



CITY OF NEWBURGH  
COUNCIL MEETING AGENDA  
*SESION GENERAL DEL CONSEJAL*

October 11, 2022

7:00 PM

Mayor/Alcaldesa

1. Moment of Silence / Momento de Silencio
2. Pledge of Allegiance / Juramento a la Alianza

City Clerk:/Secretaria de la Ciudad

3. Roll Call / Lista de Asistencia

Communications/Comunicaciones

4. Approval of the minutes from the City Council meeting of September 26, 2022 / Aprobacion del Acta de la Reunion General del Consejo del 26 de septiembre de 2022
5. City Manager Update / Gerente de la Ciudad Pone al Dia a la Audiencia de los Planes de Cada Departamento

Presentations/Presentaciones

6. Public Hearing - Local Law amending City Charter, Article II, "Municipal Powers"

There will be a public hearing on Tuesday, October 11, 2022 regarding a local law amending City Charter, Article II, entitled "Municipal Powers"

*Habr  una audiencia p blica el martes 11 de octubre del 2022 sobre una ley local que modifica el Estatuto de la Ciudad, Art culo II, titulado "Poderes Municipales"*

7. Public Hearing - Local Law amending City Charter, Article IX-A, "Water Department"

There will be a public hearing on Tuesday, October 11, 2022 regarding a local law amending City Charter, Article IX-A, entitled "Water Department"

*Habr  una audiencia p blica el martes 11 de octubre del 2022 sobre una ley local que modifica el Estatuto de la Ciudad, Art culo IX-A, titulado "Departamento de Agua"*

Comments from the public regarding agenda and general matters of City Business/Comentarios del p blico con respecto a la agenda y sobre asuntos generales

de la Ciudad.

Comments from the Council regarding the agenda and general matters of City Business/Comentarios del Consejo con respecto a la agenda y sobre asuntos generales de la Ciudad

City Manager's Report/ Informe del Gerente de la Ciudad

8. Resolution No. 247 - 2022 - Amending Resolution for NYSEFC EPG#108029 West Trunk Sewer

Resolution amending Resolution No. 72-2022 of March 28, 2022 authorizing the City Manager to accept a proposal and enter into an agreement for professional engineering services with Arcadis of New York, Inc. in the amount of \$128,000.00 for the West Trunk Sewer Inflow and Infiltration Engineering Planning Grant Project at a total project cost of \$148,000.00

*Resolución que enmienda la Resolución No. 72-2022 del 28 de marzo del 2022 que autoriza al Gerente de la Ciudad a aceptar una propuesta y a entrar en un acuerdo para servicios profesionales de ingeniería con Arcadis de Nueva York, Inc. por el monto de \$128,000.00 para el Proyecto de Subvención para la Planificación del Diseño del Flujo e Infiltración del Alcantarillado Troncal Oeste a un costo total del proyecto de \$148,000.00*

9. Resolution No. 248 - 2022 - 2023 Budget - Scheduling the Public Hearing

Resolution scheduling a public hearing for November 14, 2022 to receive comments concerning the adoption of the 2023 Budget for the City of Newburgh

Resolución que programa una audiencia pública el 14 de noviembre del 2022 para recibir comentarios sobre la adopción del Presupuesto 2023 para la Ciudad de Newburgh

10. Resolution No. 249 - 2022 - Site Development Agreement - 137 Smith Street, 140 Montgomery Street and 146 Montgomery Street

Resolution authorizing the City Manager to execute a site development agreement with The Kearney Realty & Development Group Inc. for the transfer and redevelopment of properties located at 137 Smith Street (Section 12, Block 4, Lot 4.1), 140 Montgomery Street (Section 12, Block 4, Lot 10), and 146 Montgomery Street (Section 12, Block 4, Lot 2.1)

*Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo de desarrollo de área con The Kearney Realty & Development Group Inc. para la transferencia y nuevo desarrollo de las propiedades ubicadas en 137 Smith Street (Sección 12, Bloque 4, Lote 4.1), 140 Montgomery Street (Sección 12, Bloque 4, Lote 10) y 146 Montgomery Street (Sección 12, Bloque 4, Lote 2.1)*

11. Resolution No. 250 - 2022 - CPL Proposal for Design and Bid Services for the Aquatics Center at Delano Hitch Park

Resolution authorizing the City Manager to accept a proposal and execute a contract with Clark Patterson Lee for professional engineering services for the Delano-Hitch Recreation Park Aquatic Center Improvements Project in the amount of \$804,00.00

*Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un contrato con Clark Patterson Lee para servicios profesionales de ingeniería para el Proyecto de mejoramiento del Centro Acuático del Parque de Recreación Delano-Hitch por el monto de \$804,00.00*

12. Resolution No. 251 - 2022 - 121 William 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 E & M Associates to the premises known as 121 William Street (f/k/a 119-121 William Street) (Section 45, Block 15, Lot 16)

*Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y derecho de reingreso de una escritura emitida a E & M Associates a las instalaciones conocidas como 121 William Street (f/k/a 119-121 William Street) (Sección 45, Bloque 15, Lote 16)*

13. Resolution No. 252 - 2022 - 34 Lander 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 Richard Carstens to the premises known as 34 Lander Street (Section 30, Block 3, Lot 14)

*Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y derecho de reingreso de una escritura emitida a Richard Carstens a las instalaciones conocidas como 34 Lander Street (Sección 30, Bloque 3, Lote 14)*

14. Resolution No. 253 - 2022 - Ferry Parking Lot Lease Extension

Resolution authorizing the City Manager to execute a fourth extension until December 31, 2023 to the Agreement of Lease with Riverside Newburgh Realty, LLC for the continued lease of vacant real property known as Section 31, Block 5, Lots 13.2 and 14 for the purpose of providing parking for the Newburgh-Beacon Ferry commuters

*Resolución que autoriza al Gerente de la Ciudad a ejecutar una cuarta prolongación, hasta el 31 de diciembre del 2023, del Acuerdo de Arrendamiento con Riverside Newburgh Realty, LLC para el arrendamiento continuado de los bienes raíces vacantes conocidos como Sección 31, Bloque 5, Lotes 13.2 y 14 con el propósito de proporcionar estacionamiento a los viajeros del Ferry Newburgh-Beacon*

15. Resolution No. 254 - 2022 - Ninth MOU with Metro-North Railroad  
Resolution authorizing the City Manager to execute a Ninth Memorandum of Understanding with Metro-North Commuter Railroad Company to provide reimbursement of parking lot lease payments related to the Newburgh-Beacon Ferry  
  
*Resolución que autoriza al Gerente de la Ciudad a ejecutar un Noveno Memorando de Entendimiento con Metro-North Commuter Railroad Company para proporcionar el reembolso de los pagos de arrendamiento del estacionamiento relacionados con el Ferry Newburgh-Beacon*
16. Resolution No. 255 - 2022 - Scheduling a Public Hearing - Spectrum Northeast, LLC, an Indirect Subsidiary of Charter Communications Inc. Cable Franchise Agreement Renewal  
Resolution scheduling a public hearing for October 24, 2022 to received public comment concerning the renewal of a cable franchise agreement between the City of Newburgh and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc.  
  
*Resolución programando una audiencia pública para el 24 de octubre del 2022 para recibir comentarios públicos sobre la renovación de un acuerdo de franquicia de cable entre la Ciudad de Newburgh y Spectrum Northeast, LLC, una subsidiaria indirecta de Charter Communications, Inc.*
17. Resolution No. 256 - 2022 - 2023 Orange County Youth Bureau Grant Applications  
Resolution authorizing the City Manager to apply for and accept if awarded New York State Office of Children and Family Services Youth Development Program Grants and Youth Sports and Education Grants and Orange County Solutions Grants to support twelve programs in the City of Newburgh Recreation Department  
  
*Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado Subsidios del Programa de Desarrollo Juvenil de la Oficina de Servicios para Niños y Familias del Estado de Nueva York y Subsidios de Deportes y Educación para Jóvenes y Subsidios de Soluciones del Condado de Orange para apoyar doce programas en el Departamento de Recreación de la Ciudad de Newburgh*
18. Ordinance No. 7 - 2022 - Ordinance Amending Chapter 263 of the City of Newburgh Code of Ordinances  
An ordinance amending Chapter 263, entitled "Streets and Sidewalks" of the City of Newburgh Code of Ordinances  
  
*Ordenanza que enmienda el capítulo 263, titulado "Calles y aceras" del Código de Ordenanzas de la Ciudad de Newburgh*

19. Resolution No. 257 - 2022 - Scheduling a Public Hearing - Local Law Authorizing a Property Tax Levy in Excess of the Limit Authorized by General Municipal Law Section 3-C

Resolution scheduling a public hearing for October 24, 2022 to hear public comment concerning a Local Law authorizing a property tax levy in excess of the limit established in General Municipal Law Section 3-c

*Resolución que programa una audiencia pública para el 24 de octubre del 2022 para escuchar comentarios públicos sobre una ley local que autoriza un gravamen del impuesto a la propiedad que exceda el límite establecido en la Sección 3-c de la Ley Municipal General*

20. Local Law No. B - 2022 - Local Law Repealing and Replacing City Charter, Article IX

A Local Law repealing and replacing Article IX of the Charter of the City of Newburgh entitled "Department of Public Works"

*Una ley local que deroga y sustituye el artículo IX de los Estatutos de la Ciudad de Newburgh titulado "Departamento de Obras Públicas"*

21. Local Law No. C - 2022 - Local Law Amending Chapter 183, Waste Management, Handling and Disposal

A local law amending Chapter 183 of the City of Newburgh Code of Ordinances entitled "Waste Management, Handling and Disposal"

*Una ley local que enmienda el Capítulo 183 del Código de Ordenanzas de la Ciudad de Newburgh titulado "Gestión, Manejo y Eliminación de Residuos"*

22. City Manager's Proposed FY2023 Budget

*Presupuesto Propuesto del Gerente de la Ciudad para el 2023*

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

Final Comments from the City Council/ Comentarios Finales del Ayuntamiento:

Adjournment/ Aplazamiento:

RESOLUTION NO.: 245 - 2022

OF

SEPTEMBER 26, 2022

RESOLUTION SCHEDULING A PUBLIC HEARING FOR OCTOBER 11, 2022  
TO HEAR PUBLIC COMMENT CONCERNING "A LOCAL LAW AMENDING  
ARTICLE II OF THE CHARTER OF THE CITY OF NEWBURGH  
ENTITLED 'MUNICIPAL POWERS'"

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 amending Article II of the Charter of the City of Newburgh entitled 'Municipal Powers'"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 11th day of October, 2022.

I, Lorene Vitak, 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 September 26, 2022  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 27 day of September, 2022

  
\_\_\_\_\_  
City Clerk

LOCAL LAW NO.: \_\_\_\_\_ - 2022

OF

\_\_\_\_\_, 2022

**A LOCAL LAW AMENDING ARTICLE II OF THE CHARTER OF  
THE CITY OF NEWBURGH ENTITLED “MUNICIPAL POWERS”**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York that Article II of the Charter of the City of Newburgh entitled “Municipal Powers” be and is hereby enacted as follows:

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law amending Article II of the Charter of the City of Newburgh entitled ‘Municipal Powers’”.

**SECTION 2 - AMENDMENT**

Article II of the City Charter of the City of Newburgh entitled “Municipal Powers” is hereby amended to read as follows:

**Article II.      Municipal Powers**

§ C2.02      Further specific powers.

A. In addition to all other powers possessed by the City under this Charter or under any other law, the City shall have the power:

(1) To construct, maintain and clean sidewalks, gutters and curbs in the public streets and to regulate the grade, width, materials and construction thereof; to construct the same either as a public or as a local improvement or to permit the owners of abutting property to construct the same at their own expense under the direction and supervision of the ~~Superintendent of Public Works~~ Commissioner of Public Works.

**SECTION 3 - SEVERABILITY**

The provisions of this Local Law are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be

Underlining denotes additions

~~Strikethrough~~ denote deletions

the legislative intent that this Local Law would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part here of is held inapplicable had been specifically exempt therefrom.

#### **SECTION 4 - CODIFICATION**

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

#### **SECTION 5 - VALIDITY**

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

#### **SECTION 6 - EFFECTIVE DATE**

This Local Law and shall be effective 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.

Underlining denotes additions  
~~Strikethrough~~ denote deletions



RESOLUTION NO.: 244 - 2022

OF

SEPTEMBER 26, 2022

RESOLUTION SCHEDULING A PUBLIC HEARING FOR OCTOBER 11, 2022  
TO HEAR PUBLIC COMMENT CONCERNING "A LOCAL LAW AMENDING  
ARTICLE IX-A OF THE CHARTER OF THE CITY OF NEWBURGH  
ENTITLED "WATER DEPARTMENT"

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 amending Article IX-A of the Charter of the City of Newburgh entitled 'Water Department'"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 11th day of October, 2022.

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 26 26 22  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 26 day of 26 22

  
\_\_\_\_\_  
City Clerk

LOCAL LAW NO.: \_\_\_\_ - 2022

OF

\_\_\_\_\_, 2022

**A LOCAL LAW AMENDING ARTICLE IX-A OF THE CHARTER OF  
THE CITY OF NEWBURGH ENTITLED “WATER DEPARTMENT”**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York that Article IX-A of the Charter of the City of Newburgh entitled “Water Department” be and is hereby enacted as follows:

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law amending Article IX of the Charter of the City of Newburgh entitled ‘Water Department’”.

**SECTION 2 - AMENDMENT**

Article IX-A of the City Charter of the City of Newburgh entitled “Water Department” is hereby amended to read as follows:

**Article IX-A. ~~Water Department~~ Water Division**

§ C9-A.50 ~~Division Department~~ established; Superintendent.

~~There shall be a Water Department headed by the Superintendent of Water. The Superintendent shall have administrative control and direction of the Department and such other functions and duties as may be assigned by the City Manager.~~

There shall be a Water division headed by the Superintendent of Water. The Superintendent of Water shall have administrative control and direction of the Water division and such other functions and duties as may be assigned by the City Manager or the Commissioner of Public Works in a manner consistent with Article IX of the City Charter.

**SECTION 3 - SEVERABILITY**

The provisions of this Local Law are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts

Underlining denotes additions

~~Strikethrough~~ denote deletions

of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part here of is held inapplicable had been specifically exempt therefrom.

#### **SECTION 4 - CODIFICATION**

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

#### **SECTION 5 - VALIDITY**

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

#### **SECTION 6 - EFFECTIVE DATE**

This Local Law and shall be effective 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.

Underlining denotes additions  
~~Strikethrough~~ denote deletions

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A RESOLUTION AMENDING RESOLUTION NO. 72-2022 OF MARCH 28, 2022  
AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND ENTER INTO  
AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
WITH ARCADIS OF NEW YORK INC. IN THE AMOUNT OF \$128,000.00  
FOR THE WEST TRUNK SEWER  
INFLOW AND INFILTRATION ENGINEERING PLANNING GRANT PROJECT  
AT A TOTAL PROJECT COST OF \$148,000.00**

**WHEREAS**, by Resolution No. 163-2021 of July 12, 2021, the City Council of the City of Newburgh authorized the application for an Environmental Facilities Corporation (“EFC”) Engineering Planning Grant (“EPG”) through the Consolidated Funding Application (“CFA”) in an amount not to exceed \$100,000.00 with a 20% match to fund sewer inspection and inflow and infiltration investigation activities and further authorized the City Manager to accept, if awarded, said planning grant; and

**WHEREAS**, the City of Newburgh was selected to receive CFA EFC EPG No. 108029 for the West Trunk Sewer Inflow and Infiltration Planning Grant Project in an amount up to \$100,000.00; and

**WHEREAS**, by Resolution No. 72-2022 of March 28, 2022, the City Council approved a contract with Arcadis of New York, Inc. for professional engineering services to complete the West Trunk Sewer Inflow and Infiltration Planning Project in an amount not to exceed \$128,000.00; and

**WHEREAS**, funding for the professional engineering services contract with Arcadis of New York, Inc. shall be derived from CFA EFC EPG No. 108029 in the amount of \$100,000.00 and from the 2022 Sewer Budget Line: G.8130.0448.0006 Other Services-Miscellaneous Contracts in the amount of \$28,000.00 with the CFA EFC EPG No. 108029 local match of \$20,000.00 being derived from both in-kind services performed by the Engineering Department and the 2022 Sewer Budget Line: G.8130.0448.0006 Other Services-Miscellaneous Contracts; and

**WHEREAS**, this Council determines that amending Resolution No. 72-2022 of March 28, 2022 to accept a proposal and execute a contract with Arcadis of New York, Inc. to include all funding sources and the total project cost of \$148,000.00 is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute an agreement with Arcadis of New York, Inc. for professional services to complete the West Trunk Sewer Inflow and Infiltration Planning Project, in an amount not to exceed \$128,000.00 at a total project cost of \$148,000.00.

OF

MARCH 28, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER ACCEPT A PROPOSAL AND  
ENTER INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
WITH ARCADIS OF NEW YORK INC. FOR THE WEST TRUNK SEWER  
INFLOW AND INFILTRATION ENGINEERING PLANNING GRANT PROJECT  
AT A COST NOT TO EXCEED \$128,000.00**

WHEREAS, by Resolution No. 163-2021 of July 12, 2021, the City Council of the City of Newburgh authorized the application for an Environmental Facilities Corporation ("EFC") Engineering Planning Grant ("EPG") through the Consolidated Funding Application ("CFA") in an amount not to exceed \$100,000.00 with a 20% match to fund sewer inspection and inflow and infiltration investigation activities and further authorized the City Manager to accept, if awarded, said planning grant; and

WHEREAS, the City of Newburgh was selected to receive CFA EFC EPG No. 108029 for the West Trunk Sewer Inflow and Infiltration Planning Grant Project in an amount up to \$100,000.00; and

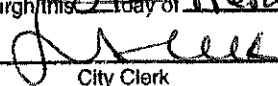
WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for professional engineering services to investigate the condition of the portions of the West Truck Sewer not previously investigated to identify sources of inflow and infiltration that impact CSOs and to document the structural integrity of the sewer to plan for aging infrastructure renewal or replacement and to advance the City's asset management program; and

WHEREAS, the scope of services will include Tasks 1 through 4 of the proposal, including project management, preliminary and detailed field investigations, and an engineering report with rehabilitation recommendations; and

WHEREAS, funding for the contract shall be derived from CFA EFC EPG No. 108029 in the amount of \$100,000.00 with the local match of 20% being derived from both in-kind services performed by the Engineering Department and from the 2022 Sewer Budget Line: G.8130.0448.0006 Other Services-Miscellaneous Contracts; 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 City Manager be and he is hereby authorized to accept the letter proposal and execute an

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 3/28/22  
and that it is a true and correct copy of such original.  
Witness my hand and seal of the City of  
Newburgh this 28 day of March, 2022  
  
City Clerk

Jason Morris, PE  
City Engineer  
City of Newburgh  
83 Broadway  
Newburgh  
New York 12550

Arcadis of New York, Inc.  
855 Route 146  
Suite 210  
Clifton Park  
New York 12065  
Phone: 518 250 7300  
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[www.arcadis.com](http://www.arcadis.com)

Date: March 15, 2022  
Our Ref: 30021574  
Subject: West Trunk Sewer Inflow and Infiltration Study

Dear Mr. Morris,

The City of Newburgh (City) is under an Order on Consent for the implementation of their Long Term Control Plan (LTCP) to reduce Combined Sewage Overflows (CSOs). On behalf of the City Arcadis submitted an application for an Engineering Planning Grant (EPG) as administered by the New York State Environmental Facilities Corporation (NYS EFC) and the City was awarded \$100,000 to investigate the condition of the portions of the West Trunk Sewer not previously investigated to identify sources of inflow and infiltration (I/I) that impact CSOs and to document the structural integrity of the sewer to plan for aging infrastructure renewal or replacement and to advance the City's asset management program.

### **Project Understanding**

A portion of the West Trunk Sewer was lined approximately two years ago from the intersection of Dickson Street and Walsh Road to CSO Regulator No. 2 after a catastrophic failure occurred due to flooding. Due to the success in lining that portion of the brick sewer and because an inspection has not been completed in the remainder of the West Trunk Sewer, the City would like to complete an inspection including an I/I study for the West Trunk Sewer upgradient of the lined portion prior to the design and construction of the South Interceptor improvements included in the LTCP. The goal of this project is to reduce stormwater flows resulting from I/I to the West Trunk Sewer and to prolong the service life of the West Trunk Sewer.

This project will include an inspection of West Trunk Sewer, which conveys flows from the Town of Newburgh and the western portion of the City of Newburgh to the WPCP through Regulator No. 2 and the South Interceptor. The work will consist of both hands-on inspection with confined space entries at manhole access points and remote inspection utilizing a combination of technologies to be identified following initial confined space entries. The portion of the sewer to be inspected is approximately 7,000 linear feet, ranges from 12- to 54-inch diameter, and is a combination of brick and clay block, and vitrified clay construction. Since the sewer is a combination of materials constructed utilizing grout, the City suspects the grout may be deteriorating, allowing for infiltration to occur and compromising the structural integrity of the sewer. Inspection will include an evaluation of the condition of the grout and documentation of structural defects. Rehabilitation recommendations will serve to reduce wet weather flows in the West Trunk Sewer and extend the service lifetime of the West Trunk Sewer by providing structural support.

## **Scope of Services**

### **Task 1 – Project Management**

This project is being funded by an EPG which was awarded by NYS EFC in December 2021; there are requirements for Minority or Women Owned Businesses (M/WBE) and Service Disabled Veteran Owned Businesses (SDVOB) participation of 30 percent and 6 percent, respectively. This task includes assistance with grant administration, including preparing draft paperwork, and submitting required paperwork after it has been approved by the City. Arcadis intends to utilize M/WBE and/or SDVOB service providers for remote inspection of the West Trunk Sewer including closed-circuit television inspection and/or confined space entry inspection. Arcadis will also assist the City with documentation of in-kind services for the City's required match for the project. The goal for in-kind services is \$20,000, which is 20 percent of the grant amount.

Arcadis will coordinate investigative activities to be performed by subcontractors in addition to City of Newburgh personnel, including sewer cleaning, and inspection performed by confined space entry, and bypass pumping if necessary. Arcadis will prepare figures with the locations for remote inspection and bypass pumping if necessary.

### **Task 2 – Preliminary Field Investigations**

Arcadis has a team of buried infrastructure specialists who routinely perform confined space entries to establish the condition of sewers within 10 to 20 feet of manhole access points. Preliminary field investigations will involve physical inspection of the sewers and manholes at select access points along the West Trunk Sewer. These investigations will serve to evaluate grout condition by probing the grout and sewer inverts and will collect information about extent of debris visible from the manholes that will enable Arcadis to recommend the most appropriate method for inspection of the portions of the trunk sewer not visible from the manholes. This strategy will develop adequate and appropriate data to inform rehabilitation recommendations.

### **Task 3 – Detailed Field Investigations**

Based on the outcome of Task 2, Arcadis will recommend a strategy for completing detailed field investigations between manhole access points in a cost-effective methodology. Options for completed detailed field investigations will vary by sewer diameter, but may include confined space entry to walk the length of the 54-inch sewer, closed-circuit television inspection (CCTV) during overnight low flows to maximize the portion of the sewer visible, or multi-sensor inspection with SONAR and laser scanning to detect structural defects below and above the waterline. Depending on which inspection method(s) are recommended, sewer cleaning may be required. The goal of this task is to complete inspections without the need for costly bypass pumping, however, in some cases it may be deemed necessary. Arcadis will provide coordination and administrative services to facilitate inspection of sewer to be performed by a subcontractor and cleaning or bypass pumping if necessary. The City has an experienced CCTV operator and would like to perform as much of the CCTV as possible such that data collected is consistent with the City's sewer inspection database. This activity that the City performs will be documented and utilized as an in-kind contribution in lieu of a monetary contribution for the EPG match. Inspections performed by a subcontractor will include video footage and Pipeline Assessment Certification Program (PACP) reports of the inspections, compatible with the City's sewer inspection database.

### **Task 4 – Engineering Report**

Inspections will result in collection of information that will be reviewed by Arcadis staff. This review will include a analysis of defects observed and a recommendation for rehabilitation. CCTV inspections completed will be provided to Arcadis using the PACP grading system. Arcadis will provide a final report summarizing the findings of the investigative work performed. Subcontractor prepared reports will be included in the final report as appendices

Mr. Jason Morris, PE  
City of Newburgh  
March 15, 2022

and key findings with associated rehabilitation recommendations and costs will be provided as a table in the report. This report will be presented to the City for review and comment and then submitted to NYS EFC.

### Compensation

Arcadis will complete the scope of services included herein for a total not to exceed fee of \$128,000 to be compensated based on a rates schedule (attached).

Task	Compensation
Task 1 – Project Management	\$12,000
Task 2 – Preliminary Field Investigations	\$20,000
Task 3 – Detailed Field Investigations	\$76,000
Task 4 – Engineering Report	\$20,000
<b>Total Not to Exceed Fee</b>	<b>\$128,000</b>

### Schedule

Arcadis will complete the Engineering Report by November 1, 2022 for submission to the NYS EFC and assist in identifying funding sources.

Arcadis appreciates the opportunity to continue to support the City with the improvement of its critical wastewater infrastructure and the improvement of the water quality of the Hudson River. If you have any questions, please do not hesitate to contact me at 518-250-7305 so that I may be of further assistance.

Sincerely,  
Arcadis of New York, Inc.



Robert Ostapczuk, P.E.  
Vice President

Email: Robert.Ostapczuk@arcadis.com  
Direct Line: 518-250-7300

Enclosures:

Standard Hourly Rates

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



## Rate Sheet

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

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

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

In-house services not subject to handling costs are:

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

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

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A RESOLUTION SCHEDULING A PUBLIC HEARING FOR NOVEMBER 14, 2022  
TO RECEIVE COMMENTS CONCERNING THE ADOPTION OF THE  
2023 BUDGET FOR THE CITY OF NEWBURGH**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that pursuant to Charter Section C8.15 a public hearing will be held to receive comments concerning the adoption of the 2023 Budget for the City of Newburgh; and that such public hearing be and hereby is duly set for a City Council meeting of the Council to be held at 7:00 p.m. on the 14th day of November, 2022, in the Third Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

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

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

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

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

**WHEREAS**, the City Council caused a public hearing to be duly noticed and convened and completed a public hearing on September 12, 2022; and

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

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh that the City Manager be and he is hereby authorized to execute on behalf of the City of Newburgh the site development agreement with The Kearney Realty & Development Group Inc. (by Kenneth Kearney, as president), in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the transfer and redevelopment of the properties located at 137 Smith Street, 140 Montgomery Street, and 146 Montgomery Street.

SITE DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWBURGH

AND

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

DATED AS OF \_\_\_\_\_, 2022

Regarding:

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

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## SITE DEVELOPMENT AGREEMENT

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

### WITNESSETH:

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

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

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

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

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

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

### ARTICLE 1 DEFINITIONS

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

"Approvals and Permits" shall mean, collectively, all approvals and permits actually issued from all governmental or administrative agencies or regulatory bodies having jurisdiction for the construction and operation of the redevelopment of the Property, including, without limitation, all site plan approvals, zoning variances, easement and franchise agreements. "Approvals and Permits"

shall also mean all applications for building permits, licenses, permits and permissions to construct and maintain all on-site and off-site improvements, curbcuts, roadway, mediate cuts and utility lines and services.

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

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

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

“Certificate of Occupancy” shall mean a permanent certificate of occupancy issued by the City of Newburgh Code Compliance Bureau.

“City” shall mean the City of Newburgh, a municipal corporation of the State of New York having a place of business at 83 Broadway, Newburgh, New York 12550, its successors and/or assigns.

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

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

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

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

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

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

“Governmental Authority” shall mean the United States, State of New York, and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of

any of them having jurisdiction over the Property including, but not limited to the United States, the U.S. Environmental Protection Agency, or any state or local environmental protection agency.

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

“Improvements” shall mean any buildings, structures, or other improvements, now or hereafter constructed or place upon, under or affixed to the Property, including without limitation any fixtures.

“Lending Institution” shall mean any insurance company, bank or trust company, college, university charitable institution or union, pension, profit or retirement fund or trust, governmental agency or fund, real estate investment trust, or other financial or lending institution whose loans on real estate or respect thereto are regulated by state or federal law, and which is not a Related Party to the Developer.

“Liens” shall mean any interest in real or personal property securing an obligation owed to a person, whether such interest is based on the common law, statute or agreement, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projection, easements, right of way, including but not limited to, mechanics’, materialman’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a “person” shall be deemed to be the owner of real or personal property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

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

“Person” shall mean an individual, partnership, corporation, trust, unincorporated organization or Government Authority.

“Plans and Specifications” shall mean the plans, specifications, drawings and related documents for the Improvements which shall be prepared by a New York Stated Licensed Architect or Professional Engineer, and shall be as detailed as the plans required to be submitted to the building inspector of the City for purposes of obtaining a building permit, including but not limited to a site plan that includes a landscaping plan, a drainage plan, pedestrian and vehicle ingress and egress, a floor plan, mark-outs for water, sewer and utilities, exterior materials, colors and elevations, parking, and signage, including all amendments and modifications thereof made in accordance with the terms hereof.



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

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

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

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

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

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

“Taxes” shall mean all taxes, assessments, water and sewer rents, rates and charges, vault license fees or rentals, levies license and permit fees and all other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, which shall be charged, levied, laid, assessed, imposed upon, become due and payable out of or in respect of, or become liens upon the whole or any part of the Property or Improvements, together with all interest and penalties, under all present or future laws, ordinances, requirements, orders, directives, rules or regulations or the federal, state, county, school and city governments and of all other Governmental Authorities whatsoever.

“Title Insurer” shall mean such title insurance company as shall be mutually acceptable to the City and the Developer for the issuance of the policies of title insurance referred to in Section 3.02.

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

## ARTICLE 2 DEVELOPER’S REPRESENTATIONS

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

- (a) Developer is a domestic business corporation duly formed and in good standing under the laws of the State of New York; is duly qualified to transact business in the State of New York; and has the requisite corporate power and authority to enter into this Agreement and any other documents required by the Parties to effectuate this Agreement including. The execution, delivery and performance by Developer of such documents does not conflict with or result in a violation of Developer's organizing documents or any judgment, order or decree of any court or arbiter to which Developer is a party or by which it is bound. Such documents are valid and binding obligations of Developer, enforceable in accordance with their terms. There is no suit, action, proceeding or litigation pending or, to the best of Developer's knowledge, threatened, against or affecting the Developer by or before any court, arbitrator, administrative agency or other Governmental Authority which might have material effect on the validity of the transaction contemplated hereby or the ability of the Developer to perform its obligations under this Agreement.
- (b) Developer intends to proceed to seek the Approvals and Permits for the construction of the Project promptly following the execution of this Agreement.
- (c) Developer has the requisite financial capacity and technical expertise and is in all respects capable of constructing the Project.
- (d) Developer's financial capacity to complete the project relies, in whole or in part, on an Award from a Governmental Authority. As such, Developer shall provide the name of the Award(s) and the Governmental Authority(ies) charged with review and issuance of the Award(s) contemporaneous with the signing of this Agreement. Developer represents to the best of its knowledge that it is qualified to apply for and receive said Award(s), and the Award(s) may be used to fund the Project. Unless already awarded or received, Developer shall promptly apply for said Award(s) and provide the City with timely updates on application deadlines, expected Award determination dates, and actual Award funding dates.
- (e) The Project will be constructed to meet all requirements of Permits and Approvals and applicable requirements of any Governmental Authority having jurisdiction over the Developer, the Property, the Improvements or their use or operation.
- (f) All certificates or statements furnished to the City by or on behalf of the Developer in connection with the transaction contemplated hereby are true and complete.
- (g) Additional Developer representations unique to this Project are annexed hereto as "Schedule E," are jointly and severally material to inducing the City into entering into this agreement, are fully incorporated into this Agreement and made part hereof, and shall survive closing of title as contemplated in Section 3.

**ARTICLE 3**  
**CONVEYANCE OF PROPERTY AND ACCEPTABLE TITLE**

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

- (a) the real property located in Orange County and described in Schedule “A” attached hereto and made part hereof (the “Land”);
- (b) all Improvements constructed or situated on the Land as of the date of Closing;
- (c) all right, title and interest currently held by the City, if any, in and to any and all strips and gores of land adjacent to or adjoining the Land, and all of the Land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damages to the Land by reason of a change of grade of any street or highway;
- (d) all appurtenances and all the estate and rights currently held by the City in and to the Land.
- (e) the appurtenances and all the estate and rights currently held by the City in and to the Land and Improvements; and
- (f) all right, title and interest currently held by the City, if any, in and to the furniture, machinery, fixtures, equipment attached to or located on the Land or the Improvements (collectively referred to in the Agreement as the “Equipment”)

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

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

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

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

**ARTICLE 4**  
**PURCHASE PRICE; ACCEPTABLE FUNDS**

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

- (a) The Developer shall pay to the City a down payment of \$20,000.00 (the "Earnest Money") upon the execution of this Agreement, which Earnest Money shall be non-refundable, except to the extent provided in Section 7.02.
- (b) The Earnest Money shall be applied as a credit toward the Purchase Price at Closing.
- (c) The balance of the Purchase Price shall be paid to the City at Closing.

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

- (a) Certified checks of the Developer on behalf of the Developer or any person making a purchase money loan to the Developer drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, payable to the order of the City;
- (b) Official bank checks drawn by any such banking institution, payable to the order of the City; or
- (c) Wire transfer to an account specified by Seller.

**ARTICLE 5**  
**CONDITIONS PRECEDENT**

SECTION 5.01 Conditions to Developer's Obligation; Right to Terminate. In addition to the conditions otherwise set forth herein, the Developer's obligations to purchase shall be contingent upon the following conditions:

- (a) Prior to conveyance of the Property, the Developer shall have the option to terminate this Agreement, but without the right to receive a refund of the Earnest Money and any costs incurred by Developer in connection with the Project.
- (b) Developer shall be deemed to have waived all contingencies if written notice is not given to City on or prior to the Closing Date.

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

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

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

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

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

## ARTICLE 6 COVENANTS

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

(a) Design and Approvals:

- i. Developer will cause to be prepared by an Architect a project design for the Project and submit Plans and Specifications to the City's land use boards in what Developer's Architect reasonably believes is sufficient time for review and approval prior to the Closing Deadline, provided the same does not conflict with or surpass the Closing Deadline.
- ii. Developer shall use commercially reasonable efforts to obtain all necessary Approvals and Permits at least 30 days prior to the Closing Deadline.
- iii. Developer shall receive City's prior written approval, not to be unreasonably withheld or delayed, of all architects, engineers and general contractors to be engaged in the planning, design, and construction of any Public Improvements. The City may reasonably withhold prior written approval, apart from any other considerations, unless and until (1) Developer provides an insurance company bond to the City for the City's estimated value of any public improvements, plus 20 percent; and (2) any of Developer's architects, engineers, and contractors specifically agree to complete work for City, at City's request, in the event of Developer's default. City hereby approves the following, should Developer desire to engage any or all of them for the Project: Coppola Architectural, P.C. (for architectural services), Insite Engineering, Surveying & Landscape Architecture, P.C. (for civil engineering and related services), and Tern Construction & Development, LLC (as general contractor).
- iv. If any lien is filed or asserted, including, without limitation, any lien for the performance of any labor or services or the furnishing of materials, whether or not valid, as a result of any act or omission of Developer, or any person or entity claiming by, through or under Developer, and made against the Property or any part thereof in the interest therein of the City, or the interest

therein of a Party under this Agreement, other than Liens for Taxes not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or liens being contested as permitted by this Section, then Developer, upon receipt of notice of the filing, assertion, entry or issuance of such lien (regardless of the source of such notice) shall give written notice thereof to City within 5 business days and, except where the validity of such Lien is being contested in accordance with the provisions of this Section, take all action (including the payment of money and/or the securing of a bond) at its own expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the City for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against City's interest in the Property. The Developer may, at its sole expense contest, after prior written notice to the City, by appropriate action conducted in good faith and with due diligence in the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Property or Improvements or any part thereof or any interest therein, or in this Agreement, of the Sell or Developer or against any of the rentals or other amounts payable under this Agreement, (2) neither the Property or Improvements nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) City would not be in any reasonable danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Developer shall have furnished such security, if any, as may be required in such proceedings; if such proceeding could result in the City being in any reasonable danger of civil liability, including accrual of interest, fines and/or penalties, the Developer shall deliver a written confirmation to the City that the Developer shall indemnify and hold the City harmless from any claims, liabilities, costs or expenses as may derive with respect thereto, and the Developer shall provide to the City such security as the City may reasonably require.

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

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

- i. Shall at its own cost and expense use commercially reasonable efforts to obtain all Approvals and Permits;
- ii. Shall comply with all requirements of Governmental Authorities applicable to the construction and installation of the Improvements;

- iii. Shall perform the construction and installation of the Project expeditiously, in compliance with the Plans and Specifications, in a good and workmanlike manner and in accordance with the provisions of this Agreement.
- iv. Shall pay all proper accounts for work done or materials furnished under all Agreement which it has entered into relating to the construction of the Project.

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

- (a) The City shall not encumber the Property or enter into any lease or other occupancy agreement therefor, without the prior written consent of the Developer. The City shall deliver the Property to Developer at Closing free of leases, occupants and tenancies.
- (b) The City shall allow for Developer or Developer's representatives access to the Property upon reasonable prior notice pursuant to Section 9.05 of this Agreement.
- (c) City hereby agrees that it will issue consents in its capacity as owner when reasonably requested by Developer, at Developer's expense, to any application for planning or other regulatory approvals necessary in connection with the contemplated use of the Property for the Project consistent with this Agreement (including but not limited to the Approvals and Permits), subject to Section 9.04.

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

notice from Seller, shall defend that action or proceeding by competent counsel reasonably acceptable to Seller.

## ARTICLE 7 OBJECTION TO TITLE, FAILURE TO PERFORM

SECTION 7.01      Developer to Deliver Title Report.      Developer shall cause a copy of an updated title report from the Title Insurer to be forwarded to City within sixty (60) days of the date of this Agreement. Service of the updated title report shall constitute notice of the Developer's objections to title, as said objections might be outlined in a Schedule B or Schedule B-1. City shall be entitled to a reasonable period of time of not less than one hundred eighty (180) days to remove any defects in or objections to title noted in such title report. Developer shall be deemed to have waived any objections to title if not made within (10) days after furnishing the title report to the City, or within ten (10) days after receiving an update to the title report with respect to exceptions contained in such update which were not raised in any prior report.

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

## ARTICLE 8 DESTRUCTION, DAMAGE OR CONDEMNATION

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

## ARTICLE 9 SITE CONDITIONS; INVESTIGATIONS; APPROVALS

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

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



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

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

SECTION 9.05      Environmental and Soil Investigation and Testing.

- (a) City grants to Developer the right to conduct an examination to obtain a report or reports by a qualified consultant or consultants (the "Consultants") concerning the presence of any (i) contamination of the Property by hazardous materials; (ii) apparent violation of environmental requirements upon or associated with activities upon the Property; (iii) potential incurrence of environmental damages by the prior or current owner(s) or operator(s) of the Property; or (iv) such other survey, soil, subsoil, geological and engineering investigations as Developer may desire or as may be required by an Governmental Authority which must approve any aspect of the development of the Project. Developer shall provide a copy of any such report(s) to City\_(which obligation shall not extend to attorney-client privileged materials or other confidential materials).
- (b) Developer may terminate this Agreement on or before 180 days after the date of this Agreement, but without the right to receive a refund of the Earnest Money, in the event such report indicates the presence of any objectionable material as contemplated in paragraph (a).
- (c) Such investigation and testing may include, without limitation, (i) site inspection; (ii) drilling, core sampling, taking of samples for analysis, installing, monitoring and testing devices; (iii) interviews of present occupants of the Property; (iv) a review of public records concerning the Property and other properties in the vicinity of the Property; and (v) a review of aerial photographs of the Property and other evidence of historic land uses.
- (d) The investigation and testing any be performed at any time or times, except that entry upon the Property shall be on reasonable notice, and under reasonable conditions. The Consultants are hereby authorized to enter upon the Property for such purposes and to perform such testing, including drilling, core sampling, and the taking of such other samples as may be necessary to conduct the investigation and testing as required in the opinion of the Consultants. The Consultants may install, and monitor such testing and sampling

devices as in their opinion are reasonable and necessary. City shall have the right to be present during all testing and sampling and survey work.

- (e) Developer shall pay all costs and expenses of such investigation and testing. Developer shall indemnify and hold City harmless from and against all costs and liabilities relating to Developer's activities, but expressly excluding losses, costs and expenses arising out of latent defects, the displacement or disturbance of unknown pre-existing conditions, the negligence or misconduct of City, or any diminution in value in the Property arising from, or related to, matters discovered by Developer during its investigation of the Property. Developer shall further repair and restore any damage to the Property caused by or occurring during Developer's investigation and testing and return the Property to substantially the same condition as existed prior to such entry. Developer and Consultants shall provide evidence of insurance satisfactory to City prior to having access to the site.

## ARTICLE 10 CLOSING OBLIGATIONS; APPORTIONMENTS

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

- (a) A quitclaim deed, including the covenant required by Section 13 of the Lien Law, properly executed and in proper form for recording so as to convey the title required by this Agreement.
- (b) A bill of sale conveying, transferring and selling to Developer all right, title and interest of the City in and to any Equipment on the Property, if any.
- (c) A non-foreign affidavit, properly executed and in recordable form, containing such information as shall be required by Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations issued therefor.
- (d) Such affidavits as Developer's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the City's name.
- (e) A designation agreement designating the "reporting person" for purposes of completing IRS Form 1099-S
- (f) Subject to Permitted Exceptions, possession of the property in the condition required by this Agreement.
- (g) Exclusive possession of the Property in the condition required by this Agreement, subject to the Permitted Exceptions.

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

- (a) Developer shall deliver to City the portion of Purchase Price payable at Closing.
- (b) Developer shall cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returned and check in payment of such taxes to be delivered to the appropriate officers promptly after Closing.

- (c) Developer shall deliver a designation agreement designated the “reporting person” for purposes of completing IRS Form 1099-S.

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

## ARTICLE 11 DEFAULTS AND REMEDIES

SECTION 11.01      Remedies on Default.

- (a) Termination of Agreement by Seller. Upon the occurrence of any default under this Agreement by Developer, Seller may, at its option, or any time thereafter, give written notice to Developer specifying the default and stating that this Agreement shall terminate on the date specified in such notice, which shall be not less than fifteen (15) days after the date of such notice. Upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement shall terminate, unless such default is cured prior to the end of such notice period. The termination of this Agreement does not relieve Developer of its liability and obligations under Section 9.05(e) and Section 6.03 of this Agreement, which shall survive. Upon such termination Seller will retain the Earnest Money as liquidated damages. The termination of this Agreement and the retention of the Earnest Money will be the sole remedy available to Seller for such default by Developer will not be liable for additional damages or for specific performance.
- (b) Termination by Developer. Upon the occurrence of any default by Seller, Developer may, at its option, at any time thereafter, give written notice to Seller specifying the default and stating that this Agreement shall terminate on the date specified in such notice, which shall not be less than fifteen (15) days after the date of such notice. Upon the date specified in the notice, this Agreement shall terminate. The termination of this Agreement shall not relieve the Developer of its liability and obligations under Section 9.05(e) and Section 6.03 of this Agreement, which shall survive. If Seller defaults under this Agreement, this provision does not preclude Developer from seeking specific performance of this Agreement but Developer shall have no right to seek monetary damages from Seller for Seller’s defaults hereunder.

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

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

## ARTICLE 12 MISCELLANEOUS PROVISIONS

SECTION 12.01     Assignment and Subletting.     The Developer and Seller agree that the Developer has been selected by the Seller based on unique and specific qualifications relating to the development of the Project. Prior to the Closing Date, the Developer shall not sell, assign, mortgage or transfer any interest in the Property or this Agreement without the prior written consent of the Seller, which shall be at the discretion of the Seller. City hereby consents to the assignment of this Contract to any assignee owned or controlled by Developer, or under common control with Developer. Notwithstanding, any such assignment, Developer shall remain responsible for the covenants set forth in Article 6. Developer shall be the managing partner or controlling shareholder of any transferee. Any transferee shall have the qualifications and financial responsibility necessary in the determination of the Seller to assure compliance with the obligations of the Developer herein. Any transferee, by instrument in writing satisfactory to the Seller and in recordable form, shall, for itself and its successors and assigns, have assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all conditions and restrictions herein.

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

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

SECTION 12.04     Governing Law.     This Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws principles that may apply. The State courts located in New York State, County of Orange, shall have exclusive jurisdiction to adjudicate any disputes arising out of or relating to, this Agreement. Each party hereto consents to the jurisdiction of such court and waives any right it may otherwise have to

challenge the appropriateness of the forum for any reason. Arbitration shall not be used to resolve any claims, controversies, or disputes between the parties.

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

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

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

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

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

Developer as follows:

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

with a copy to:

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

Seller as follows:

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

With a copy to

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

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

SECTION 12.11 Project Mortgage. Not applicable.

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

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

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

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

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

DRAFT

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

Seller: City of Newburgh

Developer: The Kearney Realty &  
Development Group Inc.

By: \_\_\_\_\_  
Todd Venning, City Manager  
Per Resolution No.: \_\_\_\_\_-2022

By: \_\_\_\_\_  
Kenneth Kearney, President

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

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

\_\_\_\_\_  
Notary Public

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

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

\_\_\_\_\_  
Notary Public



SCHEDULE A  
DESCRIPTION OF THE PROPERTY

ALL THOSE TRACTS OR PARCELS OF LAND, with buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County of Orange and State of New York, known as:

1. 137 Smith Street, being more accurately described as Section 12, Block 4, Lot 4.1 on the Official Tax Map of the City of Newburgh.
2. 140 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 10 on the Official Tax Map of the City of Newburgh.
3. 146 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 2.1 on the Official Tax Map of the City of Newburgh.

SCHEDULE B  
PERMITTED ENCUMBRANCES

1. Any and all easements for utilities, both public and private, sewers, water lines, streets, and rights-of-way of record as of the date of this Agreement;
2. Such easements, covenants, reservations, encumbrances or restrictions as are of record as of the date of this Agreement;
3. All provisions of any zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, and any and all other provisions of municipal ordinances, regulations or public laws;
4. Real estate taxes and assessments that are a lien but not yet due and payable;
5. Any state of facts a survey or personal inspection of the premises would disclose as of the date of this Agreement.

SCHEDULE C  
PROJECT AND DEVELOPMENT DEADLINES

1. Within ninety (90) days of the execution of this Agreement, the Developer shall submit a Request for Informational application to the City of Newburgh for the Project that described the development proposal in accordance with this Agreement.
2. Closing Deadline: Twenty-four (24) months from the date of this Agreement. By the Closing Deadline, Developer shall have applied for and received from the City of Newburgh all Approvals and Permits from the all Government Authorities with jurisdiction and power of approval over the Property required to construct the Project.
  - a. Developer may make a written request to the City Manager for an extension of the twenty-four (24) month Closing Deadline period. Such request shall be accompanied by a non-refundable fee of \$750.00 (\$250.00 per parcel), payable to the "City of Newburgh." The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close up to, but not to exceed, six (6) months, as measured from the end of the original Closing Deadline. Developer's diligent pursuit of Approvals and Permits, Awards and a Project Mortgage shall constitute good cause for the City Manager to grant such extension.

SCHEDULE D  
SAMPLE DEED

THIS INDENTURE, made the \_\_\_\_\_ day of \_\_\_\_\_, in the year two thousand nineteen

BETWEEN:

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

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

WITNESSETH, that the party of the first part, in consideration of two hundred thousand and 00/100 dollars (\$200,000.00) paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the State of New York, County of Orange and City of Newburgh, known as:

1. 137 Smith Street, being more accurately described as Section 12, Block 4, Lot 4.1 on the Official Tax Map of the City of Newburgh.
2. 140 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 10 on the Official Tax Map of the City of Newburgh.
3. 146 Montgomery Street, being more accurately described as Section 12, Block 4, Lot 2.1 on the Official Tax Map of the City of Newburgh.

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

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

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

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

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

IN PRESENCE OF:                    THE CITY OF NEWBURGH

BY: \_\_\_\_\_  
Todd Venning, City Manager  
Pursuant to Resolution No.: \_\_\_\_\_-2022

**RECORD & RETURN TO:**

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

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

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

SCHEDULE E  
ADDITIONAL DEVELOPER REPRESENTATIONS

1. Developer's is fully familiar with the City's zoning laws and requirements. Developer's plan does not contemplate requests for use variances or area variances, with the exception of an area variance for off-street parking.
2. Developer's plan shall include a central greenway and courtyard, community garden, rain garden, and community garden which comprise a minimum of approximately 2,000 square feet of space on the Premises.
3. Developer's plan shall include a permanent, on-site property manager to address residential and commercial tenant concerns.
4. Developer's plan shall include free wi-fi access for residential tenants.
5. Developer's plan shall include two (2) retail spaces comprising approximately 2,488 square feet and 2,829 square feet, respectively, subject to changes requested or required by City land use boards in connection with Developer's pursuit of the Approvals and Permits.
6. Developer's plan shall include a third retail space comprising approximately 1,580 square feet. Developer shall be responsible for obtaining a Certificate of Occupancy for a proposed retail use and renting said retail space to a minority or woman-owned business, where the principal operator of said business is a resident of the City of Newburgh, and rent is fixed at no greater than \$10,400.00 annually (\$866.67 monthly) for a period of 3 years. Thereafter, provided that said retail tenant is otherwise compliant in all respects with the lease in effect at the end of the third year, Developer shall offer subsequent renewal leases term(s) no less than one (1) year in length and rent increases (for the fourth and fifth years only) of no greater than four percent (4%) of the prior year's annual lease amount.
7. Developer's plan shall include approximately 101 residential units, serving households earning 40%, 60%, 80%, and approximately 110% of the then current Average Median Income for Orange County. Developer shall, subject to the review and approval by New York State Homes and Community Renewal's Fair and Equitable Housing Office, develop and administer an application process that gives primary priority rental preference to prospective tenants who:
  - a) Currently reside within three (3) square miles of the project area; and
  - b) Can demonstrate that he/she/they had one or more ancestor(s) in a direct line of descendancy (i.e. parent, grandparent, great grandparent, etc.) who owned property that was later acquired by the Newburgh Urban Renewal Agency or was the subject of an "Urban Renewal Land Disposition Agreement."and gives secondary priority rental preference to prospective tenants who meet either of the above criteria.
8. Developer's final plan shall include a certification from Developer and Developer's Architect that its plan complies with both the New York State Energy Code and Leadership in Energy and Environmental Design ("LEED") minimum requirements.

9. Supplementing Section 2.01(d), should Developer fail to receive a Governmental Award, Developer shall have one additional opportunity to apply for such Governmental Award at the next available award cycle. Should said Governmental Award no longer be available, Developer fail to timely apply, or Developer not receive said Governmental award at the next available award cycle, the City may cancel this Agreement its sole discretion, and the Parties shall owe no further obligations to each other.
10. Developer shall comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), as follows:
  - a) Developer agrees to comply with federal regulations in 24 CFR part 75, which implements Section 3. Developer certifies that it is under no contractual or other impediment that would prevent it from complying with the Part 75 regulations.
  - b) Developer agrees to notify potential contractors and subcontractors that are associated with Section 3 covered projects and activities about the requirements of Section 3, to include this Section 3 clause in every contract and subcontract subject to compliance with regulations in 24 CFR Part 75, and to ensure that any subcontractors also include this Section 3 clause in their subcontracts for work performed on the project.
  - c) Developer will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
  - d) Developer agrees to maintain hiring and contracting practices to the greatest extent feasible so that 25 percent of the total labor hours expended on the project are by Section 3 Workers, of which 5 percent are by Targeted Section 3 Workers as defined in 24 CFR part 75. As part of these practices, Developer agrees to provide priority consideration to eligible residents and businesses in accordance with 24 CFR Part 75, and eligible residents who reside within one (1) square mile of the Project Premises. If Developer is not able to meet this benchmark goal, it must provide a narrative of efforts taken and supporting documentation explaining why it was unable to meet that goal, despite greatest extent feasible efforts taken.
  - e) Developer shall offer opportunities to Section 3 Workers to attend social and networking events related to the Project, opportunities to attend project management meetings, and opportunities to meet and interact with Developer's senior management team throughout the course of the Project. Said efforts shall be documented in accordance with this paragraph (9).
  - f) Developer agrees to comply with all monitoring, reporting, recordkeeping, and other procedures specified by the City. Developer is responsible for providing Section 3 performance metrics and supporting documentation for all its subrecipients, contractors, and subcontractors, as applicable. At a minimum, Developer shall complete and submit to City a "New York State Homes and Community Renewal Section 3 Sub Reporting Form & Greatest Extent Feasible Efforts Checklist" within the first six (6) months of the Project start and every six (6) months thereafter until Project completion. Developer shall also submit a final report at the completion of the Project.

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

DRAFT



RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL  
AND EXECUTE A CONTRACT WITH CLARK PATTERSON LEE  
FOR PROFESSIONAL ENGINEERING SERVICES FOR  
THE DELANO-HITCH RECREATION PARK  
AQUATIC CENTER IMPROVEMENTS PROJECT IN THE AMOUNT OF \$804,00.00**

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

**WHEREAS**, such engineering services shall include preparation of plans for a new community size pool, new oval splash pad, and a new pool house with toilets, showers, locker area, equipment room, concessions and staff areas, and bid preparation and management services; and

**WHEREAS**, funding for the design and bid services of the Project in the amount of \$804,000.00 will be derived from American Rescue Plan Act funding; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and to execute a contract with Clark Patterson Lee, in the amount of \$804,000.00 for professional design and bid preparation and management services in the Delano-Hitch Recreation Park Aquatic Center Improvements Project.

August 30, 2022

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

**RE: Delano Hitch Pool and Splash Pad Design, Bid and CA services**

Dear Ms. Church:

CPL has been working with the City on the Delano Hitch Park Building Condition Survey and Master Planning Study. We have presented concept plans to your department and to the City Council. This proposal is to take the approved concept plans for the Pool area and move forward with Design through Bid Services.

- Investigation and Field work:
  - CPL will provide a multi-discipline team to perform detail documentation of structures that will be renovated or demolished. CPL staff will include architectural, site/survey/SEQR, structural, mechanical/HVAC, electrical and plumbing.
- Design:
  - Based on collected information from the field visits, along with programming conversation with City staff, CPL will prepare draft proposed building and site plans for discussion and approval by the City. It is assumed the scope will include the following, with ROM budget up to \$12,000,000 construction cost:
    - Complete Demolition of the existing pool, deck and pool locker/toilet building.
    - New Community size pool (similar to NFA High School) ~3500ft<sup>2</sup> with zero entry ADA ramp, maximum 6' deep and no diving. Starting blocks for swim classes can be provided. No in pool lights or night swimming. Includes all Health Department required filtration equipment, disinfection system, as associated pumps and controls.
    - New 7000 ft<sup>2</sup> oval splash pad with multiple spray features and treated circulating water system with filtration equipment, UV/disinfection system and associated pumps and controls.
    - A secondary design option for the splash pad is to provide a "once through" system using municipal City water supply through spray features, discharged directly to the municipal sewer system.
    - New pool house and toilet building including toilet rooms, showers, locker area, pool/splash pad equipment room, concessions and related staff areas.



- Landscaping, deck area, shade structures, Accessibility, fencing, site lighting, security cameras, etc. similar to City Council approved concept plan and scope.
- Design drainage improvements, paving, patron drop off and ADA accessibility for parking lot located west of the splash pad (~24,000 ft<sup>2</sup>)
- CPL will develop SWPPP/Erosion & Sediment Control Plans and documents.
- CPL will provide plans to the City for review/comments at 30%, 60% and 90%. CPL to address all comments provided by the City.
- CPL will prepare rough order of magnitude (ROM) opinion of probable cost for proposed work at the preliminary schematic design phase.
- Once scope and schematic level building floor plan and site layout plans are approved by the City, CPL will move forward to prepare full construction documents for public bid, including drawings and specifications with City of Newburgh standard front end.
- CPL will prepare all documentation required for submission to the Health Department and will coordinate the DOH approval process.
- It is assumed this will be a single phase, public bid project and that construction will be complete, and the pool open by Spring 2025.
- Bid:
  - Bidding services shall include:
    - Pre-bid Walk Through
    - Contractor bidding RFI responses and Addendums
    - Bid tabulation
    - Recommendation of Award letters.

Meeting schedule: We anticipate the following on-site visits and meetings:

- Preliminary on-site field work.
- SD level Design review and budget meeting.
- Final Design review meeting prior to Bid.
- Pre-bid walk through.

<b>CPL fee for Design and Bidding Phases .....</b>	<b>\$765,000</b>
<b>SEQR Allowance (up through Negative Declaration) .....</b>	<b>\$5,000</b>
<b>Geotechnical/Soil Boring Survey/Report Allowance .....</b>	<b>\$18,000</b>
<b>Parking Lot Survey Allowance.....</b>	<b>\$8,000</b>
<b>Hazardous Material Survey Allowance .....</b>	<b><u>\$8,000</u></b>
<b>Total – including Allowances .....</b>	<b>\$804,000</b>



Not included in this proposal:

- Hazardous Material Design. This will be an additional service that CPL can coordinate as a reimbursable expense through the Environmental sub-consultant.
- Delano Hitch Park facilities outside of the areas indicated on the approved Pool/Splash Pad Concept plan.
- Construction Administration services including final Engineer's Inspection as required for Department of Health Approval. CPL will provide a separate proposal for this upon request.

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

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

Very truly yours,  
CPL

Timothy J. Moot, PG  
Principle

SIGNATURE:

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City of Newburgh

Date

RESOLUTION NO.: \_\_\_\_\_-2022

OF

OCTOBER 11, 2022

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF  
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED  
ISSUED TO E & M ASSOCIATES TO THE PREMISES KNOWN AS  
121 WILLIAM STREET (F/K/A 119-121 WILLIAM STREET)  
(SECTION 45, BLOCK 15, LOT 16)**

**WHEREAS**, on February 23, 1982, the City of Newburgh conveyed property located at 121 William Street (f/k/a 119-121 William Street), being more accurately described on the official Tax Map of the City of Newburgh as Section 45, Block 15, Lot 16, to E & M Associates; and

**WHEREAS**, the current owner of the premises, CKDF Holding LLC (Charles DeVito, Member), by its attorney, has requested a release of the restrictive covenants contained in the deed from the City of Newburgh in order to facilitate a sale; 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, and 5 of the aforementioned deed.

**RELEASE OF COVENANTS AND  
RIGHT OF RE-ENTRY**

**KNOWN ALL PERSONS BY THESE PRESENTS**, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 121 William Street (f/k/a 119-121 William Street), Section 45, Block 15, Lot 16 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 February 23, 1982, from THE CITY OF NEWBURGH to E & M ASSOCIATES, recorded in the Orange County Clerk's Office on March 9, 1982, in Liber 2217 of Deeds at Page 879 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: \_\_\_\_\_, 2022

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
Todd Venning, City Manager  
Pursuant to Res. No.: \_\_\_\_\_-2022

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

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

\_\_\_\_\_

RESOLUTION NO.: \_\_\_\_\_-2022

OF

OCTOBER 11, 2022

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF  
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED  
ISSUED TO RICHARD CARSTENS TO THE PREMISES KNOWN AS  
34 LANDER STREET (SECTION 30, BLOCK 3, LOT 14)**

**WHEREAS**, on October 12, 1983, the City of Newburgh conveyed property located at 34 Lander Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 30, Block 3, Lot 14, to Richard Carstens; and

**WHEREAS**, the current owner of the property, the Newburgh Community Land Bank, by its attorney, has requested a release of the restrictive covenants contained in said deed; and

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

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

**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 34 Lander Street, Section 30, Block 3, Lot 14 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 October 12, 1983, from THE CITY OF NEWBURGH to RICHARD CARSTENS, recorded in the Orange County Clerk's Office on October 14, 1983, in Liber 2265, Page 775 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: \_\_\_\_\_, 2022

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
Todd Venning, City Manager  
Pursuant to Res. No.: \_\_\_\_\_-2022

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

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

\_\_\_\_\_



## ADDENDUM TO AGREEMENT OF LEASE

THIS ADDENDUM TO AGREEMENT OF LEASE ("Addendum"), made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Riverside Newburgh Realty, LLC., a New York limited liability corporation, having an address of P.O. Box 8, Newburgh, New York 12551, ("Riverside"), and the City of Newburgh, a New York municipal corporation with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("City").

### WITNESSETH:

WHEREAS, Riverside and the City executed an Agreement of Lease dated June 21, 2019 for a term commencing on July 1, 2019 and terminating on December 31, 2020 (the "Lease Agreement"), covering certain vacant real property situated along the west bank of the Hudson River and comprised of portions of two contiguous parcels of land (commonly known, respectively, Tax Map Nos.: Section 31, Block 5, Lot 13.2 and; Section 31, Block 5, Lot 14) with an aggregate of approximately 3.65 acres, in the City of Newburgh, in the County of Orange and State of New York (the "Property"); and

WHEREAS, the Lease Agreement was to expire on December 31, 2020 and the parties agreed to extend the term of the Lease Agreement for the period January 1, 2021 through June 30, 2021 ("Addendum to Lease Agreement"); and

WHEREAS, the Addendum to Lease Agreement was set to expire on June 30, 2021 and the parties agreed to extend the term of the Lease Agreement for the period July 1, 2021 through December 31, 2021 ("Second Addendum to Lease Agreement"); and

WHEREAS, the Second Addendum to Lease Agreement was set to expire on December 31, 2021 and the parties agreed to extend the term of the Lease Agreement for the period January 1, 2022 through December 31, 2022 ("Third Addendum to Lease Agreement"); and

WHEREAS, the City desires to continue to lease from Riverside the Property for use in connection with parking to be used for ferry service between the Cities of Newburgh and Beacon and uses associated therewith (the "Project") and Riverside desires to lease to City the Property therefor and the parties agree that it is necessary to extend the term of the Lease Agreement for the period January 1, 2023 through December 31, 2023:

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. The term set forth in Paragraph 1.3 of the Lease Agreement, as amended by paragraph 1 of the Addendum to Lease Agreement, the Second Addendum to Lease Agreement and Third Addendum to Lease Agreement, shall be extended for an additional extension term commencing on January 1, 2023 and terminating on December 31, 2023 ("Fourth Extension Term").
2. The Renewal Options set forth in Paragraphs 5.1 and 5.2 of the Lease Agreement as amended by paragraph 2 of the Addendum to Lease Agreement, Second Addendum to Lease Agreement and Third Addendum to Lease Agreement, are amended as follows:

- a. No later than three (3) months prior to the expiration of the Fourth Extension Term, unless the Lease is sooner terminated, each party shall have the right to notify the other of its intention to terminate the Lease Agreement, or to seek a renewal thereof.
  - b. Upon the mutual agreement of the parties, the Lease may be renewed for one (1) additional term January 1, 2024 and expiring on December 31, 2024.
3. For the Fourth Extension Term, rent shall be payable monthly in advance in equal monthly installments of Twenty-One Thousand Nine Hundred Sixteen (\$21,916) Dollars, provided however that City shall have the right to terminate this lease if the City has not received reimbursement from state sources, including but not limited to the Metropolitan Transportation Authority, Metro-North Railroad and/or The New York State Department of Transportation, of the full amount of the rent under the Lease Agreement, and in no event shall City's obligation to pay rent to Riverside exceed City's reimbursement from other sources.
4. All other terms and conditions set forth in the Lease Agreement shall remain in full force and effect during the Fourth Extension Term and Renewal Term.

IN WITNESS WHEREOF, Riverside, as Landlord, and the City, as Tenant, have duly executed this Lease Addendum in duplicate as of the day and year first above written.

RIVERSIDE NEWBURGH REALTY, LLC Landlord

CITY OF NEWBURGH, Tenant

By: \_\_\_\_\_  
William Kaplan, Manager

By: \_\_\_\_\_  
Todd Venning  
City Manager  
Per Res. No.

By: \_\_\_\_\_  
Joseph A. Bonura, Sr., Manager

*Remainder of this page intentionally left blank*

COUNTY OF ORANGE)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM KAPLAN, 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.

COUNTY OF ORANGE)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH A. BONURA, SR., 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.

COUNTY OF ORANGE)

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

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A FOURTH EXTENSION UNTIL DECEMBER 31, 2023 TO THE AGREEMENT OF  
LEASE WITH RIVERSIDE NEWBURGH REALTY, LLC  
FOR THE CONTINUED LEASE OF VACANT REAL PROPERTY KNOWN AS  
SECTION 31, BLOCK 5, LOTS 13.2 AND 14 FOR THE PURPOSE OF PROVIDING  
PARKING FOR THE NEWBURGH-BEACON FERRY COMMUTERS**

**WHEREAS**, the City of Newburgh ("City") and Memorare Realty Holding Corp. ("Memorare") executed a Lease on July 30, 2004 for the lease and use of approximately 3.65 acres of vacant real property situated on the Hudson River known as Section 31, Block 5, Lots 13.2 and 14, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours, with the City being reimbursed by New York State for the rental payments and improvements provided under such Lease; and

**WHEREAS**, by Resolution No. 142-2010 of June 14, 2010, the City Council authorized the City Manager to execute a First Amended Agreement of Lease with Memorare to accord with the amended reimbursement agreement with New York State that was effective April 21, 2010; and

**WHEREAS**, by Resolution No. 169-2014 of July 14, 2014, Resolution No. 308-2014 of December 15, 2014, Resolution No. 75-2015 of April 13, 2015 and Resolution No. 318-2015 of December 15, 2015, the City Council authorized extensions of the renewal term of the First Amended Lease through January 31, 2017; and

**WHEREAS**, the First Amended Lease was assigned to RBG of Newburgh, LLC ("RBG"), and by Resolution No. 10-2017 of January 10, 2017, the City Council authorized a New Agreement of Lease ("New Lease") with RBG for the period February 1, 2017 through December 31, 2018; and

**WHEREAS**, the New Lease was assigned to Riverside Newburgh Realty, LLC ("Riverside"), and by Resolution No. 372-2018 of December 10, 2018, the City council authorized an extension of the New Lease through June 30, 2019; and

**WHEREAS**, by Resolution No. 145-2019 of June 10, 2019, the City Council authorized a Second New Lease between the City and Riverside for the period July 1, 2019 through December 31, 2020; and

**WHEREAS**, due to the Coronavirus pandemic, by Resolution No. 307-2020 of December 14, 2020 and Resolution No. 117-2021 of May 10, 2021, the City Council authorized six (6) month extensions of the Second New Lease for the period January 1, 2021 through June 30, 2021 and July 1, 2021 through December 31, 2021, and by Resolution No. 248-2021 of October 25, 2021, the City Council authorized a 1-year extension of the Second New Lease for the period January 1, 2022 through December 31, 2022; and

**WHEREAS**, the City and Riverside agree that current conditions warrant further extension of the Second New Lease for a one year covering the period January 1, 2023 through December 31, 2023 to provide additional time to adequately evaluate renewal options; 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 on behalf of the City of Newburgh, be and he is hereby authorized to execute a Fourth Addendum to the Second New Agreement of Lease providing for a one (1) year extension for a term beginning on January 1, 2023 through December 31, 2023 with Riverside Newburgh Realty, LLC, in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and uses associated therewith.

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A NINTH MEMORANDUM OF UNDERSTANDING WITH  
METRO-NORTH COMMUTER RAILROAD COMPANY TO PROVIDE  
REIMBURSEMENT OF PARKING LOT LEASE PAYMENTS RELATED TO  
THE NEWBURGH-BEACON FERRY SERVICE**

**WHEREAS**, the City of Newburgh and Metro-North Commuter Railroad (“MNR”) entered into an Agreement, dated August 16, 2004 (the “Agreement”), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by MNR or its contractor between the City of Beacon and the City of Newburgh; and

**WHEREAS**, in compliance with the terms of the Agreement, the City entered into a lease with the owner of certain premises to provide a docking facility and 250 space parking lot for the ferry service, beginning July 30, 2014, and superseded by a First Amended Lease, effective April 21, 2010 and extended through December 31, 2015, (the “Amended Lease”); and

**WHEREAS**, by Resolution No. 169 - 2014 of July 14, 2014, Resolution No. 308-2014 of December 15, 2014, Resolution No. 75 -2015 of April 13, 2015, and Resolution No. 318-2015 of December 15, 2015, the City Council authorized extensions of the renewal term of the First Amended Lease through January 31, 2017; and

**WHEREAS**, the First Amended Lease was assigned to new owner, RBG of Newburgh, LLC (“RBG”), and by Resolution No. 10-2017 of January 10, 2017, the City authorized a New Agreement of Lease with RBG for the period February 1, 2017 through December 31, 2018 (the “New Lease”); and

**WHEREAS**, the New Lease was assigned to Riverside Newburgh Realty, LLC (“Riverside”), and by Resolution No. 372-2018 of December 10, 2018, the City authorized an extension of the New Lease for the period January 1, 2019 through June 30, 2019; and

**WHEREAS**, by Resolution No. 145-2019 of June 10, 2019, the City Council authorized a Second New Lease between the City and Riverside for the period July 1, 2019 through December 31, 2020 (the “Second New Lease”); and

**WHEREAS**, by Resolution No. 111-2015 of May 11, 2015, Resolution No. 11-2017 of January 9, 2017, Resolution No. 373-2018 of December 10, 2018, and Resolution No. 146-2019 of June 10, 2019, the City Council authorized a Second, Third, Fourth, and Fifth Memorandum of Understanding with MNR to provide reimbursement to the City of Newburgh for payments

made under the First Amended Lease, New Lease, and Second New Lease for the purpose of providing parking for users of the Newburgh-Beacon Ferry; and

**WHEREAS**, due to the Coronavirus pandemic, by Resolution No. 308-2020 of December 14, 2020, Resolution No. 118-2021 of May 10, 2021, and Resolution No. 249-2021 of October 25, 2021, the City Council authorized a Sixth Memorandum of Understanding for the period January 1, 2021 through June 30, 2021, a Seventh Memorandum of Understanding for the period July 1, 2021 through December 31, 2021, and an Eighth Memorandum of Understanding for the period January 1, 2022 through December 31, 2022 to ensure continuation of ferry service between the Cities of Newburgh and Beacon by providing continued reimbursement to the City for payments under the Second New Lease Extension and Second New Lease Second and Third Extensions with Riverside consistent with their terms; and

**WHEREAS**, the City and MNR agree that current conditions warrant a Ninth Memorandum of Understanding for the period January 1, 2023 through December 31, 2023 to be coterminous with the Second New Lease Fourth Extension with Riverside ensure continuation of ferry service between the Cities of Newburgh and Beacon by providing continued reimbursement to the City for payments under the Second New Lease Fourth Extension with Riverside consistent with its term; 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 on behalf of the City of Newburgh, be and he is hereby authorized to execute a Ninth Memorandum of Understanding coterminous with the period of the fourth extension of the Second New Agreement of Lease, with such other terms and conditions as may be recommended by the Corporation Counsel, for Metro-North Commuter Railroad to provide reimbursement to the City of Newburgh for payments made under the Second New Lease Fourth Extension with Riverside Newburgh Realty, LLC for the purpose of providing parking for users of the Newburgh-Beacon Ferry.

**NINTH MEMORANDUM OF UNDERSTANDING**

NINTH MEMORANDUM OF UNDERSTANDING (“Ninth MOU”) dated \_\_\_\_, 2022, by and between Metro-North Commuter Railroad Company (“Metro-North”), a public benefit corporation of the State of New York and a subsidiary of the Metropolitan Transportation Authority (“MTA”), with its principal offices at 420 Lexington Avenue, 11<sup>th</sup> floor, New York, New York 10170 and the City of Newburgh (“City”), a municipal corporation with its principal offices located at City Hall, 83 Broadway, Newburgh, New York 12550 (collectively, the “Parties”).

WHEREAS, the Parties entered into an Agreement dated August 16, 2004 (the “Agreement”), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by Metro-North or its contractor between the City of Beacon and the City of Newburgh (“Ferry Service”); and

WHEREAS, the Agreement states that the City will enter into a lease with the owner of certain premises (“Premises”) to provide a docking facility and 250 space parking lot for the Ferry Service (the “Lease”), and the City did enter into such Lease, beginning July 30, 2004 and superseded by a First Amended Lease effective April 21, 2010 and extended through December 31, 2015 (the “Amended Lease”); and

WHEREAS, the City and the New York State Department of Transportation (“NYSDOT”) had entered into a contract dated July 12, 2006, by which NYSDOT reimbursed the City for the rent payments under the Lease, but this contract expired; and

WHEREAS, the City had represented that it lacked funds to make the rent payments under the Amended Lease for the period from May 2015 through December 2015 (“May-December Period”) and had requested that Metro-North reimburse the City for the rent payments under the Amended Lease for the May-December Period; and

WHEREAS, NYSDOT had indicated to the City that it will reimburse the City for the rent payments under the Amended Lease up to and including April 2015, and thereafter had committed to provide Congestion Mitigation and Air Quality (“CMAQ”) funds to Metro-North, which could be used to reimburse Metro-North for assistance payments made to the City by Metro-North to fund the Amended Lease; and

WHEREAS, the City and Metro-North had entered into a Memorandum of Understanding dated May 26, 2015 (“MOU”) whereby Metro-North had agreed to reimburse the City for the rent payments made by the City under the Amended Lease for the May-December Period at the rate of \$21,278 per month; and

WHEREAS, the Amended Lease was further extended for the period January 1, 2016 through January 31, 2017 at the same rate of \$21,278 per month (“January 1, 2016 – January 31, 2017 Period”); and



WHEREAS, the City had represented that it lacked the funds to make the rent payments under the Amended Lease for the January 1, 2016 – January 31, 2017 Period and had requested that Metro-North reimburse the City for the rent payments under the Amended Lease for the January 1, 2016 – January 31, 2017 Period; and

WHEREAS, the City and Metro-North entered into a Second Memorandum of Understanding dated January 26, 2016 (“Second MOU”) whereby Metro-North had agreed to reimburse the City for the rent payments made by the City under the Amended Lease for the January 1, 2016 – January 31, 2017 Period at the rate of \$21,278 per month; and

WHEREAS, the City entered into a new lease with the new owner of the Premises to provide a docking facility and 250 space parking lot for the Ferry Service (the “New Lease”) for a term beginning February 1, 2017 and continuing until December 31, 2018 with rent payments of \$21,278 per month (“February 1, 2017 – December 31, 2018 Period”) and requested that Metro-North reimburse the City for the rent payments under the New Lease for the February 1, 2017 – December 31, 2018 Period; and

WHEREAS, the City and Metro-North entered into a Third Memorandum of Understanding dated January 31, 2017 (“Third MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the New Lease for the February 1, 2017 – December 31, 2018 Period at the rate of \$21,278 per month; and

WHEREAS, the New Lease was extended for the period January 1, 2019 through June 30, 2019 (“New Lease Extension”) at the same rate of \$21,278 per month (“January 1, 2019 – June 30, 2019 Period”) and the City requested that Metro-North reimburse the City for the rent payments under the New Lease Extension for the January 1, 2019 – June 30, 2019 Period; and

WHEREAS, the City and Metro-North entered into a Fourth Memorandum of Understanding dated February 14, 2019 (“Fourth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the New Lease Extension for the January 1, 2019 – June 30, 2019 Period at the same rate of \$21,278 per month; and

WHEREAS, the City entered into a second new lease with a second new owner of the Premises to provide a docking facility and 250 space parking lot for the Ferry Service (“Second New Lease”) for a term beginning on July 1, 2019 and continuing until December 31, 2020 with rent payments of \$21,916 per month (“July 1, 2019 – December 31, 2020 Period”) and requested that Metro-North reimburse the City for the rent payments under the Second New Lease for the July 1, 2019 – December 31, 2020 Period; and

WHEREAS, the City and Metro-North entered into a Fifth Memorandum of Understanding dated July 30, 2019 (“Fifth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the Second New Lease for the July 1, 2019 – December 31, 2020 Period at the same rate of \$21,916 per month; and

WHEREAS, the Second New Lease was extended for the period January 1, 2021 through June 30, 2021 (“Second New Lease Extension”) at the same rate of \$21,916 per month (“January 1, 2021 – June 30, 2021 Period”); and

WHEREAS, the City and Metro-North entered into a Sixth Memorandum of Understanding dated January 1, 2021 (“Sixth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the Second New Lease Extension for the January 1, 2021 – June 30, 2021 Period at the same rate of \$21,916 per month; and

WHEREAS, the Second New Lease was extended for the period July 1, 2021 through December 31, 2021 (“Second New Lease Second Extension”) at the same rate of \$21,916 per month (“July 1, 2021 – December 31, 2021 Period”); and

WHEREAS, the City and Metro-North entered into a Seventh Memorandum of Understanding dated June 8, 2021 (“Seventh MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the Second New Lease Second Extension for the July 1, 2021 – December 31, 2021 Period at the same rate of \$21,916 per month; and

WHEREAS, the Second New Lease Second Extension was extended for the period January 1, 2022 through December 31, 2022 (“Second New Lease Third Extension”) at the same rate of \$21,916 per month (“January 1, 2022 – December 31, 2022 Period”); and

WHEREAS, the City and Metro-North entered into an Eighth Memorandum of Understanding dated December 14, 2021 (“Eighth MOU”) whereby Metro-North agreed to reimburse the City for the rent payments made by the City under the Second New Lease Second Extension for the January 1, 2022 – December 31, 2022 Period at the same rate of \$21,916 per month; and

WHEREAS, the Second New Lease Second Extension was extended for the period January 1, 2023 through December 31, 2023 (“Second New Lease Fourth Extension”) at the same rate of \$21,916 per month (“January 1, 2023 – December 31, 2023 Period”); and

WHEREAS, the City continues to maintain that it lacks funds to make the rent payments under the Second New Lease Fourth Extension for the January 1, 2023 – December 31, 2023 Period; and

WHEREAS, unless the rent payments under the Second New Lease Fourth Extension are made to the landlord for the January 1, 2023 – December 31, 2023 Period, the Ferry Service is in danger of being discontinued; and

WHEREAS, the Ferry Service is important to the City as well as being an important part of Metro-North’s provision of commuter service to its ridership, especially for commuters from Orange and Dutchess Counties; and

WHEREAS, the Parties desire to prevent the discontinuance of the Ferry Service.

NOW THEREFORE, in consideration of the benefits accruing to each of the Parties hereto, the Parties agree as follows:

1. Supplement. Unless otherwise stated herein, this Ninth MOU supplements the terms set forth in the Agreement, the MOU, the Second MOU, the Third MOU, the Fourth MOU, the Fifth MOU, the Sixth MOU, the Seventh MOU and the Eighth MOU.

2. Lease Rent Payments: Metro-North agrees to reimburse the City for the rent payments made by the City under the Second New Lease Fourth Extension for the January 1, 2023 – December 31, 2023 Period only, at the rate of \$21,916 per month. For the January 1, 2023 – December 31, 2023 Period, the City will make timely monthly rent payments to the lessor under the Second New Lease Fourth Extension. The City will submit proof of each timely monthly rent payment along with an invoice for that monthly rent payment to Metro-North within ten (10) days of making the rent payment. Metro-North agrees to pay the City within thirty (30) days of receipt of the City's invoice for the monthly rent payment and proof of timely payment of the monthly rent payment under the Second New Lease Fourth Extension.

3. During the January 1, 2023 – December 31, 2023 Period, the City agrees to comply with all terms under the Second New Lease Fourth Extension, not to terminate the Second New Lease Fourth Extension and not cause the landlord to terminate the Second New Lease Fourth Extension. If the City or the landlord terminates or cancels the Second New Lease Fourth Extension, then this Ninth MOU shall automatically terminate at the same time as the termination or cancellation of the Second New Lease Fourth Extension. Upon termination or cancellation of the Second New Lease Fourth Extension, Metro-North shall have no further obligations under this Ninth MOU and Metro-North shall have the right to discontinue the Ferry Service.

4. Metro-North is not required to reimburse the City for any late fees, interest or other charges under the Second New Lease Fourth Extension.

5. This Ninth MOU does not create any obligations for Metro-North in connection with the Second New Lease Fourth Extension, or create any landlord-tenant relationship between the Parties.

6. The Parties agree to diligently work together in a cooperative and time sensitive manner to identify and make available alternative locations for the Ferry Service, docking facility and parking facility suitable to the needs of each party, and to cooperatively work together to identify other sources of funding for the Ferry Service, docking facility and parking facility.

7. Assignment: Neither party shall assign, transfer or delegate any of its rights or obligations under this Ninth MOU without the written consent of the other party, provided that Metro-North may so assign, transfer or delegate to the MTA any such right or obligation upon written notice to the City.

8. Personal Liability: No officer, director, member or employee of either of the parties hereto shall be liable personally or be sued individually for damages under or by reason of this Ninth MOU.

9. Notices: (a) Any notice, request, approval, demand or other communication under this Ninth MOU shall be in writing and given by (i) hand delivery, (ii) mailing the same by registered or certified mail, return receipt requested, (iii) reputable overnight courier service, or (iv) email transmission with an original sent by any manner above described, addressed in each case as follows:

If to Metro-North:

Metro-North Commuter Railroad Company  
420 Lexington Avenue, 11<sup>th</sup> floor  
New York, New York 10170  
Attention: General Counsel  
Email: [sarch@mnr.org](mailto:sarch@mnr.org)

If to the City:

City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550  
Attn: City Manager  
Email: [tvenning@cityofnewburgh-ny.gov](mailto:tvenning@cityofnewburgh-ny.gov)

With a copy to:

City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550  
Attn: Corporation Counsel  
Email: [mkelson@cityofnewburgh-ny.gov](mailto:mkelson@cityofnewburgh-ny.gov)

(b) Any party may by notice to the other change the addresses to which notice to such party or copies of such notices shall thereafter be sent. Notices shall be deemed to have been given (i) immediately upon acknowledgement of receipt when delivered by personal service on the person(s) designated to receive notice, (ii) on the fourth (4<sup>th</sup>) business day after the same shall have been deposited in the United States mails as aforesaid, (iii) on the next business day after the same shall have been sent by overnight courier service and (iv) upon receipt of the email; provided that no notice shall be deemed to have been given until a copy thereof has been given to each person entitled thereto as set forth above.

10. No Third-Party Rights. No provision of this Ninth MOU shall create or give to third-parties any claim or right of action against the Parties hereto.

11. Miscellaneous:

a) This Ninth MOU contains the entire agreement of the Parties respecting the subject matter hereof.

b) This Ninth MOU may be amended, modified or supplemented only by an instrument in writing signed by the Parties hereto.

c) The headings of the various paragraphs, exhibits and attachments of this Ninth MOU are for the convenience of reference only and do not in any way define or limit the scope of intent of any provision hereof.

d) If any provision of this Ninth MOU is to any extent invalid or unenforceable, the remainder of this Ninth MOU, and the application of such provision to matters as to which it is not invalid or unenforceable, shall not be affected thereby.

e) This Ninth MOU shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

f) This Ninth MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g) This Ninth MOU shall be governed by and construed in accordance with the laws of the State of New York.

h) Either party may terminate this Ninth MOU upon sixty (60) days written notice, provided that any obligations incurred by either party prior to the termination date, shall survive such termination.

**IN WITNESS WHEREOF**, Metro-North and the City have caused this Ninth Memorandum of Understanding to be duly executed as of the date first above written.

METRO-NORTH COMMUTER RAILROAD COMPANY

\_\_\_\_\_  
BY:

CITY OF NEWBURGH

\_\_\_\_\_  
BY: Todd Venning, City Manager  
Per Resolution No.

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR OCTOBER 24, 2022 TO RECEIVE PUBLIC COMMENT  
CONCERNING THE RENEWAL OF A CABLE FRANCHISE AGREEMENT  
BETWEEN THE CITY OF NEWBURGH  
AND SPECTRUM NORTHEAST, LLC, AN INDIRECT SUBSIDIARY OF  
CHARTER COMMUNICATIONS, INC.**

**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 the renewal of a Cable Franchise Agreement between the City of Newburgh and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc.; and that such public hearing be and hereby is duly set for the next meeting of the Council to be held at 7:00 p.m. on the 24<sup>th</sup> day of October, 2022, in the 3<sup>rd</sup> Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

## **FRANCHISE AGREEMENT**

**This Franchise Agreement** (“Franchise”) is between the City of Newburgh, New York, hereinafter referred to as the “Grantor” and Spectrum Northeast, LLC, an indirect subsidiary of CHARTER COMMUNICATIONS, INC., hereinafter referred to as the “Grantee.”

**WHEREAS**, in a full public proceeding affording due process to all parties, Grantor considered and found adequate and feasible Grantee’s plans for constructing and operating the cable television system, and Grantor considered and determined that the financial condition, character, legal and technical ability of the Grantee are sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

**WHEREAS**, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, that this Franchise complies with New York Public Service Commission’s (“NYPSC”) franchise standards under Title 16, Chapter VIII, Part 895 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and that the grant of a nonexclusive franchise to Grantee is consistent with the public interest; and

**WHEREAS**, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal; and

**WHEREAS**, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein;

***NOW, THEREFORE**, the Grantor and Grantee agree as follows:*

### **SECTION 1** **Definition of Terms**

**1.1 Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Board” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.

- E. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Streets, including the Cable System.
- F. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- G. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- H. “Franchise Area” shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means.
- I. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Franchise Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- J. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- K. “Service Area” shall mean the area described in subsection 6.1 herein.
- L. “Standard Installation” shall mean installations to residences and buildings that are located up to 150 feet from the point of connection to Grantee’s existing distribution system.
- M. “State” shall mean the State of New York.
- N. “Street” shall include each of the following located within the Franchise Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.
- O. “Subscriber” shall mean any Person lawfully receiving Cable Service from the Grantee.



## **SECTION 2**

### **Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, extend, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term *of fifteen (15) years*, commencing on the Effective Date of this Franchise as set forth in Section 15.13.

**2.3 Police Powers.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the mutual promises in this contract.

**2.4 Restoration of Municipal Property.** Any municipal property damaged or destroyed by Grantee shall be promptly repaired or replaced by the Grantee and restored to serviceable condition.

**2.5 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Franchise Area or be allowed to operate without a Cable System Franchise.

## **SECTION 3**

### **Franchise Renewal**

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

## **SECTION 4**

### **Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the

operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within fifteen (15) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any PEG channels.

#### **4.2     Insurance.**

- A.     The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$1,000,000 per occurrence

- B.     The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C.     The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

### **SECTION 5** **Service Obligations**

**5.1     No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age, gender or sexual orientation. Grantee shall not deny access to Cable Service to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

**5.2     Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

## **SECTION 6**

### **Service Availability**

**6.1 Service Area.** Subject to applicable law, the Grantee shall continue to provide Cable Service to all residences within the Franchise Area where Grantee currently provides Cable Service (the “Service Area”) in accordance with the provisions of Section 895.5 of the regulations of the NYPSC. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Franchise Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber’s dwelling unit or other units wherein such Cable Service is provided.

**6.2 Abandonment of Service.** Grantee shall not abandon any Cable Service or portion thereof without the Grantor’s written consent.

**6.3 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee’s installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee’s expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the fifteen day period, the cost of new trenching is to be borne by Grantee.

**6.4 Annexation.** The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days ‘written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.7 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

## **SECTION 7**

### **Construction and Technical Standards**

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** Grantee shall construct and maintain its Equipment using materials of good and durable quality and shall ensure that all work involved in the construction, installation, maintenance, and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**7.4 Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time. The Cable System shall provide for a minimum Channel capacity of at least seventy-seven (77) Channels.

## **SECTION 8**

### **Conditions on Street Occupancy**

**8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

**8.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial

condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way. Upon reasonable notice to Grantee, Grantor may require Grantee to remove any equipment or structures that Grantee installed in the public rights-of-way that Grantee has abandoned or that Grantee no longer uses or plans to use to provide its services.

**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

**8.6 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Grantee will provide Grantor with 48 hours advance notice of date, time and location of planned tree trimming activities on public property. The foregoing notice shall not be required when the trimming is required to correct an emergency or service interruption.

**8.7 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

**8.8 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.9 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

**8.10 Emergency Use.** Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

## **SECTION 9**

### **Service and Rates**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated to receive complaints and requests for repairs or adjustments at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor notice of any changes in rates, programming services or Channel positions in accordance with applicable law.

**9.3 Rate Regulation.** The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

**9.4 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 15.2 of this Franchise.

## **SECTION 10**

### **Franchise Fee**

**10.1 Amount of Fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

**10.2 Payment of Fee.** Payment of the fee due the Grantor shall be made on a semi-annual basis, within forty-five (45) days of June 30<sup>th</sup> and December 31<sup>st</sup> of each calendar year and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.13. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

**10.3 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

**10.4 Limitation on Recovery.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

**10.5** No auditor engaged by the Grantor shall be compensated on a success based formula (e.g., payment based on a percentage of an underpayment, if any).

## **SECTION 11** **Transfer of Franchise**

**11.1 Franchise Transfer.** Grantee shall provide at least sixty days' notice to Grantor prior to completion of a transaction that results in the sale, transfer, or assignment of the Franchise. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for review covered by this Section, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

## **SECTION 12** **Records**

**12.1 Inspection of Records.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records pertaining to Grantee's provision of Cable Service in the Franchise Area maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the material terms of the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

**SECTION 13**  
**Public Education and Government (PEG) Access**

**13.1 PEG Access.** Grantee shall make available channel capacity for non-commercial, video programming for public, educational and governmental (“PEG”) access use in accordance with Section 895.4 of the NYPSC regulations and will comply with the minimum standards set forth therein. Such PEG channel capacity may be shared with other localities served by Grantee’s cable system, and Grantor hereby authorizes Grantee to transmit PEG access programming authorized herein to such other localities. The tier of service on which such PEG channel(s) may be placed shall be determined by Grantee in accordance with applicable law.

**SECTION 14**  
**Enforcement or Revocation**

**14.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the “Violation Notice”).

**14.2 Grantee’s Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.8 hereof. At the hearing, the Board shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Board *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

**14.4 Enforcement.** Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or



- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

#### **14.5 Revocation.**

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise. The public hearing shall be conducted in accordance with the requirements of Section 14.3 above.
- B. Notwithstanding the above provisions, the Grantee reserves all of its rights under federal law or regulation.
- C. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

### **SECTION 15** **Miscellaneous Provisions**

**15.1 Compliance with Laws.** Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

**15.1.1 Employment Practices.** Grantee will not refuse to hire, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, color, national origin, gender, or sexual orientation.

**15.2 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or

monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**15.3 Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties or hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**15.4 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**15.5 Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall ensure that the terms applicable to such other provider are no more favorable or less burdensome than those applicable to Grantee. If the authorization applicable to such other provider contains franchise fee, PEG, free service, right-of-way, or other terms imposing monetary or regulatory burdens that are less costly or less burdensome than the corresponding obligations imposed upon Grantee, Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to ensure that the corresponding obligations applicable to Grantee are no more costly or burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee agrees not to enforce such corresponding obligations in this Franchise beyond the requirements imposed by the less costly or less burdensome obligations in such competing provider's authorization. As an alternative to the equal protection procedures set forth herein, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 15.5 shall be deemed a waiver of any remedies available to Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

**15.6 Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the Cable System under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

**15.7 Notices.** Unless otherwise provided by federal, State or local law, all notices pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: Todd Venning  
City Manager  
83 Broadway  
Newburgh, NY 12550  
Email: [tvenning@cityofnewburgh-ny.gov](mailto:tvenning@cityofnewburgh-ny.gov)

Copy to: Michelle Kelson  
Corporation Counsel  
83 Broadway  
Newburgh, NY 12550  
[mkelson@cityofnewburgh-ny.gov](mailto:mkelson@cityofnewburgh-ny.gov)

Grantee: Alexander Camarda  
Director, State Government Affairs  
120 E. 23<sup>rd</sup> St.  
New York, New York 10010  
Email: [alexander.camarda@charter.com](mailto:alexander.camarda@charter.com)

Copy to: Charter Communications  
Attn: Vice President, Government Affairs  
601 Massachusetts Ave NW, Suite 400W  
Washington, DC 20001

**15.8 Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

**15.8.1** Grantor shall provide written notice to Grantee within fifteen (15) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.8 above.

**15.9 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction,

such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**15.10 Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**15.11 Administration of Franchise.** The City Manager, or such other person as may be designated and supervised by the Board, is responsible for the continuing administration of the Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

**15.12 NYPSC Approval.** This Franchise is subject to the approval of the NYPSC. Grantee shall file an application for such approval with the NYPSC within sixty (60) days after the date the Franchise is approved by Grantor and accepted by Grantee. Grantee shall also file any necessary notices with the FCC.

**15.13 Effective Date.** The Franchise granted herein will take effect and be in full force from the date of approval by the NYPSC ("Effective Date"). If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

**15.14 No Third Party Beneficiaries.** Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Todd Venning, City Manager

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to applicable federal and State law.

Spectrum Northeast, LLC, By Its Manager, Charter Communications, Inc.

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED NEW YORK STATE OFFICE OF CHILDREN AND  
FAMILY SERVICES YOUTH DEVELOPMENT PROGRAM GRANTS AND  
YOUTH SPORTS AND EDUCATION GRANTS AND  
ORANGE COUNTY SOLUTIONS GRANTS TO SUPPORT TWELVE PROGRAMS  
IN THE CITY OF NEWBURGH RECREATION DEPARTMENT**

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

**WHEREAS**, the City of Newburgh wishes to apply for and accept if awarded grants from the New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions to support twelve programs in the City of Newburgh Recreation Department in not to exceed amounts listed below as follows:

- \$10,000.00 for the 2023 Basketball Program
- \$5,000.00 for the 2023 Fishing Program
- \$5,000.00 for the 2023 Baseball Program
- \$5,000.00 for 2023 teen cooking classes
- \$5,000.00 for 2023 computer, gaming and graphic design classes
- \$10,000.00 for the 2023 Summer Camp Program
- \$5,000.00 for 2023 arts programs
- \$5,000.00 for the 2023 Flag Football Program
- \$5,000.00 for youth and teen gardening classes
- \$10,000.00 for Soccer Program and Camp
- \$10,000.00 for Multi-sport Camp
- \$5,000.00 for After School Boxing Program

**WHEREAS**, no City matching funds are required; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports

and Education Program or Orange County Solutions Grant in an amount not to exceed \$10,000.00 requiring no City match for the 2023 Youth Basketball Program in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for the 2023 Fishing Program in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for the 2023 Baseball Program in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for 2023 teen cooking classes in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for the 2023 computer, gaming and graphic design classes in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$10,000.00 requiring no City match for the 2023 Summer Camp Program in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for 2023 arts programs in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and

Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for the 2023 Flag Football Program in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for 2023 youth and teen gardening classes in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$10,000.00 requiring no City match for the 2023 Soccer Program and Camp in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$10,000.00 requiring no City match for the 2023 Multi-sports Camp Program in the City of Newburgh; 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 apply for and accept if awarded a New York State Office of Children and Family Services Youth Development Program or Youth Sports and Education Program or Orange County Solutions Grant in an amount not to exceed \$5,000.00 requiring no City match for the 2023 After-school Boxing Program in the City of Newburgh; 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 all necessary documents to receive and comply with the terms of such grants and to carry out the programs funded thereby.



ORDINANCE NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**AN ORDINANCE AMENDING CHAPTER 263, ENTITLED “STREETS AND  
SIDEWALKS” OF THE CITY OF NEWBURGH CODE OF ORDINANCES**

**BE IT ORDAINED**, by the Council of the City of Newburgh, New York that Chapter 263 entitled “Streets and Sidewalks” of the Code of the City of Newburgh is hereby amended as follows:

**SECTION 1. Amendment**

§263-8 Duty of abutting owner to repair and maintain sidewalk.

~~The owner or occupant of every house or lot of ground situated in any of the streets of the City shall at all times during the season of frost keep the sidewalk and gutter in front of his respective house and lot free from snow and ice whenever the same can be so kept free as required by § C9.30 of the Charter.~~

As required by Article IX of the Charter, it shall be the duty of the owner of property abutting a street, highway, road, public lane, alley or space to maintain and repair the sidewalk adjoining said property and keep such sidewalk and gutter free of snow and ice, obstructions, and tripping hazards. Such owner shall be liable for any injury or damage by reason of commission, failure or negligence to make, maintain or repair such sidewalk, including the defense and indemnification of the City of Newburgh against such claim.

**SECTION 2. Severability.**

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

Underlining denotes additions

~~Strikethrough~~ denote deletions

### SECTION 3. Codification.

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

### SECTION 4. Validity.

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

### SECTION 5. Effective Date.

This ordinance shall take effect immediately.

Underlining denotes additions  
~~Strikethrough~~ denote deletions

RESOLUTION NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR OCTOBER 24, 2022 TO HEAR PUBLIC COMMENT  
CONCERNING A LOCAL LAW AUTHORIZING A PROPERTY TAX LEVY  
IN EXCESS OF THE LIMIT ESTABLISHED IN  
GENERAL MUNICIPAL LAW SECTION 3-c

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 authorizing a property tax levy in excess of the limits established in General Municipal Law Section 3-c"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 24<sup>th</sup> day of October, 2022, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

LOCAL LAW NO.: \_\_\_\_\_ - 2022

OF

\_\_\_\_\_, 2022

**A LOCAL LAW AUTHORIZING A PROPERTY TAX LEVY IN EXCESS OF THE LIMIT  
ESTABLISHED IN GENERAL MUNICIPAL LAW SECTION 3-c**

**BE IT ENACTED** by the City Council of the City of Newburgh as follows:

**SECTION 1. LEGISLATIVE INTENT**

It is the intent of this local law to allow the City of Newburgh to adopt a budget for the fiscal year commencing January 1, 2023 that requires a real property tax levy in excess of the “tax levy limit” as defined by General Municipal Law Section 3-c.

**SECTION 2. AUTHORITY**

This local law is adopted pursuant to subdivision 5 of General Municipal Law Section 3-c, which expressly authorizes a local government’s governing body to override the property tax cap for the coming fiscal year by the adoption of a local law approved by a vote of sixty percent (60%) of said governing body.

**SECTION 3. TAX LEVY LIMIT OVERRIDE**

The City Council of the City of Newburgh, County of Orange, is hereby authorized to adopt a budget for the fiscal year commencing January 1, 2023 that requires a real property tax levy in excess of the amount otherwise prescribed in General Municipal Law Section 3-c.

**SECTION 4. SEVERABILITY**

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court’s order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

**SECTION 5. EFFECTIVE DATE**

This local law shall take effect immediately upon filing with the Secretary of State.

LOCAL LAW NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A LOCAL LAW REPEALING AND REPLACING ARTICLE IX OF THE CHARTER OF  
THE CITY OF NEWBURGH ENTITLED “DEPARTMENT OF PUBLIC WORKS”**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York as follows:

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law repealing and replacing Article IX of the Charter of the City of Newburgh Entitled ‘Department of Public Works’”.

**SECTION 2 - AMENDMENT**

**Article IX of the City Charter is hereby repealed and replaced as follows:**

**Article IX. Department of Public Works**

§ C9.00 Department established; composition.

There shall be a Department of Public Works, which shall consist of the divisions of Engineering, Water, Sewer, Sanitation, and Streets and Bridges. The Department shall have responsibility for all improvement and maintenance projects related to City streets, rights-of-way, parks, rivers, waterworks, sewers, and City-owned real property.

§ C9.01 Commissioner of Public Works.

The Department shall be headed by the Commissioner of Public Works. The Commissioner of Public Works, as the head of the divisions of Engineering, Water, Sewer, Sanitation, and Streets and Bridges, shall have administrative control over the Department and such other functions and duties as may be assigned by the City Manager.

In the absence or disability of the Commissioner of Public Works, the City Manager may designate the head of any division within the Department to act as Commissioner of Public Works. The acting Commissioner of Public Works shall assume all of the powers and duties of the Commissioner of Public Works in addition to the powers and duties required of the division head.

§ C9.02 Responsibilities and duties of Commissioner of Public Works. Powers and authority of Commissioner of Public Works.

The Commissioner of Public Works shall develop, manage, and implement comprehensive public improvement and maintenance plans for the operation of all City utilities and infrastructure. The Commissioner of Public Works shall keep a running inventory of all utilities and infrastructure within the City.

The Commissioner of Public Works shall have authority to require a private property owner to lay and connect utility service line(s) from a private property line to a nearby utility main at a point that extends beyond the private property line and into a public street or right-of-way. The Commissioner of Public Works shall have authority to prohibit or prevent the use of any water or sewer facility not connected to a City system. If a private property owner fails to comply with any such requirement, the Commissioner of Public Works shall have authority to cause performance of the work and, with notice of hearing, assess and levy the associated expenses onto the property taxes of such property, which shall include a fifteen percent (15%) administrative expense charge, all in accordance with §C9.04. The Commissioner of Public Works may designate the head or acting head of any division within the Department to carry out these duties.

#### § C9.03 Divisions; organization and duties.

The Engineering division shall perform all of the civil engineering and surveying of the City, prepare specifications for all public works and public buildings, and shall supervise such public works and the construction of such public buildings. The City Engineer shall supervise the operations of the Engineering division under the general supervision of the Commissioner of Public Works. Nothing herein shall restrict or limit the power of the Council to employ consulting engineers in special or difficult cases.

The Water division shall perform all of the duties as set forth in Article IX-A of the City Charter. The Water Superintendent shall supervise the operations of the Water division under the general supervision of the Commissioner of Public Works.

The Sewer division shall perform all of the duties as set forth in Chapter 248 of the Code of Ordinances of the City of Newburgh.

The Sanitation division shall be responsible for the collection and disposal of garbage, trash, refuse and recyclables throughout the City, the sweeping of streets and the enforcement of all ordinances and regulations relating to the collection, carting and disposal of garbage, trash, refuse and recyclables.

The Streets and Bridges division shall be responsible for the maintenance and repair of all streets and other public property within the City.

The Superintendent of Public Works shall supervise the operations of the Sanitation division and the Streets and Bridges division under the general supervision of the Commissioner of Public Works.

Each division shall have all other duties as are currently assigned or may be in the future assigned to it by the City Manager or by the Commissioner of Public Works. The City Manager or the Commissioner of Public Works may name one person to serve as division head of multiple divisions. In the event of a conflict, the City Manager's directives shall prevail.

#### § C9.04 Power of City to perform required work and to collect cost thereof.

Where the owner of any premises shall fail or neglect to perform any work required by this charter, by any ordinance of the City, the City Manager or the Commissioner of Public Works may cause such work to be performed. A bill for the expenses incurred by such work shall be mailed via certified mail to such owner at the address where the work is performed and the address of record with the Office of the Comptroller. If the property owner shall fail to pay the same within 20 days after the date of the notice, the City Manager or the Commissioner of Public Works shall file a certificate of the actual cost of the work plus a fifteen percent (15%) administrative expense charge with the Office of the Comptroller. The Office of the Comptroller shall, in the preparation of the next assessment roll of general City taxes, assess said amount with any applicable statutory interest rate to date upon such property, but if no statutory interest rate applies then said interest rate shall be set at eight percent (8%), and the same shall be levied, corrected, enforced and collected in the same manner by the same proceedings, at the same time, under the same penalty and shall constitute the same lien upon the property assessed as the general City tax and shall be considered a part thereof. Said authority shall be in addition to all other powers of the City to seek a civil judgment, prosecute for a violation of law or ordinance or any other authority granted by charter, statute, law, ordinance or regulation of the City.

#### § C9.05 Dedication of streets, parks, squares or other land.

Whenever any street, park, square or other land shall have been dedicated to the public use, the Council shall accept such dedication by ordinance. Before any street, park or square shall be so accepted, the Council shall cause a survey, map or description thereof either to be made by the City Engineer or approved by him in writing and by him reported to the Council, stating the exact location, the course, distance, width and boundary of the street, park, square or land so accepted. Such description shall be entered at length in the minutes of the Council, and such map shall be filed in the office of the City Clerk, and copies thereof duly certified by the City Clerk shall be presumptive evidence in any suit or proceedings of the location of such street, park, square or land.

#### § C9.06 Designation of public streets.

All streets, avenues, roads, alleys, lanes, concourses and public squares in public use within the City heretofore or hereafter laid out as streets or public highways under any law of this state or under any proceedings authorized by the statutes of this state; all streets, avenues, roads, alleys, lanes, concourses and public squares not laid out or opened under any statute of this state or by proceedings authorized by such statute but which have been worked or improved by the City and used as public streets or highways for 10 years or more; and all streets heretofore dedicated to the

public use in pursuance of law or hereafter dedicated and accepted by the Council as provided in this Act, shall be deemed public streets of the City.

#### § C9.07 Streets and public places not sufficiently described.

The Council may, by ordinance, cause all streets, public parks, squares or other public places in said City that have been used for 10 years or more and are not sufficiently described or have not been duly recorded in the public records to be ascertained, described and entered of record in its minutes, and a record thereof and of such as shall hereafter be laid out, or of such as have been dedicated and accepted by the Council, or a copy of such record certified by the City Clerk shall be evidence of the existence and location of such street, park, square and other public places as therein described.

#### § C9.08 Change of street grade.

The Council shall not change the grade of any street which has been legally established, except upon compensation for damages done, but nothing herein contained shall be construed to require compensation for damages to be ascertained or paid prior to the making of change in grade.

#### § C9.09 Duty of abutting owner to repair and maintain sidewalk and for removal of snow and ice.

It shall be the duty of the owner of property abutting a street, highway, road, public lane, alley or space to maintain and repair the sidewalk adjoining said property and keep such sidewalk and gutter free of snow and ice, obstructions, and tripping hazards. Such owner shall be liable for any injury or damage by reason of commission, failure or negligence to make, maintain or repair such sidewalk, including the defense and indemnification of the City of Newburgh against such claim.

### **SECTION 3 – SEVERABILITY**

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

### **SECTION 4 – CODIFICATION**

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Local Law shall be included in the Charter of the City of Newburgh; that the sections and subsections of this Local Law may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term “Local Law” shall be changed to “Charter”, “Article”, or



other appropriate word as required for codification; and that any such rearranging of the numbering and/or lettering and editing shall not affect the validity of this Local Law or the provisions of the City Charter affected thereby.

#### **SECTION 5 - VALIDITY**

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

#### **SECTION 6 - EFFECTIVE DATE**

This Local Law and shall be effective 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.

LOCAL LAW NO.: \_\_\_\_\_ - 2022

OF

OCTOBER 11, 2022

**A LOCAL LAW AMENDING CHAPTER 183 OF THE  
CITY OF NEWBURGH CODE OF ORDINANCES ENTITLED  
“WASTE MANAGEMENT, HANDLING AND DISPOSAL”**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York that Chapter 183 of the City of Newburgh Code of Ordinances entitled “Waste Management, Handling and Disposal” be and is hereby enacted as follows:

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law Amending Chapter 183 of the City of Newburgh Code of Ordinances Entitled ‘Waste Management, Handling and Disposal’”.

**SECTION 2 - AMENDMENT**

The Code of Ordinances of the City of Newburgh is hereby amended to enact new Chapter 183, Article III entitled “Sanitation User Fees; Dumpster User Fees” to read as follows:

**Article III. Sanitation User Fees; Dumpster User Fees**

§ 183-24 Definitions.

As used herein, the following terms shall have the meanings indicated:

**COMMERCIAL PROPERTY**

Any commercial building or portion thereof containing 5,000 square feet or more, devoted in whole or in part to nonresidential purposes. This term shall include, but not be limited to, clubs, retail stores, offices, restaurants, banks, recreational facilities and enterprises involving the sale of goods or services at retail to the general public conducted for profit or not-for-profit, but not including industrial properties.

**DWELLING UNIT**

One or more rooms with provisions for living, sanitary and sleeping facilities arranged for the use of one family.

## INDUSTRIAL PROPERTY

Any premises or portion thereof devoted to the manufacture, compounding, processing or treatment of goods or to the storage and shipping of goods which do not involve the sale of goods or services at retail to the general public.

## OWNER

The person or entity to whom a piece of real property is assessed on the current assessment roll of the City.

## RESIDENTIAL PROPERTY

A building or structure containing one or more dwelling units which are intended to serve as permanent places of abode and not transient or emergency accommodations. The term "residential property" shall not include hotels, motels, boarding or rooming houses, hospitals, clubs, schools or dormitories.

## SMALL COMMERCIAL PROPERTY

Any commercial building or portion thereof containing 5,000 square feet or less, devoted in whole or in part to nonresidential purposes. This term shall include, but not be limited to, clubs, retail stores, offices, restaurants, banks, recreational facilities and enterprises involving the sale of goods or services at retail to the general public conducted for profit or not-for-profit, but not including industrial properties.

§ 183-25 User fees to be charged for garbage collection.

A. Small commercial properties. The owner of each small commercial property within the City of Newburgh where commercial wastes are removed by the City shall be charged for the removal of commercial wastes generated by such properties at a rate of one stop fee plus two dwelling unit fees per month.

B. Residential properties. The owner of each property within the City of Newburgh in the residential classification where wastes are removed by the City shall be charged per month for the removal of such waste at the rate of one stop fee plus one dwelling unit fee for each dwelling unit in the residential building. The number of dwelling units to be charged fees with regard to any property shall be determined by the number of dwelling units indicated on the certificate of occupancy for said property. A property containing rooming and boarding units shall be charged one dwelling unit fee for each rooming or boarding unit as indicated upon such property's certificate of occupancy.

C. Commercial properties. The owner of each commercial property within the City of Newburgh where wastes are removed by the City shall be charged for the removal of such wastes at

the rate of one stop fee plus four dwelling unit fees for each month.

D. Fees defined and set.

(1) Stop fee. A stop fee is the fee for the garbage truck making a stop in front of a property. The stop fee shall be computed as set forth in Chapter 163, Fees, of this Code.

(2) Dwelling unit fee. A dwelling unit fee is the fee charged for collection of garbage from one dwelling unit for a period of one month. The dwelling unit fee shall be computed as set forth in Chapter 163, Fees, of this Code.

(3) The Council shall adjust the above rates from time to time so that the amount charged shall be sufficient to fund the operating costs of garbage collection services together with an appropriate proportional share of such capital improvements, principal and interest payments on bonds that may be issued to finance such garbage collection operations, and such other related expenses as the Council may deem necessary to fund collection operations, all under the Sanitation Fund.

E. Bills for sanitation user fees. Bills for sanitation user fees shall be prepared and sent to each owner on a quarter-annual basis, starting on August 1, 1991, in the same manner as water and sewer charges are now billed and distributed, except that sanitation user fees shall be billed and paid during the first month of the calendar quarter in which sanitation removal services are performed, in the months of January, April, July and October. Bills for user fees shall be payable within the same time limits as may be prescribed in the Charter for the payment of water bills.

§ 183-26 Overdue and unpaid sanitation user fees to become liens; collection; interest and penalties; enforcement.

A. The amounts charged as sanitation user fees shall become liens against the real property to which they relate at the time rendered and in the same manner as water rents become liens and shall be collectible against such real property as provided by law.

B. Overdue and unpaid sanitation user fees shall be subject to the same interest, penalties and fees as provided for the collection of water rents and, in all respects, like proceedings shall be had by the City Collector as are or may be provided by law for the collection of water rents if they remain unpaid. The City Collector shall report to the Council all user fees imposed after January 1, 1993, with the interest and penalties thereon, which remain unpaid as of 30 days prior to the last date prescribed by law for the annexation of tax warrant to the assessment roll, together with a brief description of the property for which said sanitation services were provided and the name and address of the person or corporation liable to pay such amount. The Council shall then, no later than its regular meeting on the fourth Monday in November of each year, levy all amounts remaining unpaid on the date taxes are levied against the real property for which or in connection with which such sanitation service was provided.

C. The amount so charged as a sanitation user fee and all interest, fees and penalties thereon

shall be a lien on the real property on which the charges accrued and shall be collected and enforced as provided by law.

D. In case the City Collector shall return any sanitation user fees uncollected, the City Manager may cut off sanitation service to the property charged until such sanitation user fees and all interest, penalties and fees are fully paid.

#### § 183-27 Application for reduction or elimination of service charge.

A. Any person applying to the Superintendent for a reduction or elimination in the service charge imposed on his property by §183-25 of the Code of Ordinances shall do so on an application form to be provided by the Superintendent, which form shall be signed and notarized by the property owner. Upon receipt of such a request, the Superintendent shall investigate the facts of the application and offer the applicant an informal hearing as to why the application should be granted and shall make a written determination granting or denying the application. The Superintendent's determination shall be final.

B. The only grounds for reduction or elimination of such service charge are as follows:

(1) That a mistake was made on the part of the City in classifying the property.

(2) A senior citizen tax exemption shall have been granted pursuant to Chapter 270, Article II, of the Code of Ordinances in regard to the property, in which case a percentage reduction in the service charge shall be granted equal to the percentage exemption of assessed valuation granted by said article for the same property.

C. Residential property with an adjoining vacant lot, owned by the same entity, shall be charged only one stop fee per month, including both parcels. The property owner must request this exemption or the billing shall reflect a separate stop fee.

D. Reductions in the amount of the user charge applying to any particular property shall be for the current billing period only. Applications for reduction must be made for each and every quarter that the unit remains unoccupied. Applications shall only be accepted for a period of 20 days after the billing date indicated on the sanitation bill. Incomplete applications will not be considered.

#### § 183-28 Dumpster user fees.

A. The owners of all properties where dumpsters are serviced by the City, within the City of Newburgh, shall be charged for the removal of wastes generated by such properties at a rate as set forth in Chapter 163, Fees, of this Code. A dumpster is defined as having a volume not exceeding two cubic yards. Dumpsters exceeding two cubic yards will not be serviced by the City.

B. The above charges shall be made on all properties where collection of dumpster wastes by the City has been requested. The owner of each such property must file an application or a dumpster

permit for such property.

C. The charges imposed by this local law shall be billed to each owner on a monthly basis. No refunds or proration shall be made for rendering of only a partial month's services. No change in charge or service shall become effective other than as of the first day of a month.

D. The Council shall adjust the above rates from time to time so that the amount charged shall be sufficient to fund the operating costs of garbage collection services, together with an appropriate proportional share of such capital improvements, principal and interest payments on bonds that may be issued to finance such garbage collection operations, and such other related expenses as the Council may deem necessary to fund collection operations, all under the Sanitation Fund.

#### § 183-29 Overdue and unpaid dumpster user fees to become liens; collection and enforcement.

A. Overdue and unpaid dumpster user fees shall become liens against the real property to which they relate at the same time and in the same manner as uncollected water rents become liens and shall be collectible against such real property in the same manner as is or may be prescribed by law for the collection of taxes for the City of Newburgh for City purposes. Like notices shall be given by the City Collector.

B. Interest, penalties and fees shall be the same as for the collection of water rents, and, in all respects, like proceedings shall be had by the City Collector as is or may be provided by law for the collection of water rents.

C. The amount so charged shall be collected and enforced in the same manner and in the same time as may be provided by law for the collection and enforcement of City taxes and such service charges, interest and penalties thereon shall be a lien on the real property on which the charges accrued.

#### § 183-30 Duties of property owner to report changes in occupancy.

Any person being the owner of residential property within the City shall have an affirmative duty to report to the Division of Sanitation, on a form to be provided by the Superintendent, by change in occupancy of that property which would have the effect of increasing the sanitation service charge. Such increases in the amount of the user charge shall become effective immediately, and any portion of a month shall constitute a full month.

#### § 183-31 Penalties for offenses.

Any person making a false statement on any application made pursuant to this article, on any report made, or any violation of this article shall be guilty of a violation and, upon conviction, shall be subject to a fine not to exceed \$500 or imprisonment not to exceed 15 days, or both such fine and imprisonment.

### **SECTION 3 - SEVERABILITY**

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

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

### **SECTION 5 - VALIDITY**

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

### **SECTION 6 - EFFECTIVE DATE**

This Local Law and shall be effective 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.

Agenda Item 22.

**Presentation - City Manager's Proposed FY2023 Budget**

*Presupuesto Propuesto del Gerente de la Ciudad para el 2023*