; that he/she is the Principal of HVEA Engineers, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Consultant.

_____

Notary Public, _____ County, N.Y.

Federal-Aid Requirements for Architectural/ Engineering Consultant Supplement

ARTICLE A. DOCUMENTS FORMING THIS AGREEMENT

The contract must include the documents forming the contract between the Sponsor and the Consultant. The following will be included in the contract:

- Agreement Form - “Municipal Consultant Contract";
- Project Description and Funding;
- Scope of Services;
- As applicable, Staffing Rates, Hours, Reimbursables and Fee;
- Federal-Aid Requirements for Architectural/Engineering Consultant Supplement.

ARTICLE B. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant’s work, services and expenses hereunder the Sponsor shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described in this contract. Compensation methods must be clearly documented in the contract. Compensation methods available are Cost Plus Fixed Fee Method, Specific Hourly Rate Method, and Lump Sum Cost Plus Reimbursables Method.

ARTICLE C. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE D. EXTRA WORK

If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT CONTRACT and constitutes extra work, the CONSULTANT shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole judge as to whether or not such work is in fact beyond the scope of this Contract and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT CONTRACT, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the CONSULTANT for

execution after approvals have been obtained from necessary Sponsor officials, and, if required from the Federal Highway Administration.

ARTICLE E. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this contract. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this contract in the sum of at least $1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

ARTICLE F. RECORDS RETENTION

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Sponsor, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE G. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Sponsor shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE H. PROPRIETARY RIGHTS

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the

world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE I. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Contract, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

C. does not have a proposed debarment pending; and

D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE J. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative contract, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE K. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and Title VI of the Civil Rights Act of 1964, as amended, and any other State and Federal Statutory and constitutional non-discrimination provision, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. 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 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, CONSULTANT agrees that neither it nor its SUBCONSULTANTS 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. CONSULTANT 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.

ARTICLE L. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Contract, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

a. an existing contract for the PROJECTs ROW incidental work or construction engineering; or

b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE M. 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 Consultant'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, Consultant and its subconsultants 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.

ARTICLE N. 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 Consultant agrees, as a material condition of the contract, that neither the Consultant 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 Consultant, or any of the aforesaid affiliates of Consultant, 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 Sponsor and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See, 2 NYCRR 105.4).

ARTICLE O. PROMPT PAYMENT.

While federal regulation (49 CFR 26.29) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

APPENDIX A-2
IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.
Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Transportation (NYSDOT) may approve a request for Assignment of Contract

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

Attachment A

Project Description and Funding

Attachment A
Architectural/ Engineering Consultant Contract

PIN:
BIN:

Term of Agreement Ends: December 31, 2025

x Main Agreement **o** Amendment to Contract [add identifying #] o Supplement to Contract

Phase of Project Consultant to work on:

x P.E./Design x ROW Incidentals x ROW Acquisition
x Construction, C/I, & C/S (Supplemental)

PROJECT DESCRIPTION:

Preliminary and Final Design of:

Lake Drive Bridge Scour Repair

Project Location:

City of Newburgh, Orange County

Consultant Work Type(s): See Attachment B for more detailed Scope of Services.

Project Description and Funding

MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:
$105,500.00

Footnotes:

Attachment B

Task List

Section 1 - General

1.01 Project Description and Location

Project Name: Lake Drive over Quassaic Creek Bridge – Scour Repair

Project Description: The project will restore the scour protection that was damaged in a severe storm event and provide additional mitigation to reduce the risk of future damage.

Project Limits: Lake Drive, approximately 305 +/- feet west of Lake Street to approximately 398 +/- feet west of Lake Street

Sponsor: City of Newburgh

County: Orange

1.02 Project Manager

The **Sponsor's** Project Manager for this project is **Jason Morris, P.E.**, who can be reached at **(845) 569-7448.**

All correspondence to the **Sponsor** should be addressed to:

Jason Morris, P.E.
City Engineer
City Hall
83 Broadway
Newburgh, New York 12550
845.569.7448

The Project Manager should receive copies of all project correspondence directed other than to the **Sponsor**.

1.03 Project Classification

This project is assumed to be a C List action under USDOT Regulations, 23 CFR 771.

Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be Type II. The Sponsor will be the lead agency.

1.04 Categorization of Work

Project work is generally divided into the following sections:

Section 1	General
Section 2	Data Collection & Analysis
Section 3	Preliminary Design

Section 4	Environmental
Section 5	Right-of-Way
Section 6	Detailed Design
Section 7	Advertising, Bid Opening and Award
Section 8	Construction Support
Section 9	Construction Inspection
Section 10	Estimating & Technical Assumptions

When specifically authorized in writing to begin work the **Consultant** will render all services and furnish all materials and equipment necessary to provide the **Sponsor** with reports, plans, estimates, and other data specifically described in Sections 1, 2, 3, 4, 5, 6, 7, 8 and 10.

1.06 Meetings

The **Consultant** will prepare for and attend all meetings as directed by the **Sponsor's Project Manager**. Meetings may be held to:

- Present, discuss, and receive direction on the progress and scheduling of work in this contract.
- Present, discuss, and receive direction on project specifics.
- Discuss and resolve comments resulting from review of project documents, advisory agency review, and coordination with other agencies.
- Preview visual aids for public meetings.
- Manage subconsultants and subcontractors.

The **Consultant** will be responsible for the preparation of all meeting minutes; the minutes will be submitted to meeting attendees within one (1) week of the meeting date.

1.07 Cost and Progress Reporting

For the duration of this contract, the **Consultant** will prepare and submit to the **Sponsor** on a monthly basis a Progress Report in a format approved by the **Sponsor**. The Progress Report must contain the *Cost Control Report*.[1] The beginning and ending dates defining the reporting period must correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the **Sponsor**, this task will not be performed during the suspension period.)

1.08 Policy and Procedures

- The design of this project will be progressed in accordance with the current version of the *NYSDOT Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual*[2] including the latest updates.
- If there are conflicts between local policies and procedures and those listed in the *PLAFAP* those listed in the *PLAFAP* take precedence.]

[1] https://www.dot.ny.gov/plafap/view-document?id=1598
[2] https://www.dot.ny.gov/plafap

1.09 Standards & Specifications

The project will be designed and constructed in accordance with the current edition of the NYSDOT Standard Specifications for Construction and Materials, including all applicable revisions.

Section 2 – Data Collection & Analysis

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Section 3 – Preliminary Design

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Section 4 – Environmental

4.02 SEQRA Classification

The **Consultant** will assist the **Sponsor** in complying with SEQRA (6 NYCRR Part 617). The **Sponsor** is the Lead Agency. Consultant tasks include, but are not limited to:

- Drafting Environmental Assessment Form(s) (Short EAF).

The **Consultant** will document the results of SEQRA processing in the body of the Design Approval Document (DAD) and will include documentation of the final SEQRA determination in the Appendix of the DAD.

4.03 Screenings and Preliminary Investigations

The **Consultant** will screen and perform preliminary investigations to determine potential impacts resulting from the design alternative(s) for:

- General Ecology and Endangered Species
- Ground Water
- Surface Water
- State Wetlands
- Federal Jurisdictional Wetlands
- Floodplains
- Coastal Zone Management
- Navigable Waterways
- Historic Resources

- Parks
- Hazardous Waste
- Asbestos
- Noise
- Air Quality
- Energy
- Farmlands
- Invasive Species
- Visual Impacts
- Critical Environmental Areas
- Smart Growth
- Environmental Justice

Work will be performed, as summarized in the PLAFAP Manual and detailed in the PDM and the TEM, to determine whether further detailed analysis or study is required. The results of these screenings and preliminary investigations will be summarized in the appropriate sections of the DAD.

4.05 Permits and Approvals

The **Consultant** will obtain all applicable permit(s) and certification(s), including but not necessarily limited to:

- NYSDOT Highway Work Permit
- Article 24 Freshwater Wetlands Permit
- Article 25 Tidal Wetlands Permit
- FHWA Executive Order 11990 Wetlands Finding
- U.S. Coast Guard Section 9 Permit
- U.S. Army Corps of Engineers Section 10 Permit (Individual or Nationwide)
- U.S. Army Corps of Engineers Section 404 Permit (Individual or Nationwide)
- NYSDEC Section 401 Water Quality Certification
- NYSDEC State Pollution Discharge Elimination System (SPDES) Permit
- NYSDEC Article 15 Protection of Waters Permit
- Safe Drinking Water Act Section 1424(e)
- Migratory Bird Treaty Act
- Coastal Zone Consistency
- Scenic, Wild and Recreational Rivers

Section 5 – Right-of-Way

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Section 6 - Detailed Design

6.02 Advance Detail Plans (ADP)

The **Consultant** will develop the approved design alternative to the ADP stage. At this stage all plans, specifications, estimates and other associated materials will be **90%** complete.

As part of this task the **Consultant** will prepare templated cross sections at 20 foot intervals.

Advance Detail Plans will be in accordance with Chapter 21 of the NYSDOT Highway Design Manual.[3]

The **Consultant** will prepare and submit 2 copies of the ADP's to the **Sponsor** for review. The **Consultant** will modify the design to reflect the review of the ADP package.

6.03 Contract Documents

The **Consultant** will prepare a complete package of bid-ready contract documents. The package will include:

- Instructions to bidders.
- Bid documents.
- Contract language, including applicable federal provisions and prevailing wage rates.
- Special notes.
- Specifications.
- Plans.
- A list of supplemental information available to bidders (i.e., subsurface exploration logs, record as-built plans, etc.).
- Other pertinent information.

The **Consultant** will submit the contract documents to the **Sponsor** for approval. Upon approval, the **Sponsor** will submit 3 copies of the contract bid documents to NYSDOT as described in the *PLAFAP Manual*.

6.04 Cost Estimate

The **Consultant** will develop, provide, and maintain the construction cost estimate for the project. The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes, and will develop and provide the final Engineer's Estimate, including all quantity computations.

6.08 Information Transmittal

[3] https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/Chapt_21.pdf

Upon completion of the contract documents, the **Consultant** will transmit to the **Sponsor** all project information, including electronic files. The electronic information will be in the format requested by the **Sponsor**.

Section 7 - Advertisement, Bid Opening and Award

7.01 Advertisement

The **Consultant** will prepare the advertisement for bids to be placed in the NYS Contract Reporter and any other newspaper or publication identified by the **Sponsor**. The **Consultant** will submit the ad(s) to the **Sponsor** for review and will revise the ad(s) to reflect comments generated by that review. Upon approval, the **Sponsor** will place the advertisements.

7.02 Bid Opening (Letting)

The **Sponsor** will hold the public bid opening.

7.03 Award

The **Consultant** will analyze the bid results. The analysis will include:

- Verifying the low bidder.
- Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, etc.).
- Making phone calls to low bidder references, if determined necessary.
- Breaking the low bid into fiscal shares, if necessary.
- Determining whether the low bid is unbalanced.
- For pay items bid more than 25% over the Engineer's Estimate:
  - Checking accuracy of quantity calculations.
  - Determining appropriateness of price bid for work in the item.
  - Determining whether the low bidder is qualified to perform the work.
- Providing a mathematical certification of the low bid.
- Making a recommendation to the **Sponsor** for award.

Section 8 – Construction Support

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Section 9 - Construction Inspection

9.01 Equipment

The **Consultant** will furnish field and field laboratory supplies and equipment required to properly perform the inspection services listed below.

9.02 Inspection

The **Consultant** must provide, to the satisfaction of the **Sponsor**, contract administration and construction inspection services from such time as directed to proceed until the completion of the final agreement and issuance of final payment for the contract. The **Consultant** must assume responsibility, as appropriate, for the administration of the contract including maintaining complete project records, processing payments, performing detailed inspection work and on-site field tests of all materials and items of work incorporated into the contract consistent with federal policies and the specifications and plans applicable to the project.

9.03 Municipal Project Manager

This Project Manager will be the **Municipality's** official representative on the contract and the **Consultant** must report to and be directly responsible to said Project Manager.

9.04 Ethics

Prior to the start of work, the **Consultant** will submit to the **Sponsor** a statement regarding conflicts of interest.

9.05 Health and Safety Requirements

The **Consultant** must provide all necessary health and safety related training, supervision, equipment and programs for their inspection staff assigned to the project.

9.06 Staff Qualifications and Training

The **Consultant** must provide sufficient trained personnel to adequately and competently perform the requirements of this agreement. The **Consultant** will recommend inspectors to the Sponsor for approval prior to their assignment to the project. Resumes, proof of required certification and the proposed initial salary shall be furnished. The Sponsor may want to interview before approval, and reserves the right to disapprove any application. The employment of all consultant personnel is conditional, subject to satisfactory performance, as determined by the Sponsor.

For all construction inspection agreements, it is mandatory that all technician personnel be identified by the National Institute for Certification in Engineering Technologies (NICET) certification levels in the staffing tables. In addition, all Transportation Engineering Technicians-Construction assigned to the project at and above level III, Engineering and Senior Engineering Technicians, must be certified by NICET. Transportation Engineering Technicians-Construction below level III assigned to the project must have successfully completed the General Work Element requirements and at least those Special Work Elements which apply to their specific project assignments at the level of their rating.

In lieu of the NICET certification requirements, the Sponsor may accept evidence that the person proposed for employment (1) has satisfactorily performed similar duties as a

former NYS Department of Transportation (NYSDOT) employee or (2) has a combination of education and appropriate experience commensurate with the scope of the position in question.

Technicians employed by the **consultant** that perform field inspection of Portland cement concrete shall possess a current certification from the American Concrete Institute (ACI) as a Concrete field-testing Technician-Grade 1, or have completed all of the following NICET work elements, which are equivalent to the ACI certification:

NICET LEVEL	NICET CODE	NICET WORK ELEMENT
I	82019	Sample Fresh Concrete
I	82020	Slump Test
II	84068	Air Content, Pressure
II	84069	Air Content, Gravimetric
II	84070	Air Content, Volumetric
II	84076	Field Prepared Test Specimens

Inspectors designated as the responsible person in charge of work zone traffic control must have sufficient classroom training, or a combination of classroom training and experience, to develop needed knowledge and skills. Acceptable training should consist of a formal course presented by a recognized training program which includes at least two full days of classroom training. A minimum of two days classroom training is normally required, although one day of classroom training plus responsible experience may be considered. Recognized training providers include American Traffic Safety Services Association (ATSSA), National Safety Council (NSC), Federal Highway Administration's National Highway Institute (FHWA-NHI), and accredited colleges and universities with advanced degree programs in Civil/Transportation/Traffic Engineering. Former DOT employees may be considered on the basis of at least one day of formal classroom training combined with responsible M&PT experience.

Technicians employed by the **consultant** who perform field inspection of geotechnical construction (earthwork), including, but not limited to embankment construction, subbase placement, structure and culvert backfill placement, and testing of earthwork items for in-place density and/or gradation, shall possess a current certification and/or proof of training from the following organization:

North East Transportation Technician Certification Program (NETTCP) Soils and Aggregate Inspector Certification. An alternative to the certification/training listed above would be proof of previous training (within the past 5 years) of the NYSDOT Earthwork Inspectors School, given by the Department's Geotechnical Engineering Bureau.

9.07 Scope of Services/Performance Requirements

A. Quality

The Consultant will enforce the specifications and identify in a timely manner to the **Sponsor** local conditions, methods of construction, errors on the plans or defects in the work or materials which would conflict with the quality of work, and conflict with the successful completion of the project.

B. Record Keeping & Payments to the Contractor

1) All records must be kept in accordance with the directions of the **Sponsor and must be consistent with the requirements of the NYSDOT Manual of Uniform Recordkeeping (MURK).**[4] The **Consultant** must take all measurements and collect all other pertinent information necessary to prepare daily inspection reports, monthly and final estimates, survey notes, record plans showing all changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract.

2) Any record plans, engineering data, survey notes or other data provided by the Sponsor should be returned to the Sponsor at the completion of the contract. Original tracings of record plans, maps, engineering data, the final estimate and any other engineering data produced by the Consultant will bear the endorsement of the Consultant. Any documents that require an appropriate review and approval of a Professional Engineer (P.E.) licensed and registered to practice in New York State must be signed by the P.E.

3) Unless otherwise modified by this agreement, the **Sponsor** will check, and when **acceptable**, approve all structural **shop drawings**.

4) The **Consultant** must submit the final estimate of the contract to the **Sponsor** within four (4) weeks after the date of acceptance of the contract. All **project records** must be cataloged, indexed, **packaged, and** delivered to the **Sponsor** within five (5) weeks after the date of the acceptance of the contract.

Health & Safety/Work Zone Traffic Control

1) The **Consultant** must ensure that all inspection staff assigned to the project are knowledgeable concerning the health and safety requirements of the contract per **Sponsor** policy, procedures and specifications and adhere to all standards. Individual inspectors must be instructed relative to the safety concerns for construction operations they are assigned to inspect to protect their personal safety, and to ensure they are prepared to recognize and address any contractor oversight or disregard of project safety requirements.

2) The **Consultant** is responsible for monitoring the Contractor's and Subcontractor's efforts to maintain traffic and protect the public from damage to person and property within the limits of, and for the duration of the contract.

[4] https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information

Section 10 - Estimating and Technical Assumptions

10.01 Estimating Assumptions

The following assumptions have been made for estimating purposes:

Section 1 — Estimate 12 meetings during the life of this agreement. Assume 1 hour per meeting.

Section 2 — Assume that survey will not be required.

Estimate 0 soil borings will be taken.

Estimate 0 pavement cores will be taken.

Section 4 — Assume project is a NEPA “C List” requiring the Federal Environmental Approval Worksheet

Project will be a SEQR Type II Action requiring at most a Short EAF.

Estimate 2 permits will be required.

A Section 106 (SHPO) determination package will not be required.

USFWS Section 7 and NYSDEC Heritage Program consultation will be required.

A Habitat Assessment will be required. Detailed habitat studies will not be required.

Section 5 — Estimate 0 properties will require title searches.

Estimate 0 taking maps will be required.

Estimate 0 public hearings.

Estimate 0 administrative settlements.

Estimate 0 condemnations.

Estimate 0 relocations.

Assume no need for property management.

Section 6 — Detailed Design or Final Design

Final Design will include but not be limited to:

- Development of bridge repair plans
- Maintenance and protection of traffic / detour plans during construction.

- Preparation and submission of final Plans, Specifications, and Estimate (PS&E) for the project.

Estimate 1 cost estimate(s) plus 2 updates will be required.

Estimate 0 bridges will be replaced and 1 will be rehabilitated.

Estimate 0 utility companies and 0 railroad agencies will be affected.

Assumed that the **Sponsor** will provide any pertinent contract or boiler plate language in digital format for the preparation of the bid proposal.

Section 7 Estimate 4 copies of the final contract bid documents will be needed for Sponsor and NYSDOT. The **Sponsor** shall be responsible for additional paper copies to bidders. The **Consultant** will provide CD's containing the project documents.

Section 9 Construction Inspection will include but not be limited to:

- Providing on-site construction inspection and oversight to ensure the quality of construction and conformity with the final plans and specifications.
- Preparation of as-built plans.

Estimate award will be September 1, 2024.

Estimate construction will begin on September 15, 2024 and will be completed by November 15, 2024.

HVEA will staff the project with:

1 Part time Project Manager
1 Full time Inspector

HVEA's Project Engineer will review shop drawings, structural plans, lift plans and submittals.

Attachment C

Staffing Rates, Hours, and Estimated Direct Non-Salary Costs

FEES FOR SERVICES

Tasks 1 through 7:

HVEA will perform Tasks 1 - 7 for a lump sum fee of $51,000. invoiced monthly based on percentage complete. In the event that the scope of work is increased for any reason, the lump sum fee to complete the work shall be mutually revised by written amendment.

Tasks 1 through 7 - Lump Sum Fee of $51,000.00

Task 9:

HVEA will perform Task 9 for a not to exceed fee of $54,500. We will undertake this work on an hourly plus expense basis, and you will be billed based on direct labor costs times a 2.4 multiplier. Reimbursable expenses performed by other than HVEA employees, such as subcontractors, materials purchased directly for this project, and permitting fees will be invoiced at cost. In the event that the scope of work is increased for any reason, the limiting fee to complete the work shall be mutually revised by written amendment.

The following breakout of Titles and Hours are budgeted for the hourly not-to-exceed Task 5:

- Construction Inspector: 336 hours

The budget includes construction observation while the contractor is working on-site, which is assumed to be 8 weeks.

Task 9 Construction Inspection Hourly Services - Not To Exceed $54,500.00

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND ENTER INTO AN AGREEMENT FOR FINAL DESIGN PROFESSIONAL ENGINEERING SERVICES WITH ARCADIS OF NEW YORK INC. FOR THE NORTH STREET SEWER SEPARATION PROJECT IN AN AMOUNT NOT TO EXCEED $241,000.00

WHEREAS, by Resolution No. 219-2011 of October 24, 2011 and by Resolution No. 303-2015 of November 23, 2015, the City Council of the City of Newburgh, New York approved a Consent Order with the New York State Department of Environmental Conservation to resolve violations at the Wastewater Treatment Plant and for the development of the Long Term Control Plan ("LTCP") and a Modification Order on Consent approving a Compliance Schedule for Phase I through V of the LTCP; and

WHEREAS, by Resolution No. 84-2022 of April 11, 2022, the City Council approved an agreement with Arcadis of New York, Inc. for professional engineering services to complete the planning and preliminary engineering for the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project (the "Project") included in Phase II of the LTCP Schedule of Compliance; and

WHEREAS, Arcadis has submitted a letter proposal for professional engineering services for the final design of the Project to include the preparation of bid documents and obtaining regulatory approvals; and

WHEREAS, funding for the cost of the services an amount not to exceed $241,000.00 shall be derived from an allocation of American Rescue Plan Act funds as approved by Resolution No. 85-2022 of April 11, 2022; and

WHEREAS, this Council determines that accepting the proposal and executing a contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute a professional engineering services agreement with Arcadis of New York, Inc. in an amount not to exceed $241,000.00 for final design in the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project included as part of Phase II of the Long Term Control Plan.

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

Arcadis of New York, Inc.
201 Fuller Road
Suite 201
Albany, NY 12203
United States
Phone: 518 250 7300
www.arcadis.com

Date: July 9, 2024
Our Ref: 103031308
Subject: Proposal for Engineering Design Services - North Street Sewer Separation

Dear Mr. Morris,

Arcadis of New York, Inc. (Arcadis) is pleased to provide the City of Newburgh (City) with this letter proposal for design services required to comply with the Order on Consent schedule for the City's Long Term Control Plan (LTCP). We appreciate the confidence the City has in our ability to deliver results for the improvement of critical infrastructure and regulatory compliance.

Project Understanding

To meet water quality standards and the United States Environmental Protection Agency's (USEPA) presumptive approach from the Combined Sewage Overflow (CSO) Control Policy, the City has elected to maximize combined sewer flows where wet weather flows will be screened and disinfected prior to being discharged to the Hudson River. This centralized treatment methodology is combined with strategic sewer separation and green infrastructure projects to increase the combined sewer capture rate as required by the Order on Consent. The North Street Sewer Separation Project is one of the strategic sewer separation projects in the LTCP. The Project will disconnect the separate storm sewer on Robinson Avenue between Rural Lane and North Street, which ties into the combined sewer. This area is reported to experience flooding, and the proposed separate storm sewer would remove stormwater collected along a portion of Robinson Avenue and North Street from the combined sewer. The storm sewer would tie into a an existing MS4 sewer outfall that discharges to the City owned pond adjacent to I-84.

Scope of Services

Task 1: Prepare Bid Documents

Arcadis will build upon the previous evaluation to prepare Bid Documents (inclusive of Drawings and a Project Manual) for regulatory approval and bidding purposes for North Street Sewer Separation Project. The Bid Documents will be prepared as a single prime contract in accordance with Wick's Law. Funding agency language and requirements will be incorporated into the Bid Documents. The Project Manual will be developed utilizing Arcadis' standard documents, which are based on the Engineering Joint Construction Documents Committee (EJCDC) standards. Arcadis will provide the City with review submittals at 60% and 90% design development phases for review and comment. Arcadis will update the construction cost estimate at the 60% (AACE Class 4) and 90% (ACEE Class 3) submittals. The major elements of the project include the following:

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

- Detailed design of a separate storm sewer along North Street from approximately 400 feet east of the intersection of North Street and Robinson Avenue to the intersection of North Street and Fullerton Avenue.
- Rehabilitation of approximately 1,200 linear feet of 36-inch x 58-inch elliptical MS4 outfall sewer.
- Plan for traffic maintenance and protection in accordance with New York State Department of Transportation (NYSDOT) requirements.
- Coordinate and hold up to two virtual meetings with NYSDOT to review the project as the design progresses to understand NYSDOT's requirements for increased flow entering their culvert going under I-84.
- Rerouting the storm sewer on Robinson Avenue that is currently connected to the combined sewer on North Street to the new storm sewer.
- Repaving and striping as appropriate along the areas disturbed by construction.
- Replacement of sidewalks at intersections along the route to comply with Americans with Disabilities Act (ADA) requirements in accordance with City of Newburgh design details.

Survey and a geotechnical investigation were completed during the preliminary engineering phase of the project, and it is not anticipated that further geotechnical investigation will be necessary. Arcadis has included an allowance of $25,000 for additional topographical survey and underground utility survey. Utility survey will be a Quality Level B (QL-B) survey, which includes use of electromagnetic-based locating instruments, ground penetrating radar, radar tomography, metal detectors and optical instruments to gather and record approximate horizontal and vertical positional data.

Arcadis will submit the 60% Bid Documents to owners of utilities in project area for review and comment and will conduct a follow up teleconference with each utility owner.

Arcadis will meet with City representatives at the 60%, 90% and final Bid document submission.

Task 2: Permitting and Regulatory Approval

Arcadis will submit the 100% Design Documents to New York State (NYS) Environmental Facilities Corporation (EFC), NYS Department of Environmental Conservation (DEC) and NYS DOT on behalf of the City. Upon receipt of comments from NYSEFC, NYSDEC, and NYSDOT Arcadis will finalize the Bid Documents and prepare a comment response correspondence. Only one comment response letter to NYSEFC and NYSDOT has been included in the budget.

Task 3: Bidding Assistance

Arcadis will assist the City with bidding the project. We will prepare electronic Bid Documents for City's use for electronic bidding. We will prepare a bid advertisement for the City's approval and use. We will conduct a pre-bid meeting with prospective bidders and perform a walk-through of the site and storm sewer alignment. Arcadis will respond to prospective bidders' requests for clarifications and prepare up to three addenda as required for the City's distribution. Arcadis will attend the bid opening, tabulate bids, review the three apparent lowest bids and make a recommendation of award.

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

Mr. Jason Morris, PE
City of Newburgh
July 9, 2024

Compensation

Arcadis will complete the scope of services for the North Street Sewer Separation Project presented herein for a total not to exceed fee of $241,000 to be compensated based on our standard rate schedule for hours worked plus other direct costs markup of 10 percent.

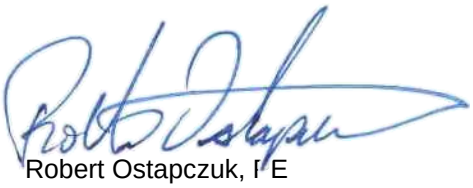
Task	Compensation
Task 1: Prepare Bid Documents	$160,000
Task 1A – Survey Allowance	$25,000
Task 2: Permitting and Regulatory Approval	$41,000
Task 3: Bidding Assistance	$15,000
Total Not to Exceed Fee:	**$241,000**

Schedule

Arcadis will complete the aforementioned scope in Task 1 on or before September 1, 2025, for submission to the NYS DEC and NYS EFC in advance of the Order on Consent required submission date of November 1, 2025.

We look forward to continuing to assist the City improve its critical wastewater infrastructure, and again, appreciate the confidence you have in our people. If you have any questions, please do not hesitate to call us at 518.250.7300 at your earliest convenience.

Sincerely,
Arcadis of New York, Inc.



Robert Ostapczuk, PE
Vice President

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

CC. M. Kosier; Arcadis
A. Brooks, Arcadis

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

This is an **Agreement** effective as of July_____, 2024 ["**Effective Date**"] City of Newburgh ["**Client**"], a municipal corporation chartered under the laws of the State of New York, having its principal place of business at 83 Broadway, Newburgh, New York 12550, and Arcadis of New York, Inc., ["**Arcadis'**] a corporation chartered under the laws of the State of New York, having its principal place of business at 110 West Fayette Street, Suite 300, Syracuse, New York 13202 and an office at 201 Fuller Road, Suite 201, Albany, NY 12203.

The Client intends to design and construct a separate storm sewer on North Street between Robinson and Fullerton Avenue in compliance with the Client's Long Term Control Plan. ["**Project**"].

Client engages Arcadis to provide professional engineering services related to the design and construction administration in support of its Project [**Services**].

The location of the Project is North Street, Newburgh [**Site**], New York [**State**].

Arcadis' Services for the Project are described generally as follows:

Provide engineering design and bidding services for the City of Newburgh North Street Sewer Separation Project.

In consideration of the mutual promises herein, Client and Arcadis agree that the terms and conditions of this Agreement are the following:

1 BASIC SERVICES

1.1 Scope. Arcadis shall provide the **Basic Services** described in Schedule A. Arcadis' obligations under this Agreement are solely for the benefit of Client and no other party is intended to benefit or have rights hereunder. Arcadis intends to perform the scope of services/work contemplated herein and in the contract documents through a combination of its own employees and employees of its affiliates, and the use of such affiliate labor shall not be deemed a subcontract for purposes of this Agreement.

1.2 Standard of Care. Arcadis shall perform the professional engineering Services under this Agreement at the level customary for competent and prudent engineers performing such services at the time and place where the services are provided [**Standard of Care**]. These Services will be provided by licensed engineers and other professionals and individuals skilled in other technical disciplines, as appropriate.

1.3 Instruments of Service. Arcadis is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its services including designs, drawings, specifications, reports [**Service Instruments**] and other services provided under this Agreement.

1.4 Applicable Codes. The Service Instruments will conform to the generally accepted codes and regulations applicable to the Project at the time of performance.

1.5 Indemnification. Arcadis agrees to indemnify and hold Client harmless from all losses and damages resulting from Arcadis' failure to meet the Standard of Care.

1.6 Contract Documents. The Service Instruments shall incorporate Arcadis' standard construction documents **[Contract Documents**]. In any event, Arcadis shall be an additional insured on all liability and property damage insurance policies which the construction contractor(s) for the Project [**Contractor**] shall be required to provide. All contracts between Client and Contractor for the Project shall require the Contractor to indemnify and hold Client and Arcadis harmless from any and all legal actions and liabilities arising out of the construction of the Project including, but not limited to, injury to or death of any person or injury or destruction of tangible property, not caused by the sole negligence of the party to be indemnified.

1.7 Subcontractors. Any subcontractors and outside associates or consultants to be engaged by Arcadis under this Agreement are limited to those identified in Schedules A and B, or as Client specifically approves during the performance of this Agreement.

1.8 Hazardous Wastes. Client represents that the Project does not contemplate the performance of services, professional or otherwise, related to hazardous or toxic wastes, material, or substances and other pollutants. Arcadis shall not be responsible for and, to the fullest extent permitted by law, shall be held harmless from all costs and other liabilities arising from the presence in

or about the Project of hazardous or toxic wastes, material or substances and other pollutants, whether or not designated as such by law or regulation.

1.9 Construction Phase Services. Arcadis shall provide construction phase Services in accordance with Schedule A and act as Client's representative at the Site in accordance with the General Conditions of the Contract Documents as modified by Schedule D.

1.9.1 In the event the construction phase services are provided by another party, Arcadis shall not be responsible for and Client shall indemnify and hold Arcadis and Arcadis' consultants harmless from all claims, damages, losses and expenses, including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution, acceptance, shop drawing or sample approval or modifications of such documentation issued or carried out by Client or others or construction observation carried out by others. Nothing contained in this paragraph shall be construed to release Arcadis or Arcadis' consultants from liability for failure to perform in accordance with professional standards any duty or responsibility which Arcadis has undertaken or assumed under this Agreement.

2 ADDITIONAL SERVICES

2.1 Scope. Arcadis will provide the **Additional Services** described in Schedule B when authorized in writing by Client.

2.2 Excluded Services. Client acknowledges the Services provided by Arcadis hereunder do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services; (4) nor any form of professional accounting or insurance advisory services.

3 CLIENT'S RESPONSIBILITIES

Unless stated otherwise in Section 8, Client shall do the following in a timely manner:

3.1 Client's Representative. Designate a representative having authority to give instructions, receive information, define Client's policies, and make decisions with respect to the Project.

3.2 Project Criteria. Provide all criteria and information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, and any budgetary limitations. Furnish copies of all design and construction standards which Client will require to be included in the Service Instruments.

3.3 Data. Provide all available information, including previous reports and any other data in the possession of Client relevant to design or construction of the Project. These data may include (1) data prepared by others, including borings, subsurface explorations, hydrographic surveys, and laboratory tests and inspections of samples, materials and equipment, (2) appropriate professional interpretations of such data, (3) environmental assessments and impact statements, (4) property, boundary, easement, right-of-way, topographic and utility surveys, (5) property descriptions, zoning, deed and other land use restrictions, and (6) other necessary special data or consultations. Arcadis may rely on the accuracy and completeness of the supplied data.

3.4 Surveys. Provide engineering surveys to define construction reference points to enable Contractor to lay out Project construction.

3.5 Access. Arrange for Arcadis to enter upon public and private property as necessary.

3.6 Review. Examine the Service Instruments and obtain the advice of attorneys, insurance counselors or other consultants as Client thinks appropriate. Render written decisions concerning the Service Instruments within a reasonable time. Client expressly acknowledges and agrees that the Services provided do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services, nor any form of insurance advisory services.

3.7 Permits. Furnish approvals and permits from governmental authorities and other entities having jurisdiction over the Project and approvals from others as may be necessary for the timely completion of the Project.

3.8 Expert Advice. Provide legal, accounting, insurance or other necessary advisory services for the Project including any documents submitted by Arcadis. Client expressly acknowledges and agrees that the Services provided do not and shall not include the practice of law or other legal services, nor any form of professional accounting or insurance advisory services.

3.9 Site Representative. If Client designates a person other than Arcadis to represent Client at the Site, specify the duties, responsibilities and limitations of authority of such other person and the effect on Arcadis' duties and responsibilities in a schedule attached to this Agreement.

3.10 Ancillary Costs. If the Construction Cost includes the cost of the activities described in 3.7 through 3.10, provide an estimate of such costs to Arcadis for Project cost estimating purposes.

3.11 Meetings. Attend the pre-bid conference, bid opening, pre-construction conference, construction progress and other job related meetings, and Substantial Completion and Final Payment inspections.

3.12 Project Developments. Give prompt written notice to Arcadis whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Arcadis' services, or any defect or non-conformance in the work of any Contractor.

4 PERIODS OF SERVICE

4.1 Time of Performance. Sections 4 and 5 anticipate the orderly and continuous progress of the Services through completion of construction. The time of performance is the period reasonably expected to be required for the design, award of contracts, construction and initial operation of the Project, including any necessary Client or regulatory agency review and approval.

4.2 Delays. If Schedule A specifies periods of time for performance of Services or specific dates by which services are to be completed and if such periods or dates are exceeded through no fault of Arcadis, the compensation specified under Section 5 shall be subject to equitable adjustment.

4.3 Start of Performance. Arcadis will start the Basic Services upon authorization by Client. Unless otherwise stated in this Agreement, signing of this Agreement by both Client and Arcadis will constitute such authorization. If Client elects to authorize Arcadis to proceed before signing this Agreement, Arcadis shall be paid as if the Services had been performed after both parties signed the Agreement.

4.4 Completion of Performance. For the purposes of final payment under Section 5, completion of Arcadis' Services will occur:

4.4.1 for a study, investigation or planning activity: upon delivery of the final report as specified in Schedule A or B, as appropriate;

4.4.2 for a design activity: when the Bid Set of Contract Documents is delivered as specified in Schedule A;

4.4.3 for a bidding or construction contract negotiation activity: upon issuance by Client of notice of award of the construction contract;

4.4.4 for a construction activity: when written recommendation of final payment for the last prime construction contract of the Project is issued; and

4.4.5 for a startup or operations activity: upon the earlier of successful completion of acceptance testing by the Contractor or beneficial occupancy by Client but, in any event, not later than one year after Substantial Completion.

4.5 Force Majeure. If a force, event, or circumstance beyond Arcadis' control interrupts or delays Arcadis' performance, the time of performance of the Basic or Additional Services shall be equitably adjusted.

5 COMPENSATION

5.1 Basic Services. Client shall pay Arcadis the Amount stated in invoices issued in accordance with Schedule C **[Pricing Schedule]** for work performed and Reimbursable Expenses incurred during the period covered by the invoice. Arcadis shall be entitled to invoice for any affiliate labor in the same manner as it invoices its own employees. Invoices are due and payable within 30 days after receipt by Client. Client's payments shall be in the form and shall be sent to the Arcadis address as described in the invoices.

5.2 Additional Services. Client shall pay Arcadis for Additional Services performed pursuant to Client's authorization and invoiced in accordance with the Pricing Schedule.

5.3 Litigation Services. If Client requires Arcadis' services either as a witness in, or in support of, litigation or other dispute resolution procedures between Client and a third party, Arcadis will provide such services in accordance with a Pricing Schedule for litigation services. In addition Client will promptly reimburse Arcadis for its reasonable fees and expenses (including without limitation attorney's fees and other legal costs incurred by Arcadis in response to a subpoena, or request for the production of documents, for any appearance at a deposition, trial or other legal proceeding) – provided Arcadis is not a named party to such legal proceeding.

5.4 Delay or Termination.

5.4.1 If Client delays the performance of, or payment for, services under this Agreement for more than 3 months for a reason(s) other than Arcadis' fault, Arcadis may suspend performance until it receives payment in full for services rendered and expenses incurred to the date of suspension.

5.4.2 If Client terminates this Agreement prior to completion of the Basic Services, Arcadis shall be paid in full for services rendered and expenses incurred to the date of termination, including reasonable demobilization and termination expenses.

5.5 Disputed Amounts. Notwithstanding the provisions of Section 7, if Client disputes an item(s) or amount(s) contained in an invoice, Client agrees to pay the balance of the undisputed invoiced amounts to Arcadis in accordance with Schedule C.

5.6 Collection. Any reasonable attorney's fees or other reasonable costs incurred by Arcadis in collection of delinquent amounts shall be paid by Client.

6 OPINIONS OF CONSTRUCTION COST

6.1 Construction Cost. The cost of constructing the Project [**Construction Cost**] means the total cost to Client of those portions of the Project designed and specified in the Service Instruments. Construction Cost will not include Arcadis' compensation and expenses, the cost of land, rights of way, or compensation for properties unless specified in Schedule A. Construction Cost will also not include Client's legal, accounting, or insurance counseling services, or interest and financing charges incurred in connection with the Project, or the cost of services to be provided by others under paragraphs 3.6 and 3.8 unless otherwise specified in Schedule A.

6.2 Opinions of Cost. Arcadis has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Arcadis' opinion of probable Construction Cost is made on the basis of Arcadis' experience and qualifications and represents Arcadis' judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Arcadis does not guarantee that proposals, bids or actual Project cost will not vary from Arcadis' opinions of probable Construction Cost.

7 GENERAL CONSIDERATIONS

7.1 Changes. By written notice at any time, Client may change the Basic Services, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the Agreement shall be made in writing prior to Arcadis' performing the changed services.

7.2 Confidentiality. Arcadis will hold secret and confidential all information designated by Client as confidential [**Confidential Information**]. Arcadis will not reveal Confidential Information to a third party unless:

7.2.1 Client consents in writing;
7.2.2 the information is or becomes part of the public domain;
7.2.3 Arcadis lawfully possessed the information before receipt from Client;
7.2.4 applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or
7.2.5 failure to disclose the information would pose an imminent and substantial threat to human health or the environment.

7.3 Professional Service. The Service Instruments furnished under this Agreement are the tangible results of Arcadis' Services for the Project and Arcadis shall have the right to use or reuse and retain the copyright of such Service Instruments for its purposes, at its sole risk and without liability to Client. Client may retain copies in connection with the use or occupancy of the Project.

7.3.1 **Reuse**. Arcadis does not represent the Service Instruments to be suitable for reuse by Client or others for extensions of the Project or on any other project. Any reuse without written verification or adaptation by Arcadis for the specific purpose intended is at Client's sole risk, without liability to Arcadis. Any such verification or adaptation will entitle Arcadis to compensation at rates to be agreed on by Client and Arcadis.

7.3.2 **CADD**. Arcadis may provide information related to the Service Instruments in computer-assisted design and drafting format [**CADD**] to Client. CADD is derived in part from computer software for which Arcadis is licensed. These licenses are not transferable. Any unlicensed reuse of CADD may subject the user to liabilities to the software licensor.

7.3.3 **Electronic Media**. Either party to this Agreement may rely on the data or information set forth on paper (also known as "hard copies") that the party receives from the sending party by mail, hand delivery, or facsimile as items the sending party intended to send. Data or information sent in electronic media format by one party to the other party are furnished only for the convenience of the receiving party and shall not be relied upon by the receiving party. If there is a discrepancy between the data received in electronic media format and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from the data in electronic media format shall be at the user's sole risk. When transferring documents in electronic

media format, the sending party makes no representations as to the long term compatibility, usability, or readability of such documents resulting from the use of software, application packages, operating systems or computer hardware differing from those used by the document's creator.

7.4 Insurance. Arcadis will maintain **insurance** against the following risks during the term of the Agreement:

7.4.1 workers compensation in statutory amounts and employer's liability for Arcadis' employees' Project-related injuries or disease;

7.4.2 general liability and automobile liability each in the amount of $1,000,000 for personal injury or property damage to third parties which arises from Arcadis' performance under this Agreement; and

7.4.3 professional liability in the amount of $1,000,000 for legal obligations arising out of Arcadis' failure to meet the Standard of Care.

7.5 Interpretation. This Agreement shall be interpreted in accordance with the laws of the State.

7.6 Successors. This Agreement is binding on the successors and assigns of Client and Arcadis. The Agreement may not be assigned in whole or in part to any third parties without the written consent of both Client and Arcadis.

7.7 Independent Contractor. Arcadis represents that it is an independent contractor and is not an employee of Client.

7.8 Disputes. If any dispute arises out of or relates to this Agreement, or the breach thereof, then in the first instance, representatives of both parties shall endeavor in good faith to negotiate a settlement of the dispute. If such dispute cannot be settled through direct discussions by such representatives of the parties, then higher level representatives of both parties shall endeavor in good faith to negotiate a settlement of such dispute. If such dispute cannot be settled through direct discussion by such higher level representatives of the parties, then the parties agree to submit the matter to mediation before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.

7.9 Notices. Written notices may be delivered in person or by certified mail, by facsimile, or by courier. All notices shall be effective upon the date of receipt by the party. Notices shall be delivered or sent to the designated representative of the other party at the address given on the last page of this Agreement. An address may only be changed by written notice.

7.10 Applicable Law. Arcadis and Client shall comply with all applicable federal, state and local laws, regulations or orders issued under such laws prohibiting any form of kickback, bribery or corrupt practices as defined in the Anti-Kickback Act of 1986, the Foreign Corrupt Practices Act and all other applicable federal, state, local laws, regulations or orders issued under such laws regarding kickbacks, bribery or corrupt practices. If applicable to this Agreement, Arcadis will comply with the requirements of:

7.10.1 the Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended,
7.10.2 Utilization of Small and Disadvantaged Business Concerns (Public Law 95-507), and
7.10.3 all other federal, state and local laws and regulations or orders issued under such laws.

7.11 Entire Agreement. This Agreement, including any schedules, attachments and referenced documents, is the entire agreement between Client and Arcadis. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by Client and Arcadis.

7.12 Waivers and Severability. A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

7.13 Effective Date. Unless stated otherwise in Schedule A, this Agreement is effective on the date shown on the cover page.

8 SECTION 8 -- SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

8.1 Special Provisions. This Agreement is subject to the following special provisions:

8.1.1 None

8.2 Schedules. The following **Schedules** are attached to and made a part of this Agreement:

8.2.1 **Schedule A** "Scope of Basic Engineering Services and Related Matters"

8.2.2 **Schedule B** "Additional or Optional Engineering Services"

8.2.3 **Schedule C** "Pricing Schedule"

Execution Authority. This Agreement is a valid and authorized undertaking of Client and Arcadis. The representatives of Client and Arcadis who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

City of Newburgh

By _____
Todd Venning *Per Res. _____-2024

Title _____

Witness _____

Date Signed:_____

Arcadis of New York, Inc

By _____

Title Vice President

Witness _____

Date Signed: 07/09/2024

Address for Giving Notices:

City of Newburgh
83 Broadway
Newburgh, New York 12550
Attn: Mayor's Office

Address for Giving Notices:

201 Fuller Road
Suite 201
Albany, New York 12203
Attn: Robert Ostapczuk, PE

Schedule A
Scope of Basic Engineering Services and Related Matters

Task 1 – Prepare Bid Documents

Arcadis will prepare Bid Documents (inclusive of Drawings and a Project Manual) for regulatory approval and bidding purposes for North Street Sewer Separation Project. The Bid Documents will be prepared as a single prime contract in accordance with Wick's Law. Funding agency language and requirements will be incorporated into the Bid Documents. The Project Manual will be developed utilizing Arcadis' standard documents, which are based on the Engineering Joint Construction Documents Committee (EJCDC) standards. Arcadis will provide Client with review submittals at 60% and 90% design development phases for review and comment. Arcadis will update the construction cost estimate at the 60% (AACE Class 4) and 90% (ACEE Class 3) submittals. The major elements of the project include the following:

- Detailed design of a separate storm sewer along North Street from approximately 400 feet east of the intersection of North Street and Robinson Avenue to the intersection of North Street and Fullerton Avenue.
- Rehabilitation of approximately 1,200 linear feet of 36-inch x 58-inch elliptical MS4 outfall sewer.
- Plan for traffic maintenance and protection in accordance with New York State Department of Transportation (NYS DOT) requirements.
- Coordinate and hold up to two virtual meetings with NYS DOT to review the project as the design progresses to understand NYSDOT's requirements for increased flow entering their culvert going under I-84.
- Rerouting the storm sewer on Robinson Avenue that is currently connected to the combined sewer on North Street to the new storm sewer.
- Repaving and striping as appropriate along the areas disturbed by construction.
- Replacement of sidewalks at intersections along the route to comply with Americans with Disabilities Act (ADA) requirements in accordance with City of Newburgh design details.

Survey and a geotechnical investigation were completed during the preliminary engineering phase of the project, and it is not anticipated that further geotechnical investigation will be necessary. Arcadis has included an allowance of $25,000 for additional topographical survey and underground utility survey to be authorized by Client in writing prior to obtaining additional field data. Utility survey will be a Quality Level B (QL-B) survey, which includes use of electromagnetic-based locating instruments, ground penetrating radar, radar tomography, metal detectors and optical instruments to gather and record approximate horizontal and vertical positional data.

Arcadis will submit the 60% Bid Documents to owners of utilities in project area for review and comment and will conduct a follow up teleconference with each utility owner.

Arcadis will meet with representatives of Client at the 60%, 90% and final Bid document submission.

Task 2 – Permitting and Regulatory Approval

Arcadis will submit the 100% Design Documents to New York State Environmental Facilities Corporation (NYS EFC), New York State Department of Environmental Conservation (NYS DEC) and NYS DOT on behalf of Client. Upon receipt of comments from NYS EFC, NYS DEC, and NYS DOT Arcadis will finalize the Bid Documents and prepare a comment response correspondence. Arcadis will prepare one comment response letter each to NYS EFC and NYS DOT.

Task 3 – Bidding Assistance

Arcadis will assist Client with bidding the project. Arcadis will prepare electronic Bid Documents for Client's use for electronic bidding. Arcadis will prepare a bid advertisement for Client's approval and use. Arcadis will conduct a pre-bid meeting with prospective bidders and perform a walk-through of the site and storm sewer alignment. Arcadis will respond to prospective bidders' requests for clarifications and prepare up to three addenda as required for Client's distribution. Arcadis will attend the bid opening, tabulate bids, review the three apparent lowest bids and make a recommendation of award.

Schedule

Arcadis will complete the work associated with Task 1 on or before September 1, 2025 for submission to NYSDEC and NYSEFC in advance of the required Order on Consent submission date of November 1, 2025.

Schedule B

Additional or Optional Engineering Services

B.1 The Scope of Additional Services consists this of page plus the following documents, attached and made part of this Agreement:

a. None at this time. In the event that Additional or Optional Engineering Services are identified and required under this Agreement at a later time, Client will provide Arcadis written authorization to perform such Services.

Schedule C
Pricing Schedule

C.1 The Pricing Schedule consists of this page plus the following documents, attached and made part of this Agreement:

C.2 **Terms of Payment**

C.2.1 **Fixed Rates.** For Basic Services under Section 1, Client shall pay Arcadis on the basis of standard hourly rates for technical work actually performed.

The estimated cost of the Consultant's services under Section 1 is $241,000.

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

Rate Schedule	
Grade 1 – Technician/Administrator I	$65
Grade 2 – Technician/Administrator II	$80
Grade 3 – Technician/Administrator III	$95
Grade 4 – Technician/Administrator IV	$100
Grade 5 – Professional	$125
Grade 6 – Professional II	$135
Grade 7 – Staff Professional	$150
Grade 8 – Project Professional	$165
Grade 9 – Senior Professional	$190
Grade 10 – Principal	$220
Grade 11 – Associate VP or VP	$255
Grade 12 – VP or Senior VP	$285

All rates presented apply to services rendered during calendar year 2024, for this project, and are subject to adjustment on January 1 of each subsequent year.

In addition to these fees, clients will also be responsible for any sales or value-added taxes that may apply to engineering services performed.

C.3 **Reimbursable Expenses.** Except for certain in-house services, project expenses incurred with subcontractors and outside vendors will be invoiced at cost plus 10% to cover handling. These project expenses may include, but are not limited to: shipping charges; printing; supplies; equipment; traveling expenses; special insurance; licenses; permits; and subcontracted services.

In-house services not subject to handling costs are:

Transportation:	Current IRS mileage reimbursement
Specialty Equipment:	In accordance with a usage rate schedule

C.4 **Invoices.** Arcadis will submit invoices to Client for each month during which services were performed. Invoices may include carrying charges at 1.5% per month for delinquent payments outstanding over 30 days and applicable sales or value-added taxes.

RESOLUTION NO.: 84 - 2022

OF

APRIL 11, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND ENTER INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH ARCADIS OF NEW YORK INC. FOR PHASE II OF THE COMBINED SEWER OVERFLOW LONG TERM CONTROL PLAN FOR THE NORTH STREET SEWER SEPARATION BETWEEN FULLERTON AVENUE AND ROBINSON AVENUE PROJECT IN AN AMOUNT NOT TO EXCEED $170,000.00

WHEREAS, by Resolution No. 219-2011 of October 24, 2011, the City Council of the City of Newburgh, New York authorized the City Manager to execute a Consent Order with the New York State Department of Environmental Conservation to resolve violations at the Wastewater Treatment Plant and for the development of the Long Term Control Plan ("LTCP"); and

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

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for professional engineering services to complete the planning and preliminary engineering for the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project (the "Project") included in Phase II of the LTCP Schedule of Compliance; and

WHEREAS, the scope of services will include field surveys, hydrologic and hydraulic evaluation, and preparation of an engineering report and a full environmental assessment form; and

WHEREAS, funding for the cost of the services an amount not to exceed $170,000.00 shall be derived from an allocation of American Rescue Plan Act funds; and

WHEREAS, this Council determines that accepting the proposal and executing a contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute a professional engineering services agreement with Arcadis of New York, Inc. in an amount not to exceed $170,000.00 to complete the planning and preliminary engineering for the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project included as part of Phase II of the Long Term Control Plan for the City's Combined Sewer Collection System.

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 Apr. 11, 2022 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 12th day of Apr. 2022

Deputy City Clerk

RESOLUTION NO.: 85 - 2022

OF

APRIL 11, 2022

A RESOLUTION AUTHORIZING AND ALLOCATING $500,000.00 OF AMERICAN RESCUE PLAN ACT OF 2021 FUNDING TO THE NORTH STREET SEWER SEPARATION BETWEEN FULLERTON AVENUE AND ROBINSON AVENUE PROJECT AS PART OF THE CITY OF NEWBURGH LONG TERM CONTROL PLAN

WHEREAS, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act of 2021 (ARPA) which includes Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds), providing federal payments to all state, local, tribal, and territorial governments in the United States that recipients may use, among other approved uses, to make necessary investments in water and sewer infrastructure; and

WHEREAS, the City of Newburgh proposes to allocate $500,000.00 of ARPA funds received to planning, final design and construction phases of the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project as part of the City of Newburgh Long Term Control Plan; and

WHEREAS, the City Council finds that authorizing and allocating $500,000.00 of ARPA funds to support the completion of the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project as part of the City's Long Term Control Plan is in the best interests of the health, safety and welfare of the residents of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to allocate $500,000.00 of American Rescue Plan Act of 2021 funds to the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project as part of the City of Newburgh Long Term Control Plan; and that the City Manager is authorized to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary administer the North Street Sewer Separation between Fullerton Avenue and Robinson Avenue Project funded thereby.

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 Apr. 11, 2022 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 12th day of Apr. 2022

Deputy City Clerk

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND ENTER INTO AN AGREEMENT FOR CONSTRUCTION PHASE PROFESSIONAL ENGINEERING SERVICES WITH ARCADIS OF NEW YORK INC. FOR THE FLOATABLES CONTROL AND DISINFECTION FACILITY PROJECT AS PART OF THE LONG TERM CONTROL PLAN IN THE AMOUNT OF $4,832,000.00

WHEREAS, by Resolution No. 219-2011 of October 24, 2011 and Resolution No. 303-2015 of November 23, 2015, the City Council approved an Order on Consent with the New York State Department of Environmental Conservation to resolve violations at the Wastewater Treatment Plant and for the development of the CSO Long Term Control Plan ("LTCP") and a Modification Order on Consent approving a Schedule of Compliance for LTCP Phase I through V; and

WHEREAS, by Resolution No. 189-2019 of August 12, 2019, the City Council approved an agreement with Arcadis of New York, Inc. ("Arcadis") for professional services to complete the planning and preliminary engineering for the LTCP Phase II, III, and IV projects including a basis of design report for the Floatables Control and Disinfection Facility Project (the "Project"); and

WHEREAS, by Resolution No. 269-2021 of November 22, 2021, the City Council approved an agreement with Arcadis for professional engineering services to complete the design and preparation of bid documents for the Project; and

WHEREAS, Arcadis has submitted a letter proposal for professional engineering services for the construction phase of the Project; and

WHEREAS, the funding for the cost of said services in the amount of $4,832,000.00 shall be derived from grants and financing through the New York State Environmental Facilities Corporation Project No. C3-7332-11-03; and

WHEREAS, this Council determines that accepting the proposal and executing a contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute an agreement with Arcadis of New York, Inc. for construction phase professional engineering services in the Floatables Control and Disinfection Facility Project in an amount not to exceed $4,832,000.00; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the Environmental Facilities Corporation Certification for Architectural/Engineering Services Procurement for Federally Funded Projects under project CWSRF#C3-7332-11-03.

