



City of Newburgh Council Work Session  
*Sesion de trabajo del Concejal de la  
Ciudad de Newburgh*  
January 5, 2023  
6:00 PM

Council Meeting Presentations

1. Public Hearing - Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. cable franchise renewal agreement

There will be a public hearing on Monday, January 9, 2023 to receive comments on the cable franchise renewal agreement between Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. and the City of Newburgh

*Habr  una audiencia p blica el lunes 9 de enero de 2023 para recibir comentarios sobre la renovaci n de un acuerdo de franquicia de cable entre Spectrum Northeast, LLC, una filial indirecta de Charter Communications, Inc. y la Ciudad de Newburgh*

2. New Digital Budget Book & Transparency Webpage

*Nuevo libro digital del presupuesto y p gina web de transparencia*

Planning and Economic Development/Planificaci n y Desarrollo Econ mico

3. 106 Carson Avenue - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to Robert Jaros and Stanley Jaros to the premises known as 106 Carson Avenue (Section 45, Block 12, Lot 27)

*Resoluci n que autoriza la ejecuci n de una liberaci n de cl usulas restrictivas y derecho de reingreso de una escritura emitida a Robert Jaros y Stanley Jaros a las instalaciones conocidas como 106 Carson Avenue (Secci n 45, Bloque 12, Lote 27)*

Grants/Contracts/Agreements / Becas /Contratos/Convenios

4. Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. cable franchise renewal agreement

Resolution of the City Council of the City of Newburgh superseding approving a Cable Franchise Agreement Renewal with Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc.

*Resoluci n del Concejo Municipal de la Ciudad de Newburgh superando*

*la aprobación de la Renovación de un Acuerdo de Franquicia de Cable con Spectrum Northeast, LLC, una subsidiaria indirecta de Charter Communications, Inc.*

5. Agreement with Ferry Crossing for Easements

Resolution authorizing the City Manager to enter into an agreement with Ferry Crossing Condominium I and Ferry Crossing Condominium II, related to the North Interceptor Sewer Replacement Project, Phase III, of the combined sewer overflow long term control plan.

*Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo con Ferry Crossing Condominium I y Ferry Crossing Condominium II, relacionado con el Proyecto de Reemplazo del Alcantarillado Interceptor Norte, Fase III, del Plan de Control a Largo Plazo del Desbordamiento del Alcantarillado Combinado*

Police Department

6. Donation of Soft Interview room

Resolution authorizing the City Manager to accept a donation of a Soft Interview Room from Project Beloved for use by the City of Newburgh Police Department

*Resolución que autoriza al Gerente de la Ciudad a aceptar la donación de un cuarto para interrogatorios delicados del Proyecto Beloved para uso del Departamento de Policía de la Ciudad de Newburgh*

Employment and Human Resource Issues

7. Amendment of 2023 Personnel Book - Code Compliance Bureau

Resolution amending the 2023 Personnel Analysis Book to add one Account Clerk position on a temporary basis in the Code Compliance Bureau

*Resolución que enmienda el Libro de Análisis del Personal 2023 para añadir un puesto de Empleado de Cuentas de forma temporal en el Buró de Cumplimiento del Código*

Boards and Commissions/Juntas y Comisiones

8. Appointments - Transportation Advisory Committee

*Nombramientos - Comité Consultivo de Transportación*

Ordinances/ Decretos

9. Fee Ordinance

Ordinance amending Chapter 163 entitled "Fees" of the Code of the City of

Newburgh

*Ordenanza que enmienda el Capítulo 163 titulado " Tarifas " del Código de la Ciudad de Newburgh*

10. Ordinance amending Section 297-6 of the City of Newburgh Code of Ordinances

Ordinance amending Section 297-6, "License Fees" of Chapter 297 "Wreckers and Towers" of the Code of Ordinances of the City of Newburgh

*Ordenanza que enmienda Sección 297-6, "Tarifas de Licencia" del Capítulo 297 "Demoledores y remolques" del Código de Ordenanzas de la Ciudad de Newburgh*

Local Laws/Leys Locales

11. Scheduling a Public Hearing - Local Law enacting Hotel Room Occupancy Tax

Resolution scheduling a public hearing for January 23, 2023 to hear public comment concerning a Local Law adding Article XIII, entitled "Hotel Room Occupancy Tax" to Chapter 270 entitled "Taxation" of the City Code of the City of Newburgh

*Resolución programando una audiencia pública para el 23 de enero de 2023 para escuchar comentarios públicos relacionados con una ley local que añade el Artículo XIII, titulado "Impuesto sobre las Habitaciones de Hotel" al Capítulo 270 titulado "Impuestos" del Código de la Ciudad de Newburgh*

Executive Session/ Sesión Ejecutiva

12. Proposed, pending or current litigation

*Litigio propuesto, pendiente o actual*

13. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation

*El historial médico, financiero, crediticio o laboral de una persona o corporación en particular, o asuntos que conduzcan al nombramiento, empleo, promoción, degradación, disciplina, suspensión, despido o remoción de una persona o corporación en particular*

RESOLUTION NO.: \_\_\_\_\_ 298 . 2022

OF

DECEMBER 12, 2022

A RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR JANUARY 9, 2023 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 9<sup>th</sup> day of January, 2023, in the 3<sup>rd</sup> Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

I, Lorena Vitek, City Clerk of the City of Newburgh,  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 12/12/22  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 13 day of Dec. 2022

Lorena Vitek  
City Clerk



## **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.: \_\_\_\_\_-2023

OF

JANUARY 9, 2023

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF  
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED  
ISSUED TO ROBERT JAROS AND STANLEY JAROS TO THE PREMISES KNOWN AS  
106 CARSON AVENUE (SECTION 45, BLOCK 12, LOT 27)**

**WHEREAS**, on July 13, 1983, the City of Newburgh conveyed property located at 106 Carson Avenue, being more accurately described on the official Tax Map of the City of Newburgh as Section 45, Block 12, Lot 27, to Robert Jaros and Stanley Jaros; and

**WHEREAS**, Robert Jaros and Stanley Jaros, by their attorney, have 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 106 Carson Avenue, Section 45, Block 12, Lot 27 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 July 13, 1983, from THE CITY OF NEWBURGH to ROBERY JAROS AND STANLEY JAROS, recorded in the Orange County Clerk's Office on July 22, 1983, in Liber 2257, Page 458 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: \_\_\_\_\_, 2023

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
Todd Venning, City Manager  
Pursuant to Res. No.: \_\_\_\_-2023

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

On the \_\_\_\_ day of January in the year 2023, 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.: \_\_\_\_\_ - 2023

OF

JANUARY 9, 2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
APPROVING A CABLE FRANCHISE AGREEMENT RENEWAL  
WITH SPECTRUM NORTHEAST, LLC,  
AN INDIRECT SUBSIDIARY OF CHARTER COMMUNICATIONS, INC.**

**WHEREAS**, an application has been duly made to the City Council of the City of Newburgh, County of Orange, New York, by Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. ("Charter"), a limited liability company organized and existing in good standing under the laws of State of Delaware doing business at 2604 Seneca Avenue, Niagara Falls, NY 14305, for the approval of a renewal agreement for Charter's cable television franchise for fifteen (15) years commencing with the date of approval by the Public Service Commission; and

**WHEREAS**, the franchise renewal agreement would bring the franchise into conformity with certain provisions of the Federal Cable Communications Policy Act of 1984, as amended, and certain court rulings; and

**WHEREAS**, a public hearing was held in the City of Newburgh, New York on January 9, 2023 at 7:00 p.m. and notice of the hearing published in the Mid-Hudson Times on December 22, 2022;

**NOW, THEREFORE**, the City Council of the City of Newburgh, New York finds that:

1. Spectrum Northeast, LLC has substantially complied with the material terms and conditions of its existing franchise and with applicable law; and
2. Spectrum Northeast, LLC has the financial, legal and technical ability to provide these services, facilities and equipment as set forth in its proposal attached; and
3. Spectrum Northeast, LLC can reasonably meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Newburgh, New York hereby grants the cable television franchise of Spectrum Northeast, LLC and the City of Newburgh, New York for fifteen (15) years commencing with the date of approval by the Public Service Commission and expiring fifteen (15) years hence; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Newburgh, New York hereby supersedes Resolution No. 277-2022 of November 14, 2022 and approves the cable franchise renewal agreement between the City of Newburgh, New York and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc.; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Newburgh, New York hereby authorizes the City Manager to execute the cable franchise renewal agreement between the City of Newburgh, New York and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. on behalf of the City of Newburgh

The foregoing having received a \_\_\_\_\_ vote was thereby declared adopted.

Dated: \_\_\_\_\_, \_\_\_\_.