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

Arcadis of New York, Inc.
201 Fuller Road
Suite 201
Albany, NY 12203
United States
Phone: 518 250 7300
www.arcadis.com

Date: July 9, 2024
Our Ref: 103031304
Subject: Proposal for Construction Phase Engineering Services – Combined Sewer Overflow Facility

Dear Mr. Morris,

Arcadis of New York, Inc. is pleased to present the City of Newburgh with this proposal for construction phase engineering services for the City's important Combined Sewer Overflow Facility (Facility) Project. For this size of a Project, we plan to have a full-time resident engineer to work on site in a field office provided by the Contractor. We have included various Disadvantaged Business Enterprises (DBE) subconsultant to provide good faith effort to meet funding requirements.

Scope of Services

Task 1 – Construction Administration

Arcadis will perform construction contract administration services based on a multi-prime construction contract (a total of four construction contracts) with an expected duration of 24 months. Arcadis will provide in-house project management to direct and coordinate services to be provided by Arcadis, such as scheduling site visits, quality reviews of deliverables, communications with City staff, budget management and invoicing.

Arcadis will schedule and attend, in conjunction with the City, the pre-construction conference to discuss general and specific requirements of the Contract Documents. Prior to the conference, Arcadis will develop an agenda and, after the conference, create and distribute minutes to attendees.

Arcadis will review the Contractors' pre-construction submittals including, but not limited to, lists of subcontractors, suppliers and vendors, preliminary construction schedule, schedules of values, and submittal logs. Arcadis will attend up to two scheduling workshops with the Prime Contractors to assist in developing an acceptable preliminary or baseline construction schedule.

Throughout construction Arcadis will review the Contractors' submittals, including shop drawings, material and equipment samples, and vendor O&M manuals to determine whether such submittals are in accordance with the Contract Documents. Arcadis will indicate what changes, if any, are necessary for each submittal and review up to two re-submittals, as part of this scope of work. If additional reviews are required to have the submittal(s) be in conformance with the Contract Documents the City per the Contract Documents can back charge the Contractor to cover the additional review time of for the submittal(s). Arcadis will maintain a submittal log describing the current status of Contractor's submittals, as well as maintain records of vendors warranties, and one complete set of approved submittals will be turned over to the City at construction completion.

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

Arcadis will review the construction progress schedule that combines prime contractors' schedule and provide comments to the Contractors and the City. Arcadis will review and make recommendations to the City for the approval of payment requests. Recommendations for payment will be based on the Contractors' progress to date, and submittal and equipment procurement status. Arcadis has included the review of a total of 24 applications for payment for each Prime Contractor.

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

Task 2 – Resident Engineer

A Resident Engineer will be on-site, full-time, throughout an estimated 24-month of full-time active construction (a total of 4,800 hours has been included for 24 months). Tasks will include the following:

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

Task 3 – Construction Observation

Arcadis will provide full time inspection services on behalf of the City to assist the Resident Engineer. Arcadis will partner with a DBE firm to provide up to two full-time inspectors for up to 7,200 hours of construction observation by a construction field representative. It is assumed that one inspector would be full-time for 24-months the second would be full-time for 12-months. While inspecting the Work on site, the construction field representative will:

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

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 4 – Special Inspections

Arcadis will develop the recommended standards and policies, as the City's representative, to require special inspection or testing of the Work; and shall review all certificates of inspections, testing and approvals required by law or the Contract Documents to determine that both the content of the certificates and the certified inspection or test results comply substantially with such requirements. Testing required to complete special inspections will be specified by Arcadis. As part of this task, the Arcadis will act as the Coordinating Special Inspector and will subcontract with an appropriate testing agency(ies) and will provide the City with recommendations for coordinating the inspections, as defined in the technical specifications in Section 01 45 33.00 Code-required Special Inspections.

Arcadis will perform site visits to inspect work as designated in the Statement of Special Inspections. Discrepancies will be brought to the attention of the City, and Contractor. Specific work items to be inspected as part of this task will include the following:

- Reinforcing steel and water stops (in advance of concrete pours)
- Cast-in-place concrete.
- Precast concrete
- Masonry construction
- Anchor systems.
- Miscellaneous metals and fiber reinforced plastic
- Anchorage of mechanical and electrical support systems
- Waterproofing

Professional services to be performed under this task will include, but will not be limited to, the following:

- Assist with the coordination of the services of the Testing/Inspecting Agencies, and verify that inspections have been performed, reports have been distributed, and discrepancies have been recorded and resolved.
- Review reports from Testing/Inspecting Agencies to determine if the Testing/Inspecting Agencies have verified conformance of the reported item of work with the Contract Documents; and initiate appropriate action in response to those reports if required.
- Keep records of inspections related to the Statement of Special Inspections.
- Review inspection and material testing reports to verify Agents are recording, tracking, and distributing discrepancies to the City, Contractor, and Code Enforcement Official (if applicable).
- Certificates of Compliance will be reviewed for conformance with the standards specified in the Contract Documents. Discrepancies will be brought to the attention of the City, and Contractor.
- Track discrepancies and their resolutions.
- Prepare a report following each site visit and distribute to the Client, Contractor, Code Enforcement Official (if applicable).
- Prepare a stamped Final Report of Special Inspections for the Project record and for submittal to the Code Enforcement Official at the completion of the Project. The Final Report of Special Inspections will include any unresolved discrepancies as required by the New York State Uniform Code (NYSUC). Interim reports from all Agents will not be included unless specifically requested by the Owner or Code Enforcement Official.

Arcadis has included an allowance for subcontracted testing agencies as part of this task in the amount of $330,000.

Task 5 – Field Resolutions

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

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

Task 6 – Progress Meetings

Attend up to 48 bi-weekly progress meetings with the City, Inframark, the Prime Contractors, and other stakeholders. Arcadis will develop agendas and create and distribute minutes for each progress meetings. Meetings will include a discussion of the work completed in the prior two weeks, the progress anticipated for the upcoming two weeks, the status of RFI's, change orders, and shop drawings. Progress meetings will be attended in person by our Resident Engineer and virtually by our Project Manager and Project Engineer.

Task 7 – Site Visits

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

Task 8 – SCADA Integration Services

Arcadis will provide configuration and programming services for the Facility. This approach has been gaining popularity with utilities working side by side with their engineering consultants to capture and graphically represent the facilities best for their staff. The following services will be provided under this task:

- Biweekly coordination meetings with City and Inframark for up to 12 months.
- Development of graphic mockups for operator interface terminals (OITs).
- Conduct a workshop with City and Inframark staff to review the layout, functionality, and intuitive nature of each screen. Based on the comments developed during the workshop, Arcadis will modify the graphics as appropriate.
- Configuration and programming of the local PLCs (PLCs provided by a vendor as specified by the Bid Documents are not included).
- Development of procedures to conduct factory testing of the SCADA hardware and software for non-vendor supplied PLCs.
- Coordination with vendors supplying PLC based controls to develop databases for monitoring pertinent information in the Facility PLC.
- Coordination and development of the network hardware configuration.
- Performance of quality checks and internal testing of the local SCADA system, in accordance with the Standard of Practice. Prior to conducting the quality checks and internal testing, Arcadis will conduct a workshop with the City and Inframark to discuss the testing program and solicit buy in.
- Performance of loop testing and verification with the PCSS and the vendors supplying PLCs on site.

Arcadis will provide up to two weeks on site (200 hours) for the commissioning and startup of the Facility by two control engineers. Three months (or as agreed upon) after commissioning, Arcadis will provide an additional two weeks (80 hours) on site for tuning and refinement of the integration services and programming.

Task 9 – Grant Administration and Coordination

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

Arcadis recognizes that the Project will be financed through the New York State Clean Water State Revolving Fund (CWSRF), as administered by New York State Environmental Facilities Corporation (NYSEFC). In addition, the City has secured WIIA and BIL grants which are also administered by NYSEFC. Arcadis will assist the City to administer the grants and financing. This includes reviewing the Contractors' utilization plans for submission to NYSEFC and will work with the Contractors in getting NYSEFC approval and acceptance of their utilization plans or waiver requests. Arcadis will prepare quarterly utilization and EEO reports to be sent to NYSEFC as required for CWSRF funding. Arcadis will also assist the City in collecting, reviewing, and maintaining necessary documents required by NYSEFC such as American Iron and Steel (AIS), Buy American Build American (BABA), Contractor's subcontract agreements, etc. Document reviews will be limited to determining that their content complies with the requirements of the Contract Documents. Arcadis will transmit the documents to the City with written comments or opinions, as appropriate.

Task 10 – Construction Closeout

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

Task 11 – Startup and Commissioning

Arcadis will work with the City and Inframark regarding the anticipated operations of the Facility. Specifically included will be the review and modification of any control systems associated with the screening and disinfection process, building controls, and the security system. Any modifications deemed necessary by the City will be evaluated, coordinated, and modified to the satisfaction of the City prior to start-up of the Facility. Furthermore, as provided for under Task 8, Arcadis will assist equipment vendors with operational decision logic and programming along with the start-up and commissioning of the facilities, as necessary.

Task 12 – LTCP and SPDES Permit Requirement Support Services

Task 12.1 - Operations and Maintenance (O&M) Manual:

Arcadis will assemble and develop complete operational and maintenance materials for the Project. These materials will be provided to the City and Inframark, as appropriate, in a searchable digital format (with up to two (2) additional hard copies provided should they be requested). Under the City's SPDES Discharge Permit, the City will be required to operate, maintain, and inspect critical elements of the improvements.

The O&M Manual will describe typical operations and controls for the facilities, as well as routine cleaning and maintenance activities to maintain optimum performance of the systems. The O&M Manual will also document the storage and handling requirements for any chemicals to be used and stored on site, including chemical delivery procedures. Prior to start-up of the Facility, the City is required to submit water treatment chemical (WTC) notification forms.

Task 12.2 - Chlorine Dose-Response Disinfection Performance Study:

Arcadis will develop an approvable work plan for a Chlorine Dose-Response Disinfection Performance Study to demonstrate effective disinfection (maximize pathogen inactivation/kill), meet the TRC Action Level at Outfall 014 and identify surrogate wet weather indicators for real-time control throughout wet weather events, including Total Chlorine Concentration (C), Contact Time (T) and calculated CT value, and TRC.

The work plan will specifically include the following:

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Chlorine dose response testing during at least three (3) different storm events that results in a discharge from the chlorine contact tank (CCT). Minimum discharge duration should be four hours over the CCT effluent weir.

- A minimum of two (2) complete dose response tests during each storm event.
- Sampling/Metering/Calculation of the CT, chlorine dose, influent and effluent fecal coliform and enterococcus, enterococcus log reduction, TRC prior to de-chlorination, and TRC at Outfall 016 must be monitored/metered/calculated at the same frequency during the event.
- If required Arcadis will assist Inframark in performing a bench scale TRC decay study to identify the appropriate TRC concentration(s) for the expected range of treated flows at the Facility, such that discharges at Outfall 014 are below the action level.

Under this task, Arcadis will review and discuss interim data collected after major storm events, or on a quarterly basis, to assess the system performance and recommend any needed modifications to the study. Upon completion of the first year's data collection, Arcadis will prepare and submit an approvable Engineer's Report summarizing the results of the Chlorine Dose-Response Disinfection Performance Study. Study results will include the number of events, duration of events, samples collected, log-reduction calculation during each event, sampling results and analysis of data results. The study shall provide performance recommendations to meet the narrative effluent limit to maximize pathogen inactivation for variable storm durations, variations in flow, sufficient CT values and chlorine dose variations. Data used in the analysis will be provided in a spreadsheet format.

Task 12.3 – Wet Weather Operating Plan (WWOP):

Arcadis will develop and submit a WWOP describing the operation of the Facility. The Facility will maximize treatment during wet weather events for flows exceeding 18 mgd to the City's wastewater treatment plant (WWTP). This will be accomplished by developing a WWOP containing procedures for operating unit processes for the treatment design flows. These procedures will be used to optimize the treatment to achieve maximum pathogen removal, while meeting TRC requirements prior to discharge to the Hudson River for the range of wet weather flows possible at the Facility during wet weather events, up to the design peak flow of 31 mgd. The WWOP will incorporate recommendations from the approved Chlorine Dose-Response Disinfection Performance Study and outline the optimum operational procedures to transition from dry weather operation mode to wet weather operation mode, and back to dry weather operation mode. The WWOP will be submitted to the Regional Water Engineer and the Bureau of Water Permits for review and approval in accordance with the Schedule of Compliance.

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

Compensation

Arcadis will complete the scope of services presented herein for a total not to exceed fee of $4,832,000. The City will be charged for actual time and expense costs incurred. If acceptable, this scope of work will be billed in accordance with our standard rate schedule for hours worked plus other direct costs markup of 10 percent.

Task	Compensation
Task 1 – Construction Administration	$445,000
Task 2 – Resident Engineer	$1,168,000
Task 3 – Construction Observation	$1,172,000
Task 4 – Special Inspections	$166,000
Task 4A – Special Inspection Agency Allowance	$330,000
Task 5 – Field Resolutions	$458,000
Task 6 – Progress Meetings	$109,000
Task 7 – Site Visits	$310,000
Task 8 – Grant Administration and Coordination	$25,000
Task 9 – SCADA Integration Services	$479,000
Task 10 – Construction Closeout	$15,000
Task 11 –Startup and Commissioning	$18,000
Task 12 – LTCP and SPDES Permit Requirement Support Services	$137,000
Total Not to Exceed Fee:	**$4,832,000**

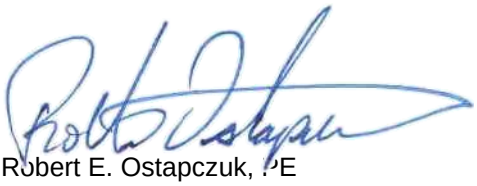
Arcadis is familiar with NYS EFC requirements to make good faith efforts to obtain the services of DBE subcontractors, and to that end we are proposing to use a DBE subcontractor for construction observation to achieve a goal of 20% utilization. It is estimated for the scope of services described herein, that the total DBE utilization will be approximately $1,044,000 or 21.6%.

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

Mr. Jason Morris, PE
City of Newburgh
July 9, 2024

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

Sincerely,
Arcadis of New York, Inc.



Robert E. Ostapczuk, PE
Vice President

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

CC. M. Kosier, Arcadis
A. Brooks, Arcadis

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

This is an **Agreement** effective as of July_____, 2024 ["**Effective Date**"] City of Newburgh ["**Client**"], a municipal corporation chartered under the laws of the State of New York, having its principal place of business at 83 Broadway, Newburgh, New York 12550, and Arcadis of New York, Inc., ["**Arcadis'**] a corporation chartered under the laws of the State of New York, having its principal place of business at 110 West Fayette Street, Suite 300, Syracuse, New York 13202 and an office at 201 Fuller Road, Suite 201, Albany, NY 12203.

The Client intends to design and construct the Combined Sewer Control Facility and Wastewater Treatment Plant Influent sewer to comply with the requirements of its Combined Sewer Overflow Long Term Control Plan. ["**Project**"].

Client engages Arcadis to provide professional engineering services related to the design and construction administration in support of its Project [**Services**].

The location of the Project is River Street, Newburgh [**Site**], New York [**State**].

Arcadis' Services for the Project are described generally as follows:

Provide engineering construction phase services for the City of Newburgh Combined Sewer Control Facility Project.

In consideration of the mutual promises herein, Client and Arcadis agree that the terms and conditions of this Agreement are the following:

1 BASIC SERVICES

1.1 Scope. Arcadis shall provide the **Basic Services** described in Schedule A. Arcadis' obligations under this Agreement are solely for the benefit of Client and no other party is intended to benefit or have rights hereunder. Arcadis intends to perform the scope of services/work contemplated herein and in the contract documents through a combination of its own employees and employees of its affiliates, and the use of such affiliate labor shall not be deemed a subcontract for purposes of this Agreement.

1.2 Standard of Care. Arcadis shall perform the professional engineering Services under this Agreement at the level customary for competent and prudent engineers performing such services at the time and place where the services are provided [**Standard of Care**]. These Services will be provided by licensed engineers and other professionals and individuals skilled in other technical disciplines, as appropriate.

1.3 Instruments of Service. Arcadis is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its services including designs, drawings, specifications, reports [**Service Instruments**] and other services provided under this Agreement.

1.4 Applicable Codes. The Service Instruments will conform to the generally accepted codes and regulations applicable to the Project at the time of performance.

1.5 Indemnification. Arcadis agrees to indemnify and hold Client harmless from all losses and damages resulting from Arcadis' failure to meet the Standard of Care.

1.6 Contract Documents. The Service Instruments shall incorporate Arcadis' standard construction documents **[Contract Documents**]. In any event, Arcadis shall be an additional insured on all liability and property damage insurance policies which the construction contractor(s) for the Project [**Contractor**] shall be required to provide. All contracts between Client and Contractor for the Project shall require the Contractor to indemnify and hold Client and Arcadis harmless from any and all legal actions and liabilities arising out of the construction of the Project including, but not limited to, injury to or death of any person or injury or destruction of tangible property, not caused by the sole negligence of the party to be indemnified.

1.7 Subcontractors. Any subcontractors and outside associates or consultants to be engaged by Arcadis under this Agreement are limited to those identified in Schedules A and B, or as Client specifically approves during the performance of this Agreement.

1.8 Hazardous Wastes. Client represents that the Project does not contemplate the performance of services, professional or otherwise, related to hazardous or toxic wastes, material, or substances and other pollutants. Arcadis shall not be responsible for and, to the fullest extent permitted by law, shall be held harmless from all costs and other liabilities arising from the presence in

or about the Project of hazardous or toxic wastes, material or substances and other pollutants, whether or not designated as such by law or regulation.

1.9 Construction Phase Services. Arcadis shall provide construction phase Services in accordance with Schedule A and act as Client's representative at the Site in accordance with the General Conditions of the Contract Documents as modified by Schedule D.

1.9.1 In the event the construction phase services are provided by another party, Arcadis shall not be responsible for and Client shall indemnify and hold Arcadis and Arcadis' consultants harmless from all claims, damages, losses and expenses, including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution, acceptance, shop drawing or sample approval or modifications of such documentation issued or carried out by Client or others or construction observation carried out by others. Nothing contained in this paragraph shall be construed to release Arcadis or Arcadis' consultants from liability for failure to perform in accordance with professional standards any duty or responsibility which Arcadis has undertaken or assumed under this Agreement.

2 ADDITIONAL SERVICES

2.1 Scope. Arcadis will provide the **Additional Services** described in Schedule B when authorized in writing by Client.

2.2 Excluded Services. Client acknowledges the Services provided by Arcadis hereunder do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services; (4) nor any form of professional accounting or insurance advisory services.

3 CLIENT'S RESPONSIBILITIES

Unless stated otherwise in Section 8, Client shall do the following in a timely manner:

3.1 Client's Representative. Designate a representative having authority to give instructions, receive information, define Client's policies, and make decisions with respect to the Project.

3.2 Project Criteria. Provide all criteria and information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, and any budgetary limitations. Furnish copies of all design and construction standards which Client will require to be included in the Service Instruments.

3.3 Data. Provide all available information, including previous reports and any other data in the possession of Client relevant to design or construction of the Project. These data may include (1) data prepared by others, including borings, subsurface explorations, hydrographic surveys, and laboratory tests and inspections of samples, materials and equipment, (2) appropriate professional interpretations of such data, (3) environmental assessments and impact statements, (4) property, boundary, easement, right-of-way, topographic and utility surveys, (5) property descriptions, zoning, deed and other land use restrictions, and (6) other necessary special data or consultations. Arcadis may rely on the accuracy and completeness of the supplied data.

3.4 Surveys. Provide engineering surveys to define construction reference points to enable Contractor to lay out Project construction.

3.5 Access. Arrange for Arcadis to enter upon public and private property as necessary.

3.6 Review. Examine the Service Instruments and obtain the advice of attorneys, insurance counselors or other consultants as Client thinks appropriate. Render written decisions concerning the Service Instruments within a reasonable time. Client expressly acknowledges and agrees that the Services provided do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services, nor any form of insurance advisory services.

3.7 Permits. Furnish approvals and permits from governmental authorities and other entities having jurisdiction over the Project and approvals from others as may be necessary for the timely completion of the Project.

3.8 Expert Advice. Provide legal, accounting, insurance or other necessary advisory services for the Project including any documents submitted by Arcadis. Client expressly acknowledges and agrees that the Services provided do not and shall not include the practice of law or other legal services, nor any form of professional accounting or insurance advisory services.

3.9 Site Representative. If Client designates a person other than Arcadis to represent Client at the Site, specify the duties, responsibilities and limitations of authority of such other person and the effect on Arcadis' duties and responsibilities in a schedule attached to this Agreement.

3.10 Ancillary Costs. If the Construction Cost includes the cost of the activities described in 3.7 through 3.10, provide an estimate of such costs to Arcadis for Project cost estimating purposes.

3.11 Meetings. Attend the pre-bid conference, bid opening, pre-construction conference, construction progress and other job related meetings, and Substantial Completion and Final Payment inspections.

3.12 Project Developments. Give prompt written notice to Arcadis whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Arcadis' services, or any defect or non-conformance in the work of any Contractor.

4 PERIODS OF SERVICE

4.1 Time of Performance. Sections 4 and 5 anticipate the orderly and continuous progress of the Services through completion of construction. The time of performance is the period reasonably expected to be required for the design, award of contracts, construction and initial operation of the Project, including any necessary Client or regulatory agency review and approval.

4.2 Delays. If Schedule A specifies periods of time for performance of Services or specific dates by which services are to be completed and if such periods or dates are exceeded through no fault of Arcadis, the compensation specified under Section 5 shall be subject to equitable adjustment.

4.3 Start of Performance. Arcadis will start the Basic Services upon authorization by Client. Unless otherwise stated in this Agreement, signing of this Agreement by both Client and Arcadis will constitute such authorization. If Client elects to authorize Arcadis to proceed before signing this Agreement, Arcadis shall be paid as if the Services had been performed after both parties signed the Agreement.

4.4 Completion of Performance. For the purposes of final payment under Section 5, completion of Arcadis' Services will occur:

4.4.1 for a study, investigation or planning activity: upon delivery of the final report as specified in Schedule A or B, as appropriate;

4.4.2 for a design activity: when the Bid Set of Contract Documents is delivered as specified in Schedule A;

4.4.3 for a bidding or construction contract negotiation activity: upon issuance by Client of notice of award of the construction contract;

4.4.4 for a construction activity: when written recommendation of final payment for the last prime construction contract of the Project is issued; and

4.4.5 for a startup or operations activity: upon the earlier of successful completion of acceptance testing by the Contractor or beneficial occupancy by Client but, in any event, not later than one year after Substantial Completion.

4.5 Force Majeure. If a force, event, or circumstance beyond Arcadis' control interrupts or delays Arcadis' performance, the time of performance of the Basic or Additional Services shall be equitably adjusted.

5 COMPENSATION

5.1 Basic Services. Client shall pay Arcadis the Amount stated in invoices issued in accordance with Schedule C **[Pricing Schedule]** for work performed and Reimbursable Expenses incurred during the period covered by the invoice. Arcadis shall be entitled to invoice for any affiliate labor in the same manner as it invoices its own employees. Invoices are due and payable within 30 days after receipt by Client. Client's payments shall be in the form and shall be sent to the Arcadis address as described in the invoices.

5.2 Additional Services. Client shall pay Arcadis for Additional Services performed pursuant to Client's authorization and invoiced in accordance with the Pricing Schedule.

5.3 Litigation Services. If Client requires Arcadis' services either as a witness in, or in support of, litigation or other dispute resolution procedures between Client and a third party, Arcadis will provide such services in accordance with a Pricing Schedule for litigation services. In addition Client will promptly reimburse Arcadis for its reasonable fees and expenses (including without limitation attorney's fees and other legal costs incurred by Arcadis in response to a subpoena, or request for the production of documents, for any appearance at a deposition, trial or other legal proceeding) – provided Arcadis is not a named party to such legal proceeding.

5.4 Delay or Termination.

5.4.1 If Client delays the performance of, or payment for, services under this Agreement for more than 3 months for a reason(s) other than Arcadis' fault, Arcadis may suspend performance until it receives payment in full for services rendered and expenses incurred to the date of suspension.

5.4.2 If Client terminates this Agreement prior to completion of the Basic Services, Arcadis shall be paid in full for services rendered and expenses incurred to the date of termination, including reasonable demobilization and termination expenses.

5.5 Disputed Amounts. Notwithstanding the provisions of Section 7, if Client disputes an item(s) or amount(s) contained in an invoice, Client agrees to pay the balance of the undisputed invoiced amounts to Arcadis in accordance with Schedule C.

5.6 Collection. Any reasonable attorney's fees or other reasonable costs incurred by Arcadis in collection of delinquent amounts shall be paid by Client.

6 OPINIONS OF CONSTRUCTION COST

6.1 Construction Cost. The cost of constructing the Project [**Construction Cost**] means the total cost to Client of those portions of the Project designed and specified in the Service Instruments. Construction Cost will not include Arcadis' compensation and expenses, the cost of land, rights of way, or compensation for properties unless specified in Schedule A. Construction Cost will also not include Client's legal, accounting, or insurance counseling services, or interest and financing charges incurred in connection with the Project, or the cost of services to be provided by others under paragraphs 3.6 and 3.8 unless otherwise specified in Schedule A.

6.2 Opinions of Cost. Arcadis has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Arcadis' opinion of probable Construction Cost is made on the basis of Arcadis' experience and qualifications and represents Arcadis' judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Arcadis does not guarantee that proposals, bids or actual Project cost will not vary from Arcadis' opinions of probable Construction Cost.

7 GENERAL CONSIDERATIONS

7.1 Changes. By written notice at any time, Client may change the Basic Services, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the Agreement shall be made in writing prior to Arcadis' performing the changed services.

7.2 Confidentiality. Arcadis will hold secret and confidential all information designated by Client as confidential [**Confidential Information**]. Arcadis will not reveal Confidential Information to a third party unless:

7.2.1 Client consents in writing;
7.2.2 the information is or becomes part of the public domain;
7.2.3 Arcadis lawfully possessed the information before receipt from Client;
7.2.4 applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or
7.2.5 failure to disclose the information would pose an imminent and substantial threat to human health or the environment.

7.3 Professional Service. The Service Instruments furnished under this Agreement are the tangible results of Arcadis' Services for the Project and Arcadis shall have the right to use or reuse and retain the copyright of such Service Instruments for its purposes, at its sole risk and without liability to Client. Client may retain copies in connection with the use or occupancy of the Project.

7.3.1 **Reuse**. Arcadis does not represent the Service Instruments to be suitable for reuse by Client or others for extensions of the Project or on any other project. Any reuse without written verification or adaptation by Arcadis for the specific purpose intended is at Client's sole risk, without liability to Arcadis. Any such verification or adaptation will entitle Arcadis to compensation at rates to be agreed on by Client and Arcadis.

7.3.2 **CADD**. Arcadis may provide information related to the Service Instruments in computer-assisted design and drafting format [**CADD**] to Client. CADD is derived in part from computer software for which Arcadis is licensed. These licenses are not transferable. Any unlicensed reuse of CADD may subject the user to liabilities to the software licensor.

7.3.3 **Electronic Media**. Either party to this Agreement may rely on the data or information set forth on paper (also known as “hard copies”) that the party receives from the sending party by mail, hand delivery, or facsimile as items the sending party intended to send. Data or information sent in electronic media format by one party to the other party are furnished only for the convenience of the receiving party and shall not be relied upon by the receiving party. If there is a discrepancy between the data received in electronic media format and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from the data in electronic media format shall be at the user’s sole risk. When transferring documents in electronic

media format, the sending party makes no representations as to the long term compatibility, usability, or readability of such documents resulting from the use of software, application packages, operating systems or computer hardware differing from those used by the document's creator.

7.4 Insurance. Arcadis will maintain **insurance** against the following risks during the term of the Agreement:

7.4.1 workers compensation in statutory amounts and employer's liability for Arcadis' employees' Project-related injuries or disease;

7.4.2 general liability and automobile liability each in the amount of $1,000,000 for personal injury or property damage to third parties which arises from Arcadis' performance under this Agreement; and

7.4.3 professional liability in the amount of $1,000,000 for legal obligations arising out of Arcadis' failure to meet the Standard of Care.

7.5 Interpretation. This Agreement shall be interpreted in accordance with the laws of the State.

7.6 Successors. This Agreement is binding on the successors and assigns of Client and Arcadis. The Agreement may not be assigned in whole or in part to any third parties without the written consent of both Client and Arcadis.

7.7 Independent Contractor. Arcadis represents that it is an independent contractor and is not an employee of Client.

7.8 Disputes. If any dispute arises out of or relates to this Agreement, or the breach thereof, then in the first instance, representatives of both parties shall endeavor in good faith to negotiate a settlement of the dispute. If such dispute cannot be settled through direct discussions by such representatives of the parties, then higher level representatives of both parties shall endeavor in good faith to negotiate a settlement of such dispute. If such dispute cannot be settled through direct discussion by such higher level representatives of the parties, then the parties agree to submit the matter to mediation before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.

7.9 Notices. Written notices may be delivered in person or by certified mail, by facsimile, or by courier. All notices shall be effective upon the date of receipt by the party. Notices shall be delivered or sent to the designated representative of the other party at the address given on the last page of this Agreement. An address may only be changed by written notice.

7.10 Applicable Law. Arcadis and Client shall comply with all applicable federal, state and local laws, regulations or orders issued under such laws prohibiting any form of kickback, bribery or corrupt practices as defined in the Anti-Kickback Act of 1986, the Foreign Corrupt Practices Act and all other applicable federal, state, local laws, regulations or orders issued under such laws regarding kickbacks, bribery or corrupt practices. If applicable to this Agreement, Arcadis will comply with the requirements of:

7.10.1 the Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended,
7.10.2 Utilization of Small and Disadvantaged Business Concerns (Public Law 95-507), and
7.10.3 all other federal, state and local laws and regulations or orders issued under such laws.

7.11 Entire Agreement. This Agreement, including any schedules, attachments and referenced documents, is the entire agreement between Client and Arcadis. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by Client and Arcadis.

7.12 Waivers and Severability. A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

7.13 Effective Date. Unless stated otherwise in Schedule A, this Agreement is effective on the date shown on the cover page.

8 SECTION 8 -- SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

8.1 Special Provisions. This Agreement is subject to the following special provisions:

8.1.1 Arcadis will make good faith efforts to generally comply with the requirements for projects funded by the New York State Clean Water State Revolving Loan Fund outlined in the Mandatory State Revolving Fund Terms and Conditions.

8.2 Schedules. The following **Schedules** are attached to and made a part of this Agreement:

8.2.1 **Schedule A** "Scope of Basic Engineering Services and Related Matters"

8.2.2 **Schedule B** "Additional or Optional Engineering Services"

8.2.3 **Schedule C** "Pricing Schedule"

8.2.4 Schedule D " Construction Phase Services"

Execution Authority. This Agreement is a valid and authorized undertaking of Client and Arcadis. The representatives of Client and Arcadis who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

City of Newburgh

By _____
Todd Venning *Per Res. _____-2024

Title _____

Witness _____

Date Signed:_____

Arcadis of New York, Inc.

By _____
Robert Ostapczuk, PE

Title Vice President

Witness _____

Date Signed: 07/09/2024

Address for Giving Notices:

City of Newburgh
83 Broadway
Newburgh, New York 12550
Attn: Mayor's Office

Address for Giving Notices:

201 Fuller Road
Suite 201
Albany, New York 12203
Attn: Robert Ostapczuk, PE

Schedule A
Scope of Basic Engineering Services and Related Matters

Task 1 – Construction Administration
Arcadis will schedule and attend, in conjunction with Client and Contractor, a pre-construction conference to discuss general and specific requirements of the Contract Documents. Arcadis will develop an agenda and prepare and distribute meeting minutes.

Arcadis will review the Contractor's submittals and shop drawings in accordance with Schedule D.5 Arcadis will review up to two re-submittals in accordance with the Contract Documents that was made part of the Agreement executed between the Contractor and Client. If in the event that there are more than two resubmittals, Client shall withhold and deduct payment from Contractor to reimburse Arcadis for expenses incurred in the review of additional resubmittals in accordance with the Contract Documents. Arcadis will maintain a submittal log describing the current status of Contractors' submittals, as well as maintain records of vendor warranties and one set of approved shop drawings to be turned over to Client at the completion of construction.

Arcadis will review the Contractor's construction progress schedule as it relates to the overall schedule for the project and provide comments to scheduling items that may need to be expedited to achieve overall project milestones. Arcadis will provide comments to the Contractor and Client. Contractor shall be responsible for the overall schedule of the project.

Arcadis will make recommendations to Client for the approval of payment requests in accordance with Schedule D.9.

Task 2 – Resident Engineer
Arcadis will provide a full-time Resident Engineer to be on site for the estimated 24-month construction period, which includes up to 4,800 hours for the Resident Engineer. The responsibilities of the Resident Engineer include the following and is further expounded on in Schedule D.2:

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

Task 3 – Construction Observation
Arcadis will provide up to 7,200 hours of full-time inspection services (resident project representative or RPR) to assist Resident Engineer. The duties of the RPR(s) are identified in Schedule D – Construction Phase Services, which is attached to this Amendment. While inspecting the Work the RPR(s) will:

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

Task 4 – Special Inspections
Arcadis will develop the recommended standards and policies, as Client's representative, to require special inspection or testing of the Work; and review certificates of inspections, testing and approvals required by law or the Contract Documents to determine that both the content of the certificates and the certified inspection or test results comply substantially with such requirements. Testing required to complete special inspections will be specified by Arcadis. As part of this task, the Arcadis will act as the Coordinating Special Inspector and will subcontract with an appropriate testing agency(ies) and will provide Client with recommendations for coordinating the inspections, as defined in the technical specifications in Section 01 45 33.00 Code-required Special Inspections.

Arcadis will perform site visits to inspect work as designated in the Statement of Special Inspections. Discrepancies will be brought to the attention of the Client, Contractor. Specific work items to be inspected as part of this task will include but may not be limited to the following:

- Reinforcing steel and water stops (in advance of concrete pours)
- Cast-in-place concrete
- Precast concrete
- Masonry construction
- Anchor systems
- Miscellaneous metals and fiber reinforced plastic
- Anchorage of mechanical and electrical support systems
- Waterproofing

Professional services to be performed under this task will include, but will not be limited to, the following:

- Assist with the coordination of the services of the Testing/Inspecting Agencies, and verify that inspections have been performed, reports have been distributed, and discrepancies have been recorded and resolved.
- Review reports from Testing/Inspecting Agencies to determine if the Testing/Inspecting Agencies have verified conformance of the reported item of work with the Contract Documents; and initiate appropriate action in response to those reports if required.
- Keep records of inspections related to the Statement of Special Inspections.
- Review inspection and material testing reports to verify Agents are recording, tracking, and distributing discrepancies to the Client, Contractor, Architect, and if applicable the Code Enforcement Official.
- Certificates of Compliance will be reviewed for conformance with the standards specified in the Contract Documents. Discrepancies will be brought to the attention of the Client.
- Track discrepancies and their resolutions.
- Prepare a report following each site visit and distribute to the Client, Contractor, and if applicable the Code Enforcement Official.
- Prepare a stamped Final Report of Special Inspections for the Project record and for submittal to the Code Enforcement Official at the completion of the Project. The Final Report of Special Inspections will include any unresolved discrepancies as required by the New York State Uniform Code (NYSUC). Interim reports from all Agents will not be included unless specifically requested by the Owner or Code Enforcement Official.

Arcadis has included an allowance for subcontracted testing agencies as part of this task in the amount of $330,000.

Task 5 – Field Resolutions

Arcadis will review, log, and respond to Requests for Information (RFIs), Requests for Field Changes, and Field Changes in accordance with Schedule D.4. Arcadis will prepare written responses for requests and prepare supplementary drawings that may be necessary for the interpretation and clarification of the Contract Documents.

Task 6 – Construction Progress Meetings

Arcadis will attend up to 48 bi-weekly progress meetings with Client, Water Pollution Control Plant Operator (Inframark), and the Contractor. Develop agendas and create and distribute minutes for each of these meetings. Meetings will include a discussion of the work completed in the prior two weeks, the progress anticipated for the upcoming two weeks, the status of RFI's, change orders, and shop drawings. Progress meetings will be attended in person by Arcadis' Resident Engineer and virtually by Arcadis' Project Manger and Project Engineer.

Task 7 – Site Visits

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

Task 8 – SCADA Integration Services

Arcadis will provide configuration and programming services for the Facility. The following services will be provided under this task:

- Biweekly coordination meetings with Client and Inframark for up to 12 months.

- Development of graphic mockups for operator interface terminals (OITs).
- Conduct a workshop with Client and Inframark staff to review the layout, functionality, and intuitive nature of each screen. Based on the comments developed during the workshop, Arcadis will modify the graphics as appropriate.
- Configuration and programming of the local PLCs (PLCs provided by a vendor as specified by the Bid Documents are not included).
- Development of procedures to conduct factory testing of the SCADA hardware and software for non-vendor supplied PLCs.
- Coordination with vendors supplying PLC based controls to develop databases for monitoring pertinent information in the Facility PLC.
- Coordination and development of the network hardware configuration.
- Performance of quality checks and internal testing of the local SCADA system, in accordance with the Standard of Practice. Prior to conducting the quality checks and internal testing, Arcadis will conduct a workshop with Client and Inframark to discuss the testing program and solicit buy in.
- Performance of loop testing and verification with the PCSS and the vendors supplying PLCs on site.

Arcadis will provide up to two weeks on site (200 hours) for the commissioning and startup of the Facility by two control engineers. Three months (or as agreed upon) after commissioning, Arcadis will provide an additional two weeks (80 hours) on site for tuning and refinement of the integration services and programming.

Task 9 – Grant Administration

Arcadis recognizes that the Project will be financed through the New York State Clean Water State Revolving Fund (CWSRF), as administered by NYSEFC. In addition, the Client has secured WIIA and BIL grants which are also administered by NYSEFC. Arcadis will assist Clint in administering the grants and financing. This includes reviewing the Contractors' utilization plans for submission to NYSEFC and will work with the Contractors in getting NYSEFC approval and acceptance of their utilization plans or waiver requests. Arcadis will prepare quarterly utilization and EEO reports to be sent to NYSEFC as required for CWSRF funding. Arcadis will also assist Client in collecting, reviewing, and maintaining necessary documents required by NYSEFC such as American Iron and Steel (AIS), Buy American Build American (BABA), Contractor's subcontract agreements, etc. Document reviews will be limited to determining that their content complies with the requirements of the Contract Documents. Arcadis will transmit the documents to Client with written comments or opinions, as appropriate.

Task 10 – Construction Closeout

Arcadis will assist Client with document collection for closeout of the project in general accordance with NYS EFC requirements. Create record drawings based upon the Contractor and Resident's field mark-ups. The record drawings will be submitted to Client electronically in PDF format, along with 2 hard copies.

Task 11 – Startup and Commissioning

Arcadis will work with Client and Inframark regarding the anticipated operations of the Facility. Specifically included will be the review and modification of any control systems associated with the screening and disinfection process, building controls, and the security system. Any modifications deemed necessary by Client will be evaluated, coordinated, and modified to the satisfaction of Client prior to start-up of the Facility. Furthermore, as provided for under Task 8, Arcadis will assist equipment vendors with operational decision logic and programming along with the start-up and commissioning of the facilities, as necessary.

Task 12 – LTCP and SPDES Permit Requirement Support Services

Task 12.1 - Operations and Maintenance (O&M) Manual:

Arcadis will assemble and develop complete operational and maintenance materials for the Project. These materials will be provided to Client and Inframark, as appropriate, in a searchable digital format (with up to two (2) additional hard copies provided should they be requested). Under Client's SPDES Discharge Permit, Client will be required to operate, maintain, and inspect critical elements of the improvements.

The O&M Manual will describe typical operations and controls for the facilities, as well as routine cleaning and maintenance activities to maintain optimum performance of the systems. The O&M Manual will also document the storage and handling requirements for any chemicals to be used and stored on site, including chemical delivery procedures.

Task 12.2 - Chlorine Dose-Response Disinfection Performance Study:

Arcadis will develop an approvable work plan for a Chlorine Dose-Response Disinfection Performance Study to demonstrate effective disinfection (maximize pathogen inactivation/kill), meet the TRC Action Level at Outfall 014 and identify surrogate wet weather

indicators for real-time control throughout wet weather events, including Total Chlorine Concentration (C), Contact Time (T) and calculated CT value, and total residual chlorine (TRC).

The work plan will include the following:

Chlorine dose response testing during three (3) different storm events that results in a discharge from the chlorine contact tank (CCT). Minimum discharge duration should be four hours over the CCT effluent weir.

- A minimum of two (2) complete dose response tests during each storm event.
- Sampling/Metering/Calculation of the CT, chlorine dose, influent and effluent fecal coliform and enterococcus, enterococcus log reduction, TRC prior to de-chlorination, and TRC at Outfall 016 will be monitored/metered/calculated at the same frequency during the event.
- If required Arcadis will assist Inframark in performing a bench scale TRC decay study to identify the appropriate TRC concentration(s) for the expected range of treated flows at the Facility, such that discharges at Outfall 014 are below the action level.

Under this task, Arcadis will review and discuss interim data collected after major storm events, or on a quarterly basis, to assess the system performance and recommend any needed modifications to the study. Upon completion of the first year's data collection, Arcadis will prepare and submit an approvable Engineer's Report summarizing the results of the Chlorine Dose-Response Disinfection Performance Study. Study results will include the number of events, duration of events, samples collected, log-reduction calculation during each event, sampling results and analysis of data results. The study will provide performance recommendations to meet the narrative effluent limit to maximize pathogen inactivation for variable storm durations, variations in flow, sufficient CT values and chlorine dose variations. Data used in the analysis will be provided in a spreadsheet format.

Task 12.3 – Wet Weather Operating Plan (WWOP):

Arcadis will develop and submit a WWOP describing the operation of the Facility. The Facility will maximize treatment during wet weather events for flows exceeding 18 mgd to Client's wastewater treatment plant (WWTP). This will be accomplished by developing a WWOP containing procedures for operating unit processes for the treatment design flows. These procedures will be used to optimize the treatment to achieve maximum pathogen removal, while meeting TRC requirements prior to discharge to the Hudson River for the range of wet weather flows possible at the Facility during wet weather events, up to the design peak flow of 31 mgd. The WWOP will incorporate recommendations from the approved Chlorine Dose-Response Disinfection Performance Study and outline the optimum operational procedures to transition from dry weather operation mode to wet weather operation mode, and back to dry weather operation mode. The WWOP will be submitted to the Regional Water Engineer and the Bureau of Water Permits for review and approval in accordance with the Schedule of Compliance.

Schedule

Arcadis anticipates that Notice to Proceed for Construction will be issued to the Prime Contractors on or before November 1, 2024, and construction will be completed winter 2026/2027 with operational startup occurring Spring 2027.

Schedule B

Additional or Optional Engineering Services

B.1 The Scope of Additional Services consists this of page plus the following documents, attached and made part of this Agreement:

a. None at this time. In the event that Additional or Optional Engineering Services are identified and required under this Agreement at a later time, Client will provide Arcadis written authorization to perform such Services.

Schedule C
Pricing Schedule

C.1 The Pricing Schedule consists of this page plus the following documents, attached and made part of this Agreement:

C.2 **Terms of Payment**

C.2.1 **Fixed Rates.** For Basic Services under Section 1, Client shall pay Arcadis on the basis of standard hourly rates for technical work actually performed.

The estimated cost of the Consultant's services under Section 1 is $4,832,000.

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

Rate Schedule	
Grade 1 – Technician/Administrator I	$65
Grade 2 – Technician/Administrator II	$80
Grade 3 – Technician/Administrator III	$95
Grade 4 – Technician/Administrator IV	$100
Grade 5 – Professional	$125
Grade 6 – Professional II	$135
Grade 7 – Staff Professional	$150
Grade 8 – Project Professional	$165
Grade 9 – Senior Professional	$190
Grade 10 – Principal	$220
Grade 11 – Associate VP or VP	$255
Grade 12 – VP or Senior VP	$285

All rates presented apply to services rendered during calendar year 2024, for this project, and are subject to adjustment on January 1 of each subsequent year.

In addition to these fees, clients will also be responsible for any sales or value-added taxes that may apply to engineering services performed.

C.3 **Reimbursable Expenses.** Except for certain in-house services, project expenses incurred with subcontractors and outside vendors will be invoiced at cost plus 10% to cover handling. These project expenses may include, but are not limited to: shipping charges; printing; supplies; equipment; traveling expenses; special insurance; licenses; permits; and subcontracted services.

In-house services not subject to handling costs are:

Transportation:	Current IRS mileage reimbursement
Specialty Equipment:	In accordance with a usage rate schedule

C.4 **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.

Schedule D
Construction Phase Services

D.1 CONSTRUCTION PHASE SERVICES

Note: For purposes of this Schedule, the expressions Contract Documents, Shop Drawing, and Change Order shall have the meanings given in the Construction Contract between Client and the Contractor.

1. **General Administration of Construction Contract**. Arcadis shall consult with and advise Client and act as Client's representative as provided in this Agreement. All of Client's instructions to Contractor will be issued through Arcadis who will have authority to act on behalf of Client to the extent provided in this Agreement.

2. **Visits to Site and Observation of Construction**. In connection with observations of the work of Contractor while it is in progress:

2.1 Arcadis shall make visits to the site at intervals appropriate to the various stages of construction as Arcadis deems necessary to observe, as an experienced and qualified design professional, the progress and quality of the Contractor's work (Work). In addition, Arcadis shall provide the services of a Resident Project Representative (Resident) at the site to provide more extensive inspection of the Work. Based on information obtained during such visits and on its inspections, Arcadis shall endeavor to determine whether the Work is proceeding in accordance with the intent of the Contract Documents. Arcadis shall keep Client informed of the progress of the Work.

2.2 The Resident will be Arcadis' agent or employee and under Arcadis' supervision. The duties and responsibilities of the Resident are set forth in Article D.2, "Duties, Responsibilities and Limitation of Authority of Resident Project Representative," below.

2.3 The purpose of Arcadis' visits to and representation by the Resident at the site will be to provide for Client a greater degree of confidence that the completed Work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor.

2.4 Arcadis shall not, during such visits or as a result of observations or inspections of the Work in progress, supervise, direct or have control over the Work nor shall Arcadis have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor furnishing and performing the Work. Arcadis can neither guarantee the performance of the Work by the Contractor nor assume responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

3. **Defective Work**. During its visits, Arcadis may disapprove of or reject the Work while it is in progress if Arcadis believes that the Work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

4. **Interpretations and Clarifications**. Arcadis shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare Change Orders for execution by Client, if appropriate.

5. **Shop Drawings**. Arcadis shall review and approve (or take other appropriate action) Shop Drawings, samples and other data which Contractor is required to submit. Such reviews shall be for conformance with the design concept of the Project as a functioning whole and compliance with the information given in the Contract Documents. Any approvals or other actions associated with the reviews shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

6. **Substitutes**. Arcadis shall evaluate and determine the acceptability of substitute or 'equivalent' materials and equipment proposed by Contractor.

7. **Inspections and Tests**. Arcadis shall have authority, as Client's representative, to require special inspection or testing of the work, and shall review all certificates of inspections, testings and approvals required by law or the Contract Documents to determine that both the content of the certificates and the certified inspection or test results comply substantially with such requirements.

8. **Disputes between Client and Contractor**. Arcadis shall act as the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of Client or Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents.

9. **Applications for Payment**. Based on Arcadis' on-site observations, on information provided by the Resident, and on review of applications for payment and the accompanying data and schedules, Arcadis shall:

9.1 Recommend in writing payments to Contractor. Such recommendations of payment will constitute a representation to Client that the Work has progressed to the point indicated and that, to the best of Arcadis' knowledge, information and belief, the quality of

the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendations.

9.2 In the case of unit price Work, include final determinations of quantities and classifications of the Work in the recommendations of payment, subject to any subsequent adjustments allowed by the Contract Documents.

9.3 By recommending any payment Arcadis will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations beyond the responsibilities specifically assigned to Arcadis in this Agreement and the Contract Documents have been made by Arcadis to check the quality or quantity of the Work as it is furnished and performed. Arcadis is not responsible to examine how or for what purposes the Contractor has used the moneys paid on account, or to determine that title to any of the Work, materials or equipment has passed to Client free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

10. **Contractor's Completion Documents**. Arcadis shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests, approvals, and record documents which are to be assembled by Contractor in accordance with the Contract Documents. Such review is limited to determining that their content complies with the requirements of the Contract Documents Arcadis shall transmit the documents to Client with written comments.

11. **Inspections**. Arcadis shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed Work is acceptable so that Arcadis may recommend, in writing, final payment to Contractor. Arcadis may give written notice to Client and the Contractor that the Work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 9.3.

12. **Limitation of Responsibilities**. Arcadis shall not be responsible for the acts or omissions of the Contractor, or of any subcontractor or supplier, or any of the Contractor's or subcontractor's or supplier's agents or employees or any other persons (except Arcadis' own employees and agents) at the site or otherwise furnishing or performing any of the Work. However, nothing contained in paragraphs 1 thru 11, shall be construed to release Arcadis from liability for failure to properly perform the duties and responsibilities assumed by Arcadis in the Contract Documents.

D.2 DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

The duties and responsibilities of the Resident Project Representative (Resident) are limited to those of Arcadis in Schedules A and B and are further described as follows:

1. **General.** The Resident is Arcadis' agent at the site, will act as directed by and under the supervision of Arcadis, and will confer with Arcadis regarding Resident's actions. Resident's dealings in matters pertaining to the on-site Work shall in general be with Arcadis and Contractor, but keeping Client advised as appropriate. Resident's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. Resident shall generally communicate with Client with the knowledge of and under the direction of Arcadis.

2. Duties and Responsibilities. The Resident shall:

2.1 *Schedules*: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with Arcadis concerning acceptability.

2.2 *Conferences and Meetings*: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

2.3 *Liaison*:

2.3.1 Serve as Arcadis' liaison with Contractor, working principally through Contractor's superintendent and assist in explaining the intent of the Contract Documents as necessary.

2.3.2 Assist Arcadis in serving as Client's liaison with Contractor when Contractor's operations affect Client's on-site operations.

2.3.2 Assist in obtaining from Client additional details or information, when required for proper execution of the Work.

2.4 *Shop Drawings and Samples*:

2.4.1 Record date of receipt of Shop Drawings and samples.

2.4.2 Receive samples which are furnished at the site by Contractor and notify Arcadis of availability of samples for examination.

2.4.3 Advise Arcadis and Contractor of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not yet been received and approved by Arcadis.

2.5 *Review of Work, Rejection of Defective Work, Inspections and Tests*:

2.5.1 Conduct on-site inspections of Work in progress to determine whether the Work is proceeding in general compliance with the Contract Documents.

2.5.2 Report to Arcadis whenever Resident believes that any Work is unsatisfactory, faulty or defective, or does not conform to the Contract Documents, has been damaged, or does not meet the requirements of any inspection, test or approval required to be made. Advise Arcadis of Work that Resident believes should be corrected or rejected, should be uncovered for inspection, or requires special testing, inspection or approval.

2.5.3 Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof. Observe, record and report to Arcadis appropriate details relative to the test procedures and startups.

2.5.4 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Arcadis.

2.6 *Interpretation of Contract Documents*: Report to Arcadis when clarifications and interpretations of the Contract Documents are needed. Transmit to Contractor clarifications and interpretations issued by Arcadis.

2.7 *Modifications*. Consider and evaluate Contractor's suggested changes to Drawings or Specifications and report to Arcadis with Resident's recommendations. Transmit Arcadis' decisions to Contractor.

2.8 *Records*:

2.8.1 Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Construction Contract, Arcadis' clarifications and interpretations of the Contract Documents, progress reports, and

2.8.2 Keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions concerning Change Orders or changed conditions, list of job site visitors, daily activities, decisions, general observations, and specific, more detailed observations as in the case of test procedures. Send copies to Arcadis at appropriate intervals.

2.8.3 Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

2.9 *Reports*:

2.9.1 Furnish reports at appropriate intervals to Arcadis concerning progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

2.9.2 Consult with Arcadis in advance of scheduled major tests, inspections or start of important phases of the Work.

2.9.3 Draft proposed Change Orders, obtaining supporting information from Contractor, and recommend to Arcadis.

2.9.4 Report any accidents or unusual incidents to Arcadis and Client immediately upon occurrence.

2.10 *Payment Requests*: Review Contractor's applications for payment for compliance with the requirements of the Contract Documents and forward with Resident's recommendations to Arcadis. The Resident will note the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the site but not incorporated in the Work.

2.11 *Certificates, Maintenance and Operation Manuals*: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be furnished by Contractor are appropriate to the items actually installed and in accordance with the Contract Documents. The Resident will have this material delivered to Arcadis for review and forwarded to Client prior to final payment for the Work.

2.12 *Completion*:

2.12.1 Before Arcadis issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

2.12.2 Determine whether necessary inspections and approvals by public agencies having jurisdiction over the Work have been performed and advise Arcadis accordingly.

2.12.3 Conduct a final inspection of the Work in the company of Arcadis, Client, and Contractor and prepare a final list of items to be completed or corrected.

2.12.4 Verify that all items on final list have been completed or corrected and make recommendations to Arcadis concerning acceptance of the Work.

3. Limitations of Authority. The Resident:

3.1 Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment unless authorized by Arcadis.

3.2 Shall not exceed limitations of Arcadis' authority as set forth in this Agreement or the Contract Documents.

3.3 Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent.

3.4 Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

3.5 Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

3.6 Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.

3.7 Shall not authorize Client to occupy the Project in whole or in part.

3.8 Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Arcadis.

NEW YORK STATE | Environmental Facilities Corporation

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

Mandatory State Revolving Fund Equivalency Project Terms and Conditions

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

Identify Contract Type prior to Advertisement for Bid:

☐ **Construction**

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

■ **Non-Construction**

Effective October 1, 2023

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INTRODUCTION

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

REQUIRED CONTRACT LANGUAGE

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

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

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

Contract means an agreement between a Recipient and a Contractor.

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

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

Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified under Build America, Buy America as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR § 184.4(e), then it is not a manufactured product.

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

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

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

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

State means the State of New York.

Subcontract means an agreement between a Contractor and a Subcontractor.

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

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

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

SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

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

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

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

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

I. General Provisions

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

1. 40 CFR Part 33 ("Federal DBE Regulations") for contracts under EPA financial assistance agreements, as those terms are defined therein.

2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.

3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction contracts related to any government programs providing federal financial assistance, as those terms are defined therein.

4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction contracts in excess of $10,000, as those terms are defined therein.

5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.

6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.

7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all DBE and EEO records available within a reasonable time or as otherwise determined by EFC.

C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.

D. If any terms or provisions herein conflict with Federal DBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.

E. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, age, disability, or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

II. Equal Employment Opportunities (EEO)

A. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.

B. For federally assisted construction Contracts, the Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

C. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

D. Pursuant to 41 CFR § 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at

https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet, if Contractor or Subcontractor:

1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
2. Has 50 or more employees;
3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
4. Has a Contract, Subcontract, or purchase order amounting to $50,000 or more.

E. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.

F. For federal or federally assisted construction contracts in excess of $10,000, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.

G. The Contractor will include the provisions of Subdivisions II(A) and II(B) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

III. Good Faith Efforts and Fair Share Objectives for DBEs

A. Fair Share Objectives for this Contract are 20%

B. Good Faith Efforts

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

1. For purposes of demonstrating good faith efforts and achieving the fair share objectives established herein, the Contractor should seek out the participation of the following certified entities:
    a. DBEs certified by the Small Business Administration (SBA), directory available at: https://web.sba.gov/pro-net/search/dsp_dsbs.cfm
    b. DBEs certified by state DOTs on behalf of the United States Department of Transportation (USDOT), directories by state available at https://www.transportation.gov/DBE%20State%20Websites, including:
    c. DBEs certified in New York State: https://nysucp.newnycontracts.com/
        i. DBEs certified in New Jersey: https://njucp.dbesystem.com/
        ii. DBEs certified in Connecticut: https://biznet.ct.gov/DOT_DBE/dbesearch.aspx

2. Participation of Brokers and Truckers/Haulers
    a. Contractors cannot count the participation of a DBE who acts as a Broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime contract or subcontract is subcontracted to a non–DBE, the DBE prime contractor or subcontractor will be presumed to be a Broker.
    b. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:

i. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

C. DBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the EFC DBE Utilization Plan with all required bid forms to the MBO no later than the execution date of this Contract.

2. The Contractor agrees to use such DBE Utilization Plan for the performance of DBEs on the Contract.

3. The Contractor further agrees that a failure to submit and/or use such DBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.

4. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the Recipient in the Quarterly Report immediately following the change. See Section III(E), *Quarterly Report*. At EFC's discretion, an updated DBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a change order is executed the change order and supporting documentation should be submitted to the MBO and a revised Utilization Plan may be required at EFC's discretion.

5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the DBE Utilization Plan to the MBO within 30 days of their execution.

D. Submission of Good Faith Effort Documentation

1. If the Contractor, after making good faith efforts, is unable to meet the DBE fair share objectives, the Contractor must submit documentation showing good faith efforts made by the Contractor to meet the fair share objectives. Such documentation should be submitted to the MBO in accordance with the instructions on the DBE Utilization Plan.

2. If the MBO, upon review of the DBE Utilization Plan and updated Quarterly Reports determines that the Contractor is failing or refusing to comply with the good faith effort requirements or that the good faith efforts are not in the requested format, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within a reasonable time and provide documentation showing good faith efforts as requested.

E. Quarterly Report

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

2. The Contractor agrees to submit any other information as may be requested by the MBO or EFC during the term of the Contract as needed to assist EFC for completion of federal reporting to EPA.

F. Other Requirements

1. All contracts shall comply with the contract administration requirements outlined at 40 CFR 33.302.

2. Contractor and Subcontractors shall assist EFC and the Recipient as necessary with complying with the recordkeeping and reporting requirements outlined at 40 CFR Part 33 Subpart E.

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

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

I. BABA Requirements

The requirements of this subsection shall not apply to CWSRF or DWSRF Contracts or Subcontracts which have been notified by EFC they are waived pursuant to the Build America, Buy America Act, Pub .L. No. 117-58, section 70914, and 2 CFR Part 184, including, but not limited to, the Adjustment Period Waiver for CWSRF and DWSRF projects that initiated project design planning prior to May 14, 2022. Disregard this subsection if the Contract or Subcontract is eligible for such a waiver, however, note that Subsection II below on AIS Requirements still applies.

If such Contracts or Subcontracts are not eligible for such a waiver, then the DWSRF or CWSRF Contract or Subcontract shall be subject to the Build America, Buy America Act, and the regulations promulgated thereafter (Pub. L. No. 117-58, §§ 70901-70953, and 2 CFR Part 184), which requires, among other things, that no SRF funds "may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States."

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

The Contractor hereby represents and warrants that:

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

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by

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

II. AIS Requirements

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

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

The Contractor hereby represents and warrants that:

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

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

SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

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

For Contracts in Excess of $2,000:

1. Minimum Wages

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
2. The classification is utilized in the area by the construction industry; and,
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of

receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

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

3. Payrolls and basic records.

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

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information

required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/agencies/whd/government-contracts/construction/forms or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90

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

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

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

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

6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate

instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

For Contracts in Excess of $100,000:

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

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

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

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

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

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

SECTION 6 RESTRICTIONS ON LOBBYING

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

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

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

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

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

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs (Recipients), are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). EPA funds may not be used to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
b. Telecommunications or video surveillance services provided by such entities or using such equipment.
c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

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

SECTION 8 CONSTRUCTION SIGNS

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

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

ATTACHMENTS (Required Forms)

Attachment 1 – EFC DBE Utilization Plan

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

Instructions for Contractors & Service Providers:

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

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

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

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

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

Instructions for Minority Business Officers (MBO):

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

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

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

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

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

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

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

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

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

SECTION 3: DBE SUBCONTRACTOR INFORMATION continued			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		

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

SECTION 4: GOOD FAITH EFFORT DOCUMENTATION
Utilization Plans that do not meet the Fair Share Objective must be accompanied by the documentation requested in numbers 1 – 7, as listed below. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in number 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in number 13, as listed below. Please contact the MBO and/or EFC for assistance or to request sample documentation.

Provide the following:

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.

2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.

3. Screenshots of search results (using commodity codes) from DBE Directories of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective. Each search should be saved as an individual file.

4. A log of solicitation results, consisting of the list of DBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians). The log should show that each firm was contacted twice by two different methods (e.g., email and phone); who was spoken to; what was said; and the final outcome of the solicitation.

5. List of the general circulation, trade association, and DBE oriented publications and dates of publication soliciting for certified DBE participation as a subcontractor/supplier and copies of such solicitations.

6. Description of the negotiations between the contractor and certified DBEs for the purposes of complying with the DBE goals of this contract.

7. Any other information deemed relevant to the request.

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

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no DBE firms could be utilized to provide the equipment.

9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.

10. Letter, email, or screenshot of website from the manufacturer listing their distributors in NYS and the locations.

11. Screenshots of DBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.

12. An invoice or executed purchase order showing the value of the equipment.

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

Documentation for Requests for Specialty Service Exclusions:

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

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

Attachment 2 – BABA Contractor's Certification

BABA CONTRACTOR CERTIFICATION

FOR EQUIVALENCY CONSTRUCTION CONTRACTS PAID FOR WITH FUNDS THROUGH

THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE

NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: _____

Contractor's Name: _____

Contract ID: _____

SRF Project No.: _____

SRF Recipient Name: _____

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

Signature: _____

Name (print): _____

Title: _____

Date: _____

Attachment 3 – AIS Contractor's Certification

AIS CONTRACTOR CERTIFICATION

FOR CONSTRUCTION CONTRACTS FUNDED THROUGH

THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE

NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: _____

Contractor's Name: _____

Contract ID: _____

SRF Project No.: _____

SRF Recipient Name: _____

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

Signature: _____

Name (print): _____

Title: _____

Date: _____

Attachment 4 – Lobbying Certification

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

SRF Project No.:
Recipient:
Project Description:

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature:
Name:
Title:
Company Name:
Date:
Contract ID:

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND ENTER INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH ARCADIS OF NEW YORK INC. FOR PHASE II OF THE LONG TERM CONTROL PLAN FOR THE LIBERTY STREET SEWER SEPARATION BETWEEN ANN STREET AND RENWICK STREET PROJECT IN AN AMOUNT NOT TO EXCEED $215,000.00

WHEREAS, by Resolution No. 219-2011 of October 24, 2011 and by Resolution No. 303-2015 of November 23, 2015, the City Council approved a Consent Order with the New York State Department of Environmental Conservation to resolve violations at the Wastewater Treatment Plant and for the development of the Long Term Control Plan ("LTCP") and Modification Order on Consent approving a Compliance Schedule for Phase I through V of the LTCP; and

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for professional engineering services to complete the planning and preliminary engineering for the Liberty Street Sewer Separation between Ann Street and Renwick Street Project included in Phase II of the LTCP Schedule of Compliance; and

WHEREAS, the scope of services will include field surveys, hydrologic and hydraulic evaluation, and preparation of an engineering report and a full environmental assessment form; and

WHEREAS, funding for the cost of the services an amount not to exceed $215,000.00 shall be derived from a New York State Environmental Facilities Corporation engineering planning grant in the amount of $50,000.00 with the required local match and the balance of the design costs derived from CD1.8686.0400.8030.2024; and

WHEREAS, this Council determines that accepting the proposal and executing a contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute a professional engineering services agreement with Arcadis of New York, Inc. in an amount not to exceed $215,000.00 to complete the planning and preliminary engineering for the Liberty Street Sewer Separation between Ann Street and Renwick Street Project included as part of Phase II of the Long Term Control Plan for the City's Combined Sewer Collection System; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the Environmental Facilities Corporation Certification for Architectural/Engineering Services Procurement for Federally Funded Projects under project EPG No. 119504.

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

Arcadis of New York, Inc.
201 Fuller Road
Suite 201
Albany, NY 12203
United States
Phone: 518 250 7300
www.arcadis.com

Date: July 9, 2024
Our Ref: 103031307
Subject: Proposal for Engineering Design Services –
Liberty Street Reconstruction Engineering Planning Report

Dear Mr. Morris,

Arcadis of New York, Inc. (Arcadis) is pleased to provide the City of Newburgh (City) with this letter proposal for design services for the City's Liberty Street Reconstruction Engineering Planning Grant to comply with the Order on Consent schedule for the City's Long Term Control Plan (LTCP). We appreciate the confidence the City has in our ability to deliver results for the improvement of critical infrastructure and regulatory compliance.

Project Understanding

In accordance with the City's CSO Long-Term Control Plan as required by the Order on Consent with the New York State Department of Environmental Conservation (NYS DEC), the City has elected to maximize combined sewer flows where wet weather flows will be screened and disinfected prior to discharge to the Hudson River. This centralized treatment methodology has been combined with strategic sewer separation and green infrastructure projects in the combined sewer system to increase the combined sewer capture rate as required by the Order on Consent. This project will involve separation of combined sewers and/or green infrastructure elements on Liberty Street, from Ann Street to Renwick Street. By reducing combined sewage and maximizing the use of green infrastructure, the project will decrease total loads of nutrients and fecal coliform discharged to the Hudson River and increase the aesthetic value of the downtown corridor in the City.

Task 1 – Project Kickoff and Data Review

Arcadis will schedule a kick-off meeting with the City, after reviewing available data and information already provided by the City, to confirm our understanding of City's goals and objectives of the project, as well as to discuss communication protocols, confirm deliverables, schedules, milestones, and additional data that maybe required. Prior to scheduling the project kick-off meeting with the City, Arcadis will evaluate if additional data or information is needed and will prepare and submit a request accordingly.

Task 2 – Field Investigations

CCTV: Arcadis will review CCTV footage provided by the City for the combined sewer system on Liberty Street. It is assumed that the City will clean and inspect and code the CCTV footage prior to providing the data to Arcadis.

Topographical and Utility Survey: Arcadis will conduct a topographical and utility survey of the Liberty Street corridor between Ann Street and Renwick Street. Utility survey will be a Quality Level B (QL-B) survey, which

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

includes use of electromagnetic-based locating instruments, ground penetrating radar, radar tomography, metal detectors and optical instruments to gather and record approximate horizontal and vertical positional data.

Preliminary Infiltration Testing and Subsurface Investigation: Subsurface soil data will be collected at up to ten (10) selected locations to facilitate the understanding of subsurface conditions by a geotechnical subcontractor. The subsurface explorations will be limited to 15-feet deep borings or bedrock whichever is shallower, and are only intended to capture soil conditions, and if encountered, proximity to rock and the water table. Infiltration testing will be completed at each location to determine if the native soil is adequate for green infrastructure practices. Boring holes located in paved areas will be backfilled with 1-1/2 sack slurry and cold patched, while boring holes in non-paved areas will be filled with slack slurry and tailings. Prior to drilling, the geotechnical contractor will explore the intended location of each boring with Ground Penetrating Radar (GPR) to search for potential interferences that could be damaged by, or be damaging to, the drill rig. This information will be used to ascertain the proper location of each. In addition, Dig Safely, New York will be contacted to mark out the utility locations in the area to support the GPR exploration and drilling. Arcadis will collect up to three (3) soil samples per location and have them tested for environmental contaminates. If the soil is found to be contaminated it may preclude green infrastructure practices from being recommended.

Arcadis will conduct a preliminary on-site meeting with Central Hudson Gas and Electric and Verizon to discuss the project and understand the utility infrastructure in the Liberty Street Corridor.

Task 3 – Preliminary Evaluation

Arcadis will create a hydrologic model of the drainage areas contributory to the established project area. The drainage areas will be drawn based on available topographic data along with the known stormwater drainage system flow paths. Land use and soil survey data will be used to estimate the runoff conditions to create the hydrologic model. The resultant hydrographs will be utilized to calculate the sewer sizes necessary to deliver the predicted stormwater flow to the existing outfall sewer on Renwick Street. Hydraulic analyses of the existing sewer will be performed for the tie-in from the new system, which will also be sized with appropriate hydraulic modelling tools.

Arcadis will prepare a conceptual plan of the areas where a full green street approach will be suitable considering where the combined sewer separation and green infrastructure installations are intended. The green street concept will consider applicable green infrastructure techniques, such as bioswale bumpouts, tree planters, and rain gardens, suitable for streetscapes and couples their installation with the traffic pattern of the street as well as its level of service by vehicles and pedestrian traffic. Arcadis will plan the green street concept for the length of Liberty Street being studied for combined sewer separation for this project. This effort will be a building-face to building-face analysis of the street scape including the sidewalks, parking areas, driving lanes, and shoulders, if there are any. The conceptual plan will lay out potential changes to these features, with the critical factor being maintenance of vehicular traffic and protection of pedestrian traffic. Green infrastructure, parking spaces, and landscaping will all be part of the final plan and typical cross section.

Arcadis will evaluate the following scenarios:

- Construction of a separate storm sewer connected to the CSO sewer on Renwick Street.
- Construction of disconnected separate green infrastructure practices.
- Construction of connected green infrastructure practices with under drains connected to a separate storm sewer.

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 4 – Schematic Design and Engineering Report

The hydrologic and hydraulic analysis will be used to prepare the schematic design of the separate sewers, green infrastructure features, sidewalks, ADA curb ramps and travel lanes of Liberty Street. Arcadis will prepare preliminary plans and profiles of the improvements. Schematic details of the green infrastructure methods selected will also be conceptually developed. A conceptual-level estimation of probable construction cost will be developed in accordance with Association for the Advancement of Cost Engineering (AACE) Class 4 requirements for budgetary purposes.

Arcadis will prepare an engineering report that will generally comply with New York State Environmental Facilities Corporation (NYS EFC) and NYS DEC requirements for regulatory approval and funding solicitation. The report will outline the evaluation and findings of the previous tasks and will include a recommendation for the proposed improvements. Arcadis will prepare a draft report for the City's review and comment. Arcadis will meet with the City to review their comments. Arcadis will submit a final report to the NYS DEC and NYS EFC for review and approval. Arcadis will review comments received and prepare a response letter and revise the design accordingly. Arcadis will submit a final report to the City, NYS DEC, and NYS EFC.

Task 5 – Permitting and Funding Support

Arcadis will prepare a long form environmental assessment form (FEAF Part I) for the City's consideration. Arcadis will assist the City in preparing FEAF Part II and Part III, expecting issuance of the Negative Declaration as Type I Action in compliance with the State Environmental Review Process (SERP) and State Environmental Quality Review (SEQR).

Arcadis will prepare a request for determination from the New York State Department of Parks, Recreation and Historic Preservation, State Historic Preservation Office (SHPO).

Arcadis will support the City for the solicitation of funding from state and federal sources as appropriate for the project including but not limited to WIIA, WQIP, GIGP, and Green Resiliency Grant.

Compensation

Arcadis will complete the scope of services in accordance with the following not to exceed budget. Arcadis will be reimbursed in accordance with our standard rate schedule. We understand that there is a Disadvantaged

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

Mr. Jason Morris, PE
City of Newburgh
July 9, 2024

Business Enterprise (DBE) goal of 20% or $10,000 (based on the $50,000 Engineering Planning Grant award) for this work.

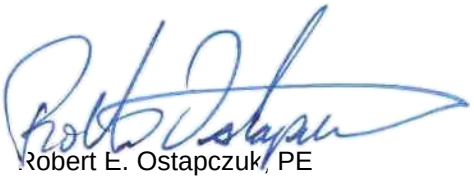
Task	Compensation
Task 1: Project Kickoff and Data Review	$7,500
Task 2: Field Investigations	$164,000
Task 3: Preliminary Evaluation	$44,000
Task 4: Schematic Design and Engineering Report	$29,000
Task 5: Permitting and Funding Support	$5,000
Total Not to Exceed Fee:	**$249,500**

Schedule

Arcadis will complete the aforementioned scope on or before May 2, 2025, for submission to the NYS DEC in advance of the Order on Consent required submission date of June 1, 2025.

We look forward to continuing assisting the City of Newburgh improve its critical wastewater infrastructure and, again, appreciate the confidence you have in our people. If you have any questions, please do not hesitate to call me at 518-250-7300 at your earliest convenience.

Sincerely,
Arcadis of New York, Inc.



Robert E. Ostapczuk, PE
Vice President

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

CC. M. Kosier, Arcadis
A. Brooks, Arcadis

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

This is an **Agreement** effective as of July _____, 2024 ["**Effective Date**"] City of Newburgh ["**Client**"], a corporation chartered under the laws of the State of New York, having its principal place of business at 83 Broadway, Newburgh, New York 12550, and Arcadis of New York, Inc., ["**Arcadis'**] a corporation chartered under the laws of the State of New York, having its principal place of business at 110 West Fayette Street, Suite 300, Syracuse, New York 13202 and an office at 201 Fuller Road, Suite 201, Albany, New York 12203.

The Client intends to perform the reconstruct Liberty Street between Ann Street and Renwick Street ["**Project**"].

Client engages ARCADIS to provide professional engineering services in support of its Project ["**Services**"].

The location of the Project is in the City of Newburgh ["**Site**"], New York ["**State**"].

ARCADIS's Services for the Project are described generally as follows: Perform a preliminary design for the Liberty Street Reconstruction and prepare a preliminary engineering report outlining alternatives and recommendations.

In consideration of the mutual promises herein, Client and ARCADIS agree that the terms and conditions of this Agreement are the following:

1 BASIC SERVICES

1.1 Scope. ARCADIS shall provide the Basic Services described in Schedule A. ARCADIS intends to perform the scope of services/work contemplated herein and in the contract documents through a combination of its own employees and employees of its affiliates, and the use of such affiliate labor shall not be deemed a subcontract for purposes of this Agreement. ARCADIS' obligations under this Agreement are solely for the benefit of Client and no other party is intended to benefit or have rights hereunder.

1.2 Standard of Care. ARCADIS shall perform the Services under this Agreement at the level customary for competent and prudent engineers performing such services at the time and place where the Services are provided ["**Standard of Care**"]. These Services will be provided by licensed engineers and other professionals and individuals skilled in other technical disciplines, as appropriate.

1.3 Instruments of Service. ARCADIS is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its Services including designs, drawings, specifications, reports ["**Service Instruments**"] and other services provided under this Agreement.

1.4 Indemnification. ARCADIS agrees to indemnify and hold Client harmless from all losses and damages resulting from ARCADIS's failure to meet the Standard of Care.

1.5 Subcontractors. Any subcontractors and outside associates or consultants to be engaged by ARCADIS under this Agreement are limited to those identified in Schedules A and B, or as Client specifically approves during the performance of this Agreement.

2 ADDITIONAL SERVICES

2.1 Scope. ARCADIS will provide the **Additional Services** described in Schedule B when authorized in writing by Client.

2.2 Excluded Services. Client acknowledges the Services provided by Arcadis hereunder do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services; (4) nor any form of professional accounting or insurance advisory services.

3 SECTION 3 -- CLIENT'S RESPONSIBILITIES

Unless stated otherwise in Section 8, Client shall do the following in a timely manner:

3.1 Client's Representative. Designate a representative having authority to give instructions, receive information, define Client's policies, and make decisions with respect to the Services.

3.2 **Services Criteria**. Provide all criteria and information as to Client's requirements for the Services, including objectives, concepts, constraints, and performance requirements, and any budgetary limitations.

3.3 **Data**. Give ARCADIS all available information, including previous reports and any other data in the possession of Client relative to the Services. These data may include (1) data prepared by others, including borings, subsurface explorations, hydrographic surveys, and laboratory tests and inspections of samples, materials and equipment, (2) appropriate professional interpretations of such data, (3) environmental assessments and impact statements, (4) property, boundary, easement, right-of-way, topographic and utility surveys, (5) property descriptions, zoning, deed and other land use restrictions, and (6) other necessary special data or consultations. ARCADIS may rely on the accuracy and completeness of the supplied data.

3.4 **Access**. Arrange for ARCADIS to enter upon public and private property as necessary.

3.5 **Review**. Examine the Service Instruments and obtain the advice of attorneys, insurance counselors or other consultants as Client thinks appropriate. Render written decisions concerning the Service Instruments within a reasonable time. Client expressly acknowledges and agrees that the Services provided do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services, nor any form of insurance advisory services.

3.6 **Expert Advice**. Provide legal, accounting, insurance or other necessary advisory services for the Services. Client expressly acknowledges and agrees that the Services provided do not and shall not include the practice of law or other legal services, nor any form of professional accounting or insurance advisory services.

3.7 **Permits.** Furnish approvals and permits from governmental authorities or other entities having jurisdiction over the Services and approvals from others as may be necessary for the timely completion of the Services.

3.8 **Services Developments**. Give prompt written notice to ARCADIS whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of ARCADIS's services.

4 PERIODS OF SERVICE

4.1 **Time of Performance**. Sections 4 and 5 anticipate the orderly and continuous progress of the Services. The time of performance contemplated is the period which should reasonably be required for the completion of the Services.

4.2 **Delays**. If Schedule A specifies periods of time for performance of services or specific dates by which services are to be completed and if such periods or dates are exceeded through no fault of ARCADIS, the compensation specified under Section 5 shall be subject to equitable adjustment.

4.3 **Start of Performance**. ARCADIS will start the Basic Services upon authorization by Client. Unless otherwise stated in this Agreement, signing of this Agreement by both Client and ARCADIS will constitute such authorization. If Client elects to authorize ARCADIS to proceed before signing this Agreement, ARCADIS shall be paid as if the services had been performed after both parties signed the Agreement.

4.4 **Completion of Performance**. For the purposes of final payment under Section 5, completion of ARCADIS's services will occur upon delivery of the final report as specified in Schedule A or B, as appropriate.

4.5 **Force Majeure**. If a force, event, or circumstance beyond ARCADIS's control interrupts or delays ARCADIS's performance, the time of performance of the Basic or Additional Services shall be equitably adjusted.

5 COMPENSATION

5.1 **Basic Services**. Client shall pay ARCADIS the Amount stated in invoices issued in accordance with Schedule C **[Pricing Schedule]** for actual work performed and Reimbursable Expenses incurred during the period covered by the invoice. ARCADIS shall be entitled to invoice for affiliate labor in the same manner as it invoices its own employees. Invoices are due and payable within 30 days after receipt by Client. Client's payments shall be in the form and shall be sent to the ARCADIS address as described in the invoices.

5.2 **Additional Services**. Client shall pay ARCADIS for Additional Services actually performed pursuant to Client's authorization and invoiced in accordance with the Pricing Schedule.

5.3 **Litigation Services**. If Client requires ARCADIS' services either as a witness in, or support of, litigation or other dispute resolution procedures between Client and a third party, ARCADIS will provide such services in accordance with a Pricing Schedule for litigation services. In addition Client will promptly reimburse ARCADIS for its reasonable fees and expenses (including without limitation attorney's fees and other legal costs incurred by ARCADIS in response to a subpoena, or request

for the production of documents, for any appearance at a deposition, trial or other legal proceeding) – provided ARCADIS is not a named party to such legal proceeding.

5.4 Delay or Termination.

5.4.1 If Client delays the performance of, or payment for, services under this Agreement for more than 3 months for a reason(s) other than ARCADIS's fault, ARCADIS may suspend performance until it receives payment in full for services rendered and expenses incurred to the date of suspension.

5.4.2 If Client terminates this Agreement prior to completion of the Basic Services, ARCADIS shall be paid in full for services rendered and expenses incurred to the date of termination, including reasonable demobilization and termination expenses.

5.5 Disputed Amounts. Notwithstanding the provisions of Section 7, if Client disputes an item(s) or amount(s) contained in an invoice, Client agrees to pay the balance of the undisputed invoiced amounts to ARCADIS in accordance with Schedule C.

5.6 Collection. Any reasonable attorneys' fees or other reasonable costs incurred by ARCADIS in collection of delinquent amounts shall be paid by Client.

6 OPINIONS OF CONSTRUCTION COST

6.1 Construction Cost. If the Service Instruments includes an estimate of the cost of constructing a facility [**Construction Cost**], that cost includes the total cost to Client of those portions of the Project described in the Service Instruments. Construction Cost will not include ARCADIS's compensation and expenses, the cost of land, rights of way, or compensation for properties. Construction Cost will also not include Client's legal, accounting, or insurance counseling services, or interest and financing charges incurred in connection with the Project, or the cost of services to be provided by others under paragraph 3.6 unless otherwise specified in Schedule A.

6.2 Opinions of Cost. ARCADIS's opinion of probable Construction Cost is made on the basis of ARCADIS's experience and qualifications and represents ARCADIS's judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. ARCADIS does not guarantee that proposals, bids or actual Project cost will not vary from ARCADIS's opinions of probable Construction Cost.

7 GENERAL CONSIDERATIONS

7.1 Changes. By written notice at any time, Client may change the Basic Services, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the Agreement shall be made in writing prior to ARCADIS's performing the changed services.

7.2 Confidentiality. ARCADIS will hold secret and confidential all information designated by Client as confidential [**Confidential Information**]. ARCADIS will not reveal Confidential Information to a third party unless:

7.2.1 Client consents in writing;
7.2.2 the information is or becomes part of the public domain;
7.2.3 ARCADIS lawfully possessed the information before receipt from Client;
7.2.4 applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or
7.2.5 failure to disclose the information would pose an imminent and substantial threat to human health or the environment.

7.3 Professional Service. The Service Instruments furnished under this Agreement are the tangible results of ARCADIS's professional services for the Services and ARCADIS shall have the right to use or reuse and retain the copyright of the Service Instruments for its purposes and at its sole risk, without liability to Client

7.3.1 **Reuse**. ARCADIS does not represent the Service Instruments to be suitable for reuse by Client or others for extensions of the Services or on any other project. Any reuse without written verification or adaptation by ARCADIS for the specific purpose intended is at Client's sole risk, without liability to ARCADIS. Any such verification or adaptation will entitle ARCADIS to compensation at rates to be agreed on by Client and ARCADIS.

7.3.2 **CADD**. ARCADIS may provide information related to the Service Instruments in computer-assisted design and drafting format [**CADD**] to Client. CADD is derived in part from computer software for which ARCADIS is licensed. These licenses are not transferable. Any unlicensed reuse of CADD may subject the user to liabilities to the software licensor.

7.3.3 **Electronic Media.** Either party to this Agreement may rely on the data or information set forth on paper (also known as "hard copies") that the party receives from the sending party by mail, hand delivery, or facsimile as items the sending party intended to send. Data or information send in electronic media format by one party to the other party are furnished only for the convenience of the receiving party and shall not be relied upon by the receiving party. If there is a discrepancy between the data received in electronic media format and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from the data in electronic media format shall be at the user's sole risk. When transferring documents in electronic

media format, the sending party makes no representations as to the long term compatibility, usability, or readability of such documents resulting from the use of software, application packages, operating systems or computer hardware differing from those used by the document's creator.

7.4 Insurance. ARCADIS will maintain **insurance** against the following risks during the term of the Agreement:

7.4.1 workers compensation in statutory amounts and employer's liability for ARCADIS's employees' Services-related injuries or disease;

7.4.2 general liability and automobile liability each in the amount of $1,000,000 for personal injury or property damage to third parties which arises from ARCADIS's performance under this Agreement; and

7.4.3 professional liability in the amount of $1,000,000 for legal obligations arising out of ARCADIS's failure to meet the Standard of Care.

7.5 Interpretation. This Agreement shall be interpreted in accordance with the laws of the State.

7.6 Successors. This Agreement is binding on the successors and assigns of Client and ARCADIS. The Agreement may not be assigned in whole or in part to any third parties without the written consent of both Client and ARCADIS.

7.7 Independent Contractor. ARCADIS represents that it is an independent contractor and is not an employee of Client.

7.8 Disputes. If any dispute arises out of or relates to this Agreement, or the breach thereof, then in the first instance, representatives of both parties shall endeavor in good faith to negotiate a settlement of the dispute. If such dispute cannot be settled through direct discussions by such representatives of the parties, then higher level representatives of both parties shall endeavor in good faith to negotiate a settlement of such dispute. If such dispute cannot be settled through direct discussion by such higher level representatives of the parties, then the parties agree to submit the matter to mediation before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.

7.9 Notices. Written notices may be delivered in person or by certified mail, by facsimile, or by courier. Such notices shall be effective upon the date of receipt by the party. Notices shall be delivered or sent to the designated representative of the other party at the address given on the cover page of this Agreement. An address may only be changed by written notice.

7.10 Applicable Law. ARCADIS and Client shall comply with all applicable federal, state and local laws, regulations or orders issued under such laws prohibiting any form of kickback, bribery or corrupt practices as defined in the Anti-Kickback Act of 1986, the Foreign Corrupt Practices Act and all other applicable federal, state, local laws, regulations or orders issued under such laws regarding kickbacks, bribery or corrupt practices. If applicable to this Agreement, ARCADIS will comply with the requirements of:

7.10.1 the Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended,

7.10.2 Utilization of Small and Disadvantaged Business Concerns (Public Law 95-507), and

7.10.3 all other federal, state and local laws and regulations or orders issued under such laws.

7.11 Entire Agreement. This Agreement, including any schedules, attachments and referenced documents, is the entire agreement between Client and the ARCADIS. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by Client and ARCADIS.

7.12 Waivers and Severability. A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

7.13 Effective Date. Unless stated otherwise in Schedule A, this Agreement is effective on the date shown on the cover page.

8 SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

8.1 Special Provisions. This Agreement is subject to the following special provisions:

8.1.1 Arcadis will make good faith efforts to generally comply with the requirements for projects funded by the New York State Clean Water State Revolving Loan Fund outlined in the Mandatory State Revolving Fund Terms and Conditions.

8.2 Schedules. The following **Schedules** are attached to and made a part of this Agreement:

8.2.1 **Schedule A** "Scope of Basic Engineering Services and Related Matters"
8.2.2 **Schedule B** "Additional or Optional Engineering Services"
8.2.3 **Schedule C** "Pricing Schedule"

Execution Authority. This Agreement is a valid and authorized undertaking of Client and ARCADIS. The representatives of Client and ARCADIS who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

City of Newburgh

By _____

Todd Venning *Per Res. _____ -2024

Title City Manager & CEO

Witness _____

Date Signed:_____

Address for Giving Notices:

City of Newburgh
83 Broadway
Newburgh, New York 12550
Attn: Mayor's Office

Arcadis of New York, Inc.

By _____

Robert Ostapczuk, PE

Title Vice President

Witness _____

Date Signed: 07/09/2024

Address for Giving Notices:

201 Fuller Road, Suite 201
Albany, New York 12203
Attn: Robert Ostapczuk, PE

Schedule A
Scope of Basic Engineering Services and Related Matters

A.1 Task 1 – Project Kickoff and Data Review

Arcadis will schedule a kick-off meeting with Client, after reviewing available data and information already provided by Client, to confirm Client's goals and objectives of the project, as well as to discuss communication protocols, deliverables, schedules, milestones, and additional data that maybe required. Prior to scheduling the project kick-off meeting with Client, Arcadis will evaluate if additional data or information is needed and will prepare and submit a request accordingly.

A.2 Task 2 – Field Investigations

CCTV: Arcadis will review CCTV footage provided by Client for the combined sewer system on Liberty Street. Client will clean and inspect and code the CCTV footage prior to providing the data to Arcadis.

Topographical and Utility Survey: Arcadis will conduct a topographical and utility survey of the Liberty Street corridor between Ann Street and Renwick Street. Utility survey will be a Quality Level B (QL-B) survey, which includes use of electromagnetic-based locating instruments, ground penetrating radar, radar tomography, metal detectors and optical instruments to gather and record approximate horizontal and vertical positional data.

Preliminary Infiltration Testing and Subsurface Investigation: Subsurface soil data will be collected at up to ten (10) selected locations to facilitate the understanding of subsurface conditions by a geotechnical subcontractor. The subsurface explorations will be limited to 15-feet deep borings and are only intended to capture soil conditions, and if encountered, proximity to rock and the water table. Infiltration testing will be completed at each location to determine if the native soil is adequate for green infrastructure practices. Boring holes located in paved areas will be backfilled with 1-1/2 sack slurry and cold patched, while boring holes in non-paved areas will be filled with slack slurry and tailings. Prior to drilling, the geotechnical contractor will explore the intended location of each boring with Ground Penetrating Radar (GPR) to search for potential interferences that could be damaged by, or be damaging to, the drill rig. This information will be used to ascertain the proper location of each. In addition, Dig Safely, New York will be contacted to mark out the utility locations in the area to support the GPR exploration and drilling. Arcadis will collect up to three soil samples per location and have the samples tested to ascertain if it is contaminated.

Arcadis will conduct a preliminary on-site meeting with Central Hudson Gas and Electric and Verizon to discuss the project and understand the utility infrastructure in the Liberty Street Corridor.

A.3
Task 3 – Preliminary Evaluation

Arcadis will create a hydrologic model of the drainage areas contributory to the established project area. The drainage areas will be drawn based on available topographic data along with the known stormwater drainage system flow paths. Land use and soil survey data will be used to estimate the runoff conditions to create the hydrologic model. The resultant hydrographs will be utilized to calculate the sewer sizes necessary to deliver the predicted stormwater flow to the existing outfall sewer on Renwick Street. Hydraulic analyses of the existing sewer will be performed for the tie-in from the new system, which will also be sized with appropriate hydraulic modelling tools.

Arcadis will prepare a conceptual plan of the areas where a full green street approach will be suitable considering where the combined sewer separation and green infrastructure installations are intended. The green street concept will consider applicable green infrastructure techniques, such as bioswale bump outs, tree planters, and rain gardens, suitable for streetscapes and couples their installation with the traffic pattern of the street as well as its level of service by vehicles and pedestrian traffic. Arcadis will plan the green street concept for the length of Liberty Street being studied for combined sewer separation for this project. This effort will be a building-face to building-face

analysis of the street scape including the sidewalks, parking areas, driving lanes, and shoulders, if there are any. The conceptual plan will lay out potential changes to these features, with the critical factor being maintenance of vehicular traffic and protection of pedestrian traffic. Green infrastructure, parking spaces, and landscaping will all be part of the final plan and typical cross section.

Arcadis will evaluate the following scenarios:

- Construction of a separate storm sewer connected to the CSO sewer on Renwick Street.
- Construction of disconnected separate green infrastructure practices.
- Construction of connected green infrastructure practices with under drains connected to a separate storm sewer.

A.4 Task 4 – Schematic Design and Engineering Report

Arcadis will prepare preliminary plans and profiles of the improvements which may include but is not limited to separate sewers, green infrastructure features, sidewalks, ADA curb ramps and travel lanes of Liberty Street. Schematic details of the green infrastructure methods selected will also be conceptually developed. A conceptual-level estimation of probable construction cost will be developed in accordance with Association for the Advancement of Cost Engineering (AACE) Class 4 requirements for budgetary purposes.

Arcadis will prepare an engineering report that will generally comply with New York State Environmental Facilities Corporation (NYS EFC) and NYS DEC requirements for regulatory approval and funding solicitation. The report will outline the evaluation and findings of the previous tasks and will include a recommendation for the proposed improvements. Arcadis will prepare a draft report for Client's review and comment. Arcadis will meet with Client to review their comments. Arcadis will submit a final report to the NYS DEC and NYS EFC for review and approval. Arcadis will review comments received and prepare a response letter and revise the design accordingly. Arcadis will submit a final report to Client, NYS DEC, and NYS EFC.

A.5 Task 5 - Permitting and Funding Support

Arcadis will prepare a long form environmental assessment form (FEAF Part I) for Client's consideration. Arcadis will assist Client in preparing FEAF Part II and Part III, expecting issuance of the Negative Declaration as Type I Action in compliance with the State Environmental Review Process (SERP) and State Environmental Quality Review (SEQR).

Arcadis will prepare a request for determination from the New York State Department of Parks, Recreation and Historic Preservation, State Historic Preservation Office (SHPO).

Arcadis will support Client for the solicitation of funding from state and federal sources as appropriate for the project including but not limited to WIIA, WQIP, GIGP, and Green Resiliency Grant.

Schedule B
Additional or Optional Engineering Services

B.1 The Scope of Additional or Optional Engineering Services consists this of page plus the following documents, attached and made part of this Agreement:

a. None at this time. In the event that Additional or Optional Engineering Services are identified and required under this Agreement at a later time, Client will provide Arcadis written authorization to perform such Services.

Schedule C
Pricing Schedule

C.1 The Pricing Schedule consists of this page plus the following documents, attached and made part of this Agreement:

a. Summary of Charges

C.2 **Terms of Payment**

C.2.1 **Fixed Rates.** For Basic Services under Section 1, Client shall pay Arcadis on the basis of standard hourly rates for technical work actually performed.

The estimated cost of the Consultant's services under Section 1 is $249,500.

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

Rate Schedule	
Grade 1 – Technician/Administrator I	$65
Grade 2 – Technician/Administrator II	$80
Grade 3 – Technician/Administrator III	$95
Grade 4 – Technician/Administrator IV	$100
Grade 5 – Professional	$125
Grade 6 – Professional II	$135
Grade 7 – Staff Professional	$150
Grade 8 – Project Professional	$165
Grade 9 – Senior Professional	$190
Grade 10 – Principal	$220
Grade 11 – Associate VP or VP	$255
Grade 12 – VP or Senior VP	$285

All rates presented apply to services rendered during calendar year 2024, for this project, and are subject to adjustment on January 1 of each subsequent year.

In addition to these fees, clients will also be responsible for any sales or value-added taxes that may apply to engineering services performed.

C.3 **Reimbursable Expenses.** Except for certain in-house services, project expenses incurred with subcontractors and outside vendors will be invoiced at cost plus 10% to cover handling. These project expenses may include, but are not limited to: shipping charges; printing; supplies; equipment; traveling expenses; special insurance; licenses; permits; and subcontracted services.

In-house services not subject to handling costs are:

Transportation:	Current IRS mileage reimbursement
Specialty Equipment:	In accordance with a usage rate schedule

C.4 **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.

NEW YORK STATE | Environmental Facilities Corporation

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

Mandatory State Revolving Fund Equivalency Project Terms and Conditions

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

Identify Contract Type prior to Advertisement for Bid:

☐ **Construction**

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

■ **Non-Construction**

Effective October 1, 2023

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

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INTRODUCTION

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

REQUIRED CONTRACT LANGUAGE

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

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

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

Contract means an agreement between a Recipient and a Contractor.

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

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

Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified under Build America, Buy America as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR § 184.4(e), then it is not a manufactured product.

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

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

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

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

State means the State of New York.

Subcontract means an agreement between a Contractor and a Subcontractor.

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

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

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

SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

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

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

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

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

I. General Provisions

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

1. 40 CFR Part 33 ("Federal DBE Regulations") for contracts under EPA financial assistance agreements, as those terms are defined therein.

2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.

3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction contracts related to any government programs providing federal financial assistance, as those terms are defined therein.

4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction contracts in excess of $10,000, as those terms are defined therein.

5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.

6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.

7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all DBE and EEO records available within a reasonable time or as otherwise determined by EFC.

C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.

D. If any terms or provisions herein conflict with Federal DBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.

E. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, age, disability, or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

II. Equal Employment Opportunities (EEO)

A. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.

B. For federally assisted construction Contracts, the Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

C. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

D. Pursuant to 41 CFR § 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at

https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet, if Contractor or Subcontractor:

1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
2. Has 50 or more employees;
3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
4. Has a Contract, Subcontract, or purchase order amounting to $50,000 or more.

E. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.

F. For federal or federally assisted construction contracts in excess of $10,000, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.

G. The Contractor will include the provisions of Subdivisions II(A) and II(B) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

III. Good Faith Efforts and Fair Share Objectives for DBEs

A. Fair Share Objectives for this Contract are 20%

B. Good Faith Efforts

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

1. For purposes of demonstrating good faith efforts and achieving the fair share objectives established herein, the Contractor should seek out the participation of the following certified entities:
    a. DBEs certified by the Small Business Administration (SBA), directory available at: https://web.sba.gov/pro-net/search/dsp_dsbs.cfm
    b. DBEs certified by state DOTs on behalf of the United States Department of Transportation (USDOT), directories by state available at https://www.transportation.gov/DBE%20State%20Websites, including:
    c. DBEs certified in New York State: https://nysucp.newnycontracts.com/
        i. DBEs certified in New Jersey: https://njucp.dbesystem.com/
        ii. DBEs certified in Connecticut: https://biznet.ct.gov/DOT_DBE/dbesearch.aspx

2. Participation of Brokers and Truckers/Haulers
    a. Contractors cannot count the participation of a DBE who acts as a Broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime contract or subcontract is subcontracted to a non–DBE, the DBE prime contractor or subcontractor will be presumed to be a Broker.
    b. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:

i. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

C. DBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the EFC DBE Utilization Plan with all required bid forms to the MBO no later than the execution date of this Contract.

2. The Contractor agrees to use such DBE Utilization Plan for the performance of DBEs on the Contract.

3. The Contractor further agrees that a failure to submit and/or use such DBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.

4. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the Recipient in the Quarterly Report immediately following the change. See Section III(E), *Quarterly Report*. At EFC's discretion, an updated DBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a change order is executed the change order and supporting documentation should be submitted to the MBO and a revised Utilization Plan may be required at EFC's discretion.

5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the DBE Utilization Plan to the MBO within 30 days of their execution.

D. Submission of Good Faith Effort Documentation

1. If the Contractor, after making good faith efforts, is unable to meet the DBE fair share objectives, the Contractor must submit documentation showing good faith efforts made by the Contractor to meet the fair share objectives. Such documentation should be submitted to the MBO in accordance with the instructions on the DBE Utilization Plan.

2. If the MBO, upon review of the DBE Utilization Plan and updated Quarterly Reports determines that the Contractor is failing or refusing to comply with the good faith effort requirements or that the good faith efforts are not in the requested format, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within a reasonable time and provide documentation showing good faith efforts as requested.

E. Quarterly Report

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

2. The Contractor agrees to submit any other information as may be requested by the MBO or EFC during the term of the Contract as needed to assist EFC for completion of federal reporting to EPA.

F. Other Requirements

1. All contracts shall comply with the contract administration requirements outlined at 40 CFR 33.302.

2. Contractor and Subcontractors shall assist EFC and the Recipient as necessary with complying with the recordkeeping and reporting requirements outlined at 40 CFR Part 33 Subpart E.

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

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

I. BABA Requirements

The requirements of this subsection shall not apply to CWSRF or DWSRF Contracts or Subcontracts which have been notified by EFC they are waived pursuant to the Build America, Buy America Act, Pub .L. No. 117-58, section 70914, and 2 CFR Part 184, including, but not limited to, the Adjustment Period Waiver for CWSRF and DWSRF projects that initiated project design planning prior to May 14, 2022. Disregard this subsection if the Contract or Subcontract is eligible for such a waiver, however, note that Subsection II below on AIS Requirements still applies.

If such Contracts or Subcontracts are not eligible for such a waiver, then the DWSRF or CWSRF Contract or Subcontract shall be subject to the Build America, Buy America Act, and the regulations promulgated thereafter (Pub. L. No. 117-58, §§ 70901-70953, and 2 CFR Part 184), which requires, among other things, that no SRF funds "may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States."

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

The Contractor hereby represents and warrants that:

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

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by

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

II. AIS Requirements

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

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

The Contractor hereby represents and warrants that:

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

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

SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

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

For Contracts in Excess of $2,000:

1. Minimum Wages

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
2. The classification is utilized in the area by the construction industry; and,
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of

receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

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

3. Payrolls and basic records.

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

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information

required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/agencies/whd/government-contracts/construction/forms or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90

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

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

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

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

6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate

instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

For Contracts in Excess of $100,000:

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

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

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

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

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

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

SECTION 6 RESTRICTIONS ON LOBBYING

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

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

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

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

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

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs (Recipients), are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). EPA funds may not be used to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
b. Telecommunications or video surveillance services provided by such entities or using such equipment.
c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

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

SECTION 8 CONSTRUCTION SIGNS

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

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

ATTACHMENTS (Required Forms)

Attachment 1 – EFC DBE Utilization Plan

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

Instructions for Contractors & Service Providers:

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

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

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

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

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

Instructions for Minority Business Officers (MBO):

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

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

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

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

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

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

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

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

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

SECTION 3: DBE SUBCONTRACTOR INFORMATION continued			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of _____; or ☐ SBA ☐ Other (indicate entity): _____	**Start Date:** **Completion Date:**		

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

SECTION 4: GOOD FAITH EFFORT DOCUMENTATION
Utilization Plans that do not meet the Fair Share Objective must be accompanied by the documentation requested in numbers 1 – 7, as listed below. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in number 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in number 13, as listed below. Please contact the MBO and/or EFC for assistance or to request sample documentation.

Provide the following:

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.

2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.

3. Screenshots of search results (using commodity codes) from DBE Directories of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective. Each search should be saved as an individual file.

4. A log of solicitation results, consisting of the list of DBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians). The log should show that each firm was contacted twice by two different methods (e.g., email and phone); who was spoken to; what was said; and the final outcome of the solicitation.

5. List of the general circulation, trade association, and DBE oriented publications and dates of publication soliciting for certified DBE participation as a subcontractor/supplier and copies of such solicitations.

6. Description of the negotiations between the contractor and certified DBEs for the purposes of complying with the DBE goals of this contract.

7. Any other information deemed relevant to the request.

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

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no DBE firms could be utilized to provide the equipment.

9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.

10. Letter, email, or screenshot of website from the manufacturer listing their distributors in NYS and the locations.

11. Screenshots of DBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.

12. An invoice or executed purchase order showing the value of the equipment.

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

Documentation for Requests for Specialty Service Exclusions:

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

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

Attachment 2 – BABA Contractor's Certification

BABA CONTRACTOR CERTIFICATION

FOR EQUIVALENCY CONSTRUCTION CONTRACTS PAID FOR WITH FUNDS THROUGH

THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE

NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: _____

Contractor's Name: _____

Contract ID: _____

SRF Project No.: _____

SRF Recipient Name: _____

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

Signature: _____

Name (print): _____

Title: _____

Date: _____

Attachment 3 – AIS Contractor's Certification

AIS CONTRACTOR CERTIFICATION

FOR CONSTRUCTION CONTRACTS FUNDED THROUGH

THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE

NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: _____

Contractor's Name: _____

Contract ID: _____

SRF Project No.: _____

SRF Recipient Name: _____

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

Signature: _____

Name (print): _____

Title: _____

Date: _____

Attachment 4 – Lobbying Certification

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

SRF Project No.:
Recipient:
Project Description:

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature:
Name:
Title:
Company Name:
Date:
Contract ID:

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED AN EMPIRE STATE DEVELOPMENT PRO-HOUSING COMMUNITIES CAPITAL IMPROVEMENT PROGRAM GRANT NOT TO EXCEED $3,000,000.00 WITH A 50% MATCH FOR THE CONSTRUCTION OF A FUTURE LONG TERM CONTROL PLAN PROJECT ALONG LIBERTY STREET BETWEEN RENWICK STREET AND ANN STREET

WHEREAS, the Capital Improvement Grants for Pro-Housing Communities Program has up to $40 million of capital grant funding made available from the Empire State Development Grant Funds program to support capital improvement and placemaking projects located within pro-housing certified communities and is intendent to incentivize capital investments within pro-housing communities to support infrastructure improvements, blight removal, and placemaking investments to create thriving and sustainable communities; and

WHEREAS, eligible project examples include but are not limited to infrastructure improvements within a downtown that will lead to additional mixed-use housing, water and/or sewer infrastructure that will increase capacity to support business expansions, transit orient development improvements within a downtown, and infrastructure improvements within a downtown to support additional development; and

WHEREAS, the City of Newburgh was certified as a Pro-Housing Community and proposes to apply for and accept if awarded an Empire State Development Pro-Housing Communities Capital Improvement Program grant to fund the construction of a future Long Term Control Plan project along Liberty Street between Renwick Street and Ann Street; and

WHEREAS, such grant funds shall be in an amount not to exceed $3,000,000.00 with a 50% match to be provided through other funding options, including grants and low interest loans;

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 an Empire State Development Pro-Housing Communities Capital Improvement Program grant in an amount not to exceed $3,000,000.00 with a 50% match to fund a future Long Term Control Plan project along Liberty Street between Renwick Street and Ann Street; and that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

Capital Improvement Grants for Pro-Housing Communities Program

Funding Available: Up to $40 million

PROGRAM DESCRIPTION:

The Capital Improvement Grants for Pro-Housing Communities Program has up to $40 million of capital grant funding made available from the Empire State Development (ESD) Grant Funds program to support capital improvement and placemaking projects located within pro-housing certified communities. The program is designed to directly support local participation in Governor Hochul's Pro-Housing Communities Program* to invest in and create more vibrant communities throughout NYS. While projects through the ESD Grant Funds program are typically considered for awards of up to twenty percent of the financing for projects, projects applying to the Capital Improvement Grants for Pro-Housing Communities program will be considered for up to fifty percent of the eligible total project cost with a cap of $3 million per project.

Capital improvement grants for projects within pro-housing communities are intended to foster economic development not only by being a catalyst to the increase in availability and access to housing, but also by stimulating community development and neighborhood growth through placemaking projects and the elimination and redevelopment of blighted structures. The focus of the program will be to incentivize capital investments within pro-housing communities to support infrastructure improvements, blight removal, and placemaking investments to create thriving and sustainable communities. While the pro-housing communities program only applies to cities, towns, and villages, this capital improvement grants program is also open to counties and not-for-profits to apply for funding as long as the project itself is located within a pro-housing community.

Grant funding will be allocated among the ten regions, each represented by a Regional Council. Funding decisions will be based on each Regional Council's strategic plan and subsequent progress reports that set out a comprehensive vision for economic development and specific strategies to implement that vision, coupled with New York State's economic growth priorities. Funding will be granted to projects which are identified as significant, regionally supported and capable of stimulating economic investment, including those indicated as a priority by the Regional Councils. Funding will be awarded by the New York State Urban Development Corporation (d/b/a Empire State Development) at its discretion. Applications will be accepted through July 31st, 4PM 2024.

*The Pro-Housing Certified Communities Program was created to recognize and reward municipalities actively working to unlock their housing potential and encourage others to follow suit. Under the program, HCR will review and certify communities who successfully unlocked housing growth or committed to taking important steps to support housing, such as by streamlining permitting and adopting pro-housing policies, and that have applied and submitted critical housing and zoning data to the state. Once certified, localities will then be eligible for the ESD Capital Improvement Grants for Pro-Housing Communities Program along with county applicants and not-for-profit organizations located within a pro-housing community.

ELIGIBLE TYPES OF APPLICANTS:

Eligible Applicants include:

- Cities, towns, and villages;
    - Cities, towns, and villages must be certified by HCR as a pro-housing community prior to submitting a Consolidated Funding Application (CFA) to the Capital Improvement Grants for Pro-Housing Communities Program OR
    - Must apply to HCR to become a certified pro-housing community by July 31st, 2024 and be approved for certification prior to award announcements in the Fall of 2024.
        - While HCR accepts letters of intent, a full application submittal to the HCR Pro-Housing Communities Program is required to be submitted to HCR by July 31st, 2024.

    - No awards will be made to municipalities that are not a pro-housing certified community at the time of award
- Not-for-profit corporations** and counties whose projects are located within a certified pro-housing community.
    - While the pro-housing communities program does not apply to not-for-profits and county applicants, projects will be considered for funding if the applicant's proposed project is located within a community that is either already certified by HCR as a pro-housing community or the community that the project is located in submits their application to become a pro-housing certified community to HCR by July 31st, 2024 and the community is approved for certification prior to award announcements in the Fall of 2024.

**If awarded funding, prior to ESD Directors' approval and execution of a contract with ESD, a not-for- profit corporation must be registered and up to date with filings with the New York State Office of the Attorney General's Charities Bureau and the New York State Office of the State Comptroller's VendRep System and must be prequalified in the New York State Financial System (SFS).

FUNDING AVAILABLE:

- Up to $40,000,000 will be made available;
- The Minimum award is $100,000; and
- The Maximum award is $3,000,000

MATCH & EQUITY REQUIREMENTS:

Applicants will not be considered for more than fifty percent of the financing for any project based on the eligible total project cost. For example, a $1,000,000 investment could receive up to a $500,000 grant from Empire State Development (ESD). While projects may be eligible for up to a certain percentage of funding, the likelihood of an award increases based on the strength of the project, economic benefits of the project in relation to similar projects and leveraging other sources vs. ESD assistance.

ESD requires that the Applicant contribute a minimum of ten percent (10%) of the total project cost in the form of equity contributed after the Applicant's acceptance of ESD's incentive proposal. Equity is defined as cash injected into the project by the Applicant or by investors and should be auditable through the Applicant's financial statements or accounts, if requested by ESD. Equity cannot be borrowed money secured by the assets in the project or grants from a government source.

ELIGIBLE PROJECT REQUIREMENTS & PROGRAM PRIORITIES:

Projects will generally fall into one of the two categories below. The more a project exceeds the parameters of the categories below, the more favorably it will be looked upon. Prioritization will be given to projects that will lead to the increase of available housing units resulting from the project; however capital projects will be considered for funding so long as there is an anticipated increase in economic development as a result of the project. Preference will be given to projects that leverage other investments occurring in the community such as Downtown Revitalization Initiative (DRI) investments, Restore investments, etc. versus standalone projects within a community. Preference will also be given to projects located in economically distressed communities as defined in the ESD Grants Program Guidelines.

Awards are offered as an incentive to undertake a project. The amount of an award from ESD is based on a number of additional factors including, but not limited to, the project's alignment with the state and regional priorities, direct and indirect fiscal benefit to the state and local governments, overall economic activity, community development and private investment. Regional distribution will be considered to the extent possible. While projects may be eligible for up to fifty percent of the

eligible total project cost, the likelihood of an award increases based on the strength of the project, economic benefits of the project in relation to similar projects and leveraging other sources vs. ESD assistance.

Municipal Applicants Only: Municipal support facilities which are not intended for public use such as municipal buildings for employees, city hall, emergency service buildings, etc. will not be considered for funding. Municipal applicants must own the site for where the project is occurring and will be required to incur the costs of the project to be eligible for reimbursement. In the event that the program is overprescribed with projects that may be awarded funding, municipal applicants will be limited to one award per municipality.

Infrastructure and Blight Removal Projects
Capital projects with a justified economic benefit will be considered for funding with the intent to award smaller-scale infrastructure projects. Eligible projects include but are not limited to:

- New or reconstruction of infrastructure including but not limited to water, sewer, or other utilities that will support development projects with a justified economic benefit;
- Site development and preparation including but not limited to blight removal, demolition, and environmental remediation; and
- Construction, expansion, and/or rehabilitation of facilities or space leading to an increase in economic development;
- Other capital projects that will result in a justified economic benefit as determined and considered by ESD. Applicants are encouraged to reach out to their ESD Regional Office to discuss their project prior to submitting an application.

Project examples include but are not limited to infrastructure improvements within a downtown that will lead to additional mixed-use housing, water and/or sewer infrastructure that will increase capacity to support business expansions, transit orient development improvements within a downtown, demolition of an existing facility and infrastructure improvements within a downtown to support additional development, etc.

Placemaking Projects
In order to attract a talented workforce and grow business, a community environment must emphasize creating accessible job centers, sustainable infrastructure and vibrant, livable communities as it is through these placemaking efforts that communities can attract the workforce for the additional housing that pro-certified communities are focused on achieving.

Placemaking projects will be reviewed, and awards will be considered based on the anticipated economic benefit and community impact resulting from the project including but not limited to direct and indirect economic impacts, a demonstrated need for the project being proposed, ancillary economic impacts to the surrounding businesses, community support for the project and any additional economic benefits that will occur as a result of the project.

Awards are intended to support places where people gather to increase economic impact within the area of the project versus projects that will only support the applicant itself who is applying. An example includes a new market concept located in an economically distressed downtown to provide opportunities for pop-up businesses, programming, and events. Another example includes an expansion of an event center located in a downtown which would lead to an increase in economic activity within the surrounding area of the event center itself; thus, resulting in greater ancillary economic impacts to the area aside from just the event center itself.

Applicants should clearly and concisely describe how the proposed project will serve their local community as well as community support for the project. A project that is located in a downtown

area will be looked upon more favorably than a project not located in a downtown area and encouraging sprawl development. Given all projects will occur within pro-housing certified communities, placemaking projects should support creating diverse and engaged communities that will be supported by the additional housing commitments by the respective municipality the project is located in. Additional examples of placemaking projects include but are not limited to cultural institutions, places of gathering, waterfront redevelopment, community space, etc.

ELIGIBLE PROJECT COSTS AND ACTIVITIES:

- Acquisition of land, buildings, machinery and/or equipment;
- Demolition and environmental remediation;
- New construction, renovation or leasehold improvements;
- Acquisition of furniture and fixtures;
- Commercial portion of mixed use project development;
- Soft costs of up to twenty-five percent (25%) of total project costs; and
- Other costs / expenditures deemed eligible by ESD.

INELIGIBLE PROJECT COSTS AND ACTIVITIES:

The following types of expenses are not eligible for reimbursement by grant funds and should not be included in the project budget:

- Developer fees;
- Training;
- Residential development only projects, although program funds may be used for the commercial component of a mixed-use project or infrastructure leading to residential use if there's a commercial component to the project;
- Medical / hospital development projects although medical research facility projects will be considered for funding;
- Retail development projects;
- Block grant projects or revolving loan funds;
- Home based service provider projects;
- Overhead and indirect costs associated with the day to day operations of the eligible entity, including but not limited to:
    - Salaries and wages;
    - Fringe benefits;
    - Rent/lease costs;
    - Website maintenance;
    - App maintenance;
    - Communication;
- In-kind costs;
- Marketing or advertising media costs;
- Events;
- Costs associated with completing an application;
- Costs incurred prior to the submission and award of a grant, actual or anticipated; and
- Other costs / expenditures deemed ineligible by ESD.

APPLICANT REQUIREMENTS:

Applicants are strongly encouraged to reach out to their ESD Regional Office to discuss their project prior to submitting an application.

For cities, towns, and villages, the municipality must be certified by HCR as a pro-housing community prior to submitting a CFA to the Capital Improvement Grants for Pro-Housing Communities Program or must apply to HCR to become a pro-housing community by July 31st,

2024 and approved for certification prior to award announcements. No awards will be made to municipalities that are not a pro-housing certified community at the time of award.

While the pro-housing communities program does not apply to not-for-profits and counties, projects sponsored by not-for-profits and counties will be considered for funding if the applicant's proposed project is located within a community that is either already certified by HCR as a pro-housing community or the community that the project is located in submits their application to HCR by July 31st, 2024 and is approved for certification prior to award announcements.

Applicants must complete and submit a Consolidated Funding Application (CFA) for review by ESD and the Regional Council for the region in which the proposed project is located.

Applicants applying for funding should clearly describe the scope and budget for the "project" for which funds are being requested. For example, an Applicant may be planning a larger project that would include multiple phases, such as in the case of a major infrastructure project or redevelopment of a specific geographic area. However, the "project" for which funds are being requested via the CFA might consist of only one phase of the larger project. In such situations, the request for funding should be specific to the phase, NOT the overall multi-phase project.

The project cannot begin, and expenses cannot not be incurred, before funding awards have been announced. Expenses incurred prior to submission of a CFA should not be included in CFA project budgets, nor should expenses that will be incurred after submission of a CFA but prior to an award announcement.

The Applicant must always disclose whether it is pursuing or intends to pursue multiple ESD funding sources, including grants, loans and tax incentives. Applicants should apply for the necessary amount of funding needed to incentivize the project to occur and request the amount of funding needed to complete their project vs. the maximum amount they may be eligible for.

A strong emphasis will be placed on project readiness along with the applicant having the capacity to complete the project if awarded. Applicants seeking funding for a project are strongly encouraged to reach out to the ESD Regional Office for where their project is located to discuss the project prior to applying.

SELECTION CRITERIA:
In addition to the criteria noted below, ESD shall have the discretion to consider additional factors in determining the relative merits of projects.

Vision and Regional Economic Development Strategies:

- The overall economic impact that the project identified in the application will have on a region, including, but not limited to, the amount of capital investment and the level of increased economic activity from the proposed capital investment;
- The economic and community benefit to the viability of the area in which the project is located in;
- The economic and community impacts that will result from the project;
- For projects that will lead to the creation of additional housing units, the number and type of anticipated units that will be created;
- For blight removal projects, the current condition of the structure(s), location of the structure(s) and the reuse plan for the property/site;
- The likelihood that the project identified in the application would be located outside of New York State or would not occur in New York State but for the availability of state or local incentives.

Public/Stakeholders:

- Whether the project has demonstrated support from local government and private sector leaders in the locality and the region where the project will be located;
- Whether the project will have a significant regional impact or is likely to increase the subject community's economic and social viability and vitality; and
- The degree of economic distress in the area where the Applicant will locate the project identified in its application, including downtown revitalization and brownfield areas.

Implementation:

- The degree of project readiness and likelihood of completion, including, where applicable for real estate development projects, if there are identified tenants for a completed project; and
- The degree of the Applicant's financial viability and strength of financials/operating history/ESD credit score.

Leveraged Resources:

- The amount of private financing leveraged; and
- The amount of public financing leveraged.

Performance Measures:

- The direct and ancillary benefits that will result from the project occurring;
- For downtown areas, whether or not the project concerns the preservation of the architectural character of a building or neighborhood;
- Whether, where applicable, there are identified tenants for a completed project;
- The degree to which the project supports the principals of smart growth, energy-efficiency (including but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design [LEED] green building rating system for the project identified in its application), and sustainable development; and
- The degree to which the project identified in the application supports New York State minority- and women-owned business enterprises.

AWARD CRITERIA DETAILS:

- Notice of a funding award will be given in the form of an incentive proposal outlining the terms of the proposed assistance. The award is subject to approval of the ESD Directors and compliance with applicable laws and regulations. Project funding may only be used for expenses incurred after the date that notice of the funding award is given. Applicants are strongly encouraged to review and countersign ESD's incentive proposal prior to starting the project.

- All Applicants will be requested to certify and agree that any decrease in the scope of work described in the Applicant's final CFA submission including, but not limited to, total project costs, jobs retained, and jobs created, may result in ESD's reduction of the award, in ESD's sole discretion, in an amount proportionate to any such decrease.

- All Applicants will be requested to certify and agree that any expansion of the scope of work described in the Applicant's final CFA submission including, but not limited to, total project costs, jobs retained, and jobs created, will not result in the increase of the award by ESD.

- The awarded grants are transferable at the sole discretion of ESD.

- The essential terms for the disbursement of assistance are included in the incentive proposal. Although funding is offered prior to project commencement as an inducement to undertake the project, funds are disbursed in arrears, as reimbursement for eligible project expenditures.

- Grant funds will be subject to pro rata recapture if property is sold within 5 years of disbursement of funds.

- It is expected the project will proceed in the time frame set forth by the Applicant. If the implementation of a project fails to proceed as planned and is delayed for a significant period of time and there is, in the exclusive judgment of ESD, doubt as to its viability, ESD reserves the right to cancel its funding commitment to such project. If awarded, the Incentive Proposal expires two years from the date of acceptance by the Recipient. ESD reserves the right to require Recipient to provide any additional information and/or documentation ESD deems necessary and terminate the project at any point if the applicant fails to provide such documentation in a timely manner.

- Funding is typically disbursed upon project completion.

- Projects generally are presented to the ESD Directors once all project expenditures have been undertaken and disbursement of ESD assistance is sought.

- All required public approvals must be in place prior to the start of construction and approval by the ESD Directors, including State Environmental Quality Review (SEQR) and consultation with the State Historic Preservation Office, if applicable. Physical work on an ESD-funded project may not be started prior to the completion of any necessary environmental, historic and/or smart growth review.

- For projects with job creation and/or retention, job numbers will be verified using the employer's NY-45 and NY-45 ATT and/or payroll reports prior to disbursement of funds and annually thereafter through the required reporting period.

- In accordance with the requirements of Article 15-A of the New York State Executive Law: Participation By Minority Group Members and Women With Respect To State Contracts, projects awarded funding shall be reviewed by ESD's Office of Contractor and Supplier Diversity, which will set business and participation goals for minorities and women. Such goals shall typically be included in the incentive proposal.

- Please note that ESD's agency-wide MWBE utilization goal is 30%. Each project will be assigned an individual contract-specific goal, which may be higher or lower than 30%. Should an Applicant receive a funding award, the Applicant shall be required to use good faith efforts to achieve the prescribed MWBE goals assigned to this project. Applicants must maintain such records and take such actions necessary to demonstrate such compliance. Failure to achieve the specified MWBE goal may result in award reduction.

- In 2014, the Service-Disabled Veteran-Owned Business Act was signed into law. The new law created the Division of Service-Disabled Veterans' Business Development in Office of General Services to certify, promote and encourage economic development among disabled veterans throughout the state. Project Applicants are urged to work with Service-Disabled Veteran-Owned Businesses (SDVOBs) and a directory can be found at https://ogs.ny.gov/Veterans.

- In accordance with State law, after approval by the ESD Directors, a public hearing will be required if the project involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property. ESD will schedule a public hearing in accordance with the New York State Urban Development Corporation Act ("UDC Act") and will take such further action as may be required by the UDC Act and other applicable law and regulations. The ESD Directors must reconsider the matter if any negative testimony is received at the public hearing. (Generally, this hearing occurs the month after the Directors' initial approval). Approval by the Public Authorities Control Board ("PACB"), New York State Comptroller ("OSC") and the New York State Attorney General ("AG") may then be required. Following approval by the ESD Directors and PACB, OSC and AG approval, if required, the documents for processing the grant award will be prepared by ESD. Notwithstanding the process outlined above, no project shall be funded if sufficient resources are not received by ESD for such project.

- A $250 Application Fee, payable when funding is documented in an Incentive Proposal, and a one percent (1%) non-reimbursable commitment fee based on the grant amount awarded will be assessed to all awardees. The commitment fee will be due when the Applicant executes documents required for processing the award, after approval by the ESD Directors. The Applicant will be obligated to pay for out-of-pocket expenses incurred by ESD in connection with the project, including, but not limited to, expenses related to attorney fees, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by ESD.

- Grant funds originally awarded to projects that have since been cancelled or terminated will be repurposed for economic development projects by ESD at its discretion in consultation with the REDCs.

- Projects having a hotel as a principal function will be required to demonstrate compliance with Section 2879-b of Public Authorities Law regarding labor peace if funding is awarded. Public Authorities Law Section 2879-b prohibits public authorities from providing financing for any project that includes, as one of the principal functions, a hotel with more than fifteen employees unless a labor peace agreement ("LPA") is entered into with a labor organization representing hotel or convention center employees in the State, for a period of at least five years. An LPA is an agreement between the project developer (or its contractors) and a labor organization prohibiting the labor organization and its members from engaging in labor activities that disrupt the hotel's operations.

- The distribution of government funds is subject to constitutional limitations under the First Amendment's Establishment and Free Exercise Clauses. Applications that implicate these Clauses may require additional information from the applicants and will be subject to legal review and approval by the agency before award. Applicants are encouraged, but not required, to anticipate and address factual and legal issues relevant to these Clauses in their application.

ADDITIONAL RESOURCES:
For more information, eligible Applicants should contact the local Empire State Development Regional Office. A complete list of the ESD Regional Offices can be found at https://esd.ny.gov/regions

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal | Division of Housing and Community Renewal

KATHY HOCHUL
Governor

RUTHANNE VISNAUSKAS
Commissioner/CEO

March 11, 2024

City of Newburgh
Attention: Alexandra Church
83 Broadway
Newburgh, NY 12550

Dear Ms. Church,

Thank you for submitting the City of Newburgh's application to New York's Pro-Housing Communities Program. We are delighted to inform you that we have completed the review of your application and the City of Newburgh has been certified as a Pro-Housing Community.

The housing shortage that faces New Yorkers affects residents of all ages and income levels, and the urgent need to take action to address the issue is only growing. In New York State, rents have risen 40 to 60 percent since 2015 and home prices have risen 50 to 80 percent. More than half of New York renters are rent-burdened, meaning that they pay more than 30 percent of their income on rent – the second-highest rate in the nation. Here at HCR, we understand the nexus between supply and affordability. In order to achieve true equity of opportunity and to erase the gaps in access to health, education, and wealth-building, we must guarantee that people have a choice as to where they live and raise their families. So much of the housing progress we have made and want to make is dependent on the support of municipalities like yours who are on the front lines helping families fight for housing that meets their needs.

As a certified Pro-Housing Community, the City of Newburgh will now be eligible to apply for various discretionary funding programs with up to $650 million in funding available. Please be on the lookout for additional details about how to maintain your certification for calendar year 2025.

We are excited that the City of Newburgh has chosen to join the Pro-Housing Communities Program and we look forward to continuing to work with the City of Newburgh to ensure that all New Yorkers have access to a safe, affordable, equitable place to live.

Sincerely,

RuthAnne Visnauskas
Commissioner/CEO

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1G TO THE CONSTRUCTION CONTRACT WITH J SQUARED CONSTRUCTION CORPORATION FOR THE WASTEWATER TREATMENT PLANT VACUUM TRUCK UNLOADING FACILITY PROJECT

WHEREAS, by Resolution No. 211-2022 of September 12, 2022, the City Council of the City of Newburgh, New York awarded a bid to and approved a contract with J Squared Construction Corporation, in the amount of $1,874,280.00, for the construction of the Wastewater Treatment Plant Vacuum Truck Unloading Facility Project; and

WHEREAS, the overall contract price is reduced by $26,586.28 from $1,874,280.00 to $1,847,693.72, and the time for substantial and final completion is extended by 345 days and 445 days, respectively, and J Squared Construction Corporation has submitted Change Order No. 1G; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to execute Change Order No. 1G with J Squared Construction Corporation reducing the overall contract price by $26,586.28 from $1,874,280.00 to $1,847,693.72, and extending the time for substantial and final completion by 345 days and 445 days, respectively, in the Wastewater Treatment Plant Vacuum Truck Unloading Facility Project.

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:	City of Newburgh	Owner's Project No.:	20.22
Engineer:	Arcadis of New York, Inc.	Engineer's Project No.:	30152118
Contractor:	J Squared Construction Corp.	Contractor's Project No.:	22-03
Project:	Vacuum Truck Unloading Facility		
Contract Name:	General Construction		

This ☐ Preliminary ☒ Final Certificate of Substantial Completion applies to:

☒ All Work ☐ The following specified portions of the Work:

Date of Substantial Completion: **March 18, 2024**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities: ☒ None ☐ As follows:

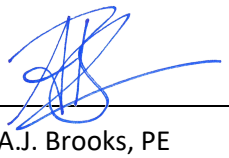
Amendments to Contractor's Responsibilities: ☒ None ☐ As follows:

The following documents are attached to and made a part of this Certificate:

- **None.**

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Engineer

By *(signature)*: 

Name *(printed)*: A.J. Brooks, PE

Title: Senior Engineer

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CHANGE ORDER NO.: 1

Owner:	City of Newburgh	Owner's Project No.:	20.22
Engineer:	Arcadis of New York, Inc.	Engineer's Project No.:	30152118
Contractor:	J Squared Construction Corp.	Contractor's Project No.:	22-03
Project:	Vacuum Truck Unloading Facility		
Contract Name:	General Construction		
Date Issued:	6/27/2024	Effective Date of Change Order:	

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

Description:

1. **Move $23,976.70 from Unit Price Pay Item No. 4 Steel H-Section Piles to Bid Item No. 3 Contingency Allowance to cover charges in excess of original contingency allowance that was included in Contingency Allowance Authorization No. 4.**
2. **Provide sand and mulch for start-up of Vacuum Truck Unloading Facility. Total cost of this change amounts to $1,348.53.**
3. **Provide additional onsite and remote services by three technicians on 9/19, 9/20, 9/25, and 10/2 to integrate the sensaphone web browser data with the local panel onsite. Total cost for this work amounts to $2,287.02.**
4. **Closeout remaining unused monies in Unit Price Pay Items No. 4 and No. 6. Total amount of unused monies to be credited back to Owner amounts to $26,586.28.**
5. **Extend Substantial Completion by 345 days to March 18, 2024, Final Completion by 345 days making the total Contract Times 655 days such that the Project shall be completed and ready for final payment by July 26, 2024.**

Attachments:

1. **Field Order proposal for Additional Sensaphone Changes from October 2023.**
2. **Sand and Mulch invoice.**

Change in Contract Price	**Change in Contract Times**
Original Contract Price: $ 1,874,280.00	Original Contract Times: Substantial Completion: 180 days Ready for final payment: 210 days
Contract Price prior to this Change Order: $ 1,874,280.00	Contract Times prior to this Change Order: Substantial Completion: 180 days Ready for final payment: 210 days
Decrease this Change Order: $ 26,586.28	**Increase** this Change Order: Substantial Completion: 345 days Ready for final payment: 445 days
Contract Price incorporating this Change Order: $ 1,847,693.72	Contract Times with all approved Change Orders: Substantial Completion: 525 days Ready for final payment: 655 days

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	Recommended by Engineer (if required)	Accepted by Contractor
By:		John Sain Jr.
Title:	Senior Engineer	President
Date:		27 June 2024
	Authorized by Owner	Approved by Funding Agency (if applicable)
By:		
Title:	City Manager, CEO Todd Venning * Res _____-2023	
Date:		

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FIELD ORDER
(C) Newburgh Vacuum Truck Unloading Facility

Additional Sensaphone Changes from October 2023

CONTRACTOR'S PROPOSAL Project No. **22-03**

Contractor Name:	J Squared Construction Corporation	Date:	02/28/24
Address:	277 Wolf Hill Road		
	Voorheesville, NY 12186	Field Order No.	-
Telephone No.:	(518) 872-9471		

SECTION A:	**CONTRACTOR WORK**		
1.	Total Contractor Labor		$0.00
2.	Total Contractor Material		$2,287.02
3.	Total Contractor Equipment		$0.00
4.	Total Unit Price Costs		$0.00
5.	SUBTOTAL	*(Total lines 1 thru 4.)*	$2,287.02
6.	Contractor's Override Combined O and P	*(15% of line 5.)*	$0.00
7.	Bond (1.5%)	*(1.5% of lines 5. and 6.)*	
8.	**CONTRACTOR TOTAL**	*(Total lines 5, 6 and 7.)*	**$2,287.02**
SECTION B:	**SUBCONTRACTOR WORK**		
9.	Names of Subcontractors:		
A.	0		$0.00
B.	0		$0.00
C.			$0.00
D.			$0.00
10.	TOTAL SUBCONTRACTORS' PROPOSALS	*(Total lines A thru D.)*	$0.00
11.	Contractor's Override on Subs' Proposals:		
11a.	Contractor's Override Combined O and P	*(5% of line 10)*	$0.00
11b.	Bond (1.5%)	*(1.5% of line 10. and 11a.)*	
12.	**SUBCONTRACTOR TOTAL**		**$0.00**
SECTION C:	**TOTAL CONTRACTED UNIT PRICE COSTS**	12.	$2,287.02
		say	**$2,287.02**

CHANGE ORDER
(C) Newburgh Vacuum Truck Unloading Facility
Additional Sensaphone Changes and MultiSmart Inputs

LABOR AND MATERIAL WORKSHEET Project No. **22-03**

Contractor Name:	J Squared Construction Corporation	Date:	02/28/24
Address:	277 Wolf Hill Road		
	Voorheesville, NY 12186	Change Order No.	-
Telephone No.:	(518) 872-9471		

A. LABOR

Work Description	Trade	Hours	Total Rate from Labor Rate Sheet, Line D	Total Labor Cost
			TOTAL LABOR	**$0.00**

B. MATERIAL

Material Description	Quantity	Unit	Unit Cost	Material Cost
Sensaphone: Hydra-Numatic Invoice dated 10/02/2023	1	LS	$2,287.02	$2,287.02
			TOTAL MATERIAL	**$2,287.02**

65 YEARS
1957-2022

HYDRA-NUMATIC SALES CO.

22 Park Place PO Box 760 Butler, NJ 07405
T: 973-492-0181 F: 973-492-1909
www.hnscompany.com

Invoice

Invoice Number:
S3052-JSQUARE-REVISE
Invoice Date:
Oct 2, 2023

Sold To:

J Squared Construction Corp
277 Wolf Hill Road
Voorheesville, NY 12186
United States

Ship To:

J Squared Construction Corp
277 Wolf Hill Road
Voorheesville, NY 12186
United States

Customer ID	Customer PO		Payment Terms
J SQUARED CONSTRUCTI	22-03: 07		Net Due
Shipping Method	**Ship Date**	**Due Date**	**Sales Order Number**
UPS Ground	Jul 6, 2023	Oct 2, 2023	S3052-JSQAURED

Quantity	Item	Description	Unit Price	Extension
		Order to supply and provide professional services to wire, program and test for the installation of a Sensaphone Sentinel Pro Cellular Monitor for the Newburgh Vacuum Truck Unloading Facility in Newburgh, NY. Services performed both remotely and onsite on 9/19, 9/20, 9/25, and 10/2. See attached report.		
1.00		**********		
1.00		Total for parts and professional services.	4,172.84	4,172.84
1.00		**********		
1.00		Newburgh Vacuum Truck Unloading Facility-Tax Exempt Certificate NY ST120.1		
1.00		**********		
1.00		Additional services, performed remotely and onsite by three technicians on 9/19, 9/20, 9/25 and 10/2, as described in the attached report.	2,287.02	2,287.02

Please remit to:
Hydra-Numatic Sales Co.
PO Box 760
Butler, NJ 07405

Subtotal	6,459.86
Sales Tax	0.00
Shipping & Handling	0.00
Total Invoice Amount	6,459.86
Payment/Credit	6,459.86
TOTAL	0.00

Tax Exempt Cert on file?

1-1/2% per month service charge will be applied to all past due accounts. A convenience fee may be added for payments by credit card.

HYDRA-NUMATIC SALES CO.
22 Park Place PO Box 760 Butler, NJ 07405
T: 973-492-0181 F: 973-492-1909
www.hnscompany.com

SERVICE REPORT

Customer:	J Squared Construction	Job#	MH230273
Location:	Newburgh, NY	Date of Service:	9/19,20,25/2023; 10/2/23
Pump Station Name:	Newburgh Vacuum Truck Unloading Facility Station	Type of Service:	Professional Services
Manufacturer/Model:	Sensaphone Sentinel Pro Cellular Monitor	SO# or S/N:	00:07:F9:01:04:85

Via Bob Cornetto:

9/19/23

Tony of G.A. Fleet was on site. He attempted to make the necessary changes to the TCIP settings. Various calls were made between Mike Henry of HNS and Tony. Mike in turn relayed the information to both Dan Capp of HNS and Bob Cornetto of HNS. We in turn were in discussions with Sensaphone. The end result was that Tony advised us that his unit was communicating. However, we were unable to connect with the Xylem controller.

9/20/23

Since Tony had advised us that his unit was working, we had no alternative but to check the installation directly. Dan Capp and Bob Cornetto travelled to the site. We connected to the Sentinel dialer, but we were not able to communicate with the Xylem controller. We discussed this with Sensaphone and while we were at the site, a Sensaphone technician was able to access the modem and Sentinel remotely. He confirmed that our unit is set up properly. He said the most likely issue was the settings in the Xylem control unit. In particular, he pointed out that the Gateway and Port settings needed to be configured properly.

This information was relayed to Mike Henry and in turn he discussed it with John Saia, Jr.

9/25/23

When Mike and Tony were at the site, Both Dan and I worked remotely on the unit and also had discussions with Sensaphone. During this time, Tony evidently made a change that was quite helpful, but I am not sure they know what they actually changed that made a difference. We were suddenly reading the controller through the Modbus connections. We tested the alarms that were digital inputs. These are shown as either 0 or 1, meaning on or off. All the digital inputs worked when tested. I asked them to do more than one of these a couple of times just to confirm. We were also receiving data from the input registers, such as elapsed time, level, flow, etc. Before you get excited, that is as far as we have been able to get. Knowing the current hours on the pumps and the range of the level transducer, we have attempted every combination to properly read these three inputs to legitimize the setting we would need for all of the input registers, as they would not vary once proven. We are unable to resolve the readings from these registers to match what we would expect.

This is something I have done many times. When I am able to use the proper combination when reading the registers, I usually see exactly what I would expect. In the case of the wet well level, I cannot find a combination that makes sense, but I can display a whole number. Over a several day period, this number has never changed. I am data logging this to be able to see any changes. It is not possible that this level is not changing, and yet it does not change. Either we are not looking at the actual level or it is not changing in real time. We see a similar problem with the other inputs.

Let me try and clarify what I mean by trying different combinations. Digital inputs are simple and, if you read the proper register, you see a 0 or a 1. According to the Flygt manual, the input and output registers are 32-bit. In Modbus, there are no 32-bit registers, so you use two 16 bit registers to match the 32-bit specified. A 16-bit register can be populated from left to right, right to left. If you are using two 16-bit registers, the same applies but it is also possible to populate one from left to right and the other from right to left. This leaves us with only four possible combinations. We test each of the four combinations and only one will show an accurate number. Once you have any one of these showing a correct number, that changes as you expect, you use the same combination to read every input or holding register you access. They do not vary this within the program of the controller. Our problem is that we are not reading the expected numbers and they also do not seem to change.

This type of issue would tend to indicate we are not reading the correct registers, or something is wrong with how the program is writing to these registers. The meeting you have suggested may shed some light on this issue. The data we are trying to read is in the Flygt control unit and only they might be able to help resolve what we are looking at to see if this can be corrected in some way.

I hope this explanation is helpful to you. Once they corrected the communications settings, we can now read the Modbus information as we expected. This issue was strictly within the Flygt unit and correctable only by them. We have now hit another stumbling block which I believe can only possibly be corrected with their help.

10/2/23

A Teams meeting was held at 11 AM. Bob Cornetto attended the meeting by request. John Saia attended, as well as individuals from G.A. Fleet, Arcadis, and the City of Newburgh. It was agreed that we were now communicating with the Xylem controller and discrete inputs were acting correctly. However, we still had no usable data from the 32-bit registers. A request was made to set up a further meeting to include someone from Xylem. The purpose of the meeting was to determine if the information could be made available in a manner that would allow the Sentinel dialer to read the correct information so the customer could gain access to the necessary information.

LMD Materials LLC

P.O. Box 1076
Wappingers Falls

Invoice

Date	Invoice #
8/21/2023	3083

Bill To

J2 Construction Corporation
John Saia, Jr., PE
277 Wolf Hill Rd
Voorheesville, NY 12186

P.O. No.	Terms	Project

Item	Qty	Description	Rate	Serviced	Amount
		Job Location: 2 Renwick St. Newburgh			
		LMD Ticket # 5865, Triaxle # 20, Driver: Joe			
Sand	20.57	Scale Ticket # 429823, (20.57 tons of Sand) Delivered	32.50	8/16/2023	668.53
MULCH	17	Brown Mulch, 17yds	40.00	8/16/2023	680.00

Total	$1,348.53
Payments/Credits	$0.00
Balance Due	$1,348.53

RESOLUTION NO.: _____-2024

OF

JULY 22, 2024

A RESOLUTION AMENDING THE 2024 PERSONNEL ANALYSIS BOOK TO ADD ONE ASSISTANT CITY ENGINEER POSITION AND DELETE ONE ENGINEERING TECHNICIAN POSITION IN THE ENGINEERING DIVISION

WHEREAS, the Commissioner of Public Works/City Engineer proposes to delete one Engineering Technician position and add one Assistant City Engineer position to promote efficiency in the Engineering Division; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2024 be amended to delete one Engineering Technician position and add one Assistant City Engineer position in the Engineering Division.

EXTRACT OF MINUTES

Meeting of the City Council of the

City of Newburgh, in the

County of Orange, New York

July 22, 2024

* * *

A regular meeting of the City Council of the City of Newburgh, in the County of Orange, New York, was held at the City Hall, Newburgh, New York, on July 22, 2024, at 7:00 o'clock P.M. (Prevailing Time).

There were present: Hon. Torrance Harvey, Mayor; and

Councilpersons:

There were absent:

Also present: Lorene Vitek, City Clerk

* * *

_____ offered the following resolution and moved its adoption:

RESOLUTION NO. ___ - 2024

OF

JULY 22, 2024

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED JULY 22, 2024, AUTHORIZING THE CONSTRUCTION OF THE NEW DELANO-HITCH RECREATION PARK AQUATIC CENTER, STATING THE ESTIMATED MAXIMUM COST THEREOF IS $15,426,744, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, INCLUDING $7,426,744 IN FUNDS OF THE CITY AVAILABLE FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $8,000,000 BONDS OF SAID CITY TO FINANCE THE BALANCE OF SAID APPROPRIATION

RECITALS

WHEREAS, the City Council of the City of Newburgh, in the County of Orange, New York (herein called the "City") recognizes the need for the construction of the new Delano-Hitch Recreation Park Aquatic Center (the "Project"); and

WHEREAS, to date the City has paid from available funds certain preliminary costs totaling $1,263,000 associated with the Project, including the cost of preliminary design plans and specifications and site preparation, and will not seek to reimburse such prior expenditures from the proceeds of the bonds herein authorized; and

WHEREAS, the City Council has given due consideration to the impact the Project may have on the environment and has complied in every respect with the requirements of the State Environmental Quality Review Act (SEQRA), constituting Article 8 of the Environmental Conservation Law with respect thereto; a copy of Resolution 108-2023, adopted by the City Council on June 12, 2023, is on file with the City Clerk.

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

Section 1. The City of Newburgh, in the County of Orange, New York (herein called the "City"), is hereby authorized to construct the new Delano-Hitch Recreation Park Aquatic Center, consisting of (i) a 9,100 square foot splash pad area, (ii) a 78ft x 50ft pool with ADA compliant entry ramp, (iii) a 5,500 square foot ADA compliant poolhouse with reception area, changing rooms, bathrooms, showers, concession stand, security office, first aid room, and mechanical room, (iv) a 14,000 square foot stamped and dyed concrete pool deck with lounge chairs, shade structures and tables, and (v) site landscaping, site lighting and a new parking lot (the "Project"). The estimated maximum cost of the Project, including preliminary costs and costs incidental thereto and to the financing thereof, is $15,426,744 and said amount is hereby appropriated for such purpose, including $7,426,744 in funds of the City available therefor. The plan of financing includes the expenditure of said available funds in the amount of $7,426,744 to pay a part of said appropriation, the issuance not to exceed $8,000,000 bonds of the City, and any bond anticipation notes issued in anticipation of the sale of such bonds, to finance the balance of said appropriation, and the levy and collection of taxes on all the taxable real property in the City to pay the principal of and interest on said bonds and notes. Any grant monies

received or expected to be received by the City from the United States of America, the State of New York or from any other source are hereby authorized to be expended towards the cost of the Project or redemption of the bonds or notes issued therefor or to be budgeted as an offset to the taxes to be levied and collected for the payment of such principal and interest.

Section 2. Bonds of the City in the principal amount of not to exceed $8,000,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called "Law"), to finance a part of the appropriation referred to herein.

Section 3. The period of probable usefulness applicable to the specific object or purpose for which said bonds are authorized to be issued, within the limitations of Section 11.00 a. 61 of the Law, is twenty (20) years.

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

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

shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Director of Finance, the chief fiscal officer of the City.

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

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

expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged."

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

(a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such resolution or a summary hereof, are not substantially complied with,

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

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

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

The adoption of the foregoing resolution was seconded by _____ and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

****

CERTIFICATE

I, LORENE VITEK, City Clerk of the City of Newburgh, in the County of Orange, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the City Council of said City of Newburgh duly called and held on July 22, 2024, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said City Council and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relate to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City of Newburgh this _____ day of July 22, 2024.

(SEAL)

_____
City Clerk

(THE FOLLOWING NOTICE IS TO BE ATTACHED TO AND
TO BE PUBLISHED
WITH SUMMARY OF RESOLUTION AFTER ADOPTION)

NOTICE

The bond resolution, a summary of which is published herewith, has been adopted on July 22, 2024, and the validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the CITY OF NEWBURGH, in the County of Orange, New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the constitution.

LORENE VITEK
City Clerk

RESOLUTION NO. _____ OF 2024

BOND RESOLUTION DATED JULY 22, 2024

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED JULY 22, 2024, AUTHORIZING THE CONSTRUCTION OF THE NEW DELANO-HITCH RECREATION PARK AQUATIC CENTER, STATING THE ESTIMATED MAXIMUM COST THEREOF IS $15,426,744, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, INCLUDING $7,426,744 IN FUNDS OF THE CITY AVAILABLE FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $8,000,000 BONDS OF SAID CITY TO FINANCE THE BALANCE OF SAID APPROPRIATION

object or purpose: construction of new Delano-Hitch Recreation Park Aquatic Center

period of probable usefulness: twenty (20) years

amount of obligations to be issued: $8,000,000

A complete copy of the Bond Resolution summarized above and such engineering reports shall be available for public inspection during normal business hours at the office of the City Clerk, 83 Broadway, in Newburgh, New York.

Dated: July 22, 2024
Newburgh, New York

Delano-Hitch Aquatics Center BOND Amount Calculation Table (May 17, 2024)

Task #	Solicitation #	Project Description	Vendor Award	Resolution No.	Funding Source	Status	Amount
1		Aquatic Center at Delano-Hitch Park- Professional Engineering Services	Clark Patterson Lee	250-2022	ARPA	Completed	$ 804,000.00
2	2.23	Aquatic Center at Delano-Hitch Park- Demolition	ADP Group, Inc.	109-2023	ARPA	Completed	$ 427,000.00
3		Aquatic Center at Delano-Hitch Park- Professional Engineering Services for demolition	Clark Patterson Lee	110-2023	ARPA	Completed	$ 32,000.00
4	12.23	Construction of New Aquatic Center at Delano-Hitch Park (General Contract)	Butler Construction Group, Inc	245-2023	ARPA & BOND	In-Progress	$ 10,024,210.00
5	12.23	Construction of New Aquatic Center at Delano-Hitch Park (Mechanical Contract)	DJ Heating & Air Conditioning, Inc	246-2023	ARPA & BOND	In-Progress	$ 320,000.00
6	12.23	Construction of New Aquatic Center at Delano-Hitch Park (Plumbing Contract)	TWP Plumbing & Heating, Inc	247-2023	ARPA & BOND	In-Progress	$ 846,000.00
7	12.23	Construction of New Aquatic Center at Delano-Hitch Park (Construction Management)	Arcadis of New York, Inc	248-2023	ARPA & BOND	In-Progress	$ 1,287,360.00
8	23.23	Construction of New Aquatic Center at Delano-Hitch Park (*Electrical Contract)*	J&J Sass Electrical, Inc	3-2024	ARPA & BOND	In-Progress	$ 835,000.00
9		Aquatic Center at Delano-Hitch Park- Professional Engineering Services for contruction administration	Clark Patterson Lee	4-2024	ARPA	In-Progress	$ 178,000.00

LINE 1: Total Contracted Project Cost (Tasks No. 1 through 9)	$ 14,753,570.00
LINE 2: Total Remaining Project Costs (As of May 2024) (In-Progress Tasks)	$ 13,490,570.00
LINE 3: Total Remaining Project Costs (As of May 2024) + 5% Contingency (LINE 2 + 5%)	$ 14,163,744.00
LINE 4: Total ARPA Funds Dedicated to Aquatic Center:	$ 7,426,744.00
LINE 5: ARPA Funds Already Expended on Aquatic Center Tasks No. 1, 2 & 3 (As of May 2024) (Completed Tasks)	$ 1,263,000.00
LINE 6: Remaining ARPA Funds (As of May 2024) (LINE 4 - LINE 5)	$ 6,163,744.00
Total Unfunded Balance (BOND Amount) (LINE 3 - LINE 6):	**$ 8,000,000.00**

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATEWIDE INVESTMENT IN MORE SWIMMING PROGRAM GRANT NOT TO EXCEED $8,000,000.00 WITH A 20% MATCH FOR THE CONSTRUCTION OF THE DELANO-HITCH RECREATION PARK AQUATICS CENTER IMPROVEMENTS PROJECT

WHEREAS, the New York Statewide Investment in More Swimming (NY SWIMS) initiative, overseen by New York State Office of Parks, Recreation, and Historic Preservation and administered by Dormitory Authority of the State of New York, is a new competitive matching grant program to expand access to safe swimming facilities in underserved communities across the State; and

WHEREAS, through NY SWIMS, local municipalities can apply for grants to fund the design and construction or renovation of swimming pools and natural swimming areas along with other related capital expenses, including site infrastructure, public restrooms and changing rooms, land acquisition, and other capital costs necessary to effectuate the NY SWIMS initiative; and

WHEREAS, the City of Newburgh, as an underserved community, proposes to apply for and accept if awarded a NY SWIMS Program grant to fund the construction of the Delano-Hitch Recreation Park Aquatics Center Improvements Project; and

WHEREAS, such grant funds shall be in an amount not to exceed $8,000,000.00 with a 20% match to be provided through other funding options;

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 New York Statewide Investment in More Swimming Program grant in an amount not to exceed $8,000,000.00 with a 20% match to fund the construction of the Delano-Hitch Recreation Park Aquatics Center Improvements Project; and that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

NEW YORK STATEWIDE INVESTMENT IN MORE SWIMMING (NY SWIMS) INITIATIVE

ROUND ONE

REQUEST FOR APPLICATIONS (RFA)

Randy Simons
Commissioner Pro Tempore
New York State Office of Parks, Recreation, & Historic Preservation

Lisa Gomez
Chair
Dormitory Authority of the State of New York

RFA Announcement: May 1, 2024
RFA Submission Start Date: June 13, 2024
RFA Submission End Date: July 12, 2024

NEW YORK STATEWIDE INVESTMENT IN MORE SWIMMING

Request for Applications

Timetable of Key Events:

Event:	**Date:**
Funding Opportunity Announcement	5/1/2024
Open Application Question Period Begin	5/1/2024
Applicant Webinar	5/15/2024
Deadline to Submit Questions	5/29/2024
Answers Posted By	6/12/2024
Application Submission Period	6/13/24 – 7/12/2024
Application Scoring	7/15/24 – 8/12/2024
Awards Announced by	8/28/2024

Program Background

Recognizing that drowning is the leading cause of death for children ages 1-4 and that climate change will increase extreme heat events, Governor Hochul announced the New York Statewide Investment in More Swimming (NY SWIMS) initiative, a new competitive matching Grant program to expand access to safe swimming facilities in Underserved Communities across the State.

Funding Purpose

Municipalities will be able to apply for funding to support the construction or renovation of Municipal Swimming Facilities, and improvements ancillary thereto, in Underserved Communities across the State.

Inquiries

In accordance with State Finance Law § 139-j and § 139-k, this RFA includes and imposes certain restrictions on communications between the Dormitory Authority of the State of New York ("DASNY") and the New York State Office of Parks, Recreation and Historic Preservation ("NYS OPRHP") personnel and an Applicant, or any representative, agent, consultant or other third party representing the Applicant during the procurement process. Any questions regarding this RFA should be submitted via the NY SWIMS Survey link: https://www.surveymonkey.com/r/NYSWIMS2024.

Contacts made to any DASNY, NYS OPRHP or other State personnel regarding this procurement as noted in this RFA between the date of release and Application deadline may disqualify the Applicant and affect future procurements with governmental entities in the State of New York. Please refer to DASNY's website (www.dasny.org) for policies and procedures regarding this law, or the OGS website (http://ogs.ny.gov/acpl/) for more information about this law.

Apply Promptly

Prospective Applicants are strongly encouraged to take the time to fully review the RFA and related documents to ensure they submit the best possible Application. **Applicants are also encouraged to not wait until the Application due date to submit an Application.** Technical issues with sending an Application may be reported to NYSWIMS@DASNY.org but there is no guarantee that an issue can be resolved in the final hours of the submission window. Late Applications will not be accepted.

Other Resources:

- 2020-2025 Statewide Comprehensive Outdoor Recreation Plan
- American Community Survey Poverty Estimates by Zip Code Tabulation Area (ZCTA) (2018-2022)

Should any issues arise after the Open Application Question period concludes on 05/29/2024, inquiries can be directed to the RFA Coordinator with the Subject line: **NY SWIMS RFA Inquiry** via NYSWIMS@DASNY.org.

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Appendix 3 Frequently Asked Questions (FAQ)
Appendix 4 Sample Grant Disbursement Agreement (GDA)
Appendix 5 NY SWIMS Scoring Template

Section One: INTRODUCTION

1.1 Background

Construction and Renovation of Municipal Swimming Facilities in Underserved Communities .

NY SWIMS, overseen by NYS OPRHP and administered by DASNY, will create a competitive Grant program to facilitate the renovation and construction of Municipal Swimming Facilities in Underserved Communities across the State. Through NY SWIMS, local municipalities can apply for Grants for Municipal Swimming Facility Projects. NY SWIMS Grants can be used to fund the design and construction or renovation of swimming pools and natural swimming areas along with other related capital expenses, including site infrastructure, public restrooms and changing rooms, land acquisition, and other capital costs necessary to effectuate the NY SWIMS initiative.

1.2 Purpose of the Funding

The 2024-2025 Enacted Budget includes $150 million in capital funding for the NY SWIMS initiative to be awarded to Municipalities and not-for-profit entities through multiple competitive funding opportunities that will award qualified applicants Grants between $50,000 and $10,000,000 for eligible capital projects. Grantees must provide a 20% match toward the Grant-funded Project.

This current round will only be open to Municipalities and Indian Nations.

1.3 Funding Availability & Allocations

Municipalities will be able to apply for this first round of funding to support the construction or renovation of Municipal Swimming Facilities in Underserved Communities across the State. It is expected this first round of funding for Municipalities will be for not less than $60 million and no more than $90 million. Any additional or future round(s) are expected to be open to Municipalities and not-for-profit entities.

NY SWIMS will be overseen by NYS OPRHP and administered by DASNY.

Section Two: ELIGIBILITY

2.1 Definitions

Ancillary Projects: Costs related to the construction or renovation of Municipal Swimming Facilities, but do not expand access to Municipal Swimming Facilities and are not required by State Sanitary Code. Ancillary costs cannot make up more than 10% of the total Grant amount. Examples include splash pads, concession stands, picnic areas, and playgrounds.

Amenities: Costs related to the construction or renovation of Municipal Swimming Facilities that allow for the expansion of access to Municipal Swimming Facilities, are required by State Sanitary Code, or needed for the safety of users. Examples include public restrooms, bathhouses, showers, shade structures, pavilions, etc.

Applicant: New York State Municipalities providing swimming opportunities to Underserved Communities.

Application: The documentation submitted that will be reviewed and scored for this funding opportunity.

Authorized Officers: Individuals authorized to sign documents on behalf of the Municipality, including but not limited to contractual agreements. In the event there is only one Authorized Officer, a letter from the municipal attorney confirming that there is only one Authorized Officer must be submitted to DASNY and NYS OPRHP.

Awardee: Applicant that has been tentatively awarded a Grant by NYS OPRHP and DASNY.

Award Letter: The letter sent to Awardees as described in Section 5.1 of this RFA.

DASNY**:** The Dormitory Authority of the State of New York.

Eligible Project Costs: That portion of allowable General Project Development Costs incurred in connection with a NY SWIMS Project that are to be reimbursed from a NY SWIMS Grant. Eligible costs are listed in this RFA. All costs to be paid with Grant funds shall be capital in nature as further described in this RFA. Grant funds may not be used to pay for non-capital costs including, but not limited to, salaries, maintenance or repair costs, operational equipment, lease payments and utility costs.

Grant Disbursement Agreement ("GDA"): The contract entered into between DASNY and the Grantee.

General Project Development Costs: Costs that include, but are not limited to acquisition, demolition, design, construction, major renovation, reconstruction, improvement, modernization or rehabilitation of a Municipal Swimming Facility or related Eligible Project Costs.

Grant Application: Any Application submitted by an Applicant to this RFA.

Grantee: Municipality that has passed the scoring and review phases and has satisfied all conditions precedent required to enter into a Grant Disbursement Agreement.

Grantee Certification: As the issuer of the bonds that will finance the Project to be funded with NY SWIMS funds, DASNY must verify that it is in compliance with all applicable Federal and State laws and regulations. This certification should accurately state the purposes for which the NY SWIMS funds will be used and must be signed by two Authorized Officers.

Grantee Questionnaire ("GQ")**:** This questionnaire is completed by all prospective Grantees to provide DASNY with pertinent information necessary for DASNY to complete its diligence review of the Applicant.

Matching Funds: The Grant will cover no more than 80% of the proposed Project. The Grantee will be expected to cover the remaining costs.

Municipality: For the purposes of this RFA, the term Municipality shall mean a County, City, Town, Village, or Indian Nation.

Municipal Swimming Facility: A swimming pool and the structure within which it is located, or natural swimming area.

NYS OPRHP: The New York State Office of Parks, Recreation and Historic Preservation

Positive Pay: A fraud-prevention system offered by most commercial banks.

Project: Capital costs related to the construction, renovation or acquisition of a Municipal Swimming Facility that serves to expand swimming opportunities for New Yorkers. Project costs are required to be incurred and paid by the Grantee and all contracts for the work to be performed for the Project are required to be signed by an Authorized Officer of the Grantee.

Project Certification: The document that certifies the Project will be in compliance with various relevant statutory provisions.

Project Location: The physical address where the Project will occur.

RFA: Request for Application, developed by NYS OPRHP and DASNY.

Short Term Debt/Bridge financing: Debt that is expected to be paid off within one year and is incurred to pay for Project costs until such time as Grant funds become available.

Site Control: Evidence that the Grantee has sufficient authorization and control to undertake the Project at the Project Location. Municipalities shall submit a Certificate of Municipal Site Control provided as Appendix 2 to this RFA. Lease agreements must extend at least 10 years from the date the Application is submitted.

Given the unique historical and legal parameters attendant to Indian Nation lands, Indian Nations should submit valid written documentation to satisfy the Site Control requirement.

State Environmental Quality Review Act ("SEQR") Review: New York State Environmental Quality Review Act (SEQR) requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making. A SEQR review must be completed for each Project to be funded with the Grant.

Underserved Communities: Underserved Communities are determined with respect to existing recreation opportunities and to the percent of the population below poverty level for the Project Location of the proposed Project. For scoring purposes, two data points will be utilized: the "Relative Index of Need" (RIN) that is published in the Statewide Comprehensive Outdoor Recreation Plan (SCORP); and the American Community Survey Poverty Estimates by Zip Code Tabulation Area (ZCTA)(2018-2022). Zip Code Tabulation Areas (ZCTAs) are developed by the US Census Bureau for tabulating summary statistics, including poverty rate. These data points are explained in Section 4.2 of the RFA.

W-9 Form: IRS document utilized to set up the Grantee as a vendor/payee in DASNY's financial system. The Organization's Federal Employer Identification Number (FEIN) is required to make payment. NOTE: The Grantee's Legal Name and FEIN on the W-9 should match the Legal Name and FEIN on file with the IRS.

2.2 Eligible Entities

New York State Municipalities providing swimming opportunities to Underserved Communities.

2.3 Eligible Projects

Grants may be used for payment of capital costs that include, but are not limited to, acquisition, demolition, design, construction, major renovation, reconstruction, improvement, modernization, or rehabilitation of a Municipal Swimming Facility and related eligible improvements that expand swimming opportunities for New Yorkers.

Project costs are required to be paid by the Grantee and all contracts for the work to be performed for the Project are required to be signed by an Authorized Officer of the Grantee.

The Grantee must be the entity entering into the contracts for the work to be performed and the entity paying for the costs of the Project.

All Projects must comply with all local and state regulations and laws at all times.

Applicants may submit Applications for more than one Project. **A separate Application must be submitted for each Project.**

2.4 Eligible Project Locations

General Project Location Requirement

Site control is required to prove that the Applicant has sufficient authorization and control to undertake the Project at the Project Location.

Municipalities must submit a Certificate of Municipal Site Control provided as Appendix 2 to this RFA to demonstrate ownership or a long-term lease that allows the Municipality to construct and maintain the Project on the property.

Indian Nations should submit documentation to demonstrate Site Control over the Project Location and authorization to construct and maintain the Project at the Project Location.

If the Project will be undertaken on leased/rented real property, the lease or rental agreement must be provided. **The lease/rental agreement must show that it is in effect for at least ten (10) years from the date the Application is submitted, and lease term will be verified at the time of the execution of the Grant Disbursement Agreement to ensure that a significant period of time remains on the lease term.** Support of the property owner for the capital improvement(s) is also required to be submitted with the Application if the property is rented/leased. Include a letter on the landlord/lease agency's letterhead granting permission to complete the Project at the designated site. The letter must be dated and signed by an authorized officer of the landlord or leasing agency.

2.5 Eligible Uses of Funds

Eligible Project costs include, but are not limited to:

- Capital costs including acquisition, demolition, acquisition, design, construction, major renovation, reconstruction, improvement, modernization or rehabilitation of a Municipal Swimming Facility or related eligible improvements thereto and required amenities under State Sanitary Code. This includes public restrooms, bathhouses, showers, shade structures, and pavilions.
- Ancillary features to a Municipal Swimming Facility, including splash pads, concession stands, picnic areas, and playgrounds are also eligible for reimbursement, but can only account for up to 10% of the total Grant amount.
- Costs to be paid from Grant funds cannot have been incurred before April 1, 2024. Costs incurred subsequent to January 1, 2023 are eligible to be included as part of the 20% match. Such costs must meet all of the requirements of the NY SWIMS program and this RFA and must be documented to the satisfaction of NYS OPRHP and DASNY.
- Dam removal may be eligible if used to enhance recreation (such as to open up a river or increase safety for aquatic recreation uses).

Eligible non-construction costs are limited to:

- Architectural design and engineering.

Ineligible Uses of Funds

Ineligible uses of NY SWIMS funds include, but are not limited to:

- Working capital, including funds required to operate a facility, such as staff, rent, utilities, toys, internal labor, supplies, and equipment.
- Grant funds may not be used to restore or preserve existing dams that have a demonstrated negative impact on fish passage or stream ecology.
- Preliminary planning, market studies, and similar activities.
- Grant writing, administration, legal, insurance and other fees.
- Minor repairs or routine maintenance projects.
- Long term debt, including financing of machinery or equipment.
- Support of any Project that is part of an existing or proposed tax credit structure.

2.6 Matching Requirement

The NY SWIMS Program requires Applicants to contribute matching funds towards the NY SWIMS Project in a 1:4 ratio. Therefore, the Grant is expected to cover no more than 80% of the maximum Project cost and the Municipality will contribute at least the remaining 20% ("Matching Funds"). Applicants must also demonstrate the ability to provide the remainder of the funds necessary to complete the Project. There is no requirement that matching funds be fully secured by the date of Application, but Applications will be scored based upon the amount of funds secured and/or the timing of additional funds expected. No Grant Disbursement Agreement will be entered into until all matching funds and funds necessary to complete the Project have been secured.

A financial analysis will be undertaken by DASNY in connection with each Application. The financial analysis will evaluate the degree to which sufficient funds in excess of the Grant amount

have been secured in the amount necessary to complete the NY SWIMS Project and shall confirm that such funds meet all applicable criteria set forth in this NY SWIMS RFA. Documentation may include, but is not limited to, any or all of the following:

- Bank account and investment account statements.
- Donor pledges, agreements and receipts.
- Grant award letters, agreements and contracts.
- Loan agreements, commitment letters, terms and conditions.
- Bond documents.
- Personal service contracts.
- Bills of sale and paid invoices evidencing payment by the Applicant for an eligible cost.
- Eligible NY SWIMS Project expenditures already made by the Applicant may be counted as **Matching Funds** contributed by the Applicant so long as such expenditures occurred subsequent to January 1, 2023.

PLEASE NOTE: Pledges or award letters with unsatisfied contingencies, pending loan applications, and other non-final commitments will not be considered to be secured in the evaluation process. Applications demonstrating that Matching Funds have been secured shall be evaluated more favorably than Applications that do not provide evidence of committed funding sources necessary to complete the NY SWIMS Project.

Section Three: APPLICATION PROCESS

3.1 Informational Webinar and Question period

A Webinar video will be posted on the NYS OPRHP and DASNY NY SWIMS Websites by 05/15/2024. This video will address questions and clarify specific elements of the RFA announcement.

Prior to the Webinar date, ensure thorough review of RFA for all requirements, including but not limited to Section Four (Evaluation) and Section Five (Advancement and Grant Disbursement Agreements).

To maintain a fair and open process, NYS OPRHP and DASNY will only accept questions regarding this RFA received via SurveyMonkey. The SurveyMonkey form can be accessed here: https:\\www.surveymonkey.com/r/NYSWIMS2024. Please send all questions no later than 4:00 pm 05/29/2024.

Questions of a substantive nature submitted prior to 05/10/2024 will be addressed on the Applicant Webinar Video, where applicable.

Questions received after the Webinar Video has been posted on 05/15/2024, and prior to 5:00 pm on 05/29/2024, will be made available on the NYS OPRHP website and DASNY (Grant Administration | DASNY) websites on 06/12/2024.

All potential Applicants are strongly encouraged to view this Webinar as the New York Statewide Investment in More Swimming initiative (NY SWIMS) Grant Application process will be explained in the Webinar Video.

3.2 Submit Application

Applicant Action Items:

1) Verify that Application responses directly address the program requirements as well as the scoring criteria as laid out in Section 4.2 of this RFA.
2) Verify that all documentation necessary to support the Application is uploaded along with the Application, including:
    - Project budget supported by professional estimates, proposals, bid documents, or other required documentation confirming the Project cost.
    - Documentation that indicates the Applicant has the funds necessary to complete the Project including the required Matching Funds. If all of the funds required to complete the project have not been secured at the time of Application, the committed funding to date should be provided along with the details on how the additional funding will be obtained. The degree to which additional funding has been secured will be a factor in scoring.
    - Required permits obtained, or list of permits that will be needed to complete the Project.
    - Certificate of Municipal Site Control attached hereto as Appendix 2. For an Indian Nation, documentation to demonstrate Site Control over the Project Location and authorization to construct and maintain the Project at the Project Location.

3) Submit Applications by email to NYSWIMS@DASNY.org *no later than 5:00 pm 07/12/2024.* Applications submitted after the due date will not be considered. **Anything received via another email, postal delivery, or facsimile will not be accepted, and no notification will be provided to the Applicant.**

4) **After submission of the Application, please check your email to verify that you have received an email confirmation that your application has been received. If you do not receive a notification, please email NYSWIMS@DASNY.org with a copy to grants@DASNY.org.**

Please note that incomplete Applications will be scored less favorably than completed Applications. If required documentation is not provided as required by this RFA, the Applicant will receive a 0 (zero) in that category. There will not be an opportunity to amend the submitted Application prior to scoring. Please refer to the checklist at the beginning of this RFA and verify that all required documentation has been included in your email.

Applications for this first round of funding will be accepted from 06/13/2024 to 07/12/2024. It is anticipated that additional round(s) of funding will be available to Municipalities and not-for-profit entities.

Prospective Applicants are strongly encouraged to submit their Applications **as soon as their Application is complete, well in advance of the Application due date**. Technical issues with sending an Application may be reported to NYSWIMS@DASNY.org but there is no guarantee that an issue can be resolved in the final hours of the submission window.

Application Submission Tips:

To complete the Application process, please pay particular attention to the following steps and required documents to be submitted:

1) The NY SWIMS Application is a fillable PDF. Be certain to save the document prior to submitting it and name the Application and any additional PDFs clearly with the

Applicant's name. Number relevant attachments as needed for clarity and to ensure that all relevant information and documentation is submitted.

2) The Applicant may choose to submit one comprehensive PDF of the Application with all related backup documentation, or to submit an email with multiple attachments. It is imperative that all relevant documents are contained in this one email. **Subsequent emails with additional information will not be considered**.
3) File size limit should not exceed 112 MB for messages outside Microsoft datacenters, and 150 MB between Microsoft users. If you prefer to submit a zip file, please find assistance here: Zip and unzip files - Microsoft Support
4) Prior to submission, please be certain to include "SWIMS Application" in the subject line of the email and name all attachments with the Applicant's name.
5) NY SWIMS is a competitive Grant program so once your Application has been submitted, no changes will be allowed. If your Application is not complete, it will result in a lower score and/or render the Application ineligible to advance to scoring. Please refer to the checklist before submission to verify that you have included all of the required documentation.

Section Four: EVALUATION

NY SWIMS is expected to be a highly competitive Grant program. Applicants will be scored using the criteria set forth below.

A score will be assigned to each Application based upon responsiveness to the criteria set forth in this RFA. During the Grant evaluation process, reviewers will review each Application and assign a score to each based upon the criteria below. In order to receive a NY SWIMS Grant, an Application must first be deemed eligible for scoring and then must receive a combined Project Impact and Project Viability & Novel Features score such that the total combined minimum score is at least 60.

The Applicants with the highest scores of 60 and above shall be awarded a NY SWIMS Grant in a minimum amount of $50,000 and up to $10,000,000; provided, however, regional diversity shall be a goal in the award of Grants across the State. NYS OPRHP and DASNY will try to achieve this goal as part of the review and scoring process.

4.1 Eligibility Review

Initially, all Applications will be reviewed for eligibility as described in Section 2.2 (Eligible Entities) and 2.3 (Eligible Projects). Based on the information provided in the Application and supplemental documentation, NYS OPRHP and DASNY will determine if the submitted Application meets the eligibility criteria as outlined in this RFA. Projects that do not meet eligibility as described in Sections 2.2 and 2.3 will not advance to scoring.

4.2 Two-Step Selection Criteria

NYS OPRHP and DASNY will score each eligible Application and assign a score based on the information provided in the Application. A total of 100 points will be available across all categories in Steps One and Step Two.

Step One: All Applications will be scored based on Project need, as described below. Only Projects scoring at least 20 points for Project need will be evaluated in Step Two.

- **Project Need** – maximum score up to 40 points:
  - NYS OPRHP will score based on the following:
    - 0-20 points derived from the Statewide Comprehensive Outdoor Recreation Plan Relative Index of Needs (RIN) value for swimming associated with the county where the Project is located.
      - Use the "Applicant Worksheet to Calculate Project Need" and identify the RIN associated with the county where the Project is located and multiply the index number by 2 to determine the "Total Score for RIN".
    - 0-20 points derived from the American Community Survey Poverty Estimates by Zip Code Tabulation Area (ZCTA)(2018-2022) to assess the poverty level associated with the Project Location.
      - Follow the instructions labeled "Using the 'Grants Map' for NY SWIMS for 2024" to identify the ZCTA of the Project Location. Then use the Point Breakdown "ZCTA" Table on the "Applicant Worksheet to Calculate Project Need" to assign points and multiply by 2 to determine the "Total Score for ZCTA".

Step Two: Applications that have a Project need score of at least 20 points will be scored based on Project Impact and Project Viability & Novel Features, as described below. Applications that have a Project need score of less than 20 points will be deemed ineligible and will not be evaluated in Step Two. A score based on all categories will be assigned at the end of Step Two.

- **Project Impact** – maximum score up to 20 points:
  - NYS OPRHP will score and evaluate the qualitative aspects of the Project.
    - 0-20 points assessed from review of an Applicant-submitted narrative and supporting documentation describing the groups served by the proposed Project. Include, as applicable: how the Project meets the needs for an aging population; encourages participation by youth; responds to changes in the composition of the population and social condition of the community; and/or ensures open and reasonable access to persons of various abilities.
      - Rater will evaluate submissions and assign up to 20 points.
      - Scoring instructions:
        - 0-5 points for relevance of the proposal related to the needs for an aging population.
        - 0-5 points for relevance of the proposal related to participation of youth.
        - 0-5 points for relevance of the proposal related to adapting to changing community composition.
        - 0-5 points for relevance of the proposal related to ensuring open and reasonable access to persons of various abilities and from outside the municipality.

- **Project Viability & Novel Features** - maximum score up to 40 points:

- DASNY will review Applications and score for statutory and bond eligibility; site control; Project cost estimates as well as verification that sufficient funds exist to complete the Project as described along with the required Matching Funds.
  - 0-20 points for detailed Project budget, eligibility of costs and supporting documentation (quotes, proposals, estimates, etc.).
  - 0-10 points for evidence of Matching Funds and other/additional funding.
  - 0-10 points may be added based on any unique or creative features that would distinguish the Project from any other project. Applicant should clearly describe how these features will result in a signature Project within the community.

One of the goals of the NY SWIMS Grant Program is to provide regional diversity in the award of Grants across the State. NYS OPRHP and DASNY will try to achieve this goal as part of the review and scoring process.

Section Five: ADVANCEMENT & GRANT DISBURSEMENT AGREEMENT

5.1 Issuance of Award Letters

NY SWIMS Awards will be announced after all qualifying Applications have been scored by NYS OPRHP and DASNY.

Awards will be announced by August 28, 2024.

After the announcement, DASNY will issue an Award Letter to the Awardee and manage the award process. The Award Letter is not a commitment to provide funds but shall constitute a commitment on the part of DASNY to enter into a Grant Disbursement Agreement (GDA) subject to compliance with the conditions precedent set forth in the Award Letter and this RFA. The GDA is not effective until fully executed.

5.2 Prerequisites to the Grant Disbursement Agreement

After the issuance of the Award Letter, DASNY will undertake a financial, environmental, bond and tax counsel review. DASNY will also determine whether required regulatory approvals have been obtained. DASNY will also verify that sufficient site control is in place. No GDA will be entered into until the following reviews have been completed to the satisfaction of DASNY.

Financial Review

DASNY will conduct a financial review in connection with each Award in order to verify that sufficient Matching Funds, as well as additional funds, if needed, have been secured in the amount necessary to complete the NY SWIMS Project, and that such funds meet all applicable criteria set forth in this RFA, including, but not limited to, the matching requirement set forth in Section 2.6 of this RFA. Grantees will also be required to submit a W-9.

State Environmental Quality Review

If a SEQRA review has been conducted for the Project, the Applicant must provide either the Findings Statement or the Negative Declaration prepared by the SEQRA Lead Agency in

connection with the Project. If no SEQRA review has been undertaken in connection with a Project that is currently underway or has not started, DASNY will undertake the necessary review.

If a Section 14.09 of the Historic Preservation Act review was completed in connection with the NY SWIMS Project, please provide documentation.

Grantee Questionnaire

DASNY needs to be certain that Grant funds are paid only to entities that are deemed to be responsible. Full and accurate responses on the Grantee Questionnaire (GQ) will help to achieve this goal. A request will be made via email for the names and email addresses of two Authorized Officers. The GQ will then be sent to the Authorized Officers through DocuSign. The GQ is required in order to complete the review process and will then be incorporated into the GDA. The submission of false information on the GQ could be a violation of Federal and State Penal Laws.

The GQ must be completed under the Legal Name of Organization. Please use the correct, full name of the Municipality on the GQ, with no abbreviations.

Certification

Municipalities will be asked to certify, at a minimum, the following in connection with the Project to be financed by the NY SWIMS Grant:

- The Grantee shall take affirmative steps to ensure that information is widely disseminated with respect to the following aspects of the project or program:
    a. The Project or program is publicly funded.
    b. The Project or program is open to all.
    c. The Project or program beneficiaries are not limited to any particular sect or group.

- All contractors and vendors retained to perform services in connection with the Project shall be authorized to do business in the State of New York and shall possess and maintain all professional licenses and/or certifications required to perform the tasks undertaken in connection with the Project.

- Other requirements as deemed necessary and/or appropriate by DASNY, its bond and tax counsel, and NYS OPRHP.

5.3 Grant Disbursement Agreement

The Grant Disbursement Agreement execution process will occur via DocuSign. The Grantee must provide the name and a valid email for the Grantee's Attorney before the DocuSign process begins.

First, DASNY will forward a Grant Disbursement Agreement (GDA) to the Grantee once the aforementioned reviews, as applicable, have been completed. The GDA is the contract between the Grantee and DASNY. The Grantee will review and sign the GDA which will then be forwarded to the Grantee's Attorney. The Grantee's Attorney must provide an Opinion of Counsel in the form provided in the GDA in order for the GDA to be executed by DASNY.

Upon the return of the GDA to DASNY, DASNY will review the GDA for completeness and accuracy, which will include verification that the budget has not changed (or that a valid rationale is given for the change and the change does not materially affect the approved Project, timeline or budget), the exhibits are properly completed, an appropriate Opinion of Counsel has been provided as required by Exhibit B of the GDA, and no other issues have arisen that would affect the status of the Grant. Once this review is complete, DASNY will arrange for the execution of the GDA by an authorized officer of DASNY.

The GDA will become effective upon execution of the GDA by both the Grantee and DASNY. The GDA will be dated the date of the execution of the GDA by DASNY.

5.4 GDA Terms and Conditions

Terms of the NY SWIMS GDA

The NY SWIMS GDA between the Grantee and DASNY will expire 5 years after the GDA is executed.

Non-Discrimination and Affirmative Action Policy for the Project

It is the policy of the State of New York and DASNY to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minorities Group Members and women share in the economic opportunities generated by DASNY's participation in projects or initiatives, and/or the use of DASNY funds.

1. The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
    - Grantee shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
    - At the request of the Affirmative Action Officer, (AAO), the Grantee shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Grantee's obligations herein.

2. The Grantee is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.

3. Grantee represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the AAO and shall permit access to its books and records by DASNY, or its designee, for the purpose of ascertaining compliance with provisions hereof.
4. Grantee shall include or cause to be included, paragraphs (1) through (3) above, in every contract, subcontract or purchase order with a Contracting Party executed in connection with the Project, in such a manner that said provisions shall be binding upon each Contracting Party as to its obligations incurred in connection with the Project.

Non-Discrimination and Affirmative Action Definitions

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/women workforce participation, as set forth in paragraph 2) herein, and developed by DASNY.

Affirmative Action Officer ("AAO")

Shall mean DASNY's Affirmative Action Officer or his/her designee, managing the affirmative action program for DASNY.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of $1,500, in connection with any projects or initiatives funded in whole or in part by DASNY and (ii) **any borrower or Grantee** receiving funds from DASNY pursuant to a loan or Grant document.

Minority Business Enterprise ("MBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing, (iii) an enterprise in which such minority ownership has and exercises authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Minority and Women-Owned Business Enterprise Participation

Minority and Women-owned Business Enterprise participation efforts are not limited to the efforts suggested herein, and the role of M/WBE firms should not be restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such efforts may include but not be limited to:

- Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations;
- Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on DASNY contract;
- Utilizing the resources of DASNY Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- Encouraging the formation of joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate, and
- The Contracting Party shall remit payment in a timely fashion.

Women-owned Business Enterprise ("WBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing, (iii) an enterprise in which such women ownership has and exercises authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

5.5 Requisition of Funds

Once the GDA is fully executed, the Grantee may requisition funds for work completed using the forms included as exhibits to the GDA. The Grantee must forward requisitions directly to DASNY's Accounts Payable Unit at apgrants@dasny.org. No advances will be made, and Grant funds will not be disbursed to pay deposits.

DASNY will review each requisition received from the Grantee which will include, but shall not be limited to, verification that proper documentation has been received. DASNY reserves the right to request additional information to verify the representations in the requisition.

The NY SWIMS initiative will provide reimbursement only up to the Grant award amount set forth in the GDA. If a Project goes over budget, it will be the responsibility of the Grantee to cover additional expenses. **If allowable costs for the Project are less than the amount awarded (i.e. "under budget"), any unused funding will revert to the State; it cannot be used for additional purchases, renovations, or any other expense.** Please refer to Section 2.5 for additional information regarding Project costs that may not be submitted for reimbursement.

The NY SWIMS GDA allows for a Grantee to utilize DASNY's Payment on Invoice option as follows:

An interest-bearing segregated account must be established by the Grantee into which Grant Funds will be deposited after approval of a submitted requisition. An industry standard-fraud protection must be added to the segregated bank account ("Positive Pay").

Eligible Project expenses incurred in connection with the Project and to be paid with Grant Funds prior to payment by the Grantee to the contractor or vendor must be paid out of this segregated account. All work being paid on invoice must be completed prior to disbursement of Grant Funds. The funds in the segregated account shall not be used for any purpose other than making payments to a contractor or vendor for approved costs in accordance with the requisition submitted in connection with the Grant funded Project.

The Grantee must provide proof of disbursement of Grant Funds to the contractor and/or vendor set forth in the requisition for which payment on invoice was requested, in a form acceptable to DASNY, within sixty (60) days of the date that Grant Funds are disbursed to the Grantee to pay for such costs. DASNY will not make any additional disbursements from Grant Funds until such time as proof of payment is provided. Failure to comply with these requirements will revoke a Grantee's eligibility to utilize the Payment on Invoice option.

Important Note: In order to be reimbursed for eligible Project costs, the following documentation must be included with the submitted requisition:

- **Paid invoice from a vendor authorized to do business in New York State and issued to the Grantee.**
- **Cancelled check or bank statement or corporate credit card statement in the name of the Grantee evidencing payment.**
- **Completion of the requisition exhibits included with the GDA.**
- **Other information as may be requested by DASNY.**

Section Six: RIGHTS RESERVED

NYS OPRHP and DASNY reserve the right to:

- Amend the RFA if necessary and post updated information to the NYS OPRHP and DASNY websites;
- Reject any or all Applications received in response to this RFA;
- Withdraw the RFA at any time in the sole discretion of NYS OPRHP and DASNY;
- Withdraw the award if: (i) the grant administration process is delayed in excess of twelve (12) months due to non-responsiveness; (ii) inability of the Awardee to provide the documentation required for the successful administration of the Grant award (e.g., site control documentation, financial documentation, etc.); and/or (iii) Awardee fails to provide documentation required to prepare a Grant contract or fails to execute a Grant contract within twelve (12) months from date of award. No Applicant will have any rights against NYS OPRHP or DASNY arising from such actions;
- Exclude ineligible expenses from the Grant amount requested;

- In the event of NY SWIMS award forfeiture(s), NYS OPRHP and DASNY reserve the right to consider Applications submitted in response to this RFA that were not initially funded. Updated information may be requested as deemed necessary by NYS OPRHP or DASNY;
- NYS OPRHP and DASNY also reserve the right to solicit and accept new Applications if additional NY SWIMS funding becomes available;
- Request additional information from the Applicants as required prior to entering into a GDA.

Please note, however, that NYS OPRHP and DASNY will <u>not</u> contact the Applicant during the Application Period to seek clarification, request additional information or inform the Applicant that the Application is incomplete.

Delano-Hitch Aquatics Center BOND Amount Calculation Table (May 17, 2024)

Task #	Solicitation #	Project Description	Vendor Award	Resolution No.	Funding Source	Status	Amount
1		Aquatic Center at Delano-Hitch Park- Professional Engineering Services	Clark Patterson Lee	250-2022	ARPA	Completed	$ 804,000.00
2	2.23	Aquatic Center at Delano-Hitch Park- Demolition	ADP Group, Inc.	109-2023	ARPA	Completed	$ 427,000.00
3		Aquatic Center at Delano-Hitch Park- Professional Engineering Services for demolition	Clark Patterson Lee	110-2023	ARPA	Completed	$ 32,000.00
4	12.23	Construction of New Aquatic Center at Delano-Hitch Park (General Contract)	Butler Construction Group, Inc	245-2023	ARPA & BOND	In-Progress	$ 10,024,210.00
5	12.23	Construction of New Aquatic Center at Delano-Hitch Park (Mechanical Contract)	DJ Heating & Air Conditioning, Inc	246-2023	ARPA & BOND	In-Progress	$ 320,000.00
6	12.23	Construction of New Aquatic Center at Delano-Hitch Park (Plumbing Contract)	TWP Plumbing & Heating, Inc	247-2023	ARPA & BOND	In-Progress	$ 846,000.00
7	12.23	Construction of New Aquatic Center at Delano-Hitch Park (Construction Management)	Arcadis of New York, Inc	248-2023	ARPA & BOND	In-Progress	$ 1,287,360.00
8	23.23	Construction of New Aquatic Center at Delano-Hitch Park (*Electrical Contract)*	J&J Sass Electrical, Inc	3-2024	ARPA & BOND	In-Progress	$ 835,000.00
9		Aquatic Center at Delano-Hitch Park- Professional Engineering Services for contruction administration	Clark Patterson Lee	4-2024	ARPA	In-Progress	$ 178,000.00

LINE 1: Total Contracted Project Cost (Tasks No. 1 through 9)	$ 14,753,570.00
LINE 2: Total Remaining Project Costs (As of May 2024) (In-Progress Tasks)	$ 13,490,570.00
LINE 3: Total Remaining Project Costs (As of May 2024) + 5% Contingency (LINE 2 + 5%)	$ 14,163,744.00
LINE 4: Total ARPA Funds Dedicated to Aquatic Center:	$ 7,426,744.00
LINE 5: ARPA Funds Already Expended on Aquatic Center Tasks No. 1, 2 & 3 (As of May 2024) (Completed Tasks)	$ 1,263,000.00
LINE 6: Remaining ARPA Funds (As of May 2024) (LINE 4 - LINE 5)	$ 6,163,744.00
Total Unfunded Balance (BOND Amount) (LINE 3 - LINE 6):	**$ 8,000,000.00**

RESOLUTION NO.: _____ – 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED ISSUED TO GREGORY NATO FOR THE PREMISES KNOWN AS 288 GRAND STREET (SECTION 10, BLOCK 2, LOT 26)

WHEREAS, on December 18, 2014, the City of Newburgh conveyed property located at 288 Grand Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 10, Block 2, Lot 26, to Gregory Nato; and

WHEREAS, Mr. Nato has requested a release of the restrictive covenants contained in the deed from the City of Newburgh; and

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

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN ($10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 288 Grand Street, Section 10, Block 2, Lot 26, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, 5, and 6 in a deed dated December 18, 2014, from THE CITY OF NEWBURGH to GREGORY NATO, recorded in the Orange County Clerk's Office on March 6, 2015, in Book 13857, Page 660 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2024

THE CITY OF NEWBURGH

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

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

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

_____

CITY OF NEWBURGH

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

TO: Todd Venning, City Manager

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

FROM: Francis J. Spinelli, Fire Chief

DATE: June 25, 2024

SUBJECT: 288 Grand Street, Release of Restrictive Covenants Inspection

---

I conducted an inspection of 288 Grand Street (SBL 10-2-26) on June 7, 2024. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

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

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

There are no open permits or open permit applications.

The property is being used as a single-family residence.

There is a valid Certificate of Occupancy, dated June 7, 2024, in the property file for a single-family residence.

Thank you,

Francis J. Spinelli
Fire Chief





RESOLUTION NO.: _____ – 2024

OF

JULY 22, 2024

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

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

WHEREAS, by Resolution No. 114-2023, the City of Newburgh authorized execution of an Addendum to the Site Development Agreement that extended time for The Newburgh Ministry, Inc. to meet certain key performance dates; and

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

WHEREAS, the City Council of the City of Newburgh finds that approving a second Addendum to the Site Development Agreement that modifies said key performance dates is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached Second Addendum to the Site Development Agreement with The Newburgh Ministry, Inc. for the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21).

SECOND ADDENDUM TO SITE DEVELOPMENT AGREEMENT

THIS SECOND ADDENDUM TO SITE DEVELOPMENT AGREEMENT OF LEASE ("Second Addendum"), made as of this _____ day of _____, 2024, by and between the City of Newburgh, a New York municipal corporation, with offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City") and The Newburgh Ministry, Inc., a not-for-profit corporation, organized under the laws of the State of New York and having its principal office for the transaction of business at 9 Johnston Street, Newburgh, New York 12550 ("Developer").

WITNESSETH:

WHEREAS, on July 15, 2019, the City and Developer executed a Site Development Agreement ("Agreement") for, among other things, the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21) (the "Project"); and

WHEREAS, on August 8, 2023, the City and Developer executed an Addendum ("First Addendum") to the Agreement for an extension of time to meet key performance dates; and

WHEREAS, certain key dates contained in the Agreement and in the First Addendum have expired or shall expire shortly; and

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

WHEREAS, the parties desire to extend certain key performance dates contained in the Agreement and in the First Addendum;

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

1. Schedule C as originally set forth in the Agreement shall be replaced in total with the "Amended Schedule C," annexed hereto and made a part hereof.

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

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

THE CITY OF NEWBURGH

_____

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

THE NEWBURGH MINISTRY, INC.

_____

By: Colin Jarvis, Executive Director

DRAFT

AMENDED SCHEDULE "C" (SECOND ADDENDUM)
PROJECT AND DEVELOPMENT DEADLINES

1. That no longer than twenty-four (24) months from the execution of this Second Addendum, the Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.

2. That no longer than twenty-four (24) months from the execution of this Second Addendum, the Developer shall have applied for and received a Project Mortgage from a Lending Institution funding the acquisition and construction of the Project.

3. That no longer than twenty-eight (28) months from the execution of this Second Addendum, the Developer shall have commenced construction of the Project.

4. That no longer than twenty-six (26) months from the Closing Date set forth in Section 3 of the original Agreement, Developer shall have completed construction of the Project, and received a Certificate of Occupancy from the Code Compliance Bureau of the City of Newburgh.

DRAFT

NEWBURGH MINISTRY
THE POWER OF COMPASSION

9 Johnston Street
PO Box 1449
Newburgh, NY 12551
fax: 845.561.5087

newburghministry.org
phone: 845.561.0070

Proposed Amendment Request

Between The Newburgh Ministry Inc. and The City of Newburgh

Dear City Council Members,

Please accept this correspondence as an official request to amend the site development agreement between the City of Newburgh and the Newburgh Ministry regarding the development of 17 Johnston Street. The Site Development Agreement was executed July 15, 2019 and was extended via an addendum that was signed August 8th, 2023, which stipulated that construction would begin by September 30, 2024.. Although the construction will not have commenced by September 30th, we are happy to report that we have and continue to make great progress and as such would like to amend the development timeline for this project.

According to Amended Section C of the agreement, all City of Newburgh approvals and permits should have been received within twelve months of the date of the Amendment. The Amended schedule further states that within fifteen months of the execution of the contract, the developer would receive a mortgage for the acquisition and construction of the project. . Construction was to have commenced by September 30, 2024 and be completed within twenty-four months. It is not expected that the project will meet these deadlines. However, the project continues to move forward and I would like to provide some context and updates to where we are currently, in support of the request for an extension of the Site Development Agreement.

Development Project Status

In 2022 we received permission from Architectural Review Commission for the demolition of the buildings which now stand as 17 and 19 Johnston Street. The idea is to join the two lots along with the green space currently owned by the Newburgh Ministry in order to construct a five-story building with 40 studios and 10 one-bedroom apartments. This will become the Ministry's first low-income supportive housing project. The Zoning Board of Appeals approved the variance that the project requires on 5/28/2024. The Ministry expects to apply to the Planning Board for site approval within the next two months

The project has already secured funding through the Empire State Supportive Housing Initiative program for the operation of the facility. We are now working with other state entities including HHAP and HCR to secure the construction funding. We are also in the process of negotiation an Memorandum of Understanding with our anticipated joint development partner; this partner will be critical in securing the construction financing.

As you are aware it is very difficult to articulate a schedule as it relates to building and construction. We are aggressively working towards securing construction funding for this project; however, one of the key construction financing sources, 9% Low Income Housing Tax Credits, is a competitive funding source that is in high demand and is regularly oversubscribed. We anticipate it would probably take twenty-four months to complete this funding process. It is our hope that we will be shovel ready by the end of June 2026.

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

Thank you so much for your understanding in this matter

Colin Jarvis,

Executive Director, The Newburgh Ministry, Inc.

6/11/19

SITE DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWBURGH

AND

THE NEWBURGH MINISTRY

DATED AS OF July 15, 2019

Regarding:
17 Johnston Street, Tax ID 30-2-21
City of Newburgh, Orange County, New York

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SITE DEVELOPMENT AGREEMENT

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

W I T N E S S E T H:

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

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

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

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

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

ARTICLE 1
DEFINITIONS

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

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

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

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

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

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

"Closing Date" shall mean the date of closing of title pursuant to Section 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2
DEVELOPER'S REPRESENTATIONS

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

(a) Developer is a not-for-profit and/or religious corporation duly formed and in good standing under the laws of the State of New York; is duly qualified to transact business in the State of New York; and has the requisite corporate power and authority to enter into this Contract, a Project Mortgage, and the closing documents to be signed by Developer. The execution, delivery and performance by Developer of such documents does not conflict with or result in a violation of

Developer's organizing documents or any judgment, order or decree of any court or arbiter to which Developer is a party or by which it is bound. Such documents are valid and binding obligations of Developer, enforceable in accordance with their terms. There is no suit, action, proceeding or litigation pending or, to the best of Developer's knowledge, threatened, against or affecting the Developer by or before any court, arbitrator, administrative agency or other Governmental Authority which might have material effect on the validity of the transaction contemplated hereby or the ability of the Developer to perform its obligations under this Contract.

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

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

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

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

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

ARTICLE 3
CONVEYANCE OF PROPERTY AND ACCEPTABLE TITLE

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

(a) the real property located in Orange County and described in Schedule "A" attached hereto and made part hereof (the "Land");
(b) all buildings and other improvements constructed or situated on the Land (collectively the "Improvements");
(c) all right, title and interest currently held by the Seller, if any, in and to any and all strips and gores of land adjacent to or adjoining the Land, and all of the Land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damages to the Land by reason of a change of grade of any street or highway;

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

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

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

(a) the matters set forth in Schedule "B" attached hereto;
(b) the City's right of reverter set forth in Section 11.04 ; and
(c) such other matters as the Title Insurer shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Property.

SECTION 3.03 Closing. Except as otherwise provided in this Contract, the closing of title pursuant to this Contract (the "Closing") shall take place at 10:00 am on the date determined by the parties but in any event not later than thirty (30) days from the date that the Developer is issued a building permit for the Project, at the offices of the Corporation Counsel at City Hall, 83 Broadway, Newburgh, NY, or at such other date or location as may be agreed to by the parties (the actual date of the Closing being herein referred to as the "Closing Date").

ARTICLE 4
PURCHASE PRICE; ACCEPTABLE FUNDS

SECTION 4.01 Purchase Price; Down Payment. The purchase price (the "Purchase Price") to be paid by Developer for the Property shall be $1,000.00, payable as follows:

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

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

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

(b) Official bank checks drawn by any such banking institution, payable to the order of the Seller.

ARTICLE 5
CONDITIONS PRECEDENT

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

(a) Prior to conveyance of the Property, the Developer shall have the option to terminate this Contract, but without the right to receive a refund of the Earnest Money, on or before the Closing Date if despite Developer's best efforts:
   a. Developer is unable to obtain all approvals necessary to receive a Building Permit for the Project. Best efforts shall include, but not be limited to, receipt on or before twelve (12) months after the date of this Contract of a complete site plan approval or special use permit, if applicable, for the Project from the City of Newburgh Planning Board, any variances (if applicable) from the City of Newburgh Zoning Board of Appeals, and any approvals (if applicable) from the City of Newburgh Architectural Review Commission.
   b. Developer is unable to secure the necessary funding to finance the acquisition and construction of the Project. Best efforts shall include, but not be limited to, obtaining a Project Mortgage on or before twelve (12) months after the date of this Contract.

(b) Developer shall be deemed to have waived such contingency if written notice is not given to Seller no fewer than twenty (20) days prior to the Closing Date.

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

(a) Developer shall have paid the Purchase Price as provided in Article 3 of this Contract.
(b) Developer shall have deposited all Required Guarantees required by this Contract.
(c) Developer shall have furnished the Seller with a certified statement of the total development cost of the Project and evidence reasonably satisfactory to the Seller that the Developer has adequate financing to complete the Project. The Developer shall have obtained all required Approvals and Permits for the Project.
(d) The Developer shall have submitted Plans and Specifications prepared by an architect, engineer, or other design professional duly licensed by New York State and a certificate of said architect, engineer or other design professional that such Plans and Specifications are consistent with all Approvals and Permits.
(e) The Developer shall not be in default in any other fashion pursuant to the terms of this Contract.

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

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

ARTICLE 6
COVENANTS

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

(a) Design and Approvals:

i. Developer will prepare a project design for the Project and submit Plans and Specifications to the appropriate land use boards for review and approval prior to the Closing Date.

ii. Developer will use its best efforts to obtain land use board(s) approval for the Project at least 60 days prior to the Closing Date and obtain any other Approvals and Permits for the Project at least 30 days prior to the Closing Date.

(b) Completion Deadline:

i. Developer will complete the construction of the Project no later than the Completion Deadline.

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

i. Shall at its own cost and expense obtain all Approvals and Permits;

ii. Shall comply with all requirements of Governmental Authorities applicable to the construction and installation of the Improvements;

iii. Shall have received Seller's prior written approval, not to be unreasonably withheld, of all architects, engineers and general contractors to be engaged in the planning, design, and construction of the Public Improvements, which prior written approval of Seller will not be given, apart from any other considerations, unless such architects, engineers, and contractors specifically agree to complete their work for Seller, at Seller's request, in the event of Developer's default.

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

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

vi. If any Lien is filed or asserted, including, without limitation, any Lien for the performance of any labor or services or the furnishing of materials, whether or not valid, is made against the Property or any part thereof in the interest therein of the Seller, or the interest therein of a Party under this Contract, other than Liens for Taxes not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or Liens being contested as permitted by this Section, the Developer forth with upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to Seller and, except where the validity of such Lien is being contested in accordance with the provisions of this Section, take all action (including the payment of money and/or the securing of a bond) at its own expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Contract shall be construed as constituting the express or implied consent to or permission of the seller for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against Seller's interest in the Property. The Developer may at its sole expense contest, after prior written notice to the Seller, by appropriate action conducted in good faith and with due diligence in the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Property or Improvements or any part thereof or any interest therein, or in this Contract, of the Sell or Developer or against any of the rentals or other amounts payable under this Contract, (ii) neither the Property or Improvements nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) Seller would not be in any reasonable danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Developer shall have furnished such security, if any, as may be required in such proceedings; if such proceeding could result in the Seller being in any reasonable danger of civil liability, including accrual of interest, fines and/or penalties, (y) the Developer shall deliver a written confirmation to the Seller that the Developer shall indemnify and hold the Seller harmless from any claims, liabilities, costs or expenses as may derive with respect thereto, and (z) the Developer shall provide to the Seller such security as the Seller may reasonably require.

vii. At the written request of the Seller, the Developer shall provide all reasonable information as may be requested with respect to any Lien, the status thereof,

the amount in dispute, and the action taken or proposed to be taken by the Developer in connection therewith.

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

(a) The Seller shall not encumber the Property or enter into any lease or other occupancy agreement therefor, without the prior written consent of the Developer.
(b) The Seller shall allow for Developer or Developer's representatives access to the Property upon reasonable prior notice pursuant to Section 12.09 of this Contract.
(c) The Seller shall cooperate when reasonably requested by Developer, at Developer's expense, in connection with any application for planning or other regulatory approvals necessary in connection with the contemplated use of the Property for the Project, subject to Section 9.04.

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

ARTICLE 7
OBJECTION TO TITLE, FAILURE TO PERFORM

SECTION 7.01 Developer to Deliver Title Report. Developer shall cause a copy of an updated title report from the Title Insurer to be forwarded to Seller within thirty (30) days of the date hereof. Seller shall be entitled to a reasonable period of time of not less than one hundred eighty (180) days to remove any defects in or objections to title caused by Seller and noted in such title report. For express purposes of this Section, any objections by Developer or a Title Insurer with respect to Seller's tax foreclosure proceedings shall not be deemed valid or actionable objections to

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

SECTION 7.02 Developer's Right to Terminate. If Seller is unable to cause title to the Project to be conveyed at the Closing in accordance with the provisions of this Contract, Developer may elect to accept such title as Seller may be able to cause to be conveyed. If Developer shall not so elect, Developer may terminate this Contract upon thirty (30) days' notice to Seller and Seller shall be obligated to return the Earnest Money to Developer. Upon such termination, the Contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability except that the provisions of Section 9.05(e) and Section 6.05 shall survive the closing.

ARTICLE 8
DESTRUCTION, DAMAGE OR CONDEMNATION

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

ARTICLE 9
SITE CONDITIONS; INVESTIGATIONS; APPROVALS

SECTION 9.01 As-Is Condition. The Seller is conveying the Property in "as is" condition. The Seller expressly disclaims any warranties or representations whatsoever including without limitation soil conditions, the existence of below-grade foundations (whether or not concealed), environmental conditions, air-quality, or the location of existing underground utilities. Any costs related to abnormal conditions or quality of the subsoil, or to the improvement of the subsoil, or to demotion and removal of any abandoned utilities or improvements, or to the construction of new utilities, or related to hazardous soil conditions in any way whatsoever, will be the responsibility of the Developer.

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

SECTION 9.03 Developer to Obtain Approvals. Developer, at its sole expense, shall take all actions that it reasonably deems necessary to obtain, and shall make and diligently prosecute all applications for Approvals and Permits. Nothing in this Contract shall be construed as the consent, request, approval, or agreement of Seller, express or implied, by inference or otherwise, to any applications for Approvals and Permits made by Developer to any agency or body of the City, nor any agreement or contract to change, amend, modify, or alter any local law, code, or ordinance of the City or any agency or body of the City. The failure by Developer to receive any Approvals and/or Permits from Seller, other body of the City, and/or public agency, shall not be a valid basis for claiming Seller default pursuant to the terms of this Agreement.

SECTION 9.04 Zoning and Planning Approvals.

(a) Developer anticipates that the development of the Project as presently contemplated will not require an amendment to the zoning code and/or area or use variances. In the event of any proposed modifications by the Developer to the proposed Project, the Developer understands that the granting of such requests is within the discretion of the applicable governmental body and that nothing in this Contract obligates the City, the Seller, or any other governmental body to provide for such approvals. The Project must be in conformance with all applicable zoning requirements as they may be so amended.

(b) If Developer shall be delayed, hindered in or prevented from the performance of any act required under this Contract by reason(s) related to grant of approvals from the City of Newburgh Planning Board, Zoning Board of Appeals, and/or Architectural Review Commission, Developer may request an extension of time to receive any Approvals and Permits required to complete the Project. Developer must make said request in writing. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time for a period not to exceed, three (3) months. Any additional request(s) thereafter shall be made in writing and placed before the City Council for its consideration.

SECTION 9.05 Environmental and Soil Investigation and Testing.

(a) Seller grants to Developer the right to conduct an examination to obtain a report or reports by a qualified consultant or consultants (the "Consultants") concerning the presence of any (i) contamination of the Property by hazardous materials; (ii) apparent violation of environmental requirements upon or associated with activities upon the Property; (iii) potential incurrence of environmental damages by the prior or current owner(s) or operator(s) of the Property; or (iv) such other soil, subsoil, geological and engineering investigations as Developer may desire or as may be required by an Governmental Authority which must approve any aspect of the development of the Project.

(b) Developer may terminate this Contract on or before 180 days after the date of this Contract (but without the right to receive a refund of the Earnest Money) in the event such report indicates the presence of any such matters. Developer shall provide a copy of any such report to Seller.

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

(d) The investigation and testing any be performed at any time or times, except that entry upon the Property shall be on reasonable notice and under reasonable conditions to Seller. The Consultants are hereby authorized to enter upon the Property for such purposes and to perform such testing, including drilling, core sampling, and the taking of such other samples as may be necessary to conduct the investigation and testing as required in the opinion of

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

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

ARTICLE 10
CLOSING OBLIGATIONS; APPORTIONMENTS

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

(a) A quitclaim deed, including the covenant required by Section 13 of the Lien Law, properly executed and in proper form for recording so as to convey the title required by this Contract (including without limitation the right of reverter/re-entry set forth in Section 11.04).

(b) A bill of sale conveying, transferring and selling to Developer all right, title and interest of the Seller in and to any Equipment (if applicable).

(c) A non-foreign affidavit ("FIRPTA Affidavit"), properly executed and in recordable form, containing such information as shall be required by Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations issued therefor.

(d) Such affidavits as Developer's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the Seller's name, provided that such affidavits are provided to Seller no later than one (1) week prior to Closing.

(e) A designation agreement designating the "reporting person" for purposes of completing IRS Form 1099-S.

(f) Subject to Permitted Exceptions, possession of the property in the condition required by this Contract.

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

(a) Deliver to Seller the portion of Purchase Price payable at Closing.

(b) Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause necessary payments for recording to be delivered to the appropriate officers at Closing.

(c) Deliver a designation agreement designated the "reporting person" for purposes of completing IRS Form 1099-S.

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

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

ARTICLE 11
DEFAULTS AND REMEDIES

SECTION 11.01 Remedies on Default.

(a) Termination of Contract by Seller. Upon the occurrence of any default under this Contract by Developer, or upon default under any Related Contract, Seller may, at its option, or any time thereafter, give written notice to Developer specifying the default and stating that this Contract shall terminate on the date specified in such notice, which shall be not less than ten (10) days after the date of such notice. Upon the date specified in the notice, this Contract and all rights of Developer under this Contract shall terminate. Time shall be of the essence to close as of the date specified in said notice, regardless of whether said notice provides "time is of the essence" language. The termination of this Contract does not relieve Developer of its liability and obligations under Section 9.05(e) and Section 6.05 of this Contract, which shall survive. Upon such termination Seller will retain the Earnest Money as liquidated damages. The termination of this Contract and the retention of the Earnest Money will be the sole remedy available to Seller for such default by Developer and Developer will not be liable for damages or specific performance.

(b) Termination by Developer. Upon the occurrence of any default by Seller, Developer may, at its option, at any time thereafter, give written notice to Seller specifying the default and stating that this Contract shall terminate on the date specified in such notice, which shall not be less than ten (10) days after the date of such notice. Upon the date specified in the notice, this Contract shall terminate. The termination of this Contract shall not relieve the Developer of its liability and obligations under Section 9.05(e) and Section 6.05 of this Contract, which shall survive. If Seller defaults under this Contract, this provision does not preclude Developer from seeking specific performance of this Contract. Developer shall have no right to seek damages from Seller for Seller's defaults hereunder. Any costs or expenses incurred by Developer pursuant to this Contract shall not be recoverable in any lawsuit by Developer, in law or in equity.

SECTON 11.02 Force Majure. If Seller or Developer shall be delayed, hindered in or prevented from the performance of any act required under this Contract by reason of Force Majure, performance of that act shall be excused for the period of the delay (but not exceeding ninety (90) days from the date of the Force Majure event) and the period for the performance of the act shall be extended for a period equivalent to the excusable period of the delay (but not to exceed ninety (90)

days), provided the party delayed shall give the other party notice and full particulars of the Force Majure within ten (10) days after the Force Majure event occurred. The provisions of this Section shall not excuse Developer from the prompt payment of amounts due under this Contract or any Related Contract.

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

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

(a) The Property shall be developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed will contain provisions stating that the Developer is required to rehabilitate any building on the Property and bring it into compliance with all State, County and Local standards for occupancy within twenty-four (24) months of the date of the deed. Within such twenty-four (24) month time period the Developer must: obtain a Certificate of Occupancy or Certificate of Compliance from the City of Newburgh Code Compliance Bureau for all buildings on the Property. The deed shall require the Developer to schedule an inspection by City officials at or before the end of the twenty-four (24) month period. If the Developer has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person or entity before a Certificate of Occupancy or Certificate of Compliance is issued and another other reasonable terms/conditions that Seller deems necessary to protect its interest herein.

(b) The Parties recognize that Project development and rehabilitation costs may be substantial, and that Developer may seek the financial assistance of a lender to complete the Project. In the event that Seller seeks lender financing to assist in the completion of the Project, and Seller's lender conditions its financial assistance on the subordination of the City's Right of Reverter/Re-Entry to the lender's loan terms, Developer shall provide a written notice from Developer's lender outlining the terms of the loan commitment. Upon receipt of said notice and upon being provided documents that create an adequate alternative to protecting the City's interests herein, the City Manager may, in his sole discretion, execute documents and enter into any agreements with Developer or Developer's lender in order to effectuate the grant of a lending facility to Developer. However, Developer's failure to obtain financing for any reason, including failure to obtain Seller's consent to subordinating its interests herein, shall not be cause for Default or Seller's breach pursuant to this Contract.

ARTICLE 12
MISCELLANEOUS PROVISIONS

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

SECTION 12.02 Entire Agreement; Amendment. This Contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or termination except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

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

SECTION 12.04 Governing Law. This Contract shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflict of laws.

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

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

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

SECTION 12.08 Severability. In the event that any of the provisions, or portions, or applications thereof, of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, Seller and Developer shall negotiate an equitable adjustment in the

provision of this contract with a view toward effecting the purpose of this contract, and the validity and enforceability of the remaining provisions or portions, or applications thereof, shall not be affected thereby.

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

Developer as follows:

with a copy to:

Seller as follows:

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

With a copy to

Corporation Counsel
Attn: Michelle Kelson
City Hall, 83 Broadway
Newburgh, New York 12550
(845) 569-7335

SECTION 12.10 No Broker. The parties warrant and represent to each other that no broker brought about, or participated in, this Contract or transaction. Seller and Developer shall

indemnify and hold one another harmless against all liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising from any claims for brokerage on this transaction.

SECTION 12.11 No Partnership or Joint Venture. This Contract does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as a to new, specifically defined legal relationship.

SECTION 12.12 Obligations of Governmental Agencies. Notwithstanding any statement or representation to the contrary contained herein or in any of the other implementing agreements, the obligations and agreements of the Seller contained herein and in the other implementing agreements and in any other instrument or document executed in connection therewith and any instrument or document supplemental thereto shall be deemed the obligations and agreements of the Seller, and not of any member, officer, agent or employee of the Seller in her or her individual capacity, and the members, officers, agents and employees of the Seller shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

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

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

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

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

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

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

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

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

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

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

Signature Page, Site Development Agreement
City of Newburgh to the Newburgh Ministry
Premises: 17 Johnston Street, Newburgh, New York (Section 30, Block 2, Lot 21)

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

Seller: CITY OF NEWBURGH

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

Developer: The Newburgh Ministry

By: _____

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

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

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

_____
Notary Public

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

On the 10 day of July in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Collin Jacks, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

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

Notary Public

SCHEDULE "A"
DESCRIPTION OF THE PROPERTY

ALL THAT TRACT OR PARCEL OF LAND, with buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County of Orange and State of New York, known as 17 Johnston Street, being more accurately described as Section 30, Block 2, Lot 21 on the Official Tax Map of The City of Newburgh.

SCHEDULE "B"
PERMITTED EXCEPTIONS

1. Any and all easements for utilities, both public and private, sewers, water lines, streets, and rights-of-way are of record;

2. Such easements, covenants, reservations, encumbrances or restrictions as are of record;

3. All provisions of any zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, and any and all other provisions of municipal ordinances, regulations or public laws;

4. Real estate taxes, assessments, or school taxes that are a lien but not yet due and payable;

5. Any state of facts a survey or personal inspection of the premises would disclose;

6. The right of reverter/re-entry described in Section 11.04 of this Contract.

SCHEDULE "C"
PROJECT AND DEVELOPMENT DEADLINES

1. Within thirty (30) days of the execution of this Contract, the Developer shall submit to the Director of Planning and Development of the City of Newburgh, a plan and narrative description of the Developer's plan for financing the acquisition and redevelopment of the Property.

2. That no longer than twelve (12) months from the execution of this Contract, the Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.

3. That no longer than twelve (12) months from the execution of this Contract, the Developer shall have applied for and received a Project Mortgage from a Lending Institution funding the acquisition and construction of the Project.

4. That no longer than fifteen (15) months from the execution of this Contract, the Developer shall have commenced construction of the Project.

5. That no longer than twenty-four (24) months from the Closing Date set forth in Section 3 of this Agreement, Developer shall have completed construction of the Project and received a Certificate of Occupancy from the Code Compliance Bureau of the City of Newburgh.

SCHEDULE "D"
PROPOSED DEED

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

BETWEEN:

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

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

WITNESSETH, that the party of the first part, in consideration of $_____.00 paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

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

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

SUBJECT TO all easements, covenants and restrictions of record and not of record, provided any covenants and restrictions that are not of record have been disclosed to the party of the second part prior to the recording of this deed, existing in favor of The City of Newburgh prior to the vesting of title to the described premises in The City of Newburgh.

BEING the same premises indicated as In Rem No.: _____ in a deed from _____ to The City of Newburgh, dated_____, and recorded in the Orange County Clerk's Office on _____ in Liber _____ of Deeds at page _____.

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

The party of the second part expressly covenants and agrees that:

(1) within twenty-four (24) months after the date of this deed, the party of the second part shall bring the property conveyed herein into complete compliance with all State, County and City building, housing, plumbing, electrical, fire prevention, life safety and health statutes, codes, rules and regulations and shall obtain, within such time period, a Certificate of Occupancy, evidencing compliance with all said statutes, codes, rules, and regulations set forth herein, for all buildings and structures located on the property. If a Certificate of Occupancy has not been issued for any building or structure on such property, prior to the date of this deed, the party of the second part shall, within twenty-four months after the date of this deed, either make such building or structure fit for the use set forth in such Certificate of Occupancy or shall obtain a new Certificate of Occupancy for another use or shall demolish such building or structure;

(2) at or prior to the end of twenty-four (24) months after the date of delivery of this deed, the party of the second part shall schedule with the Building Inspector of the City of Newburgh an inspection of the property described in this deed to determine compliance with the covenant set forth in paragraph (1) above. If the property is found to be in compliance with such covenant, a Certificate of Occupancy or Compliance shall be issued by the Building Inspector. Nothing to the contrary herein withstanding any and all rights of the party if the first to reconveyance as set forth in this deed shall cease upon the issuance of a Certificate of Occupancy by the Building Inspector;

(3) prior to the issuance of a Certificate of Occupancy or Compliance, as provided in the covenant set forth in paragraph (2) above, the party of the second part shall not sell, convey, assign or lease the property described in this deed or any part thereof, except to the party of the first part as provided in paragraph (4) below;

(4) at the end of twenty-four (24) months after the delivery of this deed, if it is determined that the covenants contained in paragraphs (1) and (2) above have not been complied with, the party of the second part shall, within ten (10) business days from the service of a notice pursuant to Section 612 of the Real Property Actions and Proceedings Law of the State of New York, reconvey good and marketable title to the property described in this deed to the party of the first part;

(5) if, at any time after delivery of this deed, it is determined that the covenant contained in paragraph (3) above has not been complied with, the party of the second part and his grantee, assign, or successor in interest shall, within ten (10) business days from the service of a notice pursuant to Section 612 of the Real Property Actions and Proceedings Law of the State of New York, reconvey good and marketable title to the property described in this deed to the party of the first part.

The covenants set forth in the preceding paragraphs shall constitute covenants running with the land and shall without regard to technical classification or designation, legal or otherwise, be to the fullest extent binding for the benefit of, in favor of and enforceable by the party of the first part, its successors and assigns against the party of the second part, his successors and assigns and every successor in interest to the property described in this deed or any part thereof or any interest therein, and any party in possession or occupancy of the property described in this deed or any part thereof.

In the event that subsequent to the conveyance of the property described in this deed the party of the second part shall default in or violate any of its obligations contained in the covenants set forth in this deed, the party of the first part shall have the right to re-enter and take possession of the property described in this deed and to terminate the estate conveyed by this deed to the party of the second part, it being the intent of this provision that the conveyance to the party of the second part shall be made upon a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the party of the second part contrary to the obligations specified in the covenants contained in this deed, the party of the first part, may at its option, declare a termination in favor of the party of the first part, of the title and of all rights and interests in and to the property conveyed by this deed to the party of the second part and any assigns or successors in interest to or in the property, shall revert to the party of the first part. Provided, that such conditions subsequent and any reverting of title as a result thereof in the party of the first part shall always be subject to and limited by and shall not defeat, render invalid or limit in any way, the lien of any mortgage obtained by the party of the second part for the purpose of financing the work necessary to bring the property into compliance with all statutes, codes, rules and regulations as is required by the covenants contained in this deed. The words, "the party of the second part", as used in this paragraph, shall be construed to mean the party of the second part or his successors or assigns.

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

THE CITY OF NEWBURGH

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

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

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

_____

BY:_____

Title:

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

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

_____

RECORD & RETURN TO:

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN ($10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as _____, Section ___, Block __, Lot __ on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated_____, from THE CITY OF NEWBURGH to_____, recorded in the Orange County Clerk's Office on _____ in Liber _____ of Deeds at Page ____ and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed

Dated: _____, 20__

THE CITY OF NEWBURGH

By: _____

City Manager

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

On the ____ day of _____ in the year 20__, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

_____

RESOLUTION NO.: 141 - 2019

OF

JUNE 10, 2019

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

WHEREAS, the Newburgh Ministry submitted a proposal to redevelop the City-owned property located at 17 Johnston Street (the "Property") as a residential care facility for the expansion of services currently provided by the Newburgh Ministry at its current location at 9 Johnston Street; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh that the City Manager be and he is hereby authorized to executed on behalf of the City of Newburgh the site development agreement with the Newburgh Ministry, in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the transfer and redevelopment of the property at 17 Johnston Street.

ADDENDUM TO SITE DEVELOPMENT AGREEMENT

THIS ADDENDUM TO SITE DEVELOPMENT AGREEMENT OF LEASE ("Addendum"), made as of this 8th day of August, 2023, by and between the City of Newburgh, a New York municipal corporation, with offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City") and The Newburgh Ministry, Inc., a not-for-profit corporation, organized under the laws of the State of New York and having its principal office for the transaction of business at 9 Johnston Street, Newburgh, New York 12550 ("Developer").

WITNESSETH:

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

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

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

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

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

1. Schedule C as originally set forth in the Agreement shall be replaced in total with the "Amended Schedule C," annexed hereto and made a part hereof.

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

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

THE CITY OF NEWBURGH

By: _____
Todd Venning, City Manager
Per Resolution No.: 114-2023

THE NEWBURGH MINISTRY, INC.

By: _____
Colin Jarvis
Executive Director

AMENDED SCHEDULE "C"
PROJECT AND DEVELOPMENT DEADLINES

1. That no longer than twelve (12) months from the execution of this Contract Addendum, the Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.

2. That no longer than fifteen (15) months from the execution of this Contract Addendum, the Developer shall have applied for and received a Project Mortgage from a Lending Institution funding the acquisition and construction of the Project.

3. That by September 30, 2024, the Developer shall have commenced construction of the Project.

4. That no longer than twenty-four (24) months from the Closing Date set forth in Section 3 of the original Agreement, Developer shall have completed construction of the Project and received a Certificate of Occupancy from the Code Compliance Bureau of the City of Newburgh.

RESOLUTION NO.: 114 - 2023

OF

JUNE 12, 2023

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

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

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

WHEREAS, the City Council of the City of Newburgh finds that approving an Addendum to the Site Development Agreement that modifies said key performance dates is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached Addendum to the Site Development Agreement with The Newburgh Ministry, Inc. for the transfer and redevelopment of property located at 17 Johnston Street (Section 30, Block 1, Lot 21).

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held June 12 2023 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 13 day of June 20 23

City Clerk

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED AN ORANGE COUNTY MUNICIPAL LEGISLATIVE PROGRAM GRANT IN THE AMOUNT OF $4,999.00 WITH NO CITY MATCH TO SUPPORT CITY OF NEWBURGH RECREATION DEPARTMENT AFTER SCHOOL AND INTERGENERATIONAL PROGRAMS

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

WHEREAS, the City of Newburgh proposes to apply for an Orange County Municipal Legislative Program grant to support the after school and intergenerational programs at the Recreation Department; and

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

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept an Orange County Municipal Legislative Program grant with no City match in the amount of $4,999.00 to support after school and intergenerational programs at the City of Newburgh Recreation Department.

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTER-MUNICIPAL AGREEMENT EXTENSION WITH THE COUNTY OF ORANGE AS PART OF THE FY 2018 STATE LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM, DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES TO PROVIDE THE CITY OF NEWBURGH POLICE DEPARTMENT WITH ONE (1) WHITE ENCLOSED TRAILER AND TWO (2) CAN-AM OUTLANDER XT

WHEREAS, by Resolution No. 220-2022 of September 12, 2022, the City Council approved an Inter-Municipal Agreement with the County of Orange as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services (DHSES) Project OC LE18-1048-D04 for the purchase and assignment to the City of Newburgh Police Department of White Enclosed Trailer 8 x 18 and two (2) Can-Am Outlander XT; and

WHEREAS, the term of the Agreement and funding covered the period of September 1, 2022 and through May 31, 2023; and

WHEREAS, supply chain issues delayed the manufacture and delivery of the second Can-Am Outlander XT to the City of Newburgh and extending the term of the Agreement to August 1, 2024; and

WHEREAS, this Council has reviewed the attached First Amendment and Extension of the Inter-Municipal Agreement and determined it to be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to execute the attached First Amendment and Extension of the Inter-Municipal Agreement between the County of Orange and the City of Newburgh as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services.

FIRST AMENDMENT AND EXTENSION OF INTER-MUNICIPAL AGREEMENT

THIS FIRST AMENDMENT AND EXTENSION OF INTER-MUNICIPAL AGREEMENT, is effective as of May 31, 2023 ("First Amendment") and hereby amends and extends that certain INTER-MUNICIPAL AGREEMENT ("Agreement"), dated the 1st day of September, 2022, by and between the **COUNTY OF ORANGE**, a municipal corporation, by and through the Office of the Orange County Sheriff, with principal offices at 255-275 Main Street, Goshen, New York 10924 ("County"), and **THE CITY OF NEWBURGH**, a municipality within the State of New York, with principal offices at 83 Broadway, City Hall Newburgh NY 12550, by and through its Police Department ("MUNICIPALITY").

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereby amend and extend the Agreement as follows:

1. **ARTICLE 3 OF THE AGREEMENT ENTITLED "TERM OF AGREEMENT."**

   The first sentence of Article 3 of the Agreement is hereby deleted in its entirety and replaced with the following in its place and stead:

   > "The term of this IMA commences on September 1, 2022, and ends August 1, 2024. ("Term")."

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

COUNTY OF ORANGE	**MUNICIPALITY**
By: _____	By: _____
Name: Stefan (Steven) M. Neuhaus	Name: Todd Venning
Title: County Executive	Title: City Manager/CEO
Date: _____	Date: _____

RESOLUTION NO.: 230 - 2022

OF

SEPTEMBER 12, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTER-MUNICIPAL AGREEMENT WITH THE COUNTY OF ORANGE AS PART OF THE FY 2018 STATE LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM, DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES TO PROVIDE THE NEWBURGH POLICE DEPARTMENT WITH ONE WHITE ENCLOSED TRAILER AND TWO CAN-AM OUTLANDER XT

WHEREAS, the City of Newburgh wishes to enter into an Inter-Municipal Agreement with the County of Orange as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services (DHSES) Project OC LE18-1048-D04; and

WHEREAS, the County will be purchasing and assigning to the City of Newburgh Police Department a White Enclosed Trailer 8 x 18 and two (2) Can-Am Outlander XT; and

WHEREAS, the term of the Agreement and funding will cover the period of September 1, 2022 and through May 31, 2023; and

WHEREAS, this Council has reviewed the attached Inter-Municipal Agreement and determined it to be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to execute the attached Inter-Municipal Agreement between the County of Orange and the City of Newburgh as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services; 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.

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 9/12/22 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 13th day of Sept. 20 22

Katrina Cotten
Deputy City Clerk

RESOLUTION NO.: 133 - 2023

OF

JULY 10, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTER-MUNICIPAL AGREEMENT EXTENSION WITH THE COUNTY OF ORANGE AS PART OF THE FY 2018 STATE LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM, DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES TO PROVIDE THE NEWBURGH POLICE DEPARTMENT WITH ONE WHITE ENCLOSED TRAILER AND TWO CAN-AM OUTLANDER XT

WHEREAS, by Resolution No. 220-2022 of September 12, 2022, the City Council approved an Inter-Municipal Agreement with the County of Orange as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services (DHSES) Project OC LE18-1048-D04 for the purchase and assignment to the City of Newburgh Police Department of White Enclosed Trailer 8 x 18 and two (2) Can-Am Outlander XT; and

WHEREAS, the term of the Agreement and funding covered the period of September 1, 2022 and through May 31, 2023; and

WHEREAS, supply chain issues have delayed the manufacture and delivery of the second Can-Am Outlander XT to the City of Newburgh and extending the term of the Agreement to December 31, 2023; and

WHEREAS, this Council has reviewed the attached First Amendment and Extension of the Inter-Municipal Agreement and determined it to be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to execute the attached First Amendment and Extension of the Inter-Municipal Agreement between the County of Orange and the City of Newburgh as part of the FY 2018 State Law Enforcement Terrorism Prevention Program, Department of Homeland Security and Emergency Services.

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 7/10/23 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 11th day of July 20 23

Deputy City Clerk

RESOLUTION NO.: _____-2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO A LICENSING ISSUING AGENT AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

WHEREAS, by Resolution No. 219-2013, the City Council of the City of Newburgh approved a Licensing Issuing Agent Agreement with the New York State Department of Environmental Conservation ("NYSDEC") for the City Clerk to serve as Licensing Agent and for the Deputy City Clerk to serve as Assistant Licensing Agent to issue hunting and fishing licenses in New York State; and

WHEREAS, the NYSDEC changed its procedure such that in order for the City Clerk to continue to issue hunting and fishing licenses, an amendment to the Licensing Issuing Agent Agreement is required; and

WHEREAS, the City Council of the City of Newburgh finds it in the best interests of the City of Newburgh to authorize the City Clerk to execute the Licensing Issuing Agent Agreement and to appoint a Deputy City Clerk to serve as the Assistant Licensing Agent;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby authorizes the City Manager to execute an amendment to the Licensing Issuing Agent Agreement with the NYSDEC for the City Clerk and Deputy City Clerk to continue issuing hunting and fishing licenses in New York State.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, License Sales
625 Broadway, First Floor, Albany, New York 12233-4790
P: (518) 402-8843 | F: (518) 402-9025
www.dec.ny.gov

May 29, 2024

Dear License Issuing Agent,

As you are aware the DEC will be moving away from printing sporting licenses on special license paper (valeron) and moving to printing on 8 ½" x 11", plain white paper. This change is scheduled to occur between July 15, 2024, and August 1, 2024. Due to this, we have amended the License Issuing Agreement. In order to keep your DECALS account active, you will need to complete the enclosed amendment and return it the Revenue Accounting Unit no later than July 15, 2024. If we do not receive your location's amendment by July 15, 2024, your DECALS account will be disabled prior to August 1, 2024, and will remain disabled until a completed amendment is received.

The easiest and preferred method for returning your amendment is to scan and email the completed amendment to decalscredit@dec.ny.gov. Amendments may also be mailed to NYS Department of Environmental Conservation, 625 Broadway, Albany NY 12233-4900, Attn: Revenue and Accounting Unit.

With the shift to plain paper printing there will no longer be a need for the Zebra license printers that all locations have. DEC's licensing system vendor, Gordon-Darby, will be reaching out to each license issuing location to make arrangements to email you a prepaid return shipping label. Be sure to read your DECALS messages and GovDelivery messages for further direction on returning the Zebra printers as well as other information on the transition to plain paper printing. If you have questions regarding this transition please be sure to read the DEC's February 2, 2024, press release as well as the Plain Paper Transition Q&A" found in the Agent Help Center under the General Topics header. If you have questions about the transition to plain paper printing please call the License Sales office at 1-(800)-622-0280 (tor agents only, Monday-Friday, 8:00am-4:00pm). If you have any questions about how to complete the amendment, please contact the Revenue and Account Unit at 1-800-962-5622 (Monday-Friday, 8:00am – 4:30pm).

Sincerely,

Elizabeth Sammons
License Sales Supervisor

Agent ID #_____

AMENDMENT TO LICENSE ISSUING AGENT AGREEMENT

This Amendment, effective upon notification of the transition to plain paper licenses, entered into between the New York State Department of Environmental Conservation (hereinafter referred to as the "Department"), with offices at 625 Broadway, Albany, New York 12233, and

_____
Name

as the ☐ owner ☐ municipal clerk ☐ manager of

_____, _____
Business/Municipality Name Street Address

_____, _____, _____
City/Town/Village State Zip Code

(hereinafter collectively referred to as the "License Issuing Agent") is hereby attached to and becomes incorporated into the above referenced agreement.

WITNESSETH:

WHEREAS, the parties entered into a prior License Issuing Agent Agreement which said License Issuing Agent Agreement the parties now desire to amend; and

WHEREAS, both parties originally agreed that the License Issuing Agent was qualified and approved to issue sporting licenses on behalf of the Department; and

WHEREAS, a change in Department laws, rules, or regulations is anticipated that will change the format and delivery of sporting licenses that will obviate the need for Department provided license issuing equipment and the associated support and supplies; and

WHEREAS, the License Issuing Agent Agreement provides for amending the License Issuing Agent Agreement in Article 14. Contract Amendment.

NOW THEREFORE, the parties hereto agree as follows:

1. Article 3. Department Representations is hereby replaced as follows:

3. DEPARTMENT REPRESENTATIONS

The Department hereby agrees that it will:

A. Allow the License Issuing Agent to retain a portion of each license sold as prescribed in Department laws, rules, and regulations.

License Issuing Agent, the Assistant License Issuing Agent, or authorized employees of the License Issuing Agent at the approved location set forth in this Agreement.

B. All employees authorized to issue licenses by the License Issuing Agent pursuant to paragraph "A" of this section, shall be appropriately trained in the use of the license issuing system and the business rules associated with the sale of sporting licenses and the entire DECALS sales catalog by the Assistant License Issuing Agent prior to using the issuance system.

C. At the Department's discretion, the Assistant License Issuing Agent will be required to take Department sponsored DECALS training as well as take and pass tests associated with training.

D. The License Issuing Agent and his/her employees who are authorized to issue licenses pursuant to this Agreement must abide by New York State Regulations 6 NYCRR Part 177 and 6 NYCRR Part 183.

E. All funds received from the sale of licenses, less any fees established by the Department, will be held in trust for the Department. Monies collected from the sale of licenses are Department funds and any other use of such funds is prohibited. The License Issuing Agent accepts the responsibility and duties of trustee for all funds collected for the benefit of the Department under this Agreement.

F. No license may be sold for a fee in excess of or less than the amount established by the Department.

G. The complete catalog of sporting licenses must be available for sale to the public at the License Issuing Agent's approved location as designated in this Agreement.

4. Article 7. Change in Ownership is hereby replaced as follows:

7. CHANGE IN OWNERSHIP

In the event of a change in ownership of the License Issuing Agent's business, the Department must be notified 30 days in advance of any such change, and this Agreement becomes immediately terminated at the time of such change in ownership. This License Issuing Agent's appointment is not transferable and shall apply only to the License Issuing Agent's appointment to sell sporting licenses.

5. Article 10. Termination is hereby replaced as follows:

10. TERMINATION

In addition to any termination event appearing elsewhere in this Agreement, or provided in the applicable Department regulations, the following shall apply:

A. This Agreement may be terminated for cause if the Department determines that any false statements or omissions were made on the License Issuing Agent's application.

SIGNATURE PAGE

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

LICENSE ISSUING AGENT SIGNATURE
By:
Print Name:
Title:
Dated:

DEPARTMENT SIGNATURE
By:
Print Name:
Title:
Dated:

License Issuing Agent 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

Completed amendments with original signatures can be scanned and submitted electronically to decalscredit@dec.ny.gov or mailed in their original form to:

Attn: Revenue and Accounting Unit
New York State Department of Environmental Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

RESOLUTION NO.: 219-2013

OF

OCTOBER 28, 2013

A RESOLUTION AUTHORIZING THE CITY CLERK TO EXECUTE A LICENSING ISSUING AGENT AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND DESIGNATING THE DEPTUTY CITY CLERK AS ASSISTANT LICENSING ISSUING AGENT

WHEREAS, under Section 11-0713 of the New York State Environmental Conservation Law, the New York State Department of Environmental Conservation is authorized to appoint municipal clerks as agents to issue hunting and fishing licenses in New York State; and

WHEREAS, in order for the City Clerk to continue to issue hunting and fishing licenses, a Licensing Issuing Agent Agreement with the New York State Department of Environmental Conservation is required; and

WHEREAS, the Licensing Issuing Agent Agreement permits the City Clerk to appoint an Assistant Licensing Agent to be trained and authorized to issue said licenses; and

WHEREAS, the City Council of the City of Newburgh finds appropriate and in the best interests of the City of Newburgh to authorize the City Clerk to execute the Licensing Issuing Agent Agreement and to appoint a Deputy City Clerk to serve as the Assistant Licensing Agent;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby authorizes the City Clerk to execute the Licensing Issuing Agent Agreement, annexed hereto and made part hereof, with New York State Department of Environmental Conservation and to appoint a Deputy City Clerk to serve as the Assistant Licensing Issuing Agent for the purpose of issuing hunting and fishing licenses in New York State.

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 10/28/13 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 31 day of Oct., 20 13

City Clerk

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXCECUTE A CONTRACT WITH FLOCK GROUP, INC. FOR A FIXED AUTOMATED LICENSE PLATE READER SYSTEM AND RELATED TECHNOLOGY SERVICES

WHEREAS, the City of Newburgh issued a request for proposals from qualified vendors to implement a fixed automated license plate reader system as a law enforcement tool to be used by the Police Department to identify and track vehicles involved in criminal activity as a crime deterrent; and

WHEREAS, Flock Group, Inc. has submitted a proposal and contract to implement a fixed automated license plate reader system and related technology services for the City of Newburgh Police Department; and

WHEREAS, funding for this contract will be derived from a New York State Division of Criminal Justice Services Law Enforcement Technology Program Grant, budget line CG.3120.0200.3350.2025; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with Flock Group, Inc. for a fixed automated license plate reader system and related technology services for use by the City of Newburgh Police Department.

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH AXON ENTERPRISE, INC. TO PURCHASE AND INSTALL RECORDS MANAGEMENT SYSTEMS SOFTWARE AND RELATED SERVICES FOR THE POLICE DEPARTMENT AT A TOTAL COST OF $823,431.00

WHEREAS, by Resolution No. 177-2022 of July 11, 2022, the City Council approved a contract with Axon Enterprise, Inc. to provide body worn cameras, along with technology, cloud, and other services for the Police Department; and

WHEREAS, the Police Department records management system has reached the end of its useful life and received a proposal from Axon Enterprise, Inc. to provide new records management system software and related services for the Police Department for a term of 60 months; and

WHEREAS, funding for the software and related services shall be derived from New York State Division of Criminal Justice Services Law Enforcement Technology Program Grant, budget line CG.3120.0200.3350.2025; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with Axon Enterprise, Inc. to provide records management software and related services to the City of Newburgh Police Department at a total cost of $823,431.00.

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Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement **("Agreement")** is between Axon Enterprise, Inc., a Delaware corporation **("Axon"),** and the agency on the Quote **("Agency").** This Agreement is effective as of the later of the last signature date on this Agreement or (b) signature date on the Quote **("Effective Date").** Axon and Agency are each a **"Party"** and collectively **"Parties".** This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix **("Quote").** It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

"Axon Cloud Services" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"Axon Device" means all hardware provided by Axon under this Agreement.

"Quote" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"Services" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated **("Term")** pursuant to the Quote, annexed hereto and made part hereof.

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote **("Subscription Term").**

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the Agency. Agency is responsible for any shipping charges in the Quote. Any shipping charges not expressly listed in the Quote are the responsibility of Axon.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

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7 Warranty.

7.1 Hardware Limited Warranty. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon **("CEW")** cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 Claims. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 Spare Axon Devices. For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote **("Spare Axon Devices").** Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

7.4 Limitations. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

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8 **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables **("SOW").** In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9 **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.

10 **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.

11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.

12 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.

13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees **("Agency Indemnitees")** against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's gross negligence or willful misconduct, or claims under workers compensation.

14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.

15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.

16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.

17 **Termination.**

17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.

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17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.

17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price **("MSRP")** and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.

18. **Confidentiality.** "Confidential Information" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

19. **General.**

19.1 **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2 **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

19.3 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

19.4 **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5 **Export Compliance.** Each Party will comply with all import and export control laws and regulations.

19.6 **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7 **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8 **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

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19.9 Survival. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.

19.10 Governing Law. The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11 Notices. All notices must be in English. Notices regarding patch notes or upcoming maintenance may be posted on Agency's Axon Evidence site and are effective upon posting. Any notice, payment, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when deposited by registered or certified mail, with postage and charges prepaid and addressed to the parties at the address(es) as set forth below:

Axon:

Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

Agency:

City of Newburgh
Attn: City Clerk
83 Broadway
Newburgh, NY 12550

with copy to:

City of Newburgh Police Department
attn.: Police Chief
55 Grand Street
Newburgh, New York 12550

City of Newburgh Office of Corporation Counsel
83 Broadway
Newburgh, New York 12550

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

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AXON

Master Services and Purchasing Agreement

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

Signature: DocuSigned by: 55DAEBB131A4424...

Name: Robert Driscoll

Title: VP, Assoc. General Counsel

Date: 11/15/2023 | 1:02 PM MST

City of Newburgh

Signature:

Name: Todd Venning

Title: City Manager

Date: 7/13/23

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Axon Cloud Services Terms of Use Appendix

1 **Definitions.**

"Agency Content" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"Evidence" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"Non-Content Data" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data **("TASER Data").** Agency may not upload non-TASER Data to Axon Evidence Lite.

3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (a) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and

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utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at https://www.youtube.com/static?template=terms.

6 **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at https://www.axon.com/legal/cloud-services-privacy-policy. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. **("Skyhook")** to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.

8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.

9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.

1O **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services , the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.

11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.

12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

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The Axon Records Subscription Term will end upon the competition of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term **("Axon Records Subscription")**

An **"Update"** is a generally available release of Axon Records that Axon makes available from time to time. An **"Upgrade"** includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

13 **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

13.1 copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;

13.2 reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;

13.3 access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;

13.4 use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;

13.5 access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;

13.6 remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or

13.7 use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

14 **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.

15 **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

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16 **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.

17 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

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Technology Assurance Plan Appendix

If Technology Assurance Plan **("TAP")** or a bundle including TAP is on the Quote, this appendix applies.

1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.

2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan **("OSP"),** Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.

3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month **("OSP 7 Term").**

4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera **("BWC Upgrade")** as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.

5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote **("Dock Upgrade").** Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.

6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.

7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.

8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

9 **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:

9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.

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9.2 Axon will not and has no obligation to provide the Upgrade Models.

9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

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Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

1 **Subscription Term.** If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

2 **Axon Citizen Storage.** For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal **("Portal Content"),** within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

3 **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.

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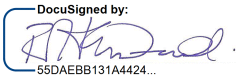
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Electronic Record and Signature Disclosure: Accepted: 10/2/2018 11:27:43 AM ID: 6943ea04-c138-4194-a96a-e670aa85f248		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Jesse Lowe jlowe@axon.com Security Level: Email, Account Authentication (None)	COPIED	Sent: 11/15/2023 12:47:21 PM Viewed: 11/15/2023 1:05:47 PM
Electronic Record and Signature Disclosure: Accepted: 8/9/2023 4:54:32 PM ID: 7fe21622-95e7-477c-867e-bd8c38d15baa		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	11/15/2023 12:47:21 PM
Certified Delivered	Security Checked	11/15/2023 1:02:13 PM
Signing Complete	Security Checked	11/15/2023 1:02:26 PM
Completed	Security Checked	11/15/2023 1:02:26 PM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: cnelson@axon.com

To advise Axon Enterprises, Inc.-HR of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at cnelson@axon.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to cnelson@axon.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to cnelson@axon.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Q-510101-45450.645JL

Issued: 06/07/2024

Quote Expiration: 08/30/2024

Estimated Contract Start Date: 07/01/2025

Account Number: 132800

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
City of Newburgh Police Department 55 GRAND ST NEWBURGH, NY 12550-4611 USA	City of Newburgh Police Dept - NY 83 Broadway 4th Fl Newburgh NY 12550-5617 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Christian Gardner Phone: (480) 502-6209 Email: cgardner@axon.com Fax:	Joseph Burns Phone: (845) 569-7525 Email: jburns@cityofnewburgh-ny.gov Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	$823,431.00
ESTIMATED TOTAL W/ TAX	$823,431.00

Discount Summary

Average Savings Per Year	($102,171.00)
TOTAL SAVINGS	($510,855.00)

Payment Summary

Date	Subtotal	Tax	Total
Jun 2025	$823,431.00	$0.00	$823,431.00
Total	**$823,431.00**	**$0.00**	**$823,431.00**

Quote Unbundled Price:	**$312,576.00**
Quote List Price:	**$312,576.00**
Quote Subtotal:	**$823,431.00**

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
A la Carte Software									
73638	AXON STANDARDS - LICENSE	7	60		$10.85	$10.85	$4,557.00	$0.00	$4,557.00
73681	AXON RECORDS	90	60		$42.31	$42.31	$228,474.00	$0.00	$228,474.00
A la Carte Services									
99901	AXON ACCELERATE CONFERENCE REGISTRATION	5			$849.00	$0.00	$0.00	$0.00	$0.00
101161	AXON - REGIONAL SWS TECHNICAL ACCOUNT MANAGER	1	12		$6,250.00	$6,250.00	$75,000.00	$0.00	$75,000.00
85157	AXON RECORDS - PROFESSIONAL SERVICES MILESTONE PAYMENT	1			$300.00	$515,400.00	$515,400.00	$0.00	$515,400.00
Total							**$823,431.00**	**$0.00**	**$823,431.00**

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
A la Carte	73638	AXON STANDARDS - LICENSE	7	07/01/2025	06/30/2030
A la Carte	73681	AXON RECORDS	90	07/01/2025	06/30/2030

Services

Bundle	Item	Description	QTY
A la Carte	101161	AXON - REGIONAL SWS TECHNICAL ACCOUNT MANAGER	1
A la Carte	85157	AXON RECORDS - PROFESSIONAL SERVICES MILESTONE PAYMENT	1
A la Carte	99901	AXON ACCELERATE CONFERENCE REGISTRATION	5

Shipping Locations

Location Number	Street	City	State	Zip	Country
	55 GRAND ST	NEWBURGH	NY	12550-4611	USA

Payment Details

Jun 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Professional Services	101161	AXON - REGIONAL SWS TECHNICAL ACCOUNT MANAGER	1	$75,000.00	$0.00	$75,000.00
Professional Services	85157	AXON RECORDS - PROFESSIONAL SERVICES MILESTONE PAYMENT	1	$515,400.00	$0.00	$515,400.00
RMS Licenses	73638	AXON STANDARDS - LICENSE	7	$4,557.00	$0.00	$4,557.00
RMS Licenses	73681	AXON RECORDS	90	$228,474.00	$0.00	$228,474.00
Total				**$823,431.00**	**$0.00**	**$823,431.00**

Jul 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	99901	AXON ACCELERATE CONFERENCE REGISTRATION	5	$0.00	$0.00	$0.00
Total				**$0.00**	**$0.00**	**$0.00**

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and the Master Services and Purchasing Agreement between Axon and Customer executed 13 July 2022.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

6/7/2024



Axon Event Offer Appendix

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon ("Axon Event"), the following shall apply:

1. **General**. Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer's understanding of the terms and conditions outlined in this Axon Event Offer Appendix.

2. **Attendee/Employee Selection**. Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).

3. **Compliance**. It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon's provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer's local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer's compliance with such reporting requirements.

4. **Assignability**. Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.

5. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.

6. **Revocation of Offer**. Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations

Axon Technical Account Manager Appendix

This Appendix applies if Axon Support Engineer services are included on the Quote.

1. **Axon Technical Account Manager Payment.** Axon will invoice for Axon Technical Account Manager ("**TAM**") services, as outlined in the Quote, when the TAM commences work on-site at Customer.

2. **Full-Time TAM Scope of Services.**

   2.1. A Full-Time TAM will work on-site four (4) days per week, unless an alternate schedule or reporting location is mutually agreed upon by Axon and Customer.

   2.2. Customer's Axon sales representative and Axon's Customer Success team will work with Customer to define its support needs and ensure the Full-Time TAM has skills to align with those needs. There may be up to a six- (6-) month waiting period before the Full-Time TAM can work on-site, depending upon Customer's needs and availability of a Full-Time TAM.

   2.3. The purchase of Full-Time TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer, and Customer is current on all payments for the Full-Time TAM Service.

   2.4. The Full-Time TAM **Service options are listed below:**

Ongoing System Set-up and Configuration Assisting with assigning cameras and registering docks Maintaining **Customer's Axon Evidence account** Connecting Customer to "Early Access" programs for new devices
Account Maintenance Conducting on-site training on new features and **devices for Customer leadership team(s)** Thoroughly documenting issues and workflows and suggesting new workflows to improve **the effectiveness of the Axon program** Conducting weekly meetings to cover current issues and program status
Data Analysis Providing on-demand Axon usage data to identify trends and insights for improving daily workflows Comparing **Customer's Axon usage and trends to peers to establish best practices** Proactively monitoring the health of Axon equipment and coordinating returns when needed
Direct Support Providing on-site, Tier 1 and Tier 2 (as defined in Axon's Service Level Agreement) technical support for Axon Devices Proactively monitoring the health of **Axon equipment** Creating and monitoring RMAs **on-site** Providing Axon app support Monitoring and testing new firmware and workflows before they are released to Customer's production environment
Customer Advocacy Coordinating bi-**annual voice of customer meetings with Axon's Device Management team** Recording and tracking Customer feature requests and major bugs

3. **Regional TAM Scope of Services**

   3.1. A Regional TAM will work on-site for three (3) consecutive days per quarter. Customer must schedule the on-site days at least two (2) weeks in advance. The Regional TAM will also be available by phone and email during regular business hours up to eight (8) hours per week.

   3.2. There may be up to a six- (6-) month waiting period before Axon assigns a Regional TAM to Customer, depending upon the availability of a Regional TAM.

   3.3. The purchase of Regional TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer and Customer is current on all payments for the Regional TAM Service.

   3.4. The Regional TAM service options are listed below:

Account Maintenance Conducting remote training on new features and **devices for Customer's leadership** Thoroughly documenting issues and workflows and suggesting new **workflows to improve the effectiveness of the Axon program** Conducting weekly conference calls to cover **current issues and program status** Visiting Customer quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Customer's goals for your Axon program, and continue to ensure a successful deployment of Axon Devices
Direct Support **Providing remote, Tier 1 and Tier 2 (As defined Axon's Service Level Agreement) technical support for Axon Devices** Creating and monitoring RMAs remotely
Data Analysis Providing quarterly Axon **usage data to identify trends and program efficiency opportunities** Comparing an **Customer's Axon usage and trends to peers to establish best practices** Proactively monitoring the health of Axon equipment and coordinating returns when needed
Customer Advocacy Coordinating bi-yearly Voice of **Customer meetings with Device Management team** Recording and tracking Customer feature requests and major bugs

4. **Out of Scope Services.** The TAM is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.

5. **TAM Leave Time**. The TAM will be allowed up seven (7) days of sick leave and up to fifteen (15) days of vacation time per each calendar year. The TAM will work with Customer to coordinate any time off and will provide Customer with at least two (2) weeks' notice before utilizing any vacation days.

STATEMENT OF WORK FOR THE IMPLEMENTATION OF AXON RECORDS FOR NEWBURGH PD ("SOW")

Submitted By:

Axon Enterprise, Inc. (Axon)

17800 North 85th Street

Scottsdale, AZ 85255

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PROJECT OVERVIEW

This document serves as an overview of the Axon Records project. Axon Records and Axon Standards are cloud-native software solutions provided as a SaaS subscription.

1. SOFTWARE

The software detailed in this SOW includes, but is not limited to, the listed functionality:

AXON RECORDS	▸ Employee Management ▸ Master Name Index ▸ Master Address Index ▸ Master Location Index ▸ Master Vehicle Index ▸ Axon DataStore ▸ User Permission Management ▸ Distribution Management ▸ Print Auditing ▸ Search ▸ Master Index Alerts ▸ NY NIBRS State Reporting ▸ Incident Reporting ▸ Expungement	▸ Redaction ▸ Supplements ▸ Audit Trail ▸ Attachments ▸ Physical Property & Evidence Entry ▸ Sealing ▸ Crimes and Productivity Analytics ▸ Restrictions ▸ Field Interviews ▸ Records Requests ▸ Case Management ▸ Configurable Forms and Fields

2. DEFINITIONS

TERM	DEFINITION
PARTIES	
Agency	Newburgh PD who is identified within this SOW
End-Users	Specific agency groups using the system
Professional Services	The services that Axon provides within the scope of this SOW
SYSTEMS	
Axon Systems	Software solutions and agency-specific integrations developed by Axon
CJIS	The Federal Bureau of Investigation's criminal justice information system

MDC	Mobile data computer – a device associated within a vehicle or other mobile unit
NIBRS	National Incident-Based Reporting System
DataStore	The database Axon provides allowing the agency to query data
Product	The software solution being implemented as part of this SOW
Production Environment	The operational environment where the product is accessed
Training Environment	The pre-production environment where all Axon-specific development, configuration, FAT, UAT, and training take place
Service Portal	An online portal provided by Axon where issues identified are entered and triaged
PROJECT & MILESTONES	
Project	Scope of this SOW as defined by the work to be completed described herein
Project Change Order (PCO)	Change order form outlined in Attachment B to be executed between Axon and the agency if a material change in scope is required for this SOW
Milestone	Event that constitutes completion of work as listed in Attachment A
Milestone Completion Report	The report outlined in Attachment A to be executed at key milestones between agency and Axon to approve completion of project phases
Requirements Phase	Requirements gathering and confirmation occurs during this phase. Confirmed requirements feed the sprint phase, and sprints are designed around what can and cannot be accomplished given time and resource constraints on both Axon and the agency's sides.
Configuration Phase	Project phase encompassing iterative development through sprints. Integrations and workflows are developed and deployed during this phase. The agency forms are also configured during this phase.
Sprint	A period during the configuration phase of the project (typically 2-3 weeks) where specific pieces of functionality are built, configured, and delivered.
Sprint Review	Signifies the end of the sprint where Axon showcases what was built, configured, and delivered. These items are then deemed ready for FAT and UAT.
Go-Live	End-users are activated, and the agency is actively using the product
Cutover	Successful implementation of interfaces, data conversion, and NIBRS state and federal certification
Third-Party Products and Services	Software, hardware, and services that are not owned by Axon but are being provided by Axon for this project as listed in Attachment C
ACCEPTANCE	
Blocker	Issue impacting 50% or more users

Functional Acceptance Testing (FAT)	Testing the functionality of the system as configured for the agency
Integration Acceptance Testing	Scheduled events for testing of each integration point and associated functionality in collaboration with the agency and the agency's vendors
User Acceptance Testing (UAT)	Testing the functionality of the system as configured for the agency from an end-user's perspective

3. OUT OF PROJECT SCOPE

Axon is only responsible for performing the professional services described within this SOW. Any additional professional services that are not defined explicitly by this SOW shall be done so through a Project Change Order. The following are considered outside the scope of this project:

- Administration, management, or support of any internal city, county, state, federal, or agency IT network or infrastructure
- Changes made by the agency or the agency's vendors after the Interface Requirements Documentation has been accepted
- Third-party products and services costs related to the vendors or agency's side of the integration
- Changes made by the agency after configuration is complete

PROFESSIONAL SERVICES

1. GENERAL

- The agency provides a master charge table that Axon loads. Axon provides the appropriate structure to the agency.

2. REPORTING AND DATASTORE

- Axon configures and make available to the agency a read-only MS SQL DataStore containing all field and form data from the Axon Suite that allows the agency to utilize available data for reporting and analytical purposes.
- Axon provides the agency with a data dictionary and/or other appropriate documentation.
- If Axon provides reports for specific purposes as indicated, it is the responsibility of the agency to maintain them after Go-Live.

3. READINESS

- Axon works in partnership with the agency to determine readiness by conducting functional testing and an end-to-end system review. The Axon program manager and the agency project manager work closely together to plan and execute readiness scenarios.
- Axon conducts functional acceptance testing via use cases approved by Axon and the agency.
- All issues discovered during and after training are entered into the service portal for triage and follow-up.

4. TRAINING

- Axon works with the agency to identify the agency trainers receiving instruction on the Axon Records, Standards, and/or Dispatch products. Axon provides a training guide that outlines the covered topics, intended audience, facility needs, and duration of the training.

FORMAT

- Axon provides the agency with all the necessary training materials and digital assets to facilitate any of the training formats listed below. Training sessions are conducted in an environment containing necessary configurations, forms, and workflows. Any additional training beyond the default method

(Tier 1) is subject to adjustments in pricing. Contact your sales representative for more information.

- It is the responsibility of the agency to deliver and update the training materials to include agency policies and procedures.

TIER 1: TRAIN THE TRAINER

- Axon trains the agency's recommended users (no more than 12 depending on the size of the agency) in full system functionality. This is typically the agency's trainers, or training academy/FTO staff. The agency's trainers are responsible for training all agency end users. Axon provides all training materials for successful training and assists the agency's trainers in creating the course and training schedule.
- Additional training options can be discussed.

SCHEDULE:

The training plan contains an agreed-upon schedule that makes efficient use of time and resources to avoid undue staffing impacts on the agency. Training sessions occur after the User Acceptance Testing has been successfully completed and documented.

- Training sessions provided by Axon are conducted on consecutive weekdays (Tuesday-Friday) during normal business hours (9am-6pm with an hour break in between sessions).
- Training sessions required past the agreed-upon schedule in the training plan, regardless of delivery method, are the responsibility of the agency, unless agreed upon previously by the project team and training team management.

A. GO-LIVE

Axon works in partnership with the agency to build, coordinate, and execute a Go-Live plan to ensure successful system acceptance. Axon coordinates the Go-Live event.

5. INTERFACES

The agency tasks related to interface setup start immediately after project kick-off. It is critical for the agency interface subject-matter experts (SME) and Axon project interface resources to work closely together to scope, set-up, and test all interfaces.

- The agency must provide any relevant technical documentation per interface to Axon.
- The agency facilitates any necessary meetings with all third-party system vendors where integration is required.
- Axon provides any relevant Axon API documentation to the agency.
- Axon conducts integration acceptance testing demonstrating the functionality of each integration to the agency.
- The agency must notify Axon of any changes to the agency's side of the integration that are beyond Axon's control and may impact the integration.

A. AGENCY INTERFACES

i. Records | VCAD | Call For Service: Axon will import Call For Service (CFS) information from the VCAD system. Ingested CFS data will be used to automatically create a shell Incident Report in Axon Records, assigned to the responding/primary officer from the CFS CAD Event. This integration will also pull in any NCIC returns that exist on the CFS. Specific datapoints, cadence and import triggers, along with method of transfer, will be determined during the Requirements Phase of the project.

ii. Records | TraCS | Citation: Axon will import citation data from the TraCS system into Axon Records. The data will be imported into a standalone form in Axon Records and will automatically finalize upon import. Specific datapoints, cadence and export triggers, along with method of transfer, will be determined during the Requirements Phase of the project.

iii. Records | TraCS | Collision: Axon will import crash data from the TraCS system into Axon Records. The data will be imported into a standalone form in Axon Records and will automatically finalize upon import. Specific datapoints, cadence and import triggers, along with method of transfer, will be determined during the Requirements Phase of the project.

iv. **Records | BEAST | Property and Evidence:** Axon will export Property and Evidence data to the BEAST Property and Evidence management platform, eliminating the need for duplicate entry into two systems. Specific datapoints, cadence and export triggers, along with method of transfer, will be determined during the Requirements Phase of the project.

B. GO-LIVE CONTINGENCY

The agency may Go-Live before interfaces are complete. This does not relieve Axon from completing the interfaces, but the agency is charged upon using the software.

6. GIS

A. OVERVIEW

Axon incorporates a multi-tenant, Axon-hosted ArcGIS Enterprise instance for certain GIS functions along with our existing ArcGIS Online solution. This new infrastructure meets our customers' stringent requirements for high availability GIS data in mission-critical uses.

B. GIS TERMINOLOGY

- **Feature Layer:** A single map layer that can be created from a Map Service or Feature Service, ArcGIS Online or ArcGIS Enterprise portal items, or from an array of client-side features. The layer can be either a spatial (has geographic features) or non-spatial (table).

GIS FUNCTIONS	ARCHITECTURE	RATIONALE
VECTOR TILE MAPS	ArcGIS Online (Uses Axon-hosted as backup)	ArcGIS Online's AWS CloudFront architecture is fast and reliable
SATELLITE IMAGERY	ArcGIS Online	ArcGIS Online's AWS CloudFront architecture is fast and reliable
ROUTING SERVICE	Axon ArcGIS Enterprise	Axon routing service has higher availability and offers an SLA
ADDRESS SUGGESTION SERVICE	Axon ArcGIS Enterprise	Axon routing service has lower latency, higher availability, and offers an SLA
GEOLOCATION SERVICES	Axon ArcGIS Enterprise	Axon routing service has lower latency, higher availability, and offers an SLA
CUSTOMER FEATURE LAYERS	Axon's ArcGIS Online account	For customers without ArcGIS Online account, customer provides layer files to Axon, and Axon hosts in Axon's ArcGIS Online account, and owns and manages layer URL
	Customer ArcGIS Online account	Customer hosts (and controls) layer content in their own ArcGIS Online account, and provides layer URL and an Access Key to Axon
	Axon ArcGIS Enterprise (not supported yet)	Customers provides layer files to Axon, and Axon hosts layers in Axon's ArcGIS Enterprise deployment, and owns and

		manages layer URLs. Axon validates that the feature layer is safe to publish and optimized. See the guide on this feature for more details.
	Customer web server (not supported yet)	Customer hosts (and controls) layer content on their own web server, provides layer URL to Axon. Axon monitors customer web server to assess availability and make recommendation to customer about its suitability for hosting layers in mission critical applications like CAD and RMS.

- Geocoding: Also called address geocoding, this is the process of taking a text-based description of a location, such as an address or the name of a place, and returning geographic coordinates, frequently latitude/longitude pair, to identify a location on the Earth's surface.
- Reverse Geocoding: A process that converts geographic coordinates to a description of a location, usually the name of a place or an addressable location. Geocoding relies on a computer representation of address points, the street / road network, together with postal and administrative boundaries.
- Routing: Routing services allow you to perform several types of spatial analysis on transportation networks, such as finding the best route across a city, finding the closest emergency vehicle or facility, identifying a service area around a location, or servicing a set of orders with a fleet of vehicles.
- Basemaps: Serves as a reference map on which you overlay data from layers and visualize geographic information. An individual basemap can be made of multiple feature, raster, or web layers.
- Geocoder: A web service which provides geocoding information. Customers can define their own and expose them as APIs.

C. AXON GIS COMPONENTS AND ARCHITECTURE

The ArcGIS Online service does not offer an SLA for many of their components. Because ArcGIS Online does not offer an SLA, Axon cannot ensure consistent performance if an agency opts to use ArcGIS Online for any of its GIS services.

The exception to this is the ArcGIS Online Map Tiles and Satellite Imagery, which are static assets hosted on reliable modern Content Delivery Networks (CDN) by ESRI. By leveraging their CDN-hosted assets, map render time and performance are dramatically improved. However, in the unlikely event that ArcGIS Online map tiles become unavailable, Axon has the ability to switch to a backup copy running on Axon's servers. Due to the massive size of satellite imagery, Axon currently does not offer a backup copy of the satellite imagery at this time but may consider this for future requests.

When accessing Map Tiles and Satellite Imagery, no customer data (such as addresses or GPS coordinates) are sent to 3rd party services.

D. GIS REQUEST FLOW

For Axon to host your feature layers in our ArcGIS Online account, we require two key items:

- A complete set of layer configuration files for each layer as enumerated below, with all files for all layers bundled into a single .zip file
- The numbered list describing the stacking order in which the layers should be applied when selected by end users file requirements for Layer Configuration
- Agencies requiring Axon to host their feature layers must send layer files to their Axon representative in a single .zip file with optional internal folder structure. For each layer, agencies should include files as follows:

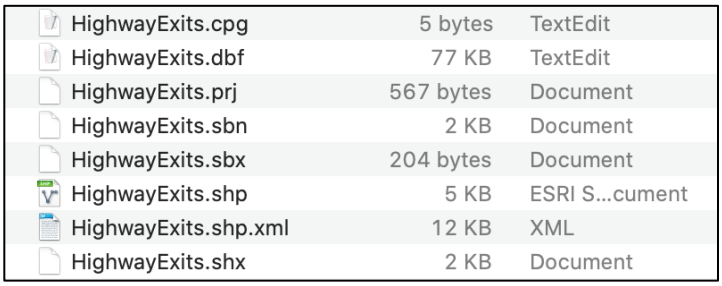
E. GIS REQUIRED LAYERS

- Shapefile (.shp extension) to represent spatial vector data, including points, lines, and polygons in a map
- Index File (.shx extension) to represent shape index position
- dBASE File (.dbf extension) to store attribute data and object IDs

F.GIS OPTIONAL LAYERS

- Projection File (.prj extension) to specify the metadata associated with the shapefiles coordinate and projection system
- XML Metadata File (.xml extension) to represent the metadata associated with the shapefile
- Spatial Index File (.sbn extension) to optimize and speed up spatial queries, used with .sbx files
- Spatial Index File (.sbx extension) to optimize and speed up spatial queries, used with .sbn files
- Code Page File (.cpg extension) to describe the encoding applied to create the shapefile

G. GIS LAYER EXAMPLES



HighwayExits.cpg	5 bytes	TextEdit
HighwayExits.dbf	77 KB	TextEdit
HighwayExits.prj	567 bytes	Document
HighwayExits.sbn	2 KB	Document
HighwayExits.sbx	204 bytes	Document
HighwayExits.shp	5 KB	ESRI S...cument
HighwayExits.shp.xml	12 KB	XML
HighwayExits.shx	2 KB	Document

7. NIBRS CERTIFICATION

Axon works in partnership with the agency to complete the NIBRS certification process with the state. Axon trains appropriate personnel within the agency to perform corrective action to Incident Reports, and ensure representative data is captured in alignment with NIBRS reporting standards.

The NIBRS certification process includes:

- Training agency personnel on the processing and critical review stages of all generated incident reports to ensure required NIBRS reporting compliance data is captured
- Training agency personnel to perform periodic checking and submission preparation audit of the incidents which contain NIBRS reporting data
- Training agency personnel to conduct a monthly NIBRS export report of the incidents to the state in the manner determined by the state
- Working with the agency to update codes, statutes, entity relationships, and any unmatched data the state rejects as part of the NIBRS test submission process through certification

A. CUTOVER

Axon works in partnership with the agency to build, coordinate, and execute a cutover plan to ensure successful implementation of interfaces, data conversion, and NIBRS state and federal certification. Some of these cutover events happen in parallel with the system implementation process, and Axon coordinates with the agency to determine the timing requirements for each cutover.

B. GO-LIVE CONTINGENCY

The agency may Go-Live before NIBRS certification is complete. This does not relieve Axon from completing the NIBRS certification, but the agency is charged upon using the software.

8. PROJECT MANAGEMENT

A. MANAGEMENT RESOURCES

AXON TEAM

- Executive Sponsor: An Axon executive overseeing the implementation process and communicating progress to Axon Leadership.
- Program Manager: The dedicated point of contact and person responsible for successful deployment.
- Business Analyst - One of the main executors of the agency's and PM's deployment plan. Holds responsibility for ensuring the project accounts for all specific data elements, and that internal systems are set up and maintained throughout deployment.
- Solution Architect: the technical lead on the project. Holds responsibility for the development and execution of technical initiatives affecting other teams.
- Customer Success Manager – Holds responsibility for post-implementation and ongoing support.
- Training Specialist – Provides training to the agency on the applications being deployed.

AGENCY TEAM

- Executive Sponsor: This role is a career police department leadership role with deep understanding of the agency. Business sponsor responsible for the success of the project.
- Project Manager: This role requires experience managing enterprise cloud-based software project delivery experience and strong foundational technical experience.
- Integrations Manager: This role requires strong foundational experience in technology solutions and application integration. This role also requires fluency in all agency project-relevant data sources, application integrations, and existing custom-developed applications, queries, and reports.
- IT Administrator: This role requires strong foundational experience in systems administration and network management, fluency in all agency network-related processes, sequence and timing of recurring process jobs, reconciliation, etc. This role also requires fluency in the overlap, vulnerabilities, and disaster recovery protocols associated with agency IT infrastructure.

- Records Supervisor: This role provides strong foundational experience in records management, agency policies, compliance activity, and standard operating procedures. This role also provides fluency in all processes associated with close activity, special processes, and queries to manage bulk actions, as well as a detailed understanding of data elements that support special compliance obligations.
- Patrol Lead: This role requires strong foundational experience in field policies related to data collection, records initiation, and categorization of the numerous forms of citizen interaction. This role also requires fluency in the policies associated with records creation, supplements, amendments, checkpoints, routing, case management, and determination of records outcomes.
- Reporting Analyst/Lead: This role requires strong foundational experience in ad-hoc, daily, weekly, and monthly reporting policies and compliance across local, state, and federal entities. This role also requires fluency in all agency reporting processes, including queries, scripts, and custom applications utilized for all bulk processing to support reporting requirements.

B. REQUIREMENTS PLANNING

All project requirements are documented during the kick-off and discovery phases of the project.

Once the agency and Axon agree on all requirements, Axon's project manager works with the agency's project manager to develop a project plan for Axon's implementation.

C. CHANGE CONTROL

If any changes in the project cause a material increase or decrease in fees, as determined by Axon, an adjustment in the fees will be agreed upon between the agency and Axon. All PCO forms must be approved and signed by the agency authority (Attachment B).

The agency acknowledges a proposed change request might have an impact on both scheduling and cost for the project that will be outlined in the PCO form.

D. PROJECT METHODOLOGY

Axon utilizes a hybrid approach to project management, utilizing aspects of both Agile and Waterfall methodologies. We use Waterfall for

the overall project, with respect to major milestones. We utilize Agile during the configuration and build phases of the project.

E. MILESTONE COMPLETION REPORT (MCR)

Axon submits an MCR to the agency for approval upon completion of a milestone. Milestone Completion Report included (Attachment A).

Upon receiving an MCR, the agency has 14 calendar days to approve the milestone completion. If the agency has issues related to the milestone completion, the expectation is that the agency responds in writing to Axon with any issues related to the MCR within the 14 calendar-day window.

9. AGENCY COMMITMENTS

- Ensure the reasonable availability for meetings, phone or email of knowledgeable staff and personnel to provide timely and accurate documentation and information to Axon.
- Identify holidays, non-workdays, or major events that may impact the project.
- Ensure agency desktop, mobile systems, and devices can access the product.
- Make available relevant systems if needed for assessment by Axon (including making these systems available to Axon via remote access, if possible).
- Provide Axon with remote access to the agency's Axon Evidence account when required.
- The agency agrees to pay for licenses upon completion of Go-Live.

10. SUPPORT

- Axon provides on-site Go-Live support the week the agency begins using the software.
- Axon provides ongoing support for active interfaces and NIBRS troubleshooting.
- Axon provides updates and enhancements to the product, which the agency automatically receives.
- Axon provides the agency's end users with access to the help.axon.com support portal to submit and review service tickets.
- Following final acceptance, the agency utilizes Axon support via my.axon.com for any further modifications to the product.
- For technical support assistance, the agency may contact a technical support representative at 800-978-2737, or via email at Support@Axon.com. Online, email-based support and remote-location troubleshooting are included on an ongoing basis as part of the agency's investment in the Axon ecosystem. Phone support is available 24/7.

11. TERMS AND CONDITIONS

This SOW is governed by the master services and purchasing agreement executed by the parties:

AXON ENTERPRISE, INC.	AGENCY
Signature:	Signature:
_____	_____
Name:	Name:
_____	_____
Title:	Title:
_____	_____
Date:	Date:
_____	_____

ATTACHMENT A – MILESTONE COMPLETION REPORT (MCR)

By signing for the items in this Milestone Completion Report, I agree that Axon's Professional Services Organization has reached the following milestone(s) for the project agreed upon in the SOW between Axon and Newburgh PD:

- ☐ Project kick-off
- ☐ Requirements completion
- ☐ Functional review and completion of configuration
- ☐ User acceptance testing
- ☐ Integrations completion
- ☐ NIBRS state and federal certification
- ☐ Completion of agency training
- ☐ Go-Live
- ☐ Final acceptance

Date services were completed on:

_____ day of _____, 20___

Today's date: _____

Agency name: _____

Signature: _____

Printed name: _____

Title: _____

Email: _____

SAMPLE

ATTACHMENT B – PROJECT CHANGE ORDER

Date:
Description of change to Axon product or service:
Justification for change:
Effects on schedule:
Effect on project pricing (attach quote for reduction or increase in costs):

AXON ENTERPRISE, INC.	AGENCY
Signature:	Signature:
_____	_____
Name:	Name:
_____	_____
Title:	Title:
_____	_____
Date:	Date:
_____	_____

SAMPLE

ATTACHMENT C – THIRD-PARTY PRODUCTS AND SERVICES

To deliver a complete solution to the agency, Axon employs third-party products and services providers.

Axon is responsible for the management of third parties identified within Attachment C for the purposes of this project. All communications between those third parties, the agency, and Axon is managed by Axon including any supporting requirements, integration acceptance testing, functional acceptance testing, or the processing of PCO or MCR documentation.

The following third-party products and services are included within the scope of this SOW:

- Microsoft Self Hosted Integration Runtime ("SHIRt"):
  - Included within this project is software that allows integrations within the agency's local environment to communicate with Axon's cloud hosted environment.
  - The agency agrees to provide a CJIS server and operating environment for hosting the Self Hosted Integration Runtime. The minimum technical requirements are:
    - Windows 8.1, 10, 11 or Server 2012, 2012 R2, 2016, 2019, 2022
    - 64-bit Operating System with .NET Framework 4.7.2 or above
    - 2 GHz, 4 core CPU, 8 GB Memory and 80 GB disk
    - A VM installed on a CJIS server will also suffice. It does not need to be a standalone, dedicated CJIS server.

ATTACHMENT D – AXON TECHNICAL ACCOUNT MANAGER

AXON REGIONAL TAM RESPONSIBILITIES

- Axon Technical Account Manager (TAM) Payment: Axon invoices for Axon TAM services as outlined in the quote when the TAM commences work with the agency.
- TAM Scope of Services:
  - The TAM manages the agency's technical support primarily remotely with routine onsite visits of up to three (3) days per month.
  - The TAM is a shared resource among several agencies, and cannot exceed 25% capacity for each agency.
  - The TAM is employed by Axon and adheres to all Axon policies and procedures.
  - In the event there is a need to replace the TAM, Axon coordinates with the agency to outline timing and interim coverage.
  - The TAM completes CJIS background clearance process to facilitate access controls.
  - The agency's Axon support team works with the agency to define its support needs and ensures these needs fall within the scope of a shared TAM resource. There may be up to a three (3) month waiting period before the TAM can begin supporting the agency due to hiring and onboarding needs.

The shared TAM professional services can include, but is not limited to the following:

ONGOING SYSTEM UPDATES AND CONFIGURATIONS	• Manage software releases. • Agencies will gain access to monthly release webinars that are hosted by a shared TAM resource.
ACCOUNT MAINTENANCE	• Outage communications and follow-up • After action report (ARR) reviews • Conduct monthly executive reviews with agency and Axon regarding DRS products
DIRECT SUPPORT	• Remote Troubleshooting • Troubleshoot agency issues in via phone or video conferencing.

	▸ Gather product questions and feedback from users. ▸ Triaging and overseeing MyAxon cases. ▸ Conduct MyAxon case review meetings. ▸ Directly engage with software support engineers, data analyst, and NIBRS specialists/NIBRS support engineer ▸ Prioritize feature requests/enhancements. ▸ Coordinate with software support engineers
AGENCY ADVOCACY	▸ Liaison between the agency and Axon ▸ Helps drive pre-Go-Live deliverables to completion. ▸ Representative for the agency when participating in internal customer triage meetings/planning sessions
SUBJECT MATTER EXPERTISE	▸ Serves as an agency subject matter expert on DRS products for the following: ▸ Troubleshoot and assist with reported issues. ▸ Bridge knowledge gaps for agency personnel on new functions ▸ Work with the agency to understand product adoption and workflow change needs. ▸ Help agency personnel to become subject matter experts in their respective areas (records, investigations, patrol, crime analysis, property & evidence, etc.) ▸ Work with agency on any post-Go-Live needs for DataStore or form builder





RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXCECUTE A RIGHT OF ENTRY AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE ARMY AND ITS CONTRACTED AGENTS TO ALLOW ACCESS TO CITY OWNED PROPERTY IN CONNECTION WITH A REMEDIAL INVESTIGATION PROJECT OF THE STEWART AIR NATIONAL GUARD BASE AREA

WHEREAS, the United States Department of the Army is undertaking a remedial investigation of the Stewart Air National Guard Base Area; and

WHEREAS, by Resolution No. 74-2023 of April 24, 2023, the City Council approved a Right of Entry Agreement with the United States Department of the Army allow access to City-owned water supply property identified as Section 4, Block 1, Lot 12.2, Section 4, Block 3, Lot 1.1, Section 32, Block 2, Lot 53, and Section 97, Block 3, Lot 10 on the official tax map of Orange County for the purposes of installing monitoring wells for soil and groundwater sampling as part of a remedial investigation of the Stewart Air National Guard Base Area; and

WHEREAS, the United States Department of the Army has requested access to City-owned property identified as Section 33, Block 7, Lot 29.2 and Section 41, Block 2, Lot 11.2 on the official tax map of Orange County ("the City Property") for the purposes of collecting and analyzing surface water samples as part of a remedial investigation of the Stewart Air National Guard Base Area; and

WHEREAS, the City agrees to provide access to the United States Department of the Army and its contracted agents to the City Property to allow the United States Department of the Army to perform the work, subject to the conditions provided within the attached Right of Entry Agreement; and

WHEREAS, this Council has reviewed the attached Right of Entry Agreement and has determined that entering into the same 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 execute the Right of Entry Agreement with the United States Department of the Army and their contracted agents to allow them access to City owned property in connection with the remedial investigation project of the Stewart Air National Guard Base Area.

DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NY 10278-0090

June 21, 2024

Real Estate Division

City of Newburgh
Attn: Mayor Torrance Harvey
83 Broadway
Newburgh, NY 12550

Dear Mayor Harvey:

The U.S. Army Corps of Engineers (USACE) is requesting permission to enter upon the property owned by the City of Newburgh in Orange County, New York, for the purpose of performing environmental remediation activities under the Per and Polyfluoroalkyl Substances (PFAS) Program, in accordance with the enclosed Right-of-Entry No. DACA51-9-24-095 and accompanying map, Exhibit A.

The Government will contact you at least five (5) days prior to performing any work on the described property either by phone, email, or letter. The purpose of the notification is to inform you of the specific work that will be conducted and when access to the property will be required, and to coordinate any access requirements. The exact date will be determined once the Right-of-Entry is signed and will be coordinated by the Government and/or its agents. Upon final signature by the Government, a copy of the executed right-of-entry agreement will be furnished for your files.

Thank you for your continued support and cooperation. Please review and sign the enclosed right-of-entry and return it to Mr. Michael Heck, Realty Specialist, via email at michael.r.heck@usace.army.mil, or to the following address: USACE Real Estate New York District, 26 Federal Plaza, Room 16-507-10, New York, NY 10278-0090. Should you have any questions pertaining to the environmental remediation activities, please contact Mr. Tom Heins at (917) 936-6273 or thomas.r.heins@usace.army.mil; if you have any real estate questions, contact Michael Heck at (917) 790-8538 or by email.

Sincerely,

ROOS.ALLEN.D.1228890509
Digitally signed by ROOS.ALLEN.D.1228890509
Date: 2024.06.21 08:51:37 -04'00'

Allen D. Roos
Deputy Chief, Real Estate Division

Enclosures

DEPARTMENT OF THE ARMY
RIGHT-OF-ENTRY
Per and Polyfluoroalkyl Substances (PFAS) Program

Project: Stewart Air National Guard Base Area

Property I.D. #: Assessor Parcel Numbers (APNs) 33-7-29.2 and 41-2-11.2
The undersigned, the City of Newburgh, hereinafter called the "City," in consideration for the mutual benefits of the work described below, hereby grants the **UNITED STATES OF AMERICA**, Department of the Army, hereinafter called the "Government," a right-of-entry upon the following terms and conditions:

1. The City hereby grants to the Government, its employees, officers, and contractors, an assignable right to enter in, on, over and across the land described below in APNs 33-7-29.2 and 41-2-11.2 for the purpose of conducting remedial investigation as determined by the Government for a period not to exceed thirty-six (36) months or for a period not less than the duration of the remedial investigation phase, beginning with the date of the signing of this instrument for use by the Government, its representatives, agents, contractors, and assigns, as a work area for the PFAS Program, whichever is sooner, and perform any other such work as may be further described in the Government's remedial investigation Scope of Work and Site Access Plan, as previously reviewed and approved by the City.

2. The City also grants the right to the Government to request entry from the City to any other adjoining lands owned by the City, as may be necessary in order to use the lands described herein and for the purposes listed in the Right of Entry, Scope of Work, and Site Access Plan. If access to such adjoining land is required, the Government will provide remedial investigation scope of work and site access plan for the adjoining land for the City's review. The City's approval of such request by the Government not to be unreasonably denied.

3. All proposed activities will be coordinated with the City five (5) days prior to the start of a phase of field work.

4. All tools, equipment, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and shall be removed by the Government at any time within a reasonable period after the expiration of this permit of right-of-entry.

5. If any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the City. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. The Government's liability

under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the City may have to make a claim under applicable laws for any damages other than those provided for herein.

6. The land affected by this right-of-entry is located in Orange County, New York, and is described as follows: APNs 33-7-29.2 and 41-2-11.2 in the City of Newburgh, as shown on **EXHIBIT "A"** attached hereto.

7. This Right of Entry includes and incorporates by reference Exhibit "A" depicting the lands affected, the Addendum, Scope of Work and Site Access Plan, and the insurance certificates required by this Right of Entry and the Addendum.

Dated this _____ day of _____, 2024.

CITY OF NEWBURGH

BY: _____
TODD VENNING
City Manager

THE UNITED STATES OF AMERICA

BY: _____
ALLEN D. ROOS
Deputy Chief, Real Estate
Real Estate Contracting Officer
New York District

CERTIFICATE OF AUTHORITY

I, _____ certify that I am _____
(Name) *(Title)*

of the City of Newburgh, and that Todd Venning, who signed the foregoing instrument on behalf of the City, was then the City Manager of the City of Newburgh. I further certify that the said Todd Venning was acting within the scope of powers delegated to him in executing said instrument.

Date: _____

Signature[1]: _____

(The person that signed the attached instrument cannot sign this Certificate)

[1] Certificate of authority is required if owner is a corporation, company, agency, etc. to verify that the person who signed this page has the proper authority to sign on owner's behalf.

ADDENDUM

1. This Right of Entry is only assignable to another agency or branch of the U.S. Government.

2. All work described in the attached Scope of Work and Site Access Plan, relative to this Right of Entry, will be at the expense of the Government, subject to the appropriation of funding for such purposes.

3. The Government will coordinate with the City, in order for a designated City representative to be present during the performance of work, as described in the Scope of Work and Site Access Plan, at the sites, and to also have an engineering consultant, as designated by the City, to be present, with the ability to obtain a split of any samples taken. Any and all costs of such split samples will be the responsibility of the City. The Government makes no warranty herein, and also, assumes no risk or liability therein, as may arise with such split samples taken.

4. It is acknowledged, that by separate agreement, any contractors of the Government shall maintain or cause to be maintained, the following policies of insurance, as procured from insurance companies authorized to do business in New York: (a) Workers Compensation Insurance and Employer Liability Insurance providing statutory benefits and limits; (b) Motor Vehicle Insurance with coverage for all owned, non-owned and hired vehicles with combined single limits of not less than $1,000,000.00 per occurrence for bodily injury and property damage; (c) Commercial General Liability Insurance with combined single limits of not less than $2,000,000.00 per occurrence for bodily injury and property damage naming the City of Newburgh as an additional insured; and (d) pollution liability insurance.

5. Upon completion of the work, subject to this Right of Entry and related Scope of Work and Site Access Plan, the Government shall provide the City with a copy of any laboratory analytical reports and any final written report, regarding the work, subject to this Right of Entry and related Scope of Work and Site Access Plan.

6. The Scope of Work and Site Access Plan are attached hereto, and also herein, incorporated by reference into this Right of Entry. It is understood by the Government and acknowledged by the City, that the City has reviewed and approved the attached Scope of Work and Site Access Plan.

7. Whenever there arises a conflict between the terms of the Right of Entry including exhibits and this Addendum, the terms of this Addendum shall prevail.

Proposed Environmental Sampling Scope of Work
City of Newburgh, New York Property
Phase 1 Per- and Polyfluoroalkyl Substances (PFAS) Remedial Investigation
Stewart Air National Guard Base
April 18, 2024

AECOM Technical Services, Inc. (AECOM), under contract with USACE, is conducting a Phase 1 Per- and Polyfluoroalkyl Substances (PFAS) Remedial Investigation (RI) at the Stewart Air National Guard Base (SANGB) in Newburgh, NY. As part of the approved Uniform Federal Policy-Quality Assurance Project Plan (UFP-QAPP) for the RI, AECOM has proposed to collect and analyze samples of surface water during field Mobilization 2 at locations within City of Newburgh, NY properties that encompass Crystal Lake and Muchattoes Lake. Two sample locations, CL01 and CL02 are proposed for Crystal Lake and one sample, QC02, is proposed for Muchattoes Lake. These three Mobilization 2 sampling locations are shown on attached **Figure 1**. AECOM's schedule for Mobilization 2 calls for sampling these locations sometime between May and August 2024, and will be determined based on several schedule factors.

Access Plan:

- AECOM will collect samples CL01 and CL02 from the Crystal Lake shore. AECOM will access the sample locations on foot via a walking path that leads from Temple Avenue along the south lake shore.

- AECOM intends to collect sample QC02 from the Lake Drive bridge. This sample technically will be collected from Quassaic Creek, immediately prior to its discharge to Muchattoes Lake.

DACA51-9-24-095 EXHIBIT A



CLIENT	New York Air National Guard			
PROJECT	Stewart ANGB PFAS RI			
REVISED	4/18/2024	GIS BY	GC	4/18/2024
SCALE	1:3,600	CHK BY	PY	4/18/2024
Base Map: Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community		PM	WH	4/18/2024

Proposed Mobilization 2 Surface Water Sample Location

Orange Co. NY Tax Map Parcel Boundary (Approximate)

0 150 300 600 Feet

Proposed Sample Locations - Mobilization 2 On City of Newburgh Property

AECOM 12420 Milestone Center Drive Germantown, MD 20876

Figure 1

C:\Users\grace.canham\AECOM\60668988 - Stewart ANGB PFAS RI - General\900_CAD_GIS\920_929_GIS_Graphics\MXDs\ROE\Mob2_ROE\Fig2_Newburgh_RI_Samples_Mob2.mxd

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/02/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Marsh Risk & Insurance Services
CA License #0437153
633 W. Fifth Street, Suite 1200
Los Angeles, CA 90071
Attn: LosAngeles.CertRequest@Marsh.Com

CN101348564-STND-GAUE-24-25 11 2024

CONTACT NAME: Marsh | U.S. Operations
PHONE (A/C, No, Ext): 866-966-4664 **FAX (A/C, No):** 212-948-0533
E-MAIL ADDRESS: LosAngeles.CertRequest@marsh.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : ACE American Insurance Company	22667
INSURER B : N/A	N/A
INSURER C : Illinois Union Insurance Co	27960
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
AECOM
AECOM Technical Services, Inc.
3101 Wilson Boulevard, Suite 900
Arlington, VA 22201

COVERAGES **CERTIFICATE NUMBER:** LOS-002670561-12 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			HDO G47343045	04/01/2024	04/01/2025	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 2,000,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
A	**AUTOMOBILE LIABILITY**			ISA H1073888A	04/01/2024	04/01/2025	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB [ ] OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N			WLR C50718748 (AOS)	04/01/2024	04/01/2025	X PER STATUTE [ ] OTH-ER	
A	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] **(Mandatory in NH)**	N / A		SCF C50718852 (WI Retro)	04/01/2024	04/01/2025	E.L. EACH ACCIDENT	$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	$ 2,000,000
C	ARCHITECTS & ENG.			EON G21654693 005	04/01/2024	04/01/2025	Per Claim/Agg	4,000,000
	PROFESSIONAL LIAB.			"CLAIMS MADE"			Defense Included	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: AECOM Project No: 6066988. Client Reference No: W912DR18D0005, DO W912DR21F0410. AECOM Technical Services, Inc. will be drilling monitoring wells as part of a Remedial Investigation (RI) for the Air National Guard under Contract W912DR-18-D-0005, delivery order #W912DR-21-F-0410.

City of Newburgh is named as additional insured for GL & AL coverages, but only as respects work performed by or on behalf of the named insured and where required by written contract.

CERTIFICATE HOLDER

City of Newburgh
Jason C. Morris, PE
83 Broadway
Newburgh, NY 12550

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh Risk & Insurance Services

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AGENCY CUSTOMER ID: CN101348564
LOC #: Los Angeles

ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
Marsh Risk & Insurance Services		AECOM AECOM Technical Services, Inc. 3101 Wilson Boulevard, Suite 900 Arlington, VA 22201
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Contractors Pollution Liability, Carrier: AIG Specialty Insurance Company, NAIC #26883, Policy #: CPL 1814870, Policy Term: 04/01/2024 – 04/01/2025, "Claims Made," Defense Included, Limit: $ 4,000,000.

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RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MYRA ARMSTEAD TO PROVIDE HISTORICAL CONSULTANT AND SUPERVISORY RESEARCH SERVICES IN CONNECTION WITH THE NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS PROGRAM GRANT AND ORAL HISTORY PROJECT

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

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

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

WHEREAS, Myra Armstead, an independent contractor, has applied to work with the City of Newburgh to provide historical consultant and research supervisory services in connection with the NPS AACR Program grant and oral history project; and

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

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

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

SUBGRANTEE AGREEMENT
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT

This subgrantee agreement ("Agreement"), by and among the **CITY OF NEWBURGH, NEW YORK,** a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City") and Myra Armstead, an individual with a principal place of business at 8 Walnut Hill Road, Poughkeepsie, NY 12603 ("Sub-grantee"), is made this dated as of _____, 2024, as follows:

RECITALS

A. The City received an award of funds from the National Parks Service (referred to herein as "Grantor") African American Civil Rights ("AACR") program.

B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being to research oral histories and local data in connection with the Grantor's African American Civil Rights Oral History Project.

C. Sub-grantee has applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.

D. Sub-grantee has also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.

E. In addition to the terms and conditions in this Agreement, Sub-grantee has agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement.

F. The City has identified Sub-grantees as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantees to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

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

ARTICLE I SPECIFIC TERMS OF AGREEMENT

1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantees. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipients shall be an independent entity and not an employee or agent of the City.

2. Sub-grantees shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

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3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipients a sum not to exceed **Six Thousand Five Hundred 00/l00 dollars ($6,500.00**, said sum being a part of grant award to the City by Grantor.

ARTICLE II PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.

2. Total payment under this Contract shall not exceed **Six Thousand Five Hundred 00/l00 dollars ($6,500.00)** as payment for all eligible services incurred by Sub-grantees.

3. The City may withhold any payment whenever the Sub-grantees fail to achieve its program goals for the vouchered expenditure period.

ARTICLE III METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantees eligible reimbursable costs.

2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.

3. The City shall reimburse Sub-grantee not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4th Floor, Newburgh, New York 12550.

4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date **commensurate of the project period specifically set forth in Schedule C**. The final statement of costs shall constitute Sub-grantees' final financial report.

5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

ARTICLE IV TERMINATION

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

If to City:

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

If to Sub-grantees:

Myra Armstead
8 Walnut Hill Road
Poughkeepsie, NY 12603

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantees under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.

3. In the event of termination, Sub-grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantee, the City may withhold from any payments due the Sub-grantees for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantee.

ARTICLE V NO ASSIGNMENT

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

ARTICLE VI BOOKS AND RECORDS; REPORTS

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

ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Sub-grantees, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantees shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantees agrees for a period of six (6) years to hold

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in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:

a. was known to Sub-grantee prior to receipt from the City, as evidenced through written documentation;
b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantee;
c. is acquired from a third party entitled to disclose the information to Sub-grantee;
d. is developed independently by Sub-grantee;
e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantees shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

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

1. Sub-grantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.

2. Sub-grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.

3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

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

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

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

ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

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

ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

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

ARTICLE XII REPRESENTATIONS OF SUBGRANTEES

1. Sub-grantee acknowledges and agree that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

2. Sub-grantee will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

3. Sub-grantee certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

ARTICLE XIII EQUAL EMPLOYMENT OPPORTUNITY

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

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

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instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE XIV FACILITIES AND PERSONNEL

1. Sub-grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.

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

ARTICLE XV INDEMNIFICATION

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

2. If any personal shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantee hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.

3. Sub-grantee shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.

    a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.

    b. Sub-grantee shall carry Liability and Property Damage Insurance with limits of not less than:

i.	Property Damage Liability	$1,000,000 for each occurrence
ii.	Personal Injury Liability	$1,000,000 for each person $2,000,000 for each occurrence

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4. The Agency, as Sub-grantee shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

SECTION XVI NOTICES

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

   If to City:

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

   If to Sub-grantees:

   Myra Armstead
   8 Walnut Hill Road
   Poughkeepsie, NY 12603

SECTION XVII MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.

2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.

3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.

4. Subrecipient has read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
[Signature page to follow]

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Signature Page
Subgrantee Agreement, National Parks Service, AACR Grant
City of Newburgh / Myra Armstead

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

DATED: _____, 2024 CITY OF NEWBURGH

By: _____
Name: Todd Venning
Title: City Manager

DATED: _____, 2024 SUB-GRANTEES

By: _____
Name: Myra Armstead

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

On this ____ day of _____, in the year 2024, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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

On this ____ day of _____, in the year 2024, before me personally appeared Myra Armstead personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

SCHEDULE A

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Scope of Services: Historical Consultant

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

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

Deliverables:

The Project will be completed via a Work Plan that includes but is not limited to the following:

Sub-grantee will conduct research in the records of the Newburgh Urban Renewal Agency and other relevant archival collections.

Sub-grantee will assist the Civil Rights Project for the City of Newburgh's revised preservation and interpretation of its historic district (HD) in two ways: 1) by extracting information from the oral histories of long standing Black residents of Newburgh regarding their experiences within the HD (this may require completing follow-up interviews with some who have already been interviewed and/or to conduct additional interviews), and 2) by using the federal census to identify Black servants residing within White-headed households. The oral interviews will be used to identify buildings and spaces within the HD that have been historically significant to the African American community mostly in the years since 1940; this will constitute the bulk of the research. As a secondary concern, the Dutch last names of a couple of Blacks found by Sub-grantee through the census living inside the HD in the years prior to 1940 will prompt an investigation of their families' longer history inside the district.

Sub-grantee will draft oral history report.

Sub-grantee will perform other tasks as required.

Timeline:
Immediate.

SCHEDULE B

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Compensation:

The Sub-grantee will be paid at a rate of $50 per hour with a not-to-exceed limit of $6,500.

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

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

REMARKS

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

Articles

1. Department of the Interior Standard Terms and Conditions

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

2. Legal Authority

   NPS enters into this Agreement pursuant to:

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

3. Performance Goals and Project Objectives

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

4. Performance Goals and Project Objectives

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

5. COVID-19 Provisions

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

6. Statement of Work

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

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

7. Responsibilities of the Parties

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

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

8. Cost-Share Requirement

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

9. Pre-Award Incurrence of Costs

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

10. Administrative & Indirect Costs

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

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

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

11. Key Officials

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

12. Award and Payment

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

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

4. **Adjusting Payment Requests for Available Cash**. Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts**. All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments**. Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.

3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at http://www.sam.gov. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs**. Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs**. For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs**. Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match**. Any non–Federal share, whether in cash or in–kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in–kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

13. Prior Approval

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

14. Insurance and Liability

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

15. Reports and/or Outputs/Outcomes

    1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.

    2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIIS). Each report shall be submitted as described above.

    3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.

    4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

16. Property Utilization

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

17. Modification, Remedies for Noncompliance, Termination

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

18. Reporting of Matters Related to Recipient Integrity and Performance

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

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

2. Proceedings You Must Report
   Submit the information required about each proceeding that:
   1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
   2. Reached its final disposition during the most recent five year period; and
   3. Is one of the following:
      1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
      2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
      3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of $5,000 or more; or reimbursement, restitution, or damages in excess of $100,000; or
      4. Any other criminal, civil, or administrative proceeding if:
         1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
         2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
         3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.
3. Reporting Procedures
   Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.
4. Reporting Frequency
   During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.
5. Definitions
   For purposes of this award term and condition:
   1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

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

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

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

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

Administrative use includes the use of unmanned aircraft by

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

20. Patents and Inventions (37 CFR 401)

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

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

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

performance.

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

2. **Allocation of Principal Rights**

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

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

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

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

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

4. **Conditions When the Government May Obtain Title**

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

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

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

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

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

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

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

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

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

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

10. **March-in Rights**
The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:
    1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
    2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
    3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
    4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

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

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

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

12. **Communication**
    Communications regarding matters relating to this provision shall be directed to:
    Deputy Associate Solicitor
    Branch of Procurements and Patents
    Office of the Solicitor
    U.S. Department of the Interior
    1849 C Street, NW
    Washington, DC 20240

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

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

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

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

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

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

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

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

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

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

23. General and Special Provisions

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

employees are not agents of the Recipient and will not act on behalf of the Recipient.

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

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

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

24. Signatures

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

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

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

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

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

Program Specific Requirements

1. NPS Oversight

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

   1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;

   2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;

   3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;

   4. Review and approval for compliance with the National Environmental Policy Act (NEPA);

   5. Review and approval of project signage to notify the public of federal involvement; and

   6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

2. Determination of Risk

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

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

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

3. Eligible Costs

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

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);

2. Administrative costs necessary to complete and administer the grant requirements;

3. Rehabilitation of properties;
    1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
    2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
    3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
    4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement

4. Survey and Inventory of historic resources to determine eligibility;

5. Cost for producing a nomination to the National Register of Historic Places (if applicable);

6. Conservation of collections;

7. Cost for any required audits or financial requests;

8. Cost for the production of project signs:

9. Costs for public notice of grant opportunities;

10. Costs associated with required training or reporting; and/

11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

4. Equipment Purchases

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

5. Consultants & Contractors

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

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

6. Requirement for Project Sign & Public Notification

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

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

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

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

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

7. Publicity & Press Releases

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

8. Funding Acknowledgement

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

   All deliverables must contain the following disclaimer and acknowledgement:

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

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

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

9. Copyright

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

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

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

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

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;

2. a city/county map with the site of the property clearly labeled;

3. set of plans and specifications for the project;

4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;

5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;

6. for NHL Districts include overall views of the district from the project area; and

7. any additional information that will better enable a technical review of the project to be completed.

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

and funds deobligated.

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

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

11. Compliance with Section 106

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

12. Compliance with Section 110

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

13. Requirement for NEPA Compliance

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

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

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

15. Unanticipated Discovery Protocols

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

16. NAGPRA Costs Are Unallowable

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

17. GIS Spatial Data Transfer Standards

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

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

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

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

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

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

19. Subgrant Awards

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

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

    1. A summary statement of the priorities for funding;

    2. Description of eligible activities for which funding is to be provided;

3. The total amount available, or expected to be available for subgrants;

4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;

5. The deadline for submitting the completed application;

6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;

7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;

8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;

9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;

10. Notice of the requirement for easements or covenants for grant assisted preservation work.

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

1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;

2. Be able to comply with the proposed or required completion schedule for the project;

3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;

4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;

2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;

3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);

4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

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

6. Review of final executed preservation easement/covenant;

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

20. Requirement for Training

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

21. Demonstration of Effort – Performance Goals

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

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

22. Notice of Financial Management Review

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

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

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

24. Audit Findings and Follow-Up

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

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

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

AWARD ATTACHMENTS

NEWBURGH, CITY OF P21AP11742-00

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

United States Department of the Interior
NATIONAL PARK SERVICE
1849 C Street, NW
Washington, DC 20240

ENVIRONMENTAL CERTIFICATION

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

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

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

3/25/2021
Date

Digital Product Submission Guidelines

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

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

What to submit:

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

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

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

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

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

Naming files for submission:

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

Required file formats and resolution standards:

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

Creating an index file for your submission:

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

Submitting Your Files:

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

Reviewing submitted files:

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

Addenda
to
Grant Agreement
P21AP11742

1. Addendum to Approved Budget

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

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

2. Addendum to Article VI - Statement of Work

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

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

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

iv. Hire a Historic Preservation Consultant to translate findings into an update of the EEHD National Register nomination

    1. Lead consultant must meet the Secretary of the Interior's Professional Qualifications for Historian or Architectural Historian.

v. Research and conduct oral histories in accordance with the Secretary of the Interior's Standards and Guidelines for Historic Preservation and Archeology, in addition to best practices as identified by the Oral History Association and the American Folklife Center of the Library of Congress. (http://www.oralhistory.org/about/principles-and-practices/ and https://www.loc.gov/folklife/familyfolklife/oralhistory.html)

    1. Provide research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
    2. Hire an oral history facilitator.
    3. Oral histories must be conducted and/or supervised by a qualified professional. Oral histories may also be subject to Institutional Review Board (IRB) approval, as applicable.
    4. Prepare a written oral history report

vi. Select approximately ten sites significant to the African American community for the installation of historic markers.

    1. A letter of permission from the site owners must be submitted, as applicable, if the grantee is not the owner of the site and a letter was not submitted with the application.

vii. Procure an educational consultant to review research findings alongside curricula benchmarks for grades K-12 and prepare recommendations for future curriculum development

viii. Consultant service*

*Requires approval by NPS ATR prior to hire

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

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

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

i. Draft documents including text, layout, etc., for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee, by name or title (see Department of the Interior Standard Terms and Conditions)

ii. Draft press release posted upon receipt of the grant funding (see Requirement for Project Sign & Public Notification)

iii. Draft oral history research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.

iv. Draft proposals of the text of the historic markers at 80% to NPS. Such documentation must include any construction details related to signage installation and letters of owner consent, as applicable.

v. Selected consultant qualifications (prior to signing contract)

vi. Draft nominations or amendments should be presented to the NPS and the relevant State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) at 50% completion to ensure that the document is in keeping with the necessary requirements.

vii. Written oral history report and educational materials at 80% completion

3. The Final Report must be submitted digitally and include:

   i. Complete and attach the SF-428B *Tangible Personal Property Report Final Report* or SF-428C, *Tangible Personal Property Disposition Request/Report*, if applicable

   ii. **Final project deliverables**:

      1. A detailed project report, which includes which includes: description of the project's process, an analysis of the data, and any conclusion that sums up the findings, plans for dissemination and next steps. The report should incorporate any special material such as photos, maps, or copies of important documents.

      2. Index of collected Oral Histories.

      3. Sample oral history transcripts or digital recordings

      4. Markers installed

      5. Publications or products (workshops, handouts, pamphlets, videotapes, etc.) produced using this grant (one digital copy), if applicable

      6. Final written oral history report and educational materials (digital copies)

7. Final National Register nomination amendment submitted to the SHPO

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

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

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

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

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

WHEREAS, Marissa Brown, an independent contractor, has applied to work with the City of Newburgh to provide research assistant services over the course of approximately ten (10) weeks in August 2024 through October 2024 in connection with the NPS AACR Program grant and oral history project; and

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

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

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

SUBGRANTEE AGREEMENT
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT

This subgrantee agreement ("Agreement"), by and among the **CITY OF NEWBURGH, NEW YORK,** a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City") and Marissa Brown, an individual with a principal place of business at , 12 Euclid Avenue, Middletown, New York 10940 ("Sub-grantee"), is made this dated as of _____, 2024, as follows:

RECITALS

A. The City received an award of funds from the National Parks Service (referred to herein as "Grantor") African American Civil Rights ("AACR") program.

B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being to research oral histories and local data in connection with the Grantor's African American Civil Rights Oral History Project.

C. Sub-grantee has applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.

D. Sub-grantee has also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.

E. In addition to the terms and conditions in this Agreement, Sub-grantee has agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement.

F. The City has identified Sub-grantee as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantee to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

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

ARTICLE I SPECIFIC TERMS OF AGREEMENT

1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantee. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipient shall be an independent entity and not an employee or agent of the City.

2. Sub-grantee shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

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3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipient a sum not to exceed **four thousand two hundred and 00/l00 dollars ($4,200.00) at a rate of $35.00 per hour**, said sum being a part of grant award to the City by Grantor.

ARTICLE II PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.

2. Total payment under this Contract shall not exceed **four thousand two hundred and 00/l00 dollars ($4,200.00)** as payment for all eligible services incurred by Sub-grantee.

3. The City may withhold any payment whenever the Sub-grantee fails to achieve its program goals for the vouchered expenditure period.

ARTICLE III METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantee eligible reimbursable costs.

2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.

3. The City shall reimburse Sub-grantee not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4th Floor, Newburgh, New York 12550.

4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date **commensurate of the project period specifically set forth in Schedule C**. The final statement of costs shall constitute Sub-grantee's final financial report.

5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

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ARTICLE IV TERMINATION

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

   If to City:

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

   If to Sub-grantee

   Marissa Brown
   12 Euclid Avenue
   Middletown, NY 10940

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantee under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.

3. In the event of termination, Sub-grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantee, the City may withhold from any payments due the Sub-grantee for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantee.

ARTICLE V NO ASSIGNMENT

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

ARTICLE VI BOOKS AND RECORDS; REPORTS

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

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

ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Sub-grantee, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantee shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantee agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:

    a. was known to Sub-grantee prior to receipt from the City, as evidenced through written documentation;
    b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantee;
    c. is acquired from a third party entitled to disclose the information to Sub-grantee;
    d. is developed independently by Sub-grantee;
    e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantee shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

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

1. Sub-grantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.

2. Sub-grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.

3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

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

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

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

ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

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

ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

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

ARTICLE XII REPRESENTATIONS OF SUBGRANTEE

1. Sub-grantee acknowledges and agrees that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

2. Sub-grantee will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

3. Sub-grantee certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

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ARTICLE XIII EQUAL EMPLOYMENT OPPORTUNITY

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

2. Sub-grantee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Sub-grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.

3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE XIV FACILITIES AND PERSONNEL

1. Sub-grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.

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

ARTICLE XV INDEMNIFICATION

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

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2. If any personal shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantee hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.

3. Sub-grantee shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.

   a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.

   b. Sub-grantee shall carry Liability and Property Damage Insurance with limits of not less than:

i.	Property Damage Liability	$1,000,000 for each occurrence
ii.	Personal Injury Liability	$1,000,000 for each person
		$2,000,000 for each occurrence

4. The Agency, as Sub-grantee shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

SECTION XVI NOTICES

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

   If to City:

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

   If to Sub-grantee

   Marissa Brown
   12 Euclid Avenue
   Middletown, NY 10940

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SECTION XVII MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.

2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.

3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.

4. Subrecipient has read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
[Signature page to follow]

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Signature Page
Subgrantee Agreement, National Parks Service, AACR Grant
City of Newburgh / Marissa Brown

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

DATED: _____, 2024 CITY OF NEWBURGH

By: _____
Name: Todd Venning
Title: City Manager

DATED: _____, 2024 SUB-GRANTEE

By: _____
Name: Marissa Brown

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

On this ____ day of _____, in the year 2024, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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

On this ____ day of _____, in the year 2024, before me personally appeared Marissa Brown personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

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SCHEDULE A

Scope of Services

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

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

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

Deliverables:

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

Timeline:
Immediate (8-10 weeks)

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SCHEDULE B

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

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

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

REMARKS

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

Articles

1. Department of the Interior Standard Terms and Conditions

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

2. Legal Authority

   NPS enters into this Agreement pursuant to:

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

3. Performance Goals and Project Objectives

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

4. Performance Goals and Project Objectives

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

5. COVID-19 Provisions

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

6. Statement of Work

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

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

7. Responsibilities of the Parties

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

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

8. Cost-Share Requirement

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

9. Pre-Award Incurrence of Costs

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

10. Administrative & Indirect Costs

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

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

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

11. Key Officials

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

12. Award and Payment

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

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

4. **Adjusting Payment Requests for Available Cash**. Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts**. All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments**. Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.

3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at http://www.sam.gov. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs**. Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs**. For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs**. Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match**. Any non–Federal share, whether in cash or in–kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in–kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

13. Prior Approval

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

14. Insurance and Liability

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

15. Reports and/or Outputs/Outcomes

    1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.

    2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIIS). Each report shall be submitted as described above.

    3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.

    4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

16. Property Utilization

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

17. Modification, Remedies for Noncompliance, Termination

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

18. Reporting of Matters Related to Recipient Integrity and Performance

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

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

2. Proceedings You Must Report
   Submit the information required about each proceeding that:
   1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
   2. Reached its final disposition during the most recent five year period; and
   3. Is one of the following:
      1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
      2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
      3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of $5,000 or more; or reimbursement, restitution, or damages in excess of $100,000; or
      4. Any other criminal, civil, or administrative proceeding if:
         1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
         2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
         3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.
3. Reporting Procedures
   Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.
4. Reporting Frequency
   During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.
5. Definitions
   For purposes of this award term and condition:
   1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

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

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

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

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

Administrative use includes the use of unmanned aircraft by

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

20. Patents and Inventions (37 CFR 401)

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

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

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

performance.

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

2. **Allocation of Principal Rights**

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

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

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

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

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

4. **Conditions When the Government May Obtain Title**

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

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

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

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

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

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

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

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

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

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

10. **March-in Rights**
The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:
    1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
    2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
    3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
    4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

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

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

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

12. **Communication**
    Communications regarding matters relating to this provision shall be directed to:
    Deputy Associate Solicitor
    Branch of Procurements and Patents
    Office of the Solicitor
    U.S. Department of the Interior
    1849 C Street, NW
    Washington, DC 20240

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

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

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

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

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

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

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

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

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

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

23. General and Special Provisions

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

employees are not agents of the Recipient and will not act on behalf of the Recipient.

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

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

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

24. Signatures

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

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

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

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

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

Program Specific Requirements

1. NPS Oversight

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

   1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;

   2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;

   3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;

   4. Review and approval for compliance with the National Environmental Policy Act (NEPA);

   5. Review and approval of project signage to notify the public of federal involvement; and

   6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

2. Determination of Risk

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

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

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

3. Eligible Costs

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

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);

2. Administrative costs necessary to complete and administer the grant requirements;

3. Rehabilitation of properties;
    1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
    2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
    3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
    4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement

4. Survey and Inventory of historic resources to determine eligibility;

5. Cost for producing a nomination to the National Register of Historic Places (if applicable);

6. Conservation of collections;

7. Cost for any required audits or financial requests;

8. Cost for the production of project signs:

9. Costs for public notice of grant opportunities;

10. Costs associated with required training or reporting; and/

11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

4. Equipment Purchases

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

5. Consultants & Contractors

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

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

6. Requirement for Project Sign & Public Notification

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

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

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

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

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

7. Publicity & Press Releases

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

8. Funding Acknowledgement

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

   All deliverables must contain the following disclaimer and acknowledgement:

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

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

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

9. Copyright

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

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

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

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

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;

2. a city/county map with the site of the property clearly labeled;

3. set of plans and specifications for the project;

4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;

5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;

6. for NHL Districts include overall views of the district from the project area; and

7. any additional information that will better enable a technical review of the project to be completed.

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

and funds deobligated.

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

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

11. Compliance with Section 106

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

12. Compliance with Section 110

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

13. Requirement for NEPA Compliance

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

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

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

15. Unanticipated Discovery Protocols

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

16. NAGPRA Costs Are Unallowable

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

17. GIS Spatial Data Transfer Standards

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

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

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

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

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

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

19. Subgrant Awards

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

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

    1. A summary statement of the priorities for funding;

    2. Description of eligible activities for which funding is to be provided;

3. The total amount available, or expected to be available for subgrants;

4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;

5. The deadline for submitting the completed application;

6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;

7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;

8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;

9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;

10. Notice of the requirement for easements or covenants for grant assisted preservation work.

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

1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;

2. Be able to comply with the proposed or required completion schedule for the project;

3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;

4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;

2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;

3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);

4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

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

6. Review of final executed preservation easement/covenant;

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

20. Requirement for Training

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

21. Demonstration of Effort – Performance Goals

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

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

22. Notice of Financial Management Review

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

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

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

24. Audit Findings and Follow-Up

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

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

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

AWARD ATTACHMENTS

NEWBURGH, CITY OF P21AP11742-00

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

United States Department of the Interior
NATIONAL PARK SERVICE
1849 C Street, NW
Washington, DC 20240

ENVIRONMENTAL CERTIFICATION

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

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

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

3/25/2021
Date

Digital Product Submission Guidelines

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

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

What to submit:

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

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

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

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

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

Naming files for submission:

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

Required file formats and resolution standards:

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

Creating an index file for your submission:

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

Submitting Your Files:

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

Reviewing submitted files:

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

Addenda
to
Grant Agreement
P21AP11742

1. Addendum to Approved Budget

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

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

2. Addendum to Article VI - Statement of Work

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

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

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

iv. Hire a Historic Preservation Consultant to translate findings into an update of the EEHD National Register nomination

    1. Lead consultant must meet the Secretary of the Interior's Professional Qualifications for Historian or Architectural Historian.

v. Research and conduct oral histories in accordance with the Secretary of the Interior's Standards and Guidelines for Historic Preservation and Archeology, in addition to best practices as identified by the Oral History Association and the American Folklife Center of the Library of Congress. (http://www.oralhistory.org/about/principles-and-practices/ and https://www.loc.gov/folklife/familyfolklife/oralhistory.html)

    1. Provide research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
    2. Hire an oral history facilitator.
    3. Oral histories must be conducted and/or supervised by a qualified professional. Oral histories may also be subject to Institutional Review Board (IRB) approval, as applicable.
    4. Prepare a written oral history report

vi. Select approximately ten sites significant to the African American community for the installation of historic markers.

    1. A letter of permission from the site owners must be submitted, as applicable, if the grantee is not the owner of the site and a letter was not submitted with the application.

vii. Procure an educational consultant to review research findings alongside curricula benchmarks for grades K-12 and prepare recommendations for future curriculum development

viii. Consultant service*

*Requires approval by NPS ATR prior to hire

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

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

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

i. Draft documents including text, layout, etc., for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee, by name or title (see Department of the Interior Standard Terms and Conditions)

ii. Draft press release posted upon receipt of the grant funding (see Requirement for Project Sign & Public Notification)

iii. Draft oral history research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.

iv. Draft proposals of the text of the historic markers at 80% to NPS. Such documentation must include any construction details related to signage installation and letters of owner consent, as applicable.

v. Selected consultant qualifications (prior to signing contract)

vi. Draft nominations or amendments should be presented to the NPS and the relevant State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) at 50% completion to ensure that the document is in keeping with the necessary requirements.

vii. Written oral history report and educational materials at 80% completion

3. The Final Report must be submitted digitally and include:

   i. Complete and attach the SF-428B *Tangible Personal Property Report Final Report* or SF-428C, *Tangible Personal Property Disposition Request/Report*, if applicable

   ii. **Final project deliverables**:

      1. A detailed project report, which includes which includes: description of the project's process, an analysis of the data, and any conclusion that sums up the findings, plans for dissemination and next steps. The report should incorporate any special material such as photos, maps, or copies of important documents.

      2. Index of collected Oral Histories.

      3. Sample oral history transcripts or digital recordings

      4. Markers installed

      5. Publications or products (workshops, handouts, pamphlets, videotapes, etc.) produced using this grant (one digital copy), if applicable

      6. Final written oral history report and educational materials (digital copies)

7. Final National Register nomination amendment submitted to the SHPO

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATE PEER NETWORK GRANT FROM THE HOUSING SOLUTIONS LAB AND ENTERPRISE COMMUNITY PARTNERS FOR TECHNICAL ASSISTISTANCE TO ADDRESS HOUSING NEEDS IN THE CITY OF NEWBURGH

WHEREAS, the City of Newburgh Department of Planning and Development proposes to apply for a New York State Peer Network technical assistance grant from the Housing Solutions Lab and Enterprise Community Partners to address housing needs in the City of Newburgh; and

WHEREAS, the technical assistance will consist of an eight-month opportunity for local officials and community stakeholders to identify promising practices to address challenges for funding, implementing, and evaluating strategies to improve housing assets and create new housing opportunities, including but not limited to, local land use and zoning reform, identifying developable land, unlocking tax incentives and local capital resources, strategic code enforcement, anti-displacement strategies, leveraging state and federal housing programs and climate resiliency programs, solutions for tax foreclosed or vacant, abandoned, or deteriorated properties; constructive negotiation strategies with developers; access and analyze local and state data on housing and zoning; and develop action plans to make progress on implementing and/or strengthening existing programs or policies; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Peer Network technical assistance grant from the Housing Solutions Lab and Enterprise Community Partners to address housing needs in the City of Newburgh; and that the City Manager is authorized to execute all such documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

Housing Solutions Lab
Building and sharing knowledge to advance equitable local housing policy.

NYU Furman Center

Enterprise

2024 New York State Peer Network

Call for Applications

Click here to apply by July 8, 2024.

Overview

The Housing Solutions Lab (Lab) and **Enterprise Community Partners** (Enterprise) invite applications for the New York State Peer Network, an eight-month opportunity for leaders from municipalities throughout New York State to implement, refine, and strengthen tools to meet rental housing and homeownership needs in their communities.

With support from the Robert Wood Johnson Foundation, the Lab and Enterprise will bring together teams of local city officials and housing stakeholders. The program will include interactive sessions with peers, insightful presentations from policy experts, and personalized technical support to address pressing local housing challenges. Together, we will help participants:

- Identify promising practices to address challenges for funding, implementing, and evaluating strategies to improve housing assets and create new housing opportunities, including but not limited to:
  - Local land use and zoning reform (e.g., improving the landscape for housing development, tailoring zoning principles to a range of housing markets)
  - Identifying developable land
  - Unlocking tax incentives and local capital resources
  - Strategic code enforcement
  - Anti-displacement strategies
  - Leveraging state and federal housing programs
  - Leveraging climate resiliency programs
  - Solutions for tax foreclosed or vacant, abandoned, or deteriorated properties
  - Constructive negotiation strategies with developers
- Access and analyze local and state data on housing, zoning, etc.
- Develop action plans to make progress on implementing and/or strengthening existing programs or policies

Network Format

Network cities will convene for an in-person kickoff event in September. During the subsequent eight-month program, participants will attend monthly virtual sessions of 60-90 minutes. Sessions will include brief presentations from housing policy experts and city participants followed by facilitated discussions to provide progress updates, reflect on challenges, ask questions, and share lessons learned from local innovations.

Team members must participate in monthly virtual discussions with the full group of Network participants. They will also have the opportunity to join technical assistance sessions or calls with Lab or Enterprise staff on a case-by-case basis.

About the Housing Solutions Lab

The Housing Solutions Lab at the NYU Furman Center works with cities across the country to design, monitor, and evaluate promising local housing policies. With funding support from the Robert Wood Johnson Foundation, the Lab seeks to help cities advance evidence-based local housing policies that promote racial equity, increase access to opportunity, and support resident health and well-being. The Lab serves cities of all sizes, with a focus on small and midsize cities (those with populations of 50,000 to 500,000).

Learn more about the Housing Solutions Lab's focus on small and midsize cities here.

Eligibility

The Lab will select eight to ten municipal teams to participate in the Network. Teams may include three to four participants from relevant sectors, including but not limited to:

- Local government officials or staff focused on housing policies/programs (at least one is required). Examples include a mayor or city manager, a senior government employee focused on economic development or housing, or a local elected official.
- Nonprofit practitioners with strong connections to local work
- Neighborhood housing service providers
- Community banks and lenders
- Philanthropic partners or foundations

Each team must identify one leader to serve as the primary point of contact for the Network and for completing the application. All participants should be prepared to actively engage in monthly group discussions and be enthusiastic about shared learning, problem-solving, and networking with colleagues from across the state.

Participating jurisdictions must have populations between 25,000 and 100,000. While this program is primarily geared toward municipal governments, we welcome applications from a county government or joint applications from multiple jurisdictions as long as the total population meets the 25,000 resident threshold.

Strength of application will be determined by:

- Demonstration of housing needs by applicant
- Team capacity and commitment to advancing the jurisdiction's housing goals
- Enthusiasm for collaborating with peer governments to foster shared learning, resource sharing, and policy innovation

Benefits of Participation

The Network will provide local leaders with timely information to support housing policy analysis and decisions affecting New York State. This includes:

- **Peer networking and support:** Network participants will join a community of peers across New York State and an ongoing forum for shared learning, support, and policy innovation.
- **Local housing data:** Participants will have support in describing and analyzing data on local and state housing conditions, trends, and challenges.
- **Timely policy resources:** Participants will receive timely, actionable policy updates and access to case studies, research, and other resources to inform housing efforts.
- **Access to Lab technical assistance and research support:** On a case-by-case basis, participants will have access to technical assistance and research to help advance local housing strategies and solutions.

Application Process and Timeline

May 28, 2024	Call for applications released
June 11, 2024	Zoom Q&A session
July 8, 2024	Application deadline
July 31, 2024	Notification of selected municipalities
August 2024	Participant intake calls
September 2024	In-person kickoff convening (location TBD)

We welcome questions about the Network opportunity and ways to develop a successful application. Please contact Elizabeth Zeldin (**ezeldin@enterprisecommunity.org**) and Jess Wunsch (**jess.wunsch@nyu.edu**) with questions.

View the Application.

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED AN EMPIRE STATE DEVELOPMENT STRATEGIC PLANNING AND FEASIBILITY STUDIES PROGRAM GRANT NOT TO EXCEED $50,000.00 WITH A 50% MATCH TO CONDUCT A FEASIBILITY STUDY FOR A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

WHEREAS, the Empire State Development Strategic Planning and Feasibility Studies Program supports planning grants for future development for communities and urban areas across New York State including feasibility studies for assessment and planning; and

WHEREAS, the City of Newburgh proposes to apply for and accept if awarded an Empire State Development Strategic Planning and Feasibility Studies Program grant to undertake a feasibility study for the development of a downtown business improvement district; and

WHEREAS, such grant funds shall be in an amount not to exceed $50,000.00 with a 50% match to be derived the Department of Planning and Development 2025 budget in the amount of $40,000.00 and the remainder from in-kind services; and

WHEREAS, this Council finds applying for and accepting such grant if awarded to be in the best interest of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded an Empire State Development Strategic Planning and Feasibility Studies Program grant in an amount not to exceed $50,000.00 with a 50% match to conduct a feasibility study for the development of a downtown business improvement district; and that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

Strategic Planning & Feasibility Studies

Funding Available: Up to $2 million

PROGRAM DESCRIPTION:

The Strategic Planning and Feasibility Studies Program was established to support planning grants for future development for communities and urban areas across New York State. Up to $2 million is available for working capital grants of up to $100,000 each to support 1) strategic development plans for a city, county, or municipality or a significant part thereof and 2) feasibility studies for site(s) or facility(ies) assessment and planning.

Projects should focus on the economic development benefits and impacts resulting from the project. Preference shall be given to projects supporting the Regional Economic Development Council Initiative, Downtown Revitalization Initiative, strategic community investment projects where investments are being made and projects located in highly distressed communities. Each grant requires a minimum of 50% of total project costs in matching funds, which must include at least 10% of total project costs in the form of cash equity contributed by the Applicant organization. Funding will be awarded by the New York State Urban Development Corporation (d/b/a Empire State Development) at its discretion.

ELIGIBLE TYPES OF APPLICANTS:

- Cities
- Counties
- Municipalities
- Business Improvement Districts
- Local Development Corporations
- Not-for-profit Economic Development Organizations*

* If awarded funding, prior to ESD Directors' approval and execution of a contract with ESD, a not-for- profit corporation must be registered and up-to-date with filings with the New York State Office of the Attorney General's Charities Bureau and the New York State Office of the State Comptroller's VendRep System and must be prequalified in the New York Statewide Financial System (SFS).

FUNDING AVAILABLE:

- Up to $2,000,000 will be made available;
- The maximum award is $100,000

MATCH & EQUITY REQUIREMENTS:

The Program grant is a 50/50 matching grant. For example, a $100,000 investment could receive up to a $50,000 matching grant from ESD.

ESD requires that the Applicant contribute a minimum of ten percent (10%) of the total project cost in the form of equity contributed after the Applicant's acceptance of ESD's incentive proposal. Equity is defined as cash injected into the project by the Applicant or by investors, and should be auditable through the Applicant's financial statements or accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project or grants from a government source.

APPLICANT REQUIREMENTS:

Applicants are strongly encouraged to reach out to their ESD Regional Office to discuss their project prior to submitting an application. Applicants must complete and submit a Consolidated Funding Application (CFA) for review by ESD and the Regional Council for the region in which the proposed project is located.

Because awards are offered as an incentive to undertake a project, The project cannot not begin, and expenses cannot not be incurred, before funding awards have been announced. Expenses incurred prior to submission of a CFA should not be included in CFA project budgets, nor should expenses that will be incurred after submission of a CFA but prior to an award announcement.

The Applicant must always disclose whether it is pursuing or intends to pursue multiple ESD funding sources, including grants, loans and tax incentives.

ELIGIBLE PROJECT REQUIREMENTS & PROGRAM PRIORITIES:
Projects should focus on economic development purposes, such as increasing viability of existing businesses, stimulating new enterprises, and analyzing potential development opportunities or obstacles to development.

Priority will be given to projects located in Highly Distressed Areas
In determining whether a project is in a highly distressed area, ESD considers whether the area is characterized by pervasive poverty, high unemployment, and general economic distress based on characteristics including but not limited to:

- Severely distressed communities shall have at least 25 households receiving public assistance income in the 2022 ACS 5-year estimate and meet at least five of the criteria listed below:
- Moderately distressed communities shall have at least 25 households receiving public assistance income in the 2022 ACS 5-year estimate and meet at least three of the criteria listed below:
- Slightly distressed communities shall have at least 100 households receiving public assistance income in the 2022 ACS 5-year estimate and meet at least two of the criteria listed below:
    - Population loss between the 2022 ACS 5-year estimate and the 2018 ACS 5-year estimate – an absolute loss in population.
    - Unemployment rate (2022 ACS 5-year estimate) higher than the State's rate.
    - Private sector employment growth rate (2022 ACS 5-year estimate) over the preceding 5 years was lower than the State's OR private sector employment (2022 ACS 5-year estimate) as a percentage of total employment was less than the State's.
    - Percentage of households receiving public assistance (2022 ACS 5-year estimate) was greater than the statewide percentage.
    - Poverty rate (2022 ACS 5-year estimate) was greater than the State's poverty rate.
    - Per Capita Income change (2022 ACS 5-year estimate) over the preceding five years was less than the growth in the consumer price index (CPI) for all urban consumers nationally OR per capita income was less than the State's per capita income.

ELIGIBLE PROJECT COSTS & ACTIVITIES:
Assistance is available in the following two categories:

- Preparation and development of strategic development plans for a city, county or municipality or a significant part thereof; and
- Studies, surveys or reports, and feasibility studies and preliminary planning studies to assess a particular site or sites or facility or facilities for any economic development purpose other than residential, though mixed-use facilities with a residential component are allowed.

INELIGIBLE PROJECT COSTS & ACTIVITIES:

The following types of expenses are not eligible for reimbursement and should not be included in the project budget:

- Medical / hospital development projects
- Retail only development projects;
- Residential development, although program funds may be used for a study involving a mixed- use project.
- In-kind costs;
- Overhead and indirect costs associated with the day-to-day operations of the eligible entity, including but not limited to:
    - Salaries and wages;
    - Fringe benefits;
    - Rent/lease costs;
    - Website maintenance;
    - App maintenance;
    - Communication;
- Marketing or advertising media costs;
- Events;
- Costs associated with completing an application;
- Costs incurred prior to the submission and award of a grant, actual or anticipated; and
- Other costs / expenditures deemed ineligible by ESD.

SELECTION CRITERIA:

In addition to the criteria noted below, ESD shall have the discretion to consider additional factors in determining the relative merits of projects.

Vision and Regional Economic Development Strategies:

- The overall economic impact that the project identified in the application will have on a region;
- The project's ability to increase viability of existing businesses, stimulate new enterprises, and analyze potential development opportunities or obstacles to development;
- Whether the project will have a significant regional impact and/or is likely to increase the subject community's economic and social viability and vitality; and
- The degree of economic distress in the area where the applicant will locate the project identified in its application, including downtown revitalization and brownfield areas.

Public/Stakeholders:

- Whether the project has demonstrated support from local government and private sector leaders in the locality and the region where the project will be located; and
- The project's plans for promoting and sharing information, tools or processes related to and resulting from the planning or feasibility study.

Implementation:

- The clarity of the proposed work plan, including description of tasks undertaken by all involved entities and schedule for completion of each task.
- The degree of project readiness and likelihood of completion; and
- The degree to which the Applicant can provide actionable deliverables.

Leveraged Resources:

- The degree to which the project is leveraged with additional resources and funds, including a minimum of 50% of total project costs in matching funds, including at least 10% cash equity.
- The degree to which future funding sources are in place and the amount expected to be committed to implementing the recommendations from the plan or study.

Performance Measures:

- The Applicant's demonstrated organizational capacity and experience in completing strategic development plans, feasibility studies, site assessments, or similar plans or studies, or ability to acquire the expertise through a consultant or another entity;
- The estimated return on investment that the project identified in the application will provide to New York State;
- The project's consistency with existing local, county and regional plans such as a local or county master or comprehensive plan and the Regional Economic Development Council's Strategic Plan;
- For downtown areas, whether or not the project concerns the preservation of the architectural character of a building or neighborhood;
- Whether, where applicable, there are identified tenants or potential tenants for a prospective development project;
- The degree to which the project supports the principals of smart growth, energy-efficiency (including but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design [LEED] green building rating system for the project identified in its application), and sustainable development; and
- The degree to which the project identified in the application supports New York state minority and women business enterprises.

AWARD CRITERIA DETAILS:

- Notice of a funding award will be given in the form of an incentive proposal outlining the terms of the proposed assistance. The award is subject to approval of the ESD Directors and compliance with applicable laws and regulations. Project funding may only be used for expenses incurred after date that notice of the funding award is given. Applicants are strongly encouraged to review and countersign ESD's incentive proposal prior to starting the project.
- All Applicants will be requested to certify and agree that any decrease in the scope of work described in the Applicant's final CFA submission including, but not limited to, total project costs, jobs retained, and jobs created, may result in ESD's reduction of the award, in ESD's sole discretion, in an amount proportionate to any such decrease.
- All Applicants will be requested to certify and agree that any expansion of the scope of work described in the Applicant's final CFA submission including, but not limited to, total project costs, jobs retained, and jobs created, will not result in the increase of the award by ESD.
- Awarded grants are **not transferable** and reimbursement payments may only be made to the awardee.
- The essential terms for the assistance are included in the incentive proposal. Although funding is offered prior to project commencement as an inducement to undertake the project, funds are disbursed in arrears, as reimbursement for eligible project expenditures.
- Projects generally are presented to the ESD Directors once all project expenditures have been undertaken and disbursement of ESD assistance is sought.
- It is expected the project will proceed in the time frame set forth by the Applicant. If the implementation of a project fails to proceed as planned and is delayed for a significant period of time and there is, in the exclusive judgment of ESD, doubt as to its viability, ESD reserves the right to cancel its funding commitment to such project. If awarded, the Incentive Proposal expires two years from the date of acceptance by the Recipient. ESD reserves the right to require Recipient to provide any additional information and/or documentation ESD deems necessary and terminate the project at any point if the applicant fails to provide such documentation in a timely manner.
- All required public approvals must be in place prior to the start of construction (should the project result in construction) and approval by the ESD Directors, including State

Environmental Quality Review (SEQR) and consultation with the State Historic Preservation Office, if applicable.

- In 2014, the Service-Disabled Veteran-Owned Business Act was signed into law. The new law created the Division of Service-Disabled Veterans' Business Development in Office of General Services to certify, promote and encourage economic development among disabled veterans throughout the state. Project Applicants are urged to work with Service-Disabled Veteran- Owned Businesses (SDVOBs) and a directory can be found at https://ogs.ny.gov/Veterans.
- In accordance with the requirements of Article 15-A of the New York State Executive Law: Participation By Minority Group Members and Women With Respect To State Contracts by providing opportunities for MBE/WBE participation, projects awarded funding shall be reviewed by ESD's Office of Contractor and Supplier Diversity, which will set business and participation goals for minorities and women. Such goals shall typically be included in the incentive proposal.

  Please note that ESD's agency-wide MWBE utilization goal is 30%. Each project will be assigned an individual contract-specific goal, which may be higher or lower than 30%. Should an Applicant receive a funding award, the Applicant shall be required to use good faith efforts to achieve the prescribed MWBE goals assigned to this project. Applicants must maintain such records and take such actions necessary to demonstrate such compliance.

- Following approval by the ESD Directors, the New York State Comptroller, and the New York State Attorney General, as required, the documents for disbursement of the grant award will be prepared by ESD. Notwithstanding the process outlined above, no project shall be funded if sufficient resources are not received by ESD for such project.
- If applicable, the Applicant will be obligated to pay for out-of-pocket expenses incurred by ESD in connection with the project, which may include, without limitation, expenses related to attorney fees, filing fees, and fees associated with other requirements deemed appropriate by ESD. There are no application fees.

ADDITIONAL RESOURCES:
For more information, eligible Applicants should contact the local Empire State Development Regional Office. A complete list of the ESD Regional Offices can be found at http://esd.ny.gov/regions.

RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH ADOPTING A POET LAUREATE PROGRAM

WHEREAS, the City of Newburgh, in conjunction with the Newburgh Arts and Cultural Commission, have developed a program for the selection of a City of Newburgh Poet Laureate; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby adopts the City of Newburgh Poet Laureate Program, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that the honorary position of City of Newburgh Poet Laureate is voluntary in nature and such honorary position shall not be considered an employee, nor an elected official of the City of Newburgh and as such cannot legally bind or obligate the City of Newburgh in transactions with others; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

CITY OF NEWBURGH POET LAUREATE PROGRAM

PURPOSE: To appoint a City of Newburgh Poet Laureate who will encourage and create opportunities for dissemination of poetry in Newburgh, promote the appreciation and knowledge of poetry among all ages, and act as a spokesperson for the growing number of poets and writers in the City of Newburgh.

POET LAUREATE COMMITTEE: The City Council of the City of Newburgh will appoint a poet laureate committee consisting of 7 members and include the following representatives:

1. A member of the Newburgh Arts and Cultural Commission,
2. A representative from the Newburgh Free Library,
3. A member of the Orange County Arts Council,
4. A City of Newburgh resident in academia,
5. A City of Newburgh resident in the humanities community, and
6. Two members of the City's arts and literary community who reside in the City of Newburgh.

The Poet Laureate Committee will review and assess all nominations for the honorary position of Poet Laureate and present their selection to the City Council for appointment.

SELECTION CRITERIA: The Poet Laureate Committee shall establish specific criteria for the appointment of the Poet Laureate based on the applicant's publications, public speaking ability, and writing skills. Applicants must be 21 years of age or older. All applicants shall submit the following materials:

1. An application on a form specified by the Newburgh Poet Laureate Committee;
2. At least three poems, one of which must be published in print or digital media;
3. Publicly recognized as a poet and well regarded for outstanding work;
4. A resume or CV of no more than three pages;
5. Proof of City of Newburgh residency;
6. Attend interview upon request;
7. Confirmation of availability to serve an entire term;
8. Agree to the conditions and terms of the two-year appointment.

The Poet Laureate Committee shall invite applications for the position of Poet Laureate on or about September of the year of the retirement of the previous Poet Laureate.

DUTIES AND REQUIREMENTS:

1. Create new works, including potential commissioned works for noteworthy occasions.
2. Create one or more works of poetry that celebrate the diversity and vibrancy of the City of Newburgh.
3. Present a poetry reading at a minimum of one City of Newburgh event or celebration.
4. Present a poetry reading at one event of the Poet Laureate's choosing that will advance poetry and/or literacy within the City of Newburgh.

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5. Make an offer to present a poetry reading at a minimum of one Newburgh Free Library event.
6. Make an offer to present a poetry reading at a minimum of one SUNY Orange event.
7. Make an offer to present a poetry program within the Newburgh Enlarged City School District.
8. Submit # works which may be promoted on City of Newburgh websites and social media.
9. Generally, promote and encourage appreciation of poetry and creative expression within the community.
10. Serve as an honorary member of the Poet Laureate Committee upon expiration of terms as Poet Laureate.

TERM: The City of Newburgh Poet Laureate shall be appointed for a term of 2 years consisting of two one-year cycles of collaborative planning, presenting, and performing. If the Poet Laureate is unable to complete a full term, the Poet Laureate Committee shall accept applications for a replacement. The replacement Poet Laureate will complete the unexpired portion of the term, and if recommended by the Poet Laureate Committee, may be appointed by City Council for full term. A Poet Laureate who does not fulfill the duties and requirements of the appointment may be removed upon a recommendation by the Poet Laureate Committee and approved by a majority vote of the City Council. The City of Newburgh Poet Laureate may serve two consecutive terms and after a hiatus of at least two terms a past Poet Laureate may be reappointed by the City Council upon recommendation by the Poet Laureate Committee.

BUDGET APPROPRIATION: The City of Newburgh Poet Laureate Program will be funded through the Newburgh Arts and Cultural Commission. The City of Newburgh may provide the Poet Laureate an annual honorarium based on a recommendation by the Newburgh Arts and Cultural Commission. All costs and expense of the Program must comply with the City of Newburgh Procurement Policy and Procedures. The City of Newburgh retains the right to suspend this program between cycles for financial and other reasons.

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RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF NEWBURGH AND ALYSSA WALRAD FOR PROJECT MANAGEMENT SERVICES RELATED TO THE ART-BIZ WORKSHOP SERIES OF 2024

WHEREAS, the City of Newburgh Arts & Cultural Commission successfully undertook an Art-Biz Workshop Series program in 2023; and

WHEREAS, the City of Newburgh Arts & Cultural Commission will continue the ArtBiz Workshop Series program in 2024; and

WHEREAS, the ArtBiz Workshop Series program is an 8-week program to engage youth and their families in activities that can lead to viable creative career paths by providing a series of free classes for youth focusing on providing exposure to career paths and career opportunities in arts and culture; and

WHEREAS, spanning a variety of artistic media, including visual art, performance, and hand-crafts, as well as other forms of cultural production such as writing, gardening, and culinary arts, Art-Biz will be taught by Newburgh artists, makers, and other creative professionals; and

WHEREAS, Alyssa Walrad submitted an application and is qualified to provide project management services to the City of Newburgh to administer the Art-Biz summer program; and

WHEREAS, the costs of these services will not exceed $3,750.00 and will be derived from A.8043.0455; and

WHEREAS, this Council has determined that entering into an agreement for such services is in the best interest of the City of Newburgh;

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement with Alyssa Walrad at cost not to exceed $3,750.00 for project management services related to the 2024 Art-Biz program.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2024, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the **"CITY,"** with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Alyssa Walrad, an individual with principal offices at 9 Parade Place, New Windsor, NY 12553 hereinafter referred to as **"VENDOR."**

ARTICLE 1. SCOPE OF WORK

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning July ___, 2024, and ending November 30, 2024.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of $3,750.00 has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization

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of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary

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to pay VENDOR'S employees for past service.

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

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

ARTICLE 13. INSURANCE

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

When applicable, VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with the following requirements:

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be

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primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

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

ARTICLE 14. INDEMNIFICATION

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 17. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

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

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

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

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

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

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

ARTICLE 18. GENERAL RELEASE

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

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the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 19. SET-OFF RIGHTS

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

ARTICLE 20. DISPUTE RESOLUTION

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

ARTICLE 21. GOVERNING LAW

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

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

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

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

ARTICLE 23. ENTIRE AGREEMENT

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

ARTICLE 24. MODIFICATION

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

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Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum.

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

THE CITY OF NEWBURGH	VENDOR
BY: _____	BY: _____
TODD VENNING	ALYSSA WALRAD
CITY MANAGER	TITLE:
Per Resolution No.:	
DATE: _____	DATE: _____

APPROVED AS TO FORM:

_____
Michelle Kelson
Corporation Counsel

_____
Janice Gaston
City Comptroller

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SCHEDULE A

SCOPE OF SERVICES

Deliverables:

- Recruit and manage selection and hiring of Art Biz instructors including the open call, application management and applicant communications
- Work with Art-Biz instructors to complete all contracts and documentation required by the City of Newburgh
- Support Art-Biz instructors in the creation of and on-time delivery of lesson plans and supply lists
- Schedule instructors for class dates
- Coordinate with the venue to schedule Art-Biz programming
- Manage advertising and outreach for Art-Biz classes
- Be present for 8 consecutive Art-Biz Classes September through October
- Attend monthly NACC meetings to provide updates on the project.
- Support instructors with day-of event needs
- Adhere to all City and venue protocols as provided by NACC
- Keep track of class attendance
- Report weekly to NACC Art-Biz Taskforce throughout duration of the project
- Provide bi-weekly timesheets and invoices
- Attend monthly NACC meetings to provide updates
- Ensure that the project is delivered within scope and budget
- Create and maintain comprehensive project documentation and maintain project database
- Prepare a close out report at end of project

Timeline:
Draft Instructor Open Call on or before August 1, 2024;
Submit close out report no later than 30 days after final Art-Biz Class

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SCHEDULE B

FEES AND EXPENSES

The Vendor will be compensated at $25 per hour, total cost not to exceed $3,750.

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RESOLUTION NO.: _____ - 2024

OF

JULY 22, 2024

RESOLUTION SCHEDULING A PUBLIC HEARING FOR AUGUST 12, 2024 TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW REPEALING AND REPLACING CHAPTER 240 "RENTAL PROPERTIES", ARTICLE III ENTITLED "PROHIBITION OF EVICTION WITHOUT GOOD CAUSE" OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law Repealing and Replacing Chapter 240, Article III entitled 'Prohibition of Eviction without Good Cause' of the Code of Ordinances of the City of Newburgh"; and that such public hearing be and hereby is duly set for the regular meeting of the Council to be held at 7:00 p.m. on the 12th day of August, 2024, in the 3rd Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

LOCAL LAW NO.: _____ - 2024

OF

_____, 2024

A LOCAL LAW REPEALING AND REPLACING CHAPTER 240 "RENTAL PROPERTIES", ARTICLE III ENTITLED "PROHIBITION OF EVICTION WITHOUT GOOD CAUSE" OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Repealing and Replacing Chapter 240, Article III entitled 'Prohibition of Eviction without Good Cause' of the Code of Ordinances of the City of Newburgh".

SECTION 2 – PURPOSE AND INTENT

The Council of the City of Newburgh commissioned and completed a Housing Needs Assessment to evaluate current housing needs in the City of Newburgh and to promote the development of long-term housing policies. The Housing Needs Assessment found housing cost burden rates for renter-occupied homes at significantly higher rates for City of Newburgh renters than for those in Orange County and all City of Newburgh census tracts had cost burden rates for renters over 50%. Renters in the City of Newburgh, especially, low- and moderate-income renters increasingly are faced with the refusal of landlords to continue to rent to otherwise credit-worthy tenants and tenants who are otherwise following all applicable laws. Increased real estate prices in the City is leading to gentrification and the displacement of tenants who cannot afford increasing rents. The Housing Needs Assessment produced the Newburgh Housing Report which outlined policy themes, goals and actions that could assist the City in developing a long-term strategy for meeting local housing needs. Strengthening and expanding eviction prevention programs, including adopting a "just cause" eviction law was identified as an action item to reduce incidents of eviction leading to homelessness. The primary purpose of this Article is to implement a policy recommendation of the City of Newburgh Housing Needs Assessment and Newburgh Housing Report intended to protect tenants from exorbitant and predatory rent increases that could result in a significant increase in homelessness in the City of Newburgh.

This local law repeals the original version of Good Cause Eviction enacted by the City Council by Local Law No. 6-2021 and exercises the City of Newburgh's option to adopt the provisions of Article 6A of the Real Property Law, enacted on April 20, 2024 by New York State, and which supersedes and preempts Local Law No. 6-2021.

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SECTION 3 – AMENDMENT

Chapter 240, Article III of the Code of Ordinances of the City of Newburgh is hereby repealed and replaced as follows:

§ 240-30. Protections established; legislative authority.

The City of Newburgh hereby adopts and establishes a Prohibition of Eviction without Good Cause pursuant to the provisions of section 213 of Article 6-A of the Real Property Law of the State of New York.

§ 240-31. Local Options.

A. Pursuant to section 213-2(a) of Article 6-A of the Real Property Law of the State of New York, the City of Newburgh provides that any unit on or within a housing accommodation shall be exempt from the provisions of this article if it has a monthly rate above three hundred forty-five percent of fair market rent as published by the United States Department of Housing and Urban Development and as shall be published for the County of Orange by the New York State Division of Housing and Community Renewal.

B. Pursuant to section 213-2(b) of Article 6-A of the Real Property Law of the State of New York, the City of Newburgh defines "small landlord," for purposes of this Article, to mean a landlord of no more than one unit anywhere in the State of New York.

SECTION 4 – SEVERABILITY

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

SECTION 5 – CODIFICATION

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Local Law shall be included in the Charter of the City of Newburgh; that the sections and subsections of this Local Law may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term "Local Law" shall be changed to "Charter", "Article", or other appropriate word as required for codification; and that any such rearranging of the numbering

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and/or lettering and editing shall not affect the validity of this Local Law or the provisions of the City Charter affected thereby.

SECTION 6 – VALIDITY

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

SECTION 7 – EFFECTIVE DATE

This Local Law and shall be effective immediately after the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

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§ 3. This act shall take effect immediately and shall apply to assessment rolls based on taxable status dates occurring on or after such effective date.

PART HH

Section 1. The real property law is amended by adding a new article 6–A to read as follows:

Ch. 50, Art. 6–A, prec. 210

ARTICLE 6–A

GOOD CAUSE EVICTION LAW

Section 210. Short title.
211. Definitions.

212. Applicability in the city of New York.

213. Voluntary participation by local governments outside the city of New York.

214. Covered housing accommodations.

215. Necessity for good cause.

216. Grounds for removal of tenants.

217. Preservation of existing requirements of law.

218. Waiver of rights void.

<< NY REAL PROP § 210 >>

§ 210. Short title

This article shall be cited as the "good cause eviction law".

<< NY REAL PROP § 211 >>

§ 211. Definition

1. The term "housing accommodation", as used in this article shall mean any residential premises, including any residential premises located within a mixed-use residential premises.

2. The term "landlord" as used in this article shall mean any fee owner, lessor, sublessor, assignor, court appointed receiver, or any other person or entity receiving or entitled to receive rent for the occupancy of any housing accommodation or an agent of any of the foregoing.

3. (a) The term "small landlord" as used in this article shall mean a landlord of no more than (i) ten units in the state, or (ii) such other number of units in the state designated by local law pursuant to paragraph (b) of subdivision two of section two hundred thirteen of this article.

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(b) If a landlord is a single natural person, then that landlord is a small landlord if they own or are a beneficial owner of, directly or indirectly, in whole or in part, no more than the number of units established pursuant to paragraph (a) of this subdivision; if there is more than one natural person owner, then no one person may own or be a beneficial owner of, directly or indirectly, in whole or in part, more than the number of units established pursuant to paragraph (a) of this subdivision.

(c) If a landlord is an entity, organized under the laws of this state or of any other jurisdiction, then that landlord is a small landlord if each natural person with a direct or indirect ownership interest in the entity or any affiliated entity owns no more than the number of units established pursuant to paragraph (a) of this subdivision. If an entity cannot provide the names of all natural persons with a direct or indirect ownership interest in the entity, such entity shall not qualify as a small landlord.

4. The term “tenant” as used in this article shall mean a tenant, sub-tenant, lessee, sublessee, or any other person entitled to the lawful possession, use or occupancy of any housing accommodation. An individual shall not be considered a tenant for the purposes of this article if:

(a) no landlord-tenant relationship exists, as established pursuant to any of the grounds set forth in section seven hundred thirteen of the real property actions and proceedings law; or

(b) the individual is an occupant, as defined in paragraph (b) of subdivision one of section two hundred thirty-five-f of this chapter, who has not received the landlord's express or implied consent to use the housing accommodation as their primary residence in exchange for payment of rent.

5. The term “rent” as used in this article shall mean any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations. The term “rent” shall not include any separate charges for services, amenities or facilities which the tenant pays in addition to rent, including but not limited to charges for fitness centers, parking, storage, or facility rentals, provided that such charges are not imposed or increased for the purposes of circumventing this article.

6. The term “disabled person” as used in this article shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

7. The term “inflation index” shall mean five percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States bureau of labor statistics for the region in which the housing accommodation is located, as established for the most recent preceding calendar year as shall be published by the division of housing and community renewal no later than the first of August in any given year, provided further that for New York city and any village, town, or city that adopts the provisions of this article by local law pursuant to subdivision one of section two hundred thirteen of this article in the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester, such consumer price index shall be the New York–Newark–Jersey City, NY–NJ–PA consumer price index, and provided further that for any other village, town, or city that adopts the provisions of this article by local law pursuant to subdivision one of section two hundred thirteen of this article, such consumer price index shall be the Northeast Region consumer price index.

8. The term “local rent standard” shall mean a rent increase equal to the inflation index or ten percent, whichever is lower.

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<< NY REAL PROP § 212 >>

§ 212. Applicability in the city of New York

Upon the effective date of this section, this article shall apply to the city of New York.

<< NY REAL PROP § 213 >>

§ 213. Voluntary participation by local governments outside the city of New York

1. Applicability. This article shall apply in any village, town, or a city, other than the city of New York, that, acting through its local legislative body, adopts the provisions of this article by local law.

2. Opt-in by a village, town, or city, other than the city of New York. A village, town, or city that adopts the provisions of this article by local law pursuant to subdivision one of this section may:

(a) provide that any unit on or within a housing accommodation shall be exempt from the provisions of this article if such unit has a monthly rent above a percent of fair market rent, as published by the United States department of housing and urban development and as shall be published for each county in the state by the division of housing and community renewal pursuant to subdivision fifteen of section two hundred fourteen of this article, that shall be established in the local law adopted pursuant to subdivision one of this section, provided that if such local law does not establish such percent of fair market rent, any unit on or within a housing accommodation with a monthly rent greater than two hundred forty-five percent of such fair market rent shall be exempt from the provisions of this article; and/or

(b) define "small landlord" as a landlord of no more than any number of units in the state that the village, town, or city enacts by local law, provided that if such local law does not define "small landlord," a "small landlord" shall mean a landlord of no more than ten units in the state.

3. Notwithstanding the foregoing provisions of this section, if a town and a village within such town both adopt the provisions of this article by local law pursuant to subdivision one of this section, the local law adopted by such town shall not apply within the territorial limits of a village within such town.

4. Nothing in this section shall permit a village, town, or city to which this article applies to preempt or alter the terms and provisions of this article within such village, town or city.

5. Within thirty days of receipt of a local law adopted pursuant to subdivision one of this section, and filed with the department of state pursuant to section twenty-seven of the municipal home rule law, the department of state shall notify the division of housing and community renewal of such adoption.

6. The division of housing and community renewal shall include in the annual publication required pursuant to subdivision seven of section two hundred eleven of this article a list including any village, town, or city, other than the city of New York, as to which the division of housing and community renewal has received the notice from the department of state required pursuant to subdivision five of this section indicating that such village, town, or city has adopted a local law pursuant to subdivision one of this section to apply the provisions of this article within such village, town, or city. Such list shall include the name of each village, town, or city that has adopted such a local law, the applicable fair market rent threshold within such village, town, or city for exemption from the provisions of this article established pursuant to paragraph (a) of subdivision two of this section, and the applicable definition of small landlord within such village, town, or city established pursuant to paragraph (b) of subdivision two of this section.

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<< NY REAL PROP § 214 >>

§ 214. Covered housing accommodations

Where this article applies, it shall apply to all housing accommodations except a:

1. premises owned by a small landlord provided that in connection with any eviction proceeding in which the landlord claims an exemption from the provisions of this article on the basis of being a small landlord, such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence; provided further that if the landlord is an entity, organized under the laws of this state or of any other jurisdiction, then such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person with a direct or indirect ownership interest in such entity or any affiliated entity, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence;

2. owner-occupied housing accommodation with no more then ten units;

3. unit on or within a housing accommodation where such unit is sublet pursuant to section two hundred twenty-six-b of this chapter, or otherwise, where the sublessor seeks in good faith to recover possession of such housing accommodation for their own personal use and occupancy;

4. unit on or within a housing accommodation where the possession, use or occupancy of which is solely incident to employment and such employment is being or has been lawfully terminated;

5. unit on or within a housing accommodation where such unit is otherwise subject to regulation of rents or evictions pursuant to local, state or federal law, rule, or regulation;

6. unit on or within a housing accommodation where such unit must be affordable to tenants at a specific income level pursuant to statute, regulation, restrictive declaration, or pursuant to a regulatory agreement with a local, state, or federal government entity;

7. unit on or within a housing accommodation owned as a condominium or cooperative, or a unit on or within a housing accommodation subject to an offering plan submitted to the office of the attorney general, provided that nothing herein shall abrogate or otherwise limit any rights or obligations a tenant residing in a unit within a condominium or cooperative or a purchaser, owner, or offeror of a condominium or cooperative unit has pursuant to any other state law;

8. housing accommodation for which a temporary or permanent certificate of occupancy was issued on or after the first of January, two thousand nine, for a period of time of thirty years following issuance of such certificate;

9. unit on or within a housing accommodation that qualifies as a seasonal use dwelling unit pursuant to subdivisions four and five of section 7–108 of the general obligations law;

10. housing accommodation in a hospital as defined in subdivision one of section twenty-eight hundred one of the public health law, continuing care retirement community licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living residence licensed pursuant to article forty-six-B of the public health law, adult care facility licensed pursuant to article seven of the social services law, senior residential community that have submitted an offering plan to the attorney general, and not-for-profit independent retirement community that offer personal emergency response, housekeeping, transportation and meals to their residents;

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11. manufactured home located on or in a manufactured home park as defined in section two hundred thirty-three of the real property law;

12. hotel room or other transient use covered by the definition of a class B multiple dwelling under subdivision nine of section four of the multiple dwelling law, regardless of whether such use is located in a jurisdiction in which the multiple dwelling law applies;

13. dormitory owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;

14. housing accommodation within and for use by a religious facility or institution; and

15. unit on or within a housing accommodation where the monthly rent is greater than the percent of fair market rent established pursuant to paragraph (a) of subdivision two of section two hundred thirteen of this article in a local law of a village, town, or city, other than the city of New York, adopting the provisions of this article pursuant to subdivision one of section two hundred thirteen of this article, or two hundred forty-five percent of the fair market rent, provided that fair market rent shall refer to the figure published by the United States department of housing and urban development, for the county in which the housing accommodation is located, as shall be published by the division of housing and community renewal no later than the first of August in any given year. The division of housing and community renewal shall publish the fair market rent and two hundred forty-five percent of the fair market rent for each unit type for which such fair market rent is published by the United States department of housing and urban development for each county in New York state in the annual publication required pursuant to subdivision seven of section two hundred eleven of this article.

<< NY REAL PROP § 215 >>

§ 215. Necessity for good cause

No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodations covered by section two hundred fourteen of this article except for good cause as defined in section two hundred sixteen of this article.

<< NY REAL PROP § 216 >>

§ 216. Grounds for removal of tenants

1. No landlord shall remove a tenant from any housing accommodation covered by section two hundred fourteen of this article, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:

(a)(i) The tenant has failed to pay rent due and owing, provided however that the rent due and owing, or any part thereof, did not result from a rent increase which is unreasonable. In determining whether all or part of the rent due and owing is the result of an unreasonable rent increase, it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unreasonable if said rent has been increased in any calendar year, after the effective date of this article, or after the effective date of the local law in any village, town, or city that enacts such local law to apply this article to such village, town, or city pursuant to subdivision one of section two hundred thirteen of this article, by an

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amount greater than the local rent standard, provided further that no rent increase less than or equal to the local rent standard shall be deemed unreasonable.

(ii) Whenever a court considers whether a rent increase is unreasonable, the court may consider all relevant facts, including but not limited to a landlord's costs for fuel and other utilities, insurance, and maintenance; but in all cases, the court shall consider the landlord's property tax expenses and any recent increases thereto; such relevant facts also shall include whether the landlord, other than in circumstances governed by paragraph (d) of this subdivision, seeks in good faith to raise the rent upon a renewal lease to reflect completed significant repairs to the housing accommodation, or to any other part of the building or real property in which the housing accommodation is located, provided that the landlord can establish that the repairs constituted significant repairs and that such repairs did not result from the landlord's failure to properly maintain the building or housing accommodation, and provided further that for the purposes of this subparagraph, "significantly repair" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or abatement of hazardous materials, including lead-based paint, mold, or asbestos in accordance with applicable federal, state, and local laws, and provided further cosmetic improvements alone, including painting, decorating, and minor repairs, do not qualify as significant repairs;

(b) The tenant is violating a substantial obligation of their tenancy or breaching any of the landlord's rules and regulations governing said premises, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article and provided such rules or regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term;

(c) The tenant is committing or permitting a nuisance in such housing accommodation, or elsewhere in the building or on the real property in which the housing accommodation is located, or is maliciously or by reason of gross negligence substantially damaging the housing accommodation, or causing substantial damage elsewhere in the building or on the real property in which the housing accommodation is located; or the tenant's conduct is such as to interfere with the comfort and safety of the landlord or other tenants or occupants of the same or another adjacent building or structure;

(d) Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefor; provided however that an agency of the state or municipality having jurisdiction has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not through neglect or deliberate action or failure to act create the condition necessitating the vacate order. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to such tenant's health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord or to otherwise compel compliance by the landlord with all applicable state or municipal housing codes;

(e) The tenant is using or permitting the housing accommodation, or elsewhere in the building or on the real property in which the housing accommodation is located, to be used for an illegal purpose;

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(f) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee or other person having a legitimate interest therein;

(g) The landlord seeks in good faith to recover possession of a housing accommodation for the landlord's own personal use and occupancy as the landlord's principal residence, or the personal use and occupancy as principal residence of the landlord's spouse, domestic partner, child, stepchild, parent, stepparent, sibling, grandparent, grandchild, parent-in-law or siblingin-law, when no other suitable housing accommodation in such building is available, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to recover possession of a housing accommodation for the landlord's own personal use and occupancy as the landlord's principal residence, or the personal use and occupancy as a principal residence of the landlord's spouse, domestic partner, child, stepchild, parent, stepparent, sibling, grandparent, grandchild, parent-in-law or sibling-in-law, by clear and convincing evidence. This paragraph shall not apply to a housing accommodation occupied by a tenant who is sixty-five years of age or older or who is a disabled person;

(h) The landlord in good faith seeks to demolish the housing accommodation, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to demolish the housing accommodation by clear and convincing evidence;

(i) The landlord seeks in good faith to withdraw a housing accommodation from the housing rental market, provided that no judgment in favor of the landlord may be granted pursuant to this paragraph unless the landlord establishes good faith to withdraw the housing accommodation from the housing rental market by clear and convincing evidence; or

(j) The tenant fails to agree to reasonable changes to a lease at renewal, including increases in rent that are not unreasonable as defined in paragraph (a) of this subdivision, as long as written notice of the changes to the lease were provided to the tenant at least thirty days, but no more than ninety days, prior to the expiration of the current lease.

2. A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (g), (h), or (i) of subdivision one of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use, removal from the rental housing market, or demolition of the housing accommodation. In any action or proceeding brought pursuant to this subdivision a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees. Except as provided in this subdivision, nothing in this article shall create a civil claim or cause of action by a tenant against a landlord.

3. Nothing in this section shall abrogate or limit the tenant's right pursuant to section seven hundred fifty-one of the real property actions and proceedings law to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the real property actions and proceedings law where applicable.

<< NY REAL PROP § 217 >>

§ 217. Preservation of existing requirements of law

No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to section two hundred sixteen of this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants, including without limitation the manner and the time of service of such notice and the contents of such notice.

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<< NY REAL PROP § 218 >>

§ 218. Waiver of rights void

Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this article shall be void as contrary to public policy.

§ 2. Paragraph (a) of subdivision 1 of section 226–c of the real property law, as amended by chapter 789 of the laws of 2021, is amended to read as follows:

<< NY REAL PROP § 226–c >>

(a) Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, or the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. **The notice shall append or contain the notice required pursuant to section two hundred thirty-one-c of this article, which shall state the following: (i) if the unit is or is not subject to article six-A of this chapter, the "good cause eviction law", and if the unit is exempt, such notice shall state why the unit is exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of this chapter, the lawful basis for such nonrenewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of this chapter above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of this chapter, the justification for such increase.** If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

§ 3. The real property law is amended by adding a new section 231–c to read as follows:

<< NY REAL PROP § 231–c >>

§ 231–c. Good cause eviction law notice

1. A landlord as defined in subdivision two of section two hundred eleven of this chapter shall append to or incorporate into any initial lease, renewal lease, notice required pursuant to paragraph (a) of subdivision one of section two hundred twenty-six-c of this article, notice required pursuant to subdivision two of section seven hundred eleven of the real property actions and proceedings law, or petition pursuant to section seven hundred forty one of the real property actions and proceedings law, the following notice:

NOTICE TO TENANT OF APPLICABILITY OR INAPPLICABILITY OF THE NEW YORK STATE GOOD CAUSE EVICTION LAW

This notice from your landlord serves to inform you of whether or not your unit/apartment/home is covered by the New York State Good Cause Eviction Law (Article 6–A of the Real Property Law) and, if applicable, the reason permitted under the New York State Good Cause Eviction Law that your landlord is not renewing your lease. Even if your apartment is not protected by Article 6–A, known as the New York State Good Cause Eviction Law, you may have other rights under other local, state, or federal laws and regulations concerning rents and evictions. This notice, which your landlord is required to fill out and give to you, does not constitute legal advice. You may wish to consult a lawyer if you have any questions about your rights under the New York State Good Cause Eviction Law or about this notice.

NOTICE (THIS SHOULD BE FILLED OUT BY YOUR LANDLORD)

UNIT INFORMATION

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STREET:

.....

UNIT OR APARTMENT NUMBER:

.....

CITY/TOWN/VILLAGE:

.....

STATE:

.....

ZIP CODE:

.....

1. IS THIS UNIT SUBJECT TO ARTICLE 6–A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW? (PLEASE MARK APPLICABLE ANSWER)

YES _____

NO _____

2. IF THE UNIT IS EXEMPT FROM ARTICLE 6–A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, WHY IS IT EXEMPT FROM THAT LAW? (PLEASE MARK ALL APPLICABLE EXEMPTIONS)

A. Village/Town/City outside of New York City has not adopted good cause eviction under section 213 of the Real Property Law ___;

B. Unit is owned by a "small landlord," as defined in subdivision 3 of section 211 of the Real Property Law, who owns no more than 10 units for small landlords located in New York City or the number of units established as the maximum amount a "small landlord" can own in the state by a local law of a village, town, or city, other than New York City, adopting the provisions of Article 6–A of the Real Property Law, known as the New York State Good Cause Eviction Law, or no more than 10 units, as applicable. In connection with any eviction proceeding in which the landlord claims an exemption from the provisions of Article 6–A of the Real Property Law, known as the New York State Good Cause Eviction Law, on the basis of being a small landlord, the landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence. If the landlord is an entity, organized under the laws of this state or of any other jurisdiction, then such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person with a direct or indirect ownership interest in such entity or any affiliated entity, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence (exemption under subdivision 1 of section 214 of the Real Property Law) _____;

C. Unit is located in an owner-occupied housing accommodation with no more than 10 units (exemption under subdivision 2 of section 214 of the Real Property Law) _____;

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D. Unit is subject to regulation of rents or evictions pursuant to local, state, or federal law (exemption under subdivision 5 of section 214 of the Real Property Law) _____;

E. Unit must be affordable to tenants at a specific income level pursuant to statute, regulation, restrictive declaration, or pursuant to a regulatory agreement with a local, state, or federal government entity (exemption under subdivision 6 of section 214 of the Real Property Law) _____;

F. Unit is on or within a housing accommodation owned as a condominium or cooperative, or unit is on or within a housing accommodation subject to an offering plan submitted to the office of the attorney general (exemption under subdivision 7 of section 214 of the Real Property Law) _____;

G. Unit is in a housing accommodation that was issued a temporary or permanent certificate of occupancy within the past 30 years (only if building received the certificate on or after January 1st, 2009) (exemption under subdivision 8 of section 214 of the Real Property Law) _____;

H. Unit is a seasonal use dwelling unit under subdivisions 4 and 5 of section 7–108 of the General Obligations Law (exemption under subdivision 9 of section 214 of the Real Property Law) _____;

I. Unit is in a hospital as defined in subdivision 1 of section 2801 of the Public Health Law, continuing care retirement community licensed pursuant to Article 46 or 46–A of the Public Health Law, assisted living residence licensed pursuant to Article 46–B of the Public Health Law, adult care facility licensed pursuant to Article 7 of the Social Services Law, senior residential community that has submitted an offering plan to the attorney general, or not-for-profit independent retirement community that offers personal emergency response, housekeeping, transportation and meals to their residents (exemption under subdivision 10 of section 214 of the Real Property Law) _____;

J. Unit is a manufactured home located on or in a manufactured home park as defined in section 233 of the Real Property Law (exemption under subdivision 11 of section 214 of the Real Property Law) _____;

K. Unit is a hotel room or other transient use covered by the definition of a class B multiple dwelling under subdivision 9 of section 4 of the Multiple Dwelling Law (exemption under subdivision 12 of section 214 of the Real Property Law) _____;

L. Unit is a dormitory owned and operated by an institution of higher education or a school (exemption under subdivision 13 of section 214 of the Real Property Law) _____;

M. Unit is within and for use by a religious facility or institution (exemption under subdivision 14 of section 214 of the Real Property Law) _____;

N. Unit has a monthly rent that is greater than the percent of fair market rent established in a local law of a village, town, or city, other than New York City, adopting the provisions of Article 6–A of the Real Property Law, known as the New York Good Cause Eviction Law, or 245 percent of the fair market rent, as applicable. Fair market rent refers to the figure published by the United States Department of Housing and Urban Development, for the county in which the housing accommodation is located, as shall be published by the Division of Housing and Community Renewal no later than August 1st in any given year. The Division of Housing and Community Renewal shall publish the fair market rent and 245 percent of the fair market rent for each unit type for which such fair market rent is published by the United States Department of Housing and Urban Development for each county in New York State in the annual publication required pursuant to subdivision 7 of section 211 of the Real Property Law (exemption under subdivision 15 of section 214 of the Real Property Law) _____;

3. IF THIS UNIT IS SUBJECT TO ARTICLE 6–A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, AND THIS NOTICE SERVES TO INFORM A TENANT THAT THE LANDLORD IS INCREASING THE RENT ABOVE THE THRESHOLD FOR PRESUMPTIVELY

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UNREASONABLE RENT INCREASES, WHAT IS THE LANDLORD'S JUSTIFICATION FOR INCREASING THE RENT ABOVE THE THRESHOLD FOR PRESUMPTIVELY UNREASONABLE RENT INCREASES? (A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published not later than August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent.) (PLEASE MARK AND FILL OUT THE APPLICABLE RESPONSE)

A. The rent is not being increased above the threshold for presumptively unreasonable rent increases described above: _____;

B. The rent is being increased above the threshold for presumptively unreasonable rent increases described above: _____;

B–1: If the rent is being increased above the threshold for presumptively unreasonable rent increases described above, what is the justification for the increase: .....

.....

.....

.....
.....

4. IF THIS UNIT IS SUBJECT TO ARTICLE 6–A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, AND THIS NOTICE SERVES TO INFORM A TENANT THAT THE LANDLORD IS NOT RENEWING A LEASE, WHAT IS THE GOOD CAUSE FOR NOT RENEWING THE LEASE? (PLEASE MARK ALL APPLICABLE REASONS)

A. This unit is exempt from Article 6–A of the Real Property Law, known as the New York State Good Cause Eviction Law, for the reasons stated in response to question 2, above (IF THIS ANSWER IS CHECKED, NO OTHER ANSWERS TO THIS QUESTION SHOULD BE CHECKED): _____;

B. The tenant is receiving this notice in connection with a first lease or a renewal lease, so the landlord does not need to check any of the lawful reasons listed below for not renewing a lease under Article 6–A of the Real Property Law, known as the New York State Good Cause Eviction Law (IF THIS ANSWER IS CHECKED, NO OTHER ANSWERS TO THIS QUESTION SHOULD BE CHECKED) ;

C. The landlord is not renewing the lease because the unit is sublet and the sublessor seeks in good faith to recover possession of the unit for their own personal use and occupancy (exemption under subdivision 3 of section 214 of the Real Property Law): ;

D. The landlord is not renewing the lease because the possession, use or occupancy of the unit is solely incident to employment and the employment is being or has been lawfully terminated (exemption under subdivision 4 of section 214 of the Real Property Law): _____;

E. The landlord is not renewing the lease because the tenant has failed to pay rent due and owing, and the rent due or owing, or any part there-of, did not result from a rent increase which is unreasonable. A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published not later than August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent (good cause for eviction under paragraph a of subdivision 1 of section 216 of the Real Property Law): _____;

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F. The landlord is not renewing the lease because the tenant is violating a substantial obligation of their tenancy or breaching any of the landlord's rules and regulations governing the premises, other than the obligation to surrender possession of the premises, and the tenant has failed to cure the violation after written notice that the violation must cease within 10 days of receipt of the written notice. For this good cause to apply, the obligation the tenant violated cannot be an obligation that was imposed for the purpose of circumventing the intent of Article 6–A of the Real Property Law, known as the New York State Good Cause Eviction Law. The landlord's rules or regulations that the tenant has violated also must be reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term (good cause for eviction under paragraph b of subdivision 1 of section 216 of the Real Property Law): _____;

G. The landlord is not renewing the lease because the tenant is either (a) committing or permitting a nuisance on the unit or the premises; (b) maliciously or grossly negligently causing substantial damage to the unit or the premises; (c) interfering with the landlord's, another tenant's, or occupants of the same or an adjacent building or structure's comfort and safety (good cause for eviction under paragraph c of subdivision 1 of section 216 of the Real Property Law): _____;

H. The landlord is not renewing the lease because the tenant's occupancy of the unit violates law and the landlord is subject to civil or criminal penalties for continuing to let the tenant occupy the unit. For this good cause to apply, a state or municipal agency having jurisdiction must have issued an order requiring the tenant to vacate the unit. No tenant shall be removed from possession of a unit on this basis unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the vacate order. If the landlord does not try to cure the conditions causing the violation of the law, the tenant has the right to pay or secure payment, in a manner satisfactory to the court, to cure the violation. Any tenant expenditures to cure the violation shall be applied against rent owed to the landlord. Even if removal of a tenant is absolutely essential to the tenant's health and safety, the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. The tenant also retains the right to bring an action for monetary damages against the landlord or to otherwise compel the landlord to comply with all applicable state or municipal housing codes (good cause for eviction under paragraph d of subdivision 1 of section 216 of the Real Property Law): _____;

I. The landlord is not renewing the lease because the tenant is using or permitting the unit or premises to be used for an illegal purpose (good cause for eviction under paragraph e of subdivision 1 of section 216 of the Real Property Law): _____;

J. The landlord is not renewing the lease because the tenant has unreasonably refused the landlord access to the unit for the purposes of making necessary repairs or improvements required by law or for the purposes of showing the premises to a prospective purchaser, mortgagee, or other person with a legitimate interest in the premises (good cause for eviction under paragraph f of subdivision 1 of section 216 of the Real Property Law): _____;

K. The landlord is not renewing the lease because the landlord seeks in good faith to recover possession of the unit for the landlord's personal use and occupancy as the landlord's principal residence, or for the personal use and occupancy as a principal residence by the landlord's spouse, domestic partner, child, stepchild, parent, stepparent, sibling, grandparent, grandchild, parent-in-law, or sibling-in-law. The landlord can only recover the unit for these purposes if there is no other suitable housing accommodation in the building that is available. Under no circumstances can the landlord recover the unit for these purposes if the tenant is (a) 65 years old or older; or (b) a "disabled person" as defined in subdivision 6 of section 211 of the Real Property Law. To establish this good cause in an eviction proceeding, the landlord must establish good faith to recover possession of a housing accommodation for the uses described herein by clear and convincing evidence (good cause for eviction under paragraph g of subdivision 1 of section 216 of the Real Property Law): _____;

L. The landlord is not renewing the lease because the landlord in good faith seeks to demolish the housing accommodation. To establish this good cause in an eviction proceeding, the landlord must establish good faith to demolish the housing accommodation by clear and convincing evidence (good cause for eviction under paragraph h of subdivision 1 of section 216 of the Real Property Law): _____;

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M. The landlord is not renewing the lease because the landlord seeks in good faith to withdraw the unit from the housing rental market. To establish this good cause in an eviction proceeding, the landlord must establish good faith to withdraw the unit from the rental housing market by clear and convincing evidence (good cause for eviction under paragraph i of subdivision 1 of section 216 of the Real Property Law): _____;

N. The landlord is not renewing the lease because the tenant has failed to agree to reasonable changes at lease renewal, including reasonable increases in rent, and the landlord gave written notice of the changes to the lease to the tenant at least 30 days, but no more than 90 days, before the current lease expired. A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published by August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent (good cause for eviction under paragraph j of subdivision 1 of section 216 of the Real Property Law): _____.

§ 4. Subdivision 2 of section 711 of the real property actions and proceedings law, as amended by section 12 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

<< NY RP ACT & PRO § 711 >>

2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon ~~him~~ **the tenant** as prescribed in section seven hundred thirty-five of this article. **The fourteen-day notice shall append or contain the notice required pursuant to section two hundred thirty-one-c of the real property law, which shall state the following: (i) if the premises are or are not subject to article six-A of the real property law, the "good cause eviction law", and if the premises are exempt, such notice shall state why the premises are exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of the real property law, the lawful basis for such nonrenewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of the real property law above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of the real property law, the justification for such increase.** Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due ~~his~~ **such person's** predecessor in interest if ~~he has~~ **such person has** a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.

§ 5. Section 741 of the real property actions and proceedings law is amended by adding two new subdivisions 5–a and 5–b to read as follows:

<< NY RP ACT & PRO § 741 >>

5–a. Append or incorporate the notice required pursuant to section two hundred thirty-one-c of the real property law, which shall state the following: (i) if the premises are or are not subject to article six-A of the real property law, the "good cause eviction law", and if the premises are exempt, such petition shall state why the premises are exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of the real property law, the lawful basis for such nonrenewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of the real property law above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of the real property law, the justification for such increase.

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5–b. If the petitioner claims exemption from the provisions of article six-A of the real property law pursuant to subdivision one of section two hundred fourteen of the real property law, append or incorporate the information required pursuant to subdivision one of section two hundred fourteen of the real property law.

§ 6. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

<< Note: NY REAL PROP § 226–c >>

<< Note: NY REAL PROP §§ 210, 211, 212, 213, 214, 215, 216, 217, 218, 231–c >>

<< Note: NY RP ACT & PRO §§ 711, 741 >>

§ 7. This act shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective

date; provided, however, that:
(a) sections two, three, four, and five of this act shall take effect on the one hundred twentieth day after this act shall have become a law;

(b) this act shall expire and be deemed repealed on June 15, 2034; and

(c) any local law as may be enacted pursuant to subdivision 1 of 213 of article 6–A of the real property law established by section one of this act shall remain in full force and effect only until June 15, 2034.

Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.

PART II

Section 1. The opening paragraph of section 711 of the real property actions and proceedings law, as amended by section 12 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

<< NY RP ACT & PRO § 711 >>

A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. **A tenant shall not include a squatter. For the purposes of this section, a squatter is a person who enters onto or intrudes upon real property without the permission of the person entitled to possession, and continues to occupy the property without title, right or permission of the owner or owner's agent or a person entitled to possession. In the event of a conflict between the provisions regarding squatters of this section and the provisions of subdivision three of section seven hundred thirteen of this article, the provisions of section seven hundred thirteen of this article shall be controlling.** No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. A special proceeding may be maintained under this article upon the following grounds:

§ 2. This act shall take effect immediately.

PART JJ

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FY 2024 Fair Market Rent Documentation System

The FY 2024 Poughkeepsie-Newburgh-Middletown, NY MSA FMRs for All Bedroom Sizes

Final FY 2024 & Final FY 2023 FMRs By Unit Bedrooms					
Year	**Efficiency**	**One-Bedroom**	**Two-Bedroom**	**Three-Bedroom**	**Four-Bedroom**
FY 2024 FMR	$1,237	$1,419	$1,825	$2,315	$2,560
FY 2023 FMR	$1,126	$1,233	$1,583	$2,016	$2,238

Orange County, NY is part of the Poughkeepsie-Newburgh-Middletown, NY MSA, which consists of the following counties: Dutchess County, NY; and Orange County, NY. All information here applies to the entirety of the Poughkeepsie-Newburgh-Middletown, NY MSA.

Fair Market Rent Calculation Methodology

Show/Hide Methodology Narrative

Fair Market Rents for metropolitan areas and non-metropolitan FMR areas are developed as follows:

1. **Calculate the Base Rent**: HUD uses 2017-2021 5-year American Community Survey (ACS) estimates of 2-bedroom adjusted standard quality gross rents calculated for each FMR area as the new basis for FY2024, provided the estimate is statistically reliable. For FY2024, the test for reliability is whether the margin of error for the estimate is less than 50% of the estimate itself and whether the ACS estimate is based on at least 100 survey cases. HUD does not receive the exact number of survey cases, but rather a categorical variable known as the count indicator indicating a range of cases. An estimate based on at least 100 cases corresponds to a count indicator of 4 or higher.

   If an area does not have a reliable 2017-2021 5-year estimate, HUD checks whether the area has had at least 2 minimally reliable estimates in the past 3 years, or estimates that meet the 50% margin of error test described above. If so, the FY2024 base rent is the average of the inflated ACS estimates.

If an area has not had a minimally reliable estimate in the past 3 years, HUD uses the estimate for the area's corresponding metropolitan area (if applicable) or State non-metropolitan area as the basis for FY2024.

2. **Calculate the Basis for Recent Mover Adjustment Factor**: HUD calculates a recent mover adjustment factor by comparing an ACS 2021 1-year 40th percentile recent mover 2-bedroom rent to the ACS 2017-2021 5-year 40th percentile adjusted standard quality gross rent. If either the recent mover and non-recent mover rent estimates are not reliable, HUD uses the recent mover adjustment for a larger geography. For metropolitan areas, the order of geographies examined is: FMR Area, Entire Metropolitan Area (for Metropolitan Sub-Areas), State Metropolitan Portion, Entire State, and Entire US; for non-metropolitan areas, the order of geographies examined is: FMR Area, State Non-Metropolitan Portion, Entire State, and Entire US. The recent mover adjustment factor is floored at one.

   HUD has traditionally defined recent movers as those who have moved into their residence within the current year or preceding year of the ACS survey. Newly for FY2024, HUD is electing to first examine recent movers who have moved within the current year of the ACS. Upon determining a reliable recent mover estimate, HUD calculates the appropriate recent mover adjustment factor between the 5-year data and the 1-year data.

3. **Adjust for Inflation**: In order to calculate rents that are "as of" 2022, HUD applies a gross rent inflation adjustment factor using data from commercial rent data sources and the Consumer Price Index. HUD uses a local measure of private rent inflation for markets that are covered by at least three of the six available sources of private rent data. HUD combines this local measure of rent inflation with either the local metropolitan area CPI rent of primary residence for the 23 areas where such data exist, or the regional CPI rent in areas without a local index.

   Unlike in FY 2023, for areas without at least three of the six private rent data sources available, HUD uses a regional average of private rent inflation factors alongside the regional CPI rent of primary residence. HUD constructs the regional average by taking the rental unit weighted average of the change in rents of each area in a region that does have private rent data coverage. HUD averages the private and CPI shelter rent data with the year-to-year change in the CPI housing fuels and utilities index for the area in order to make the resulting inflation measure reflective of gross rents.

   The private and CPI gross rent update factors are then combined using a weighting scheme which controls the national weighted average of the private and CPI gross rent factors to the national change in the ACS recent mover gross rent. The resulting weights assigned are as follows: $\mathbf{W}_{2022} = 0.558$ assigned to the private gross rent factor and $(1-\mathbf{W}_{2022}) = 0.442$ assigned to the CPI gross rent factor.

4. **Calculate the Trend Factor**: To further inflate rents from CY2022 to FY2024, HUD uses a "trend factor" based on the forecast of CPI gross rent changes through FY2024.

5. **Multiply the Factors**: HUD multiplies the base rent by the recent mover factor, the gross rent inflation factor, and the trend factor to produce a rent that is "as of" the current fiscal year.

6. **Compare to the State minimum**: FY2024 FMRs are then compared to a State minimum rent, and any area whose preliminary FMR falls below this value is raised to the level of the State minimum.

7. **Calculate Bedroom Ratios**: HUD calculates "bedroom ratios" and multiplies these by the two-bedroom rent to produce preliminary FMRs for unit sizes other than two bedrooms.

8. **Compare to Last Year's FMR**: FY2024 FMRs may not be less than 90% of FY2023 FMRs. Therefore, HUD applies "floors" based on the prior year's FMRs.

The results of the Fair Market Rent Step-by-Step Process

1. **Base Rent Calculation**
The following are the 2021 American Community Survey 5-year 2-Bedroom Adjusted Standard Quality Gross Rent estimates and margins of error for Poughkeepsie-Newburgh-Middletown, NY MSA.

Area	ACS_{2021} 5-Year 2-Bedroom Adjusted Standard Quality Gross Rent	ACS_{2021} 5-Year 2-Bedroom Adjusted Standard Quality Gross Rent Margin of Error	Ratio	Sample Size Category	Result
Poughkeepsie-Newburgh-Middletown, NY MSA	$1,377	$27	$27 / $1,377=0.01961	6	0.01961 < .5 6 ≥ 4 Use ACS_{2021} 5-Year Poughkeepsie-Newburgh-Middletown, NY MSA 2-Bedroom

					Adjusted Standard Quality Gross Rent

Since the ACS_{2021} Margin of Error Ratio is less than .5, HUD uses the ACS_{2021} Poughkeepsie-Newburgh-Middletown, NY MSA value for the estimate of 2-Bedroom Adjusted Standard Quality Gross Rent (Base Rent).

Area	FY2024 Base Rent
Poughkeepsie-Newburgh-Middletown, NY MSA	$1,377

2. **Recent Mover Adjustment Factor Calculation**

A recent mover adjustment factor is applied based on the smallest area of geography containing Poughkeepsie-Newburgh-Middletown, NY MSA that has an ACS_{2021} 1-year Adjusted Standard Quality Recent-Mover estimate with a Margin of Error Ratio that is less than .5 and a sufficient number of sample cases.

Area	ACS_{2021} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent	ACS_{2021} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent Margin of Error	Ratio	Sample Size Category	Result
Poughkeepsie-Newburgh-Middletown, NY MSA – ACS 1-year 2 Bedroom	$1,755	$229	0.13	1	1 < 4 Do Not Use ACS_{2021} 1-Year Poughkeepsie-Newburgh-Middletown, NY MSA 2-Bedroom Adjusted Standard Quality Recent-Mover Gross Rent
Poughkeepsie-Newburgh-Middletown, NY MSA – ACS 1-year All Bedroom	$1,520	$170	0.112	2	2 < 4 Do Not Use ACS_{2021} 1-Year Poughkeepsie-Newburgh-Middletown, NY MSA All Bedroom Adjusted Standard

Area	ACS_{2021} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent	ACS_{2021} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent Margin of Error	Ratio	Sample Size Category	Result
					Quality Recent-Mover Gross Rent
Poughkeepsie-Newburgh-Middletown, NY MSA – ACS 2-year 2 Bedroom	$1,668	$191	0.115	2	2 < 4 Do Not Use ACS_{2021} 1-Year Poughkeepsie-Newburgh-Middletown, NY MSA 2 Bedroom Adjusted Standard Quality Recent-Mover Gross Rent
Poughkeepsie-Newburgh-Middletown, NY MSA – ACS 2-year All Bedroom	$1,448	$122	0.084	4	0.084 < .5 4 ≥ 4 Use ACS_{2021} 1-Year Poughkeepsie-Newburgh-Middletown, NY MSA All Bedroom Adjusted Standard Quality Recent-Mover Gross Rent

The calculation of the relevant Recent-Mover Adjustment Factor for Poughkeepsie-Newburgh-Middletown, NY MSA is as follows:

ACS_{2021} 5-Year Area	ACS_{2021} 5-Year 40th Percentile Adjusted Standard Quality Gross Rent	ACS_{2021} 1-Year 40th Percentile Adjusted Standard Quality Recent-Mover Gross Rent
Poughkeepsie-Newburgh-Middletown, NY MSA – All Bedroom	$1,277	$1,448

Area	Ratio	Recent-Mover Adjustment Factor
Poughkeepsie-Newburgh-Middletown, NY MSA	$1,448 / $1,277 =1.134	1.1339 ≥ 1.0 Use calculated Recent-Mover Adjustment Factor of 1.1339

3. **Inflation Adjustment Factor Calculation**

A gross rent inflation adjustment factor is applied based on a weighted average of a private source gross rent inflation factor and a Consumer Price Index gross rent inflation factor. Since Poughkeepsie-Newburgh-Middletown, NY MSA is covered by at least 3 private data sources, a local-based private rent factor is applied. Furthermore, since Poughkeepsie-Newburgh-Middletown, NY MSA is covered by a local-CPI rent area, a Local-based CPI gross rent factor is applied.

Components of 2022 Inflation Adjustment Factor for Poughkeepsie-Newburgh-Middletown, NY MSA					
	R_{2022}= Shelter Rent Change, 2021 to 2022	**U_{2022} = CPI Annual Utilities Change, 2021 to 2022**	**C_{2022} = ACS Utility Cost as a Percent of Gross Rent**	**Gross Rent Inflation Factor Calculation = (R_{2022} x (1-C_{2022}) + U_{2022} x C_{2022})**	**Inflation Factor Type**
P_{2022}= Private Inflation Factor	1.1004	1.18213	0.1575	(1.10040 * 0.84250) + (1.182125 * 0.1575)= 1.11327	Local
CPI_{2022}= CPI Inflation Factor	1.01141	1.18213	0.1575	(1.01141 * 0.8425) + (1.18213 * 0.1575)= 1.0383	Local

The 2022 Gross Rent Inflation Factor for Poughkeepsie-Newburgh-Middletown, NY MSA is computed as follows:

= **CPI_{2022}** x (1-**W_{2022}**) + **P_{2022}** x **W_{2022}**

= (1.0383 x 0.442) + (1.11327 x 0.558)

= (0.458929) + (0.621205)

= **1.08016**

4. **Trend Factor Adjustment**
The calculation of the Trend Factor is as follows: HUD forecasts the change in gross rents from 2022 to 2024 for each CPI area and Census Region. This makes Fair Market Rents "as of" FY2024.

	Trend Factor	Trend Factor Type
Trend Factor	1.08202	Local

5. **Combination of Factors**
The FY 2024 2-Bedroom Fair Market Rent for Poughkeepsie-Newburgh-Middletown, NY MSA is calculated as follows:

Area	Base Rent		Recent-Mover Adjustment Factor		Annual 2021 to 2022 Gross Rent Inflation Adjustment		Trending 2022 to FY2024		FY 2024 2-Bedroom FMR
Poughkeepsie-Newburgh-Middletown, NY MSA	$1,377	*	1.1339	*	1.08016	*	1.08202	=	$1,825

6. **State Minimum Comparison**
In keeping with HUD policy, the preliminary FY 2024 FMR is checked to ensure that it does not fall below the state minimum.

Area	Preliminary FY2024 2-Bedroom FMR	FY 2024 New York State Minimum	Final FY2024 2-Bedroom FMR
Poughkeepsie-Newburgh-Middletown, NY MSA	$1,825	$905	$1,825 ≥ $905 Use Poughkeepsie-Newburgh-Middletown, NY MSA FMR of $1,825

7. **Bedroom Ratios Application**
Bedroom ratios are applied to calculate FMRs for unit sizes other than two bedrooms.

Click on the links in the table to see how the bedroom ratios are calculated.

FY 2024 FMRs By Unit Bedrooms

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY 2024 FMR	$1,237	$1,419	$1,825	$2,315	$2,560

8. **Comparison to Previous Year**
   The FY2024 FMRs for each bedroom size must not be below 90% of the FY2023 FMRs.

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY2023 FMR	$1,126	$1,233	$1,583	$2,016	$2,238
FY2023 floor	$1,014	$1,110	$1,425	$1,815	$2,015
FY 2024 FMR	$1,237	$1,419	$1,825	$2,315	$2,560
Use FY2023 floor for FY2024?	No	No	No	No	No

Final FY2024 Rents for All Bedroom Sizes for Poughkeepsie-Newburgh-Middletown, NY MSA

Final FY 2024 FMRs By Unit Bedrooms					
	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
Final FY 2024 FMR	$1,237	$1,419	$1,825	$2,315	$2,560

The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four bedroom FMR, for each extra bedroom. For example, the FMR for a five bedroom unit is 1.15 times the four bedroom FMR, and the FMR for a six bedroom unit is 1.30 times the four bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero bedroom (efficiency) FMR.

Permanent link to this page:
http://www.huduser.gov/portal/datasets/fmr/fmrs/FY2024_code/2024summary.odn?&year=2024&fmrtype=Final&selection_type=county&fips=3607199999

Select a different area

Press below to select a different county within the same state (same primary state for metropolitan

areas):

Albany County, NY
Allegany County, NY
Bronx County, NY
Broome County, NY
Cattaraugus County, NY

Select a new county

Press below to select a different state:

Select a new state

Select a Final FY 2024 Metropolitan FMR Area:

Poughkeepsie-Newburgh-Middletown, NY MSA

Select Metropolitan FMR Area

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