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

## **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.: \_\_\_\_\_ - 2023

OF

JANUARY 9, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN  
AGREEMENT WITH FERRY CROSSING CONDOMINIUM I AND  
FERRY CROSSING CONDOMINIUM II, RELATED TO THE  
NORTH INTERCEPTOR SEWER REPLACEMENT PROJECT, PHASE III,  
OF THE COMBINED SEWER OVERFLOW LONG TERM CONTROL PLAN**

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

**WHEREAS**, one component of the LTCP is the reconstruction and realignment of the City's North Interceptor Sewer Main (the "Project"), said sewer main servicing multiple properties in the City and running underneath several other properties in the City; and

**WHEREAS**, a portion of the existing North Interceptor Sewer Main that requires reconstruction and realignment is located within a property area generally known as the Ferry Crossing Condominiums (SBLs: 54-1-1, 54-1-2, 55-1-1, and 55-1-2) (collectively the "Property"); and

**WHEREAS**, in order to proceed with the Project, the City will require expanded permanent and temporary easements over the Property for both the reconstruction/realignment portion of sewer main, as well as its future maintenance; and

**WHEREAS**, the City expects the project to impact the Property generally and temporarily remove from service approximately 56 parking spaces located at the southern portion of the Property; and

**WHEREAS**, Ferry Crossing Condominium I and Ferry Crossing Condominium II have approved an agreement to address the impacts to the Property during the course of construction operations on the Property, and granting certain easements to benefit the City; and

**WHEREAS**, this Council determines that executing the agreement creates incidental benefits for the private property owners while furthering primarily the City's obligations under the LTCP, completing major repairs and upgrades to the City's sewer system, and is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement with Ferry Crossing Condominium I and Ferry Crossing Condominium II related to the North Interceptor Sewer Replacement Project, Phase III, of the combined sewer overflow long term control plan.

**CITY OF NEWBURGH**  
**Easement Agreement**

This easement agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Newburgh, a municipal corporation, with an office address of 83 Broadway, Newburgh, New York 12550 (“City”), and Ferry Crossing Condominium I and Ferry Crossing Condominium II, c/o First Service Residential, 25 Smith Street, Suite 501, Nanuet, New York 10954 (collectively referred to herein as “Ferry Crossing”).

**WITNESSETH**

WHEREAS, in connection with a Consent Order between the City and the New York State Department of Environmental Conservation (“DEC”), the City is engaged in a Long-Term CSO Control Plan to resolve certain combined sewer issues identified in the Consent Order; and

WHEREAS, one component of the long-term control plan is the reconstruction and realignment of the City’s North Interceptor Sewer Main, said sewer main servicing multiple properties in the City and running underneath several other properties in the City; and

WHEREAS, a portion of the existing North Interceptor Sewer Main that requires reconstruction and realignment is located within an existing easement underneath the area generally known as the Ferry Crossing Condominiums (SBLs: 54-1-1, 54-1-2, 55-1-1, and 55-1-2) (collectively the “Property”); and

WHEREAS, Ferry Crossing is the title owner of the Property; and

WHEREAS, in order to proceed with the Long Term CSO Control Plan project, the City will require expanded permanent and temporary easements over the Property for both the reconstruction/realignment portion of sewer main, as well as its future maintenance; and

WHEREAS, the City expects the project to impact and temporarily remove from service approximately 56 parking spaces located at the southern portion of Ferry Crossing property; and

WHEREAS, Ferry Crossing, by and through authority granted by its Board of Managers, is prepared to grant said expanded permanent and temporary easements over the Property in order for the City to complete the project on terms further set forth herein;

NOW, THEREFORE, in consideration of the statements and conditions herein, and other good and valuable consideration granted by and between the City and Ferry Crossing (hereafter referred to as the “Parties”), the Parties agree as follows:

[Remainder of this page intentionally left blank. Terms and conditions to follow.]

1. Grant of Easement. Ferry Crossing, as grantor, shall grant to the City, as grantee, both permanent and temporary easements for the reconstruction, realignment, and future maintenance of the City's North Interceptor Sewer Main in a manner and form more fully outlined in **Exhibit A**, annexed hereto and made a part hereof. This Agreement shall supersede and amend any and all prior related agreements, insofar as it relates specifically to the new segment of the easements, as defined herein.
2. Additional Services as Consideration. The City expects the sewer main restoration and repair project to impact areas contemplated in **Exhibit A**, and temporarily remove from service approximately 56 parking spaces (the "impacted spaces") located at the southern portion of Ferry Crossing Property located on the Property during the period of work. The City will repair and restore the affected areas in accordance with this Agreement, as well as perform the following tasks:
  - 2.1 Provide Ferry Crossing no less than thirty (30) days' notice prior to commencement of construction activities generally.
  - 2.2 Provide Ferry Crossing no less than sixty (60) days' notice prior to commencement of construction activities of a pre-construction and logistics meeting with a Ferry Crossing representative and the City, and a City Contractor, with regard to planning for pedestrian and modified traffic and parking access, and development of a written construction access and logistics plan within the Ferry Crossing property. The written access and logistics plan shall be provided to Ferry Crossing no less than thirty (30) days prior to construction activities generally.
  - 2.3 Provide Ferry Crossing no less than thirty (30) days' notice prior to the temporary removal of Ferry Crossing parking spaces from service.
  - 2.4 After providing notice as referenced in Section 2.1, but sometime prior to commencement of work, participate in a meeting organized by Ferry Crossing to field and answer questions from Ferry Crossing residents with respect to the project.
  - 2.5 Provide an active, on-site point person from the City or a City designee to be present daily during construction operations for facilitating and directing contractors, delivery services, and emergency management personnel.
  - 2.6 Within 30 days of the execution of this Agreement, confirm in writing that the three (3) existing private fire hydrants on the Property are in working order.
  - 2.7 Flush the three (3) existing private fire hydrants on the Property one time per year for the years 2023, 2024, and 2025.

- 2.8 Conduct a flow test for each of the three (3) existing private fire hydrants on the Property and provide test results to Ferry Crossing during the 2023 and 2025 calendar years.
- 2.9 Provide the results of any flow tests and, where warranted, provide written confirmation that the hydrants are in good working order and are free from leaks.
- 2.10 Suspend all parking restrictions on Montgomery Street between Broad Street (to the south) and Park Place (to the north) beginning when construction operations commence on the site and ending when the impacted parking spaces are restored and ready for use, with the exception of snow emergency declarations and restrictions. The service road adjacent to the Ferry Crossing property shall not be impacted.
3. Risk of Operations. The City's use of Ferry Crossing property are made at the risk of the City. The City shall, and shall cause all of its representatives to, comply with work safety rules, regulations, instructions and scheduling concerning the use of Ferry Crossing Property. Any construction hereunder shall be done at the sole risk of the party having such construction done, and not at the risk of Ferry Crossing.
4. Restoration of Property. Upon the completion of work, the City shall, at its sole cost and expense, promptly repair and restore any and all damage to Ferry Crossing Property, including but not limited to, the restoration of all parking spaces, retaining walls, fencing, guard rails, and landscaping, caused by the exercise of such easement rights the City within Ferry Crossing in accordance with good building industry practice and all local and state governmental standards to the same condition or better, as determined by the City, as prior to the commencement of work. Specifically, in accordance with the foregoing, the City shall cause the impacted spaces area to be entirely resurfaced "curb to curb".
5. Compliance with Laws. The City shall cause its operations and construction hereunder and the use of Ferry Crossing Property to be in compliance with all applicable laws, statutes, regulations, rules, zoning laws, environmental laws, health and safety laws, and any other federal, state or local codes and ordinances applicable to the party, its business, operations, improvements and equipment, and the Property affected thereby. The City and its contractors shall ensure all hazardous conditions shall be safeguarded and marked in a conspicuous manner.
6. Cooperation in Operations. The Parties agree to cooperate in good faith with each other during the course of the project operations.
7. Permanent Covenants Running with Land. Unless otherwise specified, all of the easements and rights hereby granted, the restrictions and obligations hereby imposed, and the agreements herein contained shall be permanent, perpetual easements, rights, restrictions, obligations and agreements and shall be covenants running with the land and shall inure to the benefit of, and

be binding upon, the Parties hereto and their respective successors and assigns, and the future owners thereof.

8. **Insurance and Risk Management.** For purposes of this section, references to the City shall include the City or the City's contractors, at the City's discretion. The City shall obtain and maintain, at its sole cost and expense, insurance of the following kinds and limits, covering all locations of the City's operations, and that of its contractors, in connection with the work to be performed:

**Worker's Compensation.** The City shall secure and maintain for the duration of the Agreement such insurance as will protect it from claims under the Worker's Compensation Statute for the state in which the work is located and from such claims for bodily injury, death or property damage as may arise in the performance of the City's or its Contractor's work under this Agreement covering all employees thereof, with statutory limits of liability.

**Employer's Liability.** Employer's Liability insurance, covering all employees of the City or its Contractors, with a liability limit of at least one million dollars (\$1,000,000.00) per accident or disease.

**Comprehensive & Property Damage.** Comprehensive Public Liability and Property Damage insurance, covering the legal liability for bodily injuries , property damages, and contractual liability for a combined limit of two million dollars (\$2,000,000.00) per occurrence (with "umbrella" form coverage in an amount not less than \$3,000,000.00) and covering at least the following hazards: (a) Contractor's Premises and Operations; (b) Contractor's Protective for its legal liability in connection with sub-contractor's operations; (c) Contractual and (d) Completed Operation.

**Comprehensive Automobile.** Comprehensive Automobile Liability insurance, covering bodily injuries, in limits of not less than one million dollars (\$1,000,000.00) per person and one million dollars (\$1,000,000.00) per accident and for property damage of not less than one million dollars (\$1,000,000.00) per accident, providing coverage for any accident resulting from the operation, maintenance, or use by the City or its contractors, on the Property of any owned, non-owned or hired automobiles, trailers or other vehicular equipment required to be licensed.

- 8.1 The City shall provide certificates of insurance to Ferry Crossing evidencing the aforementioned insurance requirements. Except with respect to Worker's Compensation insurance, said policies shall name Ferry Crossing and its managing agent as additional insured parties on a primary, non-contributory basis, including for ongoing and completed operations. All certificates must be submitted to Ferry Crossing prior to the commencement of the work pursuant to this Agreement and shall be subject to review and approval by Ferry Crossing and its attorney as to form and content. In addition, the insurance carriers of said insurance shall be required to notify

Ferry Crossing of any changes in or cancellation of coverages. Said notification shall not be effective upon Ferry Crossing unless received by Ferry Crossing at least thirty (30) days prior to the change or cancellation of insurance coverages. All policies of insurance required pursuant to this Agreement shall: (a) to the extent obtainable and regardless of additional cost or premium, contain waivers of subrogation provisions with respect to the acts or omissions of Ferry Crossing; (b) indicate that coverages are not impaired; and (c) indicate the full coverage is available to Ferry Crossing.

- 8.2 If the City fails to obtain and maintain the required insurance coverages on behalf of itself or its contractors as herein provided, this Agreement may be terminated immediately by Ferry Crossing, without giving prior written notice to the City, or the City shall have the right, but not the obligation, to procure insurance of the type and in the amounts specified and shall have the further right for reimbursement of the costs of such insurance from the City.
- 8.3 In the event the City retains any subcontractor to perform any part of the work under this Agreement, the City shall provide proof of the insurance required above on behalf of the subcontractor, or shall have the subcontractor named as an additional insured under the policies required above.
- 8.4 The City's insurance shall be the primary insurance applicable to any claim for which it is contractually obligated under this Agreement.
- 8.5 The insurance requirements of this Agreement shall not be construed or deemed to waive any rights Ferry Crossing may otherwise have nor any causes of action that Ferry Crossing may have against the City or its contractors.

9. Notices. Notice served upon the City shall be delivered to:

City of Newburgh  
attn.: City Clerk  
83 Broadway  
Newburgh, New York 12550

with copy to:

City of Newburgh  
attn.: City Engineer  
83 Broadway  
Newburgh, New York 12550



Notice served upon Ferry Crossing shall be delivered to:

Ferry Crossing Condominium I  
& Ferry Crossing Condominium II  
c/o First Service Residential  
25 Smith Street, Suite 501  
Nanuet, New York 10954

And its legal counsel:

Becker & Poliakoff, LLP  
c/o David L. Dockery, Esq.  
45 Broadway, 17<sup>th</sup> Floor  
New York, New York 10006  
E-mail: [ddockery@beckerlawyers.com](mailto:ddockery@beckerlawyers.com)

10. Jurisdiction. 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.
11. Choice of 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.
12. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. Any changes to this Agreement may be amended by mutual consent of the parties hereto in writing.
13. Execution in Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.
14. Severability. 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.

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[Signature and Acknowledgment Pages to Follow]

Signature Page  
Easement Agreement  
City of Newburgh with Ferry Crossing Condominium (Ferry Crossing)

---

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

DATED: \_\_\_\_\_, 2023

CITY OF NEWBURGH

By: \_\_\_\_\_

Name: Todd Venning

Title: City Manager

DATED: \_\_\_\_\_, 2023

FERRY CROSSING CONDOMINIUM I

By: \_\_\_\_\_

Name:

Title:

DATED: \_\_\_\_\_, 2023

FERRY CROSSING CONDOMINIUM II

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT A – EASEMENT DOCUMENTS**

DRAFT

PERMANENT EASEMENT, PERMANENT NEGATIVE EASEMENT, and  
TEMPORARY EASEMENT

THIS INDENTURE, made the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between

FERRY CROSSING CONDOMINIUM I and FERRY CROSSING CONDOMINIUM II, with an address of 350 Water Street, Newburgh, New York 12550, collectively hereafter referred to as “Grantor” and

CITY OF NEWBURGH, a municipal corporation created and existing under the laws of The State of New York, with offices at 83 Broadway, Newburgh, New York 12550, hereafter referred to as “Grantee”

WITNESSETH: that the Grantor, in consideration of one dollar (\$1.00) lawful money of the United States, and other good and valuable consideration, paid by the Grantee, does hereby grant, release, and quitclaim unto the Grantee, its successors and/or assigns, forever, the following described permanent easement:

A PERMANENT EASEMENT IN, ON, OVER AND THROUGH FOUR (4) PARCELS OF PROPERTY known as:

1. Section 54, Block 1, Lot 1
2. Section 54, Block 1, Lot 2
3. Section 55, Block 1, Lot 1
4. Section 55, Block 1, Lot 2

all as shown on official tax map in the Orange County Clerk’s office, with all parcels being situated in the City of Newburgh, County of Orange, State of New York, and said permanent easement areas being more particularly described in **Exhibit A** as “PE 1” and “PE 2” for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh’s North Interceptor Sewer, together with appurtenances thereon, and

A PERMANENT NEGATIVE EASEMENT IN, ON, OVER AND THROUGH FOUR (4) PARCELS OF PROPERTY known as:

1. Section 54, Block 1, Lot 1
2. Section 54, Block 1, Lot 2
3. Section 55, Block 1, Lot 1
4. Section 55, Block 1, Lot 2

all as shown on official tax map in the Orange County Clerk’s office, with all parcels being situated in the City of Newburgh, County of Orange, State of New York, and said permanent negative easement areas being more particularly described in **Exhibit A** as “PE 1” and “PE 2” for the purpose of restricting the construction of buildings or other structures over and through the identified easement areas in connection with the construction, reconstruction and maintaining

thereon of the City of Newburgh's North Interceptor Sewer, together with appurtenances thereon, and;

Reserving, any right, title or interest in and to the property above delineated in the Grantor, its successors or assigns, the right of using said property for any such purposes beyond which the Grantee, in its reasonable opinion, believes would not interfere with the purposes for which the permanent easement and permanent negative easement were established.

A TEMPORARY EASEMENT IN, ON, OVER AND THROUGH FOUR (4) PARCELS OF PROPERTY known as:

1. Section 54, Block 1, Lot 1
2. Section 54, Block 1, Lot 2
3. Section 55, Block 1, Lot 1
4. Section 55, Block 1, Lot 2

all as shown on official tax map in the Orange County Clerk's office, with all parcels being situated in the City of Newburgh, County of Orange, State of New York, and said temporary easement areas being more particularly described in **Exhibit A** as "TE 1" and "TE 2" for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer, together with appurtenances thereon, and

SAID TEMPORARY EASEMENT shall expire automatically on 11:59 p.m. on April 30, 2025; and

SAID PERMANENT EASEMENT, PERMANENT NEGATIVE EASEMENT, and TEMPORARY EASEMENT to be exercised in, on and over the same lands described in a deed dated March 4, 1980 and recorded May 29, 1980 in Liber 2166 of Deeds at Page 597 in the Office of the County Clerk for Orange County, New York.

SAID PERMANENT EASEMENT, PERMANENT NEGATIVE EASEMENT, and TEMPORARY EASEMENT are intended by the parties named herein to be, and shall be construed as, covenants running with the land, and

SUBJECT TO ALL COVENANTS, CONDITIONS AND RESTRICTIONS OF record affecting said premises.

THIS CONVEYANCE is made in the ordinary course of business and does not constitute all or substantially all of the assets of the selling entity.

TO HAVE AND TO HOLD the said rights and privileges unto the Grantee, its successors and assigns,

GRANTOR COVENANTS that it is the owner in fee of the above described lands and has the right to grant the easement. Notwithstanding, Grantee acknowledges that Grantors make no representations or warranties with respect to title.



GRANTEE: CITY OF NEWBURGH

\_\_\_\_\_  
By: Todd Venning, City Manager

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2023, 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 said capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

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

**Attachment: Exhibit A (metes/bounds description and map)**

Record and Return:

City of Newburgh  
attn.: City Engineer  
83 Broadway  
Newburgh, New York 12550



CITY OF NEWBURGH  
PERMANENT AND TEMPORARY EASEMENT  
ACQUISITION MAP

MAP NO. 4  
PARCEL NO. PE 1 through 6  
PARCEL NO. TE 1 through 8  
SHEET 1 OF 8 SHEETS

Algonquin Realty Corp.  
(REPUTED OWNER)  
Orange County Clerks Office  
Deed Liber: 2166 Page: 597

Parcel Summary:

Type Easement Acquisition  
Portion of 2021 Tax Map  
Ref. No. 54-1-1&2, 55-1-1&2  
City of Newburgh  
County of Orange  
State of New York

LAND OF  
Algonquin Realty Corp.  
L 2166 P 597  
SBL: 55 - 1 - 1  
O.C.C.O. FM #5536

Map Reference Information:

"Topographic Survey Prepared for ARCADIS of NEW YORK, Inc.  
CSO LTCP Implementation Project - City of Newburgh"  
dated 13 November, 2020 and last revised 08 October, 2021  
by Brooks & Brooks LSPC.

Parcel Locator Point: Project Coordinate System

Parcel No: PE 1  
N: 975998.96 E: 627270.86

Parcel No: TE 1  
N: 975998.96 E: 627270.86

Parcel No: PE 2  
N: 976377.77 E: 627201.82

Parcel No: TE 2  
N: 976359.04 E: 627205.99

Parcel No: TE 7  
N: 975962.82 E: 627277.12

Parcel No: TE 8  
N: 976356.89 E: 627134.26

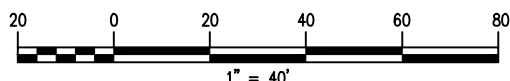
TE 8 Line Table		
Line #	Direction	Length
TL2	S15°51'49"E	22.00±
TL3	S73°41'02"W	18.38±
TL4	N17°17'16"W	22.00±
TL5	N73°40'34"E	18.93±

LEGEND

- APPROXIMATE ROAD BOUNDS
- APPROXIMATE TAX MAP LINE
- NEW PERMANENT EASEMENT
- NEW TEMPORARY EASEMENT
- EXISTING PERMANENT EASEMENT

NORTH

The project horizontal coordinate system is tied to NAD 83(2011) New York State Plan, East Zone system at Baseline Control Station #55104, with an observation value of: N=969,569.95 E=627,100.70  
All distances are horizontal ground distance. This datum is not intended to be used for GNSS construction layout. To obtain grid distances apply the scale factor of 0.99992529795 using #55104 as scaling point.



PRELIMINARY MAP  
FOR REVIEW ONLY

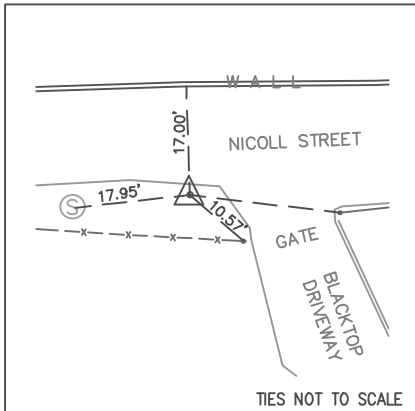
CITY OF NEWBURGH  
PERMANENT AND TEMPORARY EASEMENT  
ACQUISITION MAP

MAP NO. 4  
PARCEL NO. PE 1 through 6  
PARCEL NO. TE 1 through 8  
SHEET 2 OF 8 SHEETS

Algonquin Realty Corp.  
(REPUTED OWNER)  
Orange County Clerks Office  
Deed Liber: 2166 Page: 597

Parcel Summary:

Type Easement Acquisition  
Portion of 2021 Tax Map  
Ref. No. 54-1-1&2, 55-1-1&2  
City of Newburgh  
County of Orange  
State of New York



bSTA. 40043  
91+03.06

PROJECT COORDINATE SYSTEM  
N: 976832.14  
E: 627156.00

Map Reference Information:

"Topographic Survey Prepared for ARCADIS of NEW YORK, Inc.  
CSO LTCP Implementation Project – City of Newburgh"  
dated 13 November, 2020 and last revised 08 October, 2021  
by Brooks & Brooks LSPC.

Parcel Locator Point: Project Coordinate System  
Parcel No: PE 3  
N: 976362.12 E: 627215.55

Parcel No: TE 3  
N: 976352.77 E: 627217.63

Parcel No: PE 4  
N: 976539.76 E: 627224.17

Parcel No: TE 4  
N: 976622.12 E: 627236.12

Parcel No: PE 5  
N: 976574.89 E: 627258.92

Parcel No: TE 5  
N: 976659.93 E: 627241.78

Parcel No: PE 6  
N: 976822.73 E: 627183.22

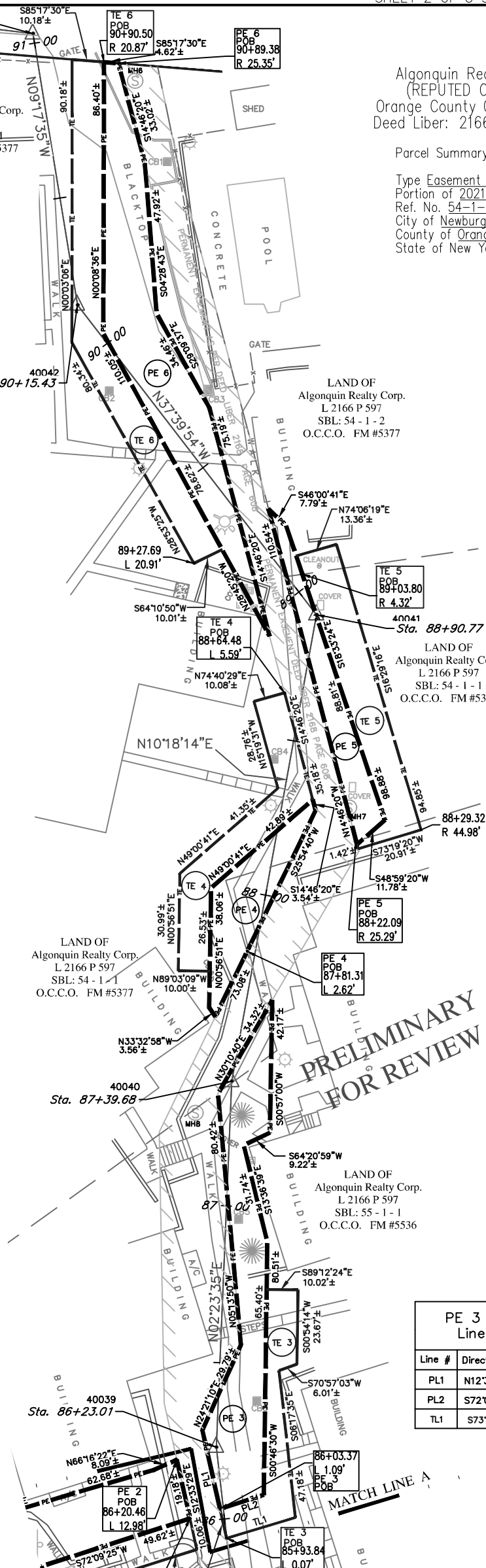
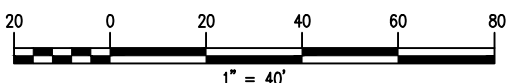
Parcel No: TE 6  
N: 976823.11 E: 627178.62

LEGEND

- APPROXIMATE ROAD BOUNDS
- APPROXIMATE TAX MAP LINE
- NEW PERMANENT EASEMENT
- NEW TEMPORARY EASEMENT
- EXISTING PERMANENT EASEMENT

NORTH

The project horizontal coordinate system is tied to NAD 83(2011) New York State Plan, East Zone system at Baseline Control Station #55104, with an observation value of: N=969,569.95 E=627,100.70  
All distances are horizontal ground distance. This datum is not intended to be used for GNSS construction layout. To obtain grid distances apply the scale factor of 0.99992529795 using #55104 as scaling point.



PRELIMINARY MAP  
FOR REVIEW ONLY

PE 3 & TE 3  
Line Table

Line #	Direction	Length
PL1	N12°33'39"W	25.74±
PL2	S72°09'25"W	14.68±
TL1	S73°17'13"W	22.88±

DESCRIPTION OF PERMANENT EASEMENT NO. 1 FOR ALGONQUIN REALTY CORP  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5536 - SBL'S 55-1-1 & 2

A permanent easement to be exercised in favor of the party of the second part, its agents, successors and/or assigns, on and over the property above delineated for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer in and to all that piece or parcel of property designated as Parcel No. PE 1, being a portion of Section 55, Block 1, Lots 1 & 2, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on the accompanying map and described as follows:

Parcel No. PE 1

Beginning at a point on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2), said point being 8.89± feet distant easterly, measured at right angles, from station 82+19.34± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence northerly along said easterly boundary of the existing permanent easement North 04°48'10" West 9.63± feet to a point 11.92± feet distant easterly, measured at right angles, from station 82+28.48± of said baseline, said last point being on the division line of other lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence continuing along said easterly boundary of the existing permanent easement North 04°48'10" West 10.72± feet to a point 15.29± feet distant easterly, measured at right angles, from station 82+38.66± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following two courses and distances: (1) North 73°16'12" East 9.89± feet to a point 25.12± feet distant easterly, measured at right angles, from station 82+37.56± of said baseline, (2) South 12°06'47" East 10.41± feet to a point 23.13± feet distant easterly, measured at right angles, from station 82+27.34± of said baseline, said last point being on the division line of said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2); thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2) the following two courses and distances: (1) South 12°06'47" East 9.52± feet to a point 21.31± feet distant easterly, measured at right angles, from station 82+18.00± of said baseline, (2) South 73°02'01" West 12.49± feet to the point of beginning; being 222.47± square feet or 0.01± acres.

The party of the first part, its agents, successors, and/or assigns additionally grants a negative easement restricting the construction buildings or other structures on the above described PE 1 parcel.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

DESCRIPTION OF TEMPORARY EASEMENT NO. 1 FOR ALGONQUIN REALTY CORP  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5536 - SBL'S 55-1-1 & 2

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 1, being a portion of Section 55, Block 1, Lots 1 & 2, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 1

Beginning at a point on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp. (reputed owner of SBL 55-1-2), said point being at the point of beginning of above described PE 1 parcel, said point also being 8.89± feet distant easterly, measured at right angles, from station 82+19.34± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence running along said PE 1 parcel the following two courses and distances: (1) North 73°02'01" East 12.49± feet to a point 21.31± feet distant easterly, measured at right angles, from station 82+18.00± of said baseline, (2) North 12°06'47" West 9.52± feet to a point 23.13± feet distant easterly, measured at right angles, from station 82+27.34± of said baseline, said last point being on the division line of other lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence continuing along said PE 1 parcel the following two courses and distances: (1) North 12°06'47" West 10.41± feet to a point 25.12± feet distant easterly, measured at right angles, from station 82+37.56± of said baseline, (2) South 73°16'12" West 9.89± feet to a point 15.29± feet distant easterly, measured at right angles, from station 82+38.66± of said baseline, said last point being on abovementioned easterly boundary of the existing permanent easement; thence along said easterly boundary of the existing permanent easement North 04°48'10" West 3.76± feet to a point 16.47± feet distant easterly, measured at right angles, from station 82+42.23± of said baseline; thence through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following three courses and distances: (1) North 75°35'16" East 8.71± feet to a point 25.08± feet distant easterly, measured at right angles, from station 82+40.91± of said baseline, (2) North 71°18'07" East 10.33± feet to a point 35.38± feet distant easterly, measured at right angles, from station 82+40.11± of said baseline, (3) South 12°49'20" East 13.98± feet to a point 32.88± feet distant easterly, measured at right angles, from station 82+26.35± of said baseline, said last point being on the division line with said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2); thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2) the following two courses and distances: (1) South 12°49'20" East 19.60± feet to a point 29.37± feet distant easterly, measured at right angles, from station 82+07.07± of said baseline (2) South 73°02'01" West 23.83± feet to a point 5.68± feet distant easterly, measured at right angles, from station 82+09.63± of said baseline, said last point being on the easterly boundary of the above referenced existing permanent easement; thence running along said existing permanent easement North 04°48'10" West 10.23± feet the point of beginning; being 492.89± square feet or 0.01± acres.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

DESCRIPTION OF PERMANENT EASEMENT NO. 2 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5536 - SBL'S 55-1-1 & 2

A permanent easement to be exercised in favor of the party of the second part, its agents, successors and/or assigns, on and over the property above delineated for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer in and to all that piece or parcel of property designated as Parcel No. PE 2, being a portion of Section 55, Block 1, Lots 1 & 2, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on the accompanying map and described as follows:

Parcel No. PE 2

Beginning at a point on the westerly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1), said point being 12.98± feet distant westerly, measured at right angles, from station 86+20.46 of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence southerly along said westerly boundary of the existing permanent easement South 12°33'29" East 19.18± feet to a point 10.94± feet distant westerly, measured at right angles, from station 86+01.39± of said baseline; thence through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following four courses and distances: (1) South 72°09'25" West 49.62± feet to a point 59.58± feet distant westerly, measured at right angles, from station 85+91.59± of said baseline, (2) South 15°51'51" East 142.45± feet to a point 27.16± feet distant westerly, measured at right angles, from station 84+37.79± of said baseline, (3) South 15°50'14" East 200.23± feet to a point 2.16± feet distant westerly, measured at right angles, from station 82+40.62± of said baseline, (4) North 73°16'12" East 2.23± feet to a point 0.06± feet distant easterly, measured at right angles, from station 82+40.37± of said baseline, said last point being on the westerly boundary of said existing permanent easement; thence running along said westerly bounds of the existing permanent easement South 04°48'10" East 10.89± feet to a point 3.37± feet distant westerly, measured at right angles, from station 82+30.03± of said baseline, said last point being on the division line of other lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2); thence continuing along said westerly bounds of the existing permanent easement South 04°48'10" East 103.71± feet to a point 20.87± feet distant westerly, measured at right angles, from station 81+19.43± of said baseline, said last point being on the division line of lands of FD Water Street Holdings LLC as recorded in Deed Liber 14241 at page 1379 in the Orange County Clerks Office; thence running

through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2) North 15°56'32" West 101.27± feet to a point 23.31± feet distant westerly, measured at right angles, from station 82+32.05± of said baseline, said last point being on the division line of said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence running through said lands of Algonquin Realty Corp the following four courses and distances: (1) North 15°56'32" West 1.74± feet to a point 23.09± feet distant westerly, measured at right angles, from station 82+33.78± of said baseline, (2) North 15°51'49" West 371.36± feet to a point 82.45± feet distant westerly, measured at right angles, from station 86+07.31± of said baseline, (3) North 73°40'34" East 62.68± feet to a point 20.70± feet distant westerly, measured at right angles, from station 86+18.06± of said baseline, (4) North 66°16'22" East 8.09± feet to the point of beginning; being 9416.52± square feet or 0.22± acres.

The party of the first part, its agents, successors, and/or assigns additionally grants a negative easement restricting the construction buildings or other structures on the above described PE 2 parcel.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

**DESCRIPTION OF TEMPORARY EASEMENT NO. 2 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5536 - SBL 55-1-1**

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 2, being a portion of Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 2

Beginning at a point on the westerly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1), said point being 10.94± feet distant westerly, measured at right angles, from station 86+01.39± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence southerly along said westerly boundary of the existing permanent easement South 12°33'29" East 10.06± feet to a point 9.87± feet distant westerly, measured at right angles, from station 85+91.38± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following two courses and distances: (1) South 72°06'46" West 22.53± feet to point 31.95± feet distant westerly, measured at right angles, from station 85+86.91± of said baseline, (2) South 17°49'01" East 178.00± feet to a point 24.43± feet distant easterly, measured at right angles, from station 84+18.16± of said baseline, said last point being on the westerly boundary of the said existing permanent easement; thence running along said existing permanent easement South 04°48'10" East 23.14± feet to a point 33.08± feet distant easterly, measured at right angles, from station 83+96.70± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following four courses and distances: (1) South 53°42'11" West 3.94± feet to a point 30.73± feet distant easterly, measured at right angles, from station 83+93.53± of said baseline, (2) South 22°28'17" East 8.00± feet to a point 35.84± feet distant easterly, measured at right angles, from station 83+87.37± of said baseline, (3) South 63°02'30" West 10.83± feet to a point 27.89± feet distant easterly, measured at right angles, from station 83+59.31± of said baseline, (4) South 16°12'01" East 55.49± feet to a point 21.20± feet distant easterly, measured at right angles, from station 83+04.22± of said baseline, said last point being on the westerly boundary of the said existing permanent easement; thence running along said existing permanent easement South 04°48'10" East 67.27± feet to a point 0.06± feet distant easterly, measured at right angle, from station 82+40.37± of said baseline, said last point being on the easterly boundary of above describe PE 2 parcel; thence running along said PE 2 parcel the following four courses and distances: (1) South 73°16'12" West 2.23± feet to a point 2.16± feet distant westerly, measured at right angles, from station 82+40.62± of said baseline, (2) North 15°50'14" West 200.23± feet to a point 27.16± feet distant westerly, measured at right angles, from station 84+37.79± of said baseline, (3) North 15°51'51" West 142.45± feet to a point 59.58± feet distant westerly, measured at right angles, from station 85+91.59± of said baseline, (4) North 72°09'25" East 49.62± feet to the point of beginning; being 8101.08± square feet or 0.19± acres.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

**DESCRIPTION OF PERMANENT EASEMENT NO. 3 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO.'S 5377 & 5536 - SBL'S 54-1-1, 55-1-1**

A permanent easement to be exercised in favor of the party of the second part, its agents, successors and/or assigns, on and over the property above delineated for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer in and to all that piece or parcel of property designated as Parcel No. PE 3, being a portion of Section 54, Block 1, Lot 1 and Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on the accompanying map and described as follows:

Parcel No. PE 3

Beginning at a point on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1), said point being 1.09± feet distant westerly, measured at right angles, from station 86+03.37± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence northerly along said easterly boundary of the existing permanent easement the following four courses and distances: (1) North 12°33'29" West 25.74± feet to a point 4.70± feet distant westerly, measured at right angles, from station 86+28.30± of said baseline, (2) North 24°21'10" East 29.79± feet to a point 6.44± feet distant easterly, measured at right angles, from station 86+55.93± of said baseline, (3) North 05°13'50" West 80.42± feet to a point 4.23± feet distant westerly, measured at right angles, from station 87+35.64± of said baseline, (4) North 30°10'40" East 0.56± feet to a point 3.96± feet distant westerly, measured at right angles, from station 87+36.14± of said baseline, said last point being on the division line of other lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1); thence still running along said existing permanent easement North 30°10'40" East 29.43± feet to a point 6.57± feet distant easterly, measured at right angles, from station 87+63.30± of said baseline, said last point being on the division line of said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence still running along said existing permanent easement North 30°10'40" East 4.33± feet to appoint 8.04± feet distant easterly, measured at right angles, from station 87+67.37± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) South 00°57'00" West 10.41± feet to a point 9.73± feet distant easterly, measured at right angles, from station 87+57.10± of said baseline, said last point being on the division line of said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1); thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) South 00°57'00" West 6.84± feet to a point 10.84± feet distant easterly, measured at right angles, from station 87+50.35± of said baseline, said last point being on the division line of said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following five courses and distances: (1) South 00°57'00" West 24.92± feet to a point 12.83± feet distant easterly, measured at right angles, from station 87+23.84± of said baseline, (2) South 64°20'59" West 9.22± feet to a point 4.69± feet distant easterly, measured at right angles, from station 87+19.51± of said baseline, (3) South 13°36'39" East 31.74± feet to a point 13.44± feet distant easterly, measured at right angles, from station 86+89.00± of said baseline, (4) South 00°46'30" West 80.51± feet to a point 13.30± feet distant easterly, measured at right angles, from station 86+06.27± of said baseline, (5) South 72°09'25" West 14.68± feet to the point of beginning; being 1858.79± square feet or 0.04± acres.

The party of the first part, its agents, successors, and/or assigns additionally grants a negative easement restricting the construction buildings or other structures on the above described PE 3 parcel.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

DESCRIPTION OF TEMPORARY EASEMENT NO. 3 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FIELD MAP NO. 5536 - SBL 55-1-1

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 3, being a portion of Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 3

Beginning at a point on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1), said point being 0.07± feet distant westerly, measured at right angles, from station 85+93.84± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence northerly along said easterly boundary of the existing permanent easement North 12°33'39" West 9.58± feet to a point 1.09± feet distant westerly, measured at right angles, from station 86+03.37± of said baseline, said last point being on southerly boundary of the above described PE3 parcel; thence running along southerly and easterly boundary of said PE 3 parcel the following two courses and distances: (1) North 72°09'25" East 14.68± feet to a point 13.30± feet distant easterly, measured at right angles, from station 86+06.27± of said baseline, (2) North 00°46'30" East 65.40± feet to a point 13.87± feet distant easterly, measured at right angles, from station 86+73.88± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following five courses and distances: (1) South 89°12'24" East 10.02± feet to a point 23.89± feet distant easterly, measured at right angles, from station 86+74.16± of said baseline, (2) South 00°54'14" West 23.67± feet to a point 24.50± feet distant easterly, measured at right angles, from station 86+50.50± of said baseline, (3) South 70°57'03" West 6.01± feet to a point 18.91± feet distant easterly, measured at right angles, from station 86+48.30± of said baseline, (4) South 06°17'35" East 47.18± feet to a point 22.44± feet distant easterly, measured at right angles, from station 85+97.92± of said baseline, (5) South 73°17'13" West 22.88± feet to the point of beginning; being 735.80± square feet or 0.02± acres.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

DESCRIPTION OF PERMANENT EASEMENT NO. 4 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO.'S 5377 & 5536 - SBL'S 54-1-1, 55-1-1

A permanent easement to be exercised in favor of the party of the second part, its agents, successors and/or assigns, on and over the property above delineated for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer in and to all that piece or parcel of property designated as Parcel No. PE 4, being a portion of Section 54, Block 1, Lot 1 and Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on the accompanying map and described as follows:

Parcel No. PE 4

Beginning at a point on the westerly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1), said point being on the division line with other lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1), said point also being 2.62± feet distant westerly, measured at right angles, from station 87+81.31± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence southerly along said easterly boundary of the existing permanent easement South 25°54'40" West 23.14± feet to a point 8.84± feet distant westerly, measured at right angles, from station 87+59.03± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) the following three courses and distances: (1) North 33°32'58" West 3.56± feet to a point 11.31± feet distant westerly, measured at right angles, from station 87+61.60± of said baseline, (2) North 00°56'51" East 38.06± feet to a point 17.50± feet distant westerly, measured at right angles, from station 87+99.15± of said baseline, (3) North 49°00'41" East 42.89± feet to a point 9.32± feet distant easterly, measured at right angles, from station 88+32.62± of said baseline, said last point being on westerly boundary of said existing permanent easement; thence running along the westerly boundary of said existing permanent easement the following two courses and distances: (1) South 14°46'20" East 3.54± feet to a point 10.82± feet distant easterly, measured at right angles, from station 88+29.42± of said baseline, (2) South 25°54'40" West 17.79± feet to a point 6.03± feet distant easterly, measured at right angles, from station 88+12.28± of said baseline, said last point being on the division line with said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence continuing along the westerly boundary of said existing permanent easement South 25°54'40" West 32.15± feet to the point of beginning; being 805.56± square feet or 0.02± acres.

The party of the first part, its agents, successors, and/or assigns additionally grants a negative easement restricting the construction buildings or other structures on the above described PE 4 parcel.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

DESCRIPTION OF TEMPORARY EASEMENT NO. 4 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5377 - SBL 54-1-1

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 4, being a portion of Section 54, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 4

Beginning at a point on the westerly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1), said point being 5.59± feet distant westerly, measured at right angles, from station 88+64.48± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence southerly along said westerly boundary of the existing permanent easement South 14°46'20" East 35.18± feet to a point 9.32± feet distant easterly, measured at right angles, from station 88+32.62± of said baseline, said last point being on the northerly boundary of the above described PE 4 parcel; thence running along the northerly boundary of said PE 4 parcel the following two courses and distances: (1) South 49°00'41" West 42.89± feet to a point 17.50± feet distant westerly, measured at right angles, from station 87+99.15± of said baseline, (2) South 00°56'51" West 26.53± feet to a point 13.19± feet distant westerly, measured at right angles, from station 87+72.98± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) the following five courses and distances: (1) North 89°03'09" West 10.00± feet to a point 23.05± feet distant westerly, measured at right angles, from station 87+71.35± of said baseline, (2) North 00°56'51" East 30.99± feet to a point 28.09± feet distant westerly, measured at right angles, from station 88+01.93± of said baseline, (3) North 49°00'41" East 41.35± feet to a point 2.23± feet distant westerly, measured at right angles, from station 88+34.19± of said baseline, (4) North 15°19'31" West 28.76± feet to a point 14.68± feet distant westerly, measured at right angles, from station 88+60.12± of said baseline, (5) North 74°40'29" East 10.08± feet to the point of beginning; being 1026.06± square feet or 0.02± acres.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.



**DESCRIPTION OF PERMANENT EASEMENT NO. 5 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO.'S 5377 & 5536 - SBL'S 54-1-1 & 2, 55-1-1**

A permanent easement to be exercised in favor of the party of the second part, its agents, successors and/or assigns, on and over the property above delineated for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer in and to all that piece or parcel of property designated as Parcel No. PE 5, being a portion of Section 54, Block 1, Lots 1 & 2 and Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on the accompanying map and described as follows:

Parcel No. PE 5

Beginning at a point on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1), said point being on the division line with other lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1), said point also being 25.29± feet distant easterly, measured at right angles, from station 88+22.09± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence northerly along said easterly boundary of the existing permanent easement North 14°46'20" West 87.19± feet to a point 0.17± feet distant westerly, measured at right angles, from station 89+06.33± of said baseline, said last point being at the southwesterly corner of other lands of Algonquin Realty Corp (reputed owner of SBL 54-1-2); thence continuing along the easterly boundary of said existing permanent easement and the westerly boundary of said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-2) North 14°46'20" West 22.28± feet to a point 8.50± feet distant easterly, measured at right angles, from station 89+26.85± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-2) the following two courses and distances: (1) South 46°00'41" East 7.79± feet to a point 9.63± feet distant easterly, measured at right angles, from station 89+19.14± of said baseline, (2) South 18°33'24" East 16.23± feet to a point 4.32± feet distant easterly, measured at right angles, from station 89+03.80± of said baseline, said last point being on the division line with said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1); thence running through said other lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) the following two courses and distances: (1) South 18°33'24" East 82.65± feet to a point 33.10± feet distant easterly, measured at right angles, from station 88+30.32± of said baseline, (2) South 48°59'20" West 9.17± feet to a point 27.37± feet distant easterly, measured at right angles, from station 88+23.16± of said baseline, said last point being on the division line with said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) South 48°59'20" West 2.61± feet to a point 25.74± feet distant easterly, measured at right angles, from station 88+21.12± of said baseline, said last point being on the easterly boundary of the above mentioned existing permanent easement; thence running along the easterly boundary of said existing permanent easement North 14°46'20" West 1.07± feet to the point of beginning; being 761.60± square feet or 0.02± acres.

The party of the first part, its agents, successors, and/or assigns additionally grants a negative easement restricting the construction buildings or other structures on the above described PE 5 parcel.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

**DESCRIPTION OF TEMPORARY EASEMENT NO. 5 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO.'S 5377 & 5536 - SBL'S 54-1-1 & 2, 55-1-1**

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 5, being a portion of Section 54, Block 1, Lots 1 & 2 and Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 5

Beginning at a point on the easterly boundary of the above described PE 5 parcel, said point being 4.32± feet distant easterly, measured at right angles, from station 89+03.80± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer, said point also being on the division line with other lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1); thence northerly along said easterly boundary of PE 5 parcel North 18°33'24" West 6.16± feet to a point 6.33± feet distant easterly, measured at right angles, from station 89+09.62± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-2) the following two courses and distances: (1) North 74°06'19" East 13.36± feet to a point 18.74± feet distant easterly, measured at right angles, from station 89+04.67± of said baseline, (2) South 16°29'16" East 7.92± feet to a point 15.88± feet distant easterly, measured at right angles, from station 88+97.29± of said baseline, said last point being on the division line with other lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1); thence through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) South 16°29'16" East 84.43± feet to a point 43.85± feet distant easterly, measured at right angles, from station 88+31.56± of said baseline, said last point being on the division line with other lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1); thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) the following two courses and distances: (1) South 16°29'16" East 2.50± feet to a point 44.98± feet distant easterly, measured at right angles, from station 88+29.32± of said baseline, (2) South 73°19'20" West 20.91± feet to a point 26.34± feet distant easterly, measured at right angles, from station 88+19.84± of said baseline, said last point being on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608; thence along said easterly boundary of the existing permanent easement North 14°46'20" West 1.42± feet to a point 25.74± feet distant easterly, measured at right angles, from station 88+21.12± of said baseline, said last point being on the southerly boundary of above described PE 5 parcel; thence running along the southerly boundary of said PE 5 parcel North 48°59'20" East 2.61± feet to a point 27.37± feet distant easterly, measured at right angles, from station 88+23.16± of said baseline, said last point being on the division line with said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1); thence continuing along said southerly and easterly boundary of PE 5 parcel the following two courses and distances: (1) North 48°59'20" East 9.17± feet to a point 33.10± feet distant easterly, measured at right angles, from station 88+30.32± of said baseline, (2) North 18°33'24" West 82.65± feet to the point of beginning; being 1147.18± square feet or 0.03± acres.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

**DESCRIPTION OF PERMANENT EASEMENT NO. 6 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5377 - SBL 54-1-1**

A permanent easement to be exercised in favor of the party of the second part, its agents, successors and/or assigns, on and over the property above delineated for the purpose of constructing, reconstructing and maintaining thereon the City of Newburgh's North Interceptor Sewer in and to all that piece or parcel of property designated as Parcel No. PE 6, being a portion of Section 54, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on the accompanying map and described as follows:

Parcel No. PE 6

Beginning at a point on the westerly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 on the northerly boundary of lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and the former centerline of Nicoll Street as shown on a certain map entitled "Survey for Algonquin Realty Corp Ferry Crossing Condominiums" filed with the office of the Orange County Clerks on 18 September 1980 as Filed Map No. 5377, said point also being 25.35± feet distant easterly, measured at right angles, from station 90+89.38± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence southerly along said westerly boundary of said existing permanent easement South 14°46'20" East 33.02± feet to a point 28.50± feet distant easterly, measured at right angles, from station 90+56.51± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) the following two courses and distances: (1) South 04°28'43" East 47.92± feet to a point 18.36± feet distant easterly, measured at right angles, from station 89+97.92± of said baseline, (2) South 9°09'37" East 14.46± feet to a point 13.27± feet distant easterly, measured at right angles, from station 89+63.84± of said baseline, said last point being on the westerly boundary of aforementioned existing permanent easement; thence continuing along said westerly boundary of existing permanent easement South 14°46'20" East 75.19±

feet to a point 13.53± feet distant westerly, measured at right angles, from station 88+81.45± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) the following two courses and distances: (1) North 28°45'20" West 110.05± feet to a point 1.06± feet distant easterly, measured at right angles, from station 90+03.30± of said baseline, (2) North 00°08'36" East 86.40± feet to a point 20.87± feet distant easterly, measured at right angles, from station 90+90.50± of said baseline, said last point being on the northerly boundary of said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and the former centerline of Nicoll Street; thence running easterly along said northerly boundary of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and former centerline of Nicoll Street South 85°17'30" East 4.62± feet to the point of beginning; being 2363.62± square feet or 0.05± acres.

The party of the first part, its agents, successors, and/or assigns additionally grants a negative easement restricting the construction buildings or other structures on the above described PE 6 parcel.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

**DESCRIPTION OF TEMPORARY EASEMENT NO. 6 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5377 - SBL'S 54-1-1**

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 6, being a portion of Section 54, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 6

Beginning at a point on the westerly boundary of the above described PE 6 parcel, said point also being on the northerly boundary of lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and the former centerline of Nicoll Street as shown on a certain map entitled "Survey for Algonquin Realty Corp Ferry Crossing Condominiums" filed with the office of the Orange County Clerks on 18 September 1980 as Filed Map No. 5377, said point also being 20.87± feet distant easterly, measured at right angles, from station 90+90.50± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and along the westerly boundary of said PE 6 parcel the following two courses and distances: (1) South 00°08'36" West 86.40± feet to a point 1.06± feet distant easterly, measured at right angles, from station 90+03.30± of said baseline, (2) South 28°45'20" East 78.62± feet to a point 11.11± feet distant westerly, measured at right angles, from station 89+25.63± of said baseline; thence continuing through said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) the following three courses and distances: (1) South 64°10'50" West 10.01± feet to a point 20.91± feet distant westerly, measured at right angles, from station 89+27.69± of said baseline, (2) North 28°53'25" West 80.34 feet to a point 8.66± feet distant westerly, measured at right angles, from station 90+07.09± of said baseline, (3) North 00°03'06" East 90.18± feet to a point 10.99± feet distant easterly, measured at right angles, from station 90+92.96± of said baseline, said last point being on the northerly boundary of said lands of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and the former centerline of said Nicoll Street; thence running easterly along said northerly boundary of Algonquin Realty Corp (reputed owner of SBL 54-1-1) and former centerline of Nicoll Street South 85°17'30" East 10.18± feet to the point of beginning; being 1691.60± square feet or 0.04± acres.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

**DESCRIPTION OF TEMPORARY EASEMENT NO. 7 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5377 - SBL 55-1-2**

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 7, being a portion of Section 55, Block 1, Lot 2, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. TE 7

Beginning at a point on the easterly boundary of the existing permanent easement as described in Deed Liber 2168 at Page 608 in the lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2), said point being 0.46± feet distant easterly, measured at right angles, from station 81+83.65± of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence running along said easterly boundary of the existing permanent easement the following two courses and distances: (1) North 83°48'59" West 3.27± feet to a point 2.39± feet distant westerly, measured at right angles, from station 81+85.25± of said baseline, (2) North 04°48'10" West 15.24± feet to a point 2.40± feet distant easterly, measured at right angles, from station 81+99.72± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-2) South 16°14'53" East 16.19± feet to the point of beginning; being 24.48± square feet.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

PRELIMINARY MAP  
FOR REVIEW ONLY

DESCRIPTION OF TEMPORARY EASEMENT NO.8 FOR ALGONQUIN REALTY CORP.  
DEED LIBER 2166 PAGE 597 - FILED MAP NO. 5377 - SBL 55-1-1

A temporary easement to be exercised in, on and over the property delineated below for the purpose of constructing and reconstructing the City of Newburgh's North Interceptor Sewer for all foreseeable uses related to the construction or reconstruction of the City of Newburgh's North Interceptor Sewer. This temporary easement shall terminate upon the earlier of the completion of work and written notice by the party of the second part to the party of the first part, or [INSERT DATE]. Such easement shall cover all that piece or parcel of property designated as Parcel No. TE 7, being a portion of Section 55, Block 1, Lot 1, as shown on the official tax map, situate in the City of Newburgh, County of Orange, State of New York, as shown on accompanying map and described as follows:

Parcel No. PE 8

Beginning at a point at the most northwesterly corner of the above described PE 2 parcel, said point being 82.45± feet distant westerly, measured at right angles, from station 86+07.31 of the hereinafter described survey baseline for the construction of the City of Newburgh's North Interceptor Sewer; thence southerly along said westerly boundary PE 2 parcel South 15°51'49" East 22.00± feet to a point 78.85± feet distant westerly, measured at right angles, from station 85+85.61± of said baseline; thence through lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) South 73°41'02" West 18.38± feet to a point on the easterly highway bounds of North Water Street, said last point also being 96.96± feet distant westerly, measured at right angles, from station 85+82.46± of said baseline, thence running along said easterly bounds of North Water Street North 17°17'16" West 22.00± feet to a point 101.10± feet distant westerly, measured at right angles, from station 86+04.07± of said baseline; thence running through said lands of Algonquin Realty Corp (reputed owner of SBL 55-1-1) North 73°40'34" East 18.93± feet to the point of beginning; being 410.00± square feet.

Reserving, however, to the owner of any right, title or interest in and to the property above delineated, and such owner's successors or assigns, the right of using said property and such use shall not be further limited or restricted under this easement beyond that which is necessary to effectuate its purposes for, and as established by, the construction or reconstruction and as so constructed or reconstructed, the maintenance, of the herein identified project.

The above mentioned survey baseline is a portion of the 2020 survey baseline for the City of Newburgh's North Interceptor Sewer Project as shown on a map and plan on file in the office of Brooks & Brooks Land Surveyors and described as follows:

Beginning at station 79+30.62; thence North 00°59'38" East to station 81+60.84; thence North 23°07'18" West to station 83+69.81; thence North 17°09'50" East to station 84+66.23; thence North 06°27'10" West to station 86+23.01; thence North 02°23'35" East to station 87+39.68; thence North 10°18'14" East to station 88+90.77; thence North 37°39'54" West to station 90+15.43; thence North 09°17'35" West to station 91+03.06.

All bearings referred to the City of Newburgh's North Interceptor Sewer project, tied to NAD83(2011) New York State, East Zone at Baseline Control Station #55104, with an observation value of: N=969,569.95 E=627,100.70 and Project Average Scale Factor of 0.99992529795. All distances referred to are horizontal ground distances.

All of the easements contained in this instrument are intended by the parties named herein to be, and shall be construed as, covenants running with the land.

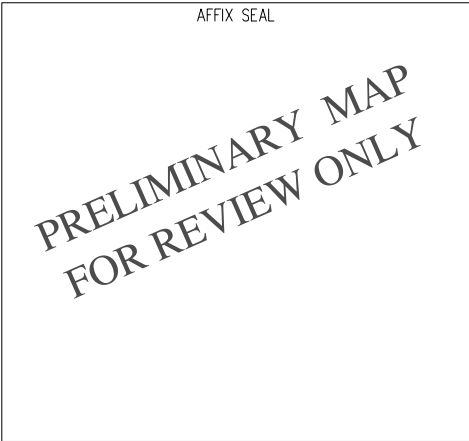
"Unauthorized alteration of a survey map bearing a licensed land surveyor's seal is a violation of the New York State Education Law."

I hereby certify that this map was prepared in accordance with current NYSAPLS policies, standards and procedures.

Date \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Land Surveyor

P.L.S. License No. \_\_\_\_\_



I hereby certify that the property mapped above is necessary for this project, and the acquisition thereof is recommended.

Date \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Project Design Engineer  
CSO LTCP Implementation Project  
– City of Newburgh



RESOLUTION NO.: \_\_\_\_\_-2023

OF

JANUARY 9, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION  
OF A SOFT INTERVIEW ROOM FROM PROJECT BELOVED FOR USE BY  
THE CITY OF NEWBURGH POLICE DEPARTMENT**

**WHEREAS**, Project Beloved has offered to donate the equipment for and set up a soft interview room for the City of Newburgh Police Department; and

**WHEREAS**, a soft interview room is proven to support trauma informed care by addressing the human body's biological and neurological response to trauma and provides a physically and emotionally safe space for law enforcement interviews of rape and sexual assault victims and can be useful for interviews of individuals suspected of committing crimes; and

**WHEREAS**, such donation shall be at no cost to the City; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to accept the donation of a soft interview room from Project Beloved with the appreciation and thanks of the City of Newburgh.

RESOLUTION NO.: \_\_\_\_\_-2023

OF

JANUARY 9, 2023

**A RESOLUTION AMENDING THE 2023 PERSONNEL ANALYSIS BOOK  
TO ADD ONE ACCOUNT CLERK POSITION ON A TEMPORARY BASIS  
IN THE CODE COMPLIANCE BUREAU**

**WHEREAS**, the Code Compliance Supervisor notified the City Manager that due to a long term leave of absence, the Code Compliance Bureau will need an additional individual to perform the duties of “Account Clerk”; and

**WHEREAS**, by Resolution No. 146-2022 of June 13, 2022, the City Council authorized an amendment of the 2022 Personnel Analysis Book to create 1 additional Account Clerk on a temporary basis to promote economy and efficiency in the Code Compliance Department; and

**WHEREAS**, the Code Compliance Bureau continues to require an additional Account Clerk position on a temporary basis to address the continued leave of absence; the same being in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2023 be amended, and that there be and hereby is created one (1) additional position on a temporary basis in the position of “Account Clerk” in the Code Compliance Bureau.

ORDINANCE NO.: \_\_\_\_\_ - 2023

OF

JANUARY 9, 2023

AN ORDINANCE AMENDING CHAPTER 163 ENTITLED "FEES" OF THE CODE  
OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

SECTION 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

§163-1. Applicability.

Notwithstanding any other provision in this Code, the following schedule of fees is hereby established with respect to licenses, permits, registrations, applications, subscriptions and activities required or regulated under the provisions of the Code of the City of Newburgh. Specific requirements and regulations shall be as set forth in the chapter to which reference is made below. The following schedule of fees shall remain in effect until rescinded or amended.

Code Section	Type of Fee	Amount
Chapter 60, Municipal Identification Card Program		
§60-5	Application fee	<del>\$2015.00</del> (adult) <u>\$107.00</u> (under 18 or over 62, veteran, disabled)
Chapter 70, Parking Violations Bureau		
§70-10	Transcript Fee	<u>\$1540</u>
§70-12	Appeal Application Fee	<u>\$3025</u>
Chapter 122, Building Construction		
§122-14	Upon the filing of a building permit application for:	
	New residential structure	\$250, plus <u>\$17.00 per \$1,000 of</u>

Underlining denotes additions

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		<del>construction value 0.25 per square foot of floor area</del>
	New commercial or industrial structure	\$350, plus <u>\$17.00 per \$1,000 of construction value</u> <del>0.25 per square foot of floor area</del>
	Addition, alteration, renovation or accessory building	<del>\$17.00-12.50</del> , per \$1,000 of construction value
	Minimum fee	\$50
	Building permit for demolition	<del>\$150</del> 75.00 per story (residential) <u>\$250.00 per story (commercial)</u>
	Failing to apply for a building permit prior to the commencement of work, the following fee shall be charged in addition to the amounts set forth above	50% of the application fee, <u>plus \$200</u> for a residential structure or <del>\$500</del> 200 for a commercial structure
§ 122-21	Certificates of occupancy	
	Single-family or two-family residence	<u>\$120</u> <del>100.00</del>
	Multiple-family residence (three units and above)	<u>\$360</u> <del>300.00</del>
	Commercial/industrial	<u>\$500</u> <del>300.00</del>
Chapter 125, Buildings, Demolition of		
§125-4	Demolition permit	<u>\$150 per story (residential)</u> <u>\$250 per story (commercial)</u>
Chapter 139, Construction Operations		
§139-11	Temporary trailers used as offices	<u>\$400 per month</u> <del>Up to 10 days: \$50.00</del> <del>Eleven to 30 days: \$100.00</del>

Underlining denotes additions  
~~Strikethrough~~ denotes deletions

## Chapter 150, Dogs and Other Animals

§150-9	Euthanization and burial of dogs	<del>\$175.00</del> Under 40 pounds: <del>\$50.00</del> Over 40 pounds: <del>\$65.00</del>
	Euthanization of cats	<del>\$175.00</del> \$45.00
	<del>Euthanization of kittens</del>	<del>\$25.00</del>
§150-16C	Replacement identification tags	<del>\$35.00</del> 10
§150- <del>21</del> 19	Adoption of <u>animals</u> <del>dogs</del>	\$10, plus the cost of a dog license
	Dogs	Spay: <del>\$148.30</del> 77 Neuter: <del>\$117.00</del> 77 Rabies shot: <del>\$52.75</del> 28
	Cats	Spay: <del>\$136.85</del> 40 Neuter: <del>\$99.50</del> 23 AIDS/FIV combo: <del>\$90.30</del>

## Chapter 155, Electrical Standards

§155-6	Electrical permit	<del>\$2025</del> per permit, <u>plus \$5 per fixture</u>
	New York State unified solar permit	\$25 per permit, <u>plus \$0.10 per watt</u>

## Chapter 158, Environmental Quality Review

§158-5	Environmental Quality Review: Upon a determination that an action may or will have a significant effect on the environment (positive declaration), the applicant shall pay the <u>actual cost of</u> <u>services which may reasonably be required</u> <u>by following to the lead agency in processing</u> <u>the action:</u>	<del>Actual cost to the lead agency of the preparation and review of the draft environmental impact statement under the State Environmental Quality Review Act up to a minimum of 2% of the project cost for</del>
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Underlining denotes additions  
~~Strikethrough~~ denotes deletions

~~residential projects and 1/2 of 1% of  
the total project cost for  
nonresidential projects~~

## Deposit

The sums of money pursuant to this  
Subsection shall be placed in an  
account to cover such costs, which  
account shall be drawn against in the  
course of the review of the action.  
Amount determined by the lead  
agency to be sufficient to cover the  
actual costs of review, which sum  
shall be drawn against in the course  
of the SEQRA process. Subsequent  
deposits shall be required as needed.

Applicant elects to prepare draft  
Environmental impact statement  
(DEIS)

Lead agency may, at its discretion,  
collect the costs incurred in  
preparing its own DEIS as well as any  
costs incurred in the review of any  
DEIS prepared by the applicant

## Chapter 168, Filming

§168-6 Non-refundable application fee

~~\$15050.00~~  
\$1,000.00 for new applications  
received less than 48 hours before  
filming commences  
\$150.00 for modifications to an  
approved film permit, other than  
adding locations

Permit fee

\$500.00 for use of public property  
~~per day~~  
~~\$750.00 for use of public property~~  
~~per night~~  
\$200.00 per day per side to reserve  
public street parking  
\$200.00 for use of public parking lot  
(less than 50% of spaces)

Underlining denotes additions  
~~Strikethrough~~ denotes deletions

\$2,500.00 for use of public parking  
Lot (50% or more of spaces)

Request for use of City personnel  
and services

\$63.00 per hour ~~Actual cost of the  
City employee or City service~~

Special Effects review

\$500.00 per hour

Refundable security deposit

\$1,500.00

#### Chapter 175, Flood Damage Prevention

§175-13 Floodplain development permit application \$250~~400~~

#### Chapter 183, Waste Management, Handling and Disposal

§183-28 Dumpster use fee \$250.00 per month

#### Chapter 190, Housing and Property Standards

§190-27 Violation search \$125~~400~~, plus \$.25 per page

§190-27 Street reports \$25~~20~~

#### Chapter 198, Junkyards

§198-10 Junkyard license \$500~~250~~ annually

#### Chapter 207, Letter and Parcel Receptacles

§207-4 Letter and parcel receptacles Annual permit fee: \$50~~25~~.00  
Renewal: \$50~~25~~.00  
Inspection fee: \$25~~40~~.00

#### Chapter 220, Parks and Recreation Areas

§220-17 Delano-Hitch Recreation Park:  
Use of multipurpose activity center building:  
Application fee: \$50  
Usage fees:  
(1) Organizations whose membership

Underlining denotes additions

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is 50% or more City residents:

~~\$300~~200 for 4 hours or less  
~~\$75~~50 for each additional hour, or  
part thereof

(2) Organizations whose membership  
is less than 50% City residents:

~~\$500~~400 for 4 hours or less  
~~\$150~~100 for each additional hour, or  
part thereof  
Usage fees shall be reduced by 25%  
for any group or organization  
sponsoring 10 or more events in any  
calendar year.

Use of facility's kitchen

\$100 additional fee for duration of  
event

Refundable damage fee

\$500

§220-19 Use of Aquatic Center and Athletic Fields

Baseball Field No. 1

City of Newburgh youth teams  
All other adult or youth teams

~~\$50~~25.00 per game  
~~\$75~~40.00 per game  
~~\$100~~55.00 per night game  
~~\$150~~70.00 per double-header  
~~\$300~~100 per ½ day  
~~\$600~~175 per full day

Baseball Field Nos. 2, 3 and 4

City of Newburgh youth teams  
All other adult or youth teams

~~\$50~~25.00 per game  
~~\$75~~40.00 per game  
~~\$150~~70.00 per double-header  
~~\$300~~100 per ½ day  
~~\$600~~175 per full day

All games played by the City of  
Newburgh Little League Baseball  
Program or other City of Newburgh  
youth programs may be approved  
pursuant to a separate license  
agreement between the Program and  
the City Manager for a fee of \$1,000  
which may be discounted as follows:

Underlining denotes additions  
~~Strikethrough~~ denotes deletions



40% if at least 50% of the Program registrants are City of Newburgh residents; or 60% if at least 75% of the Program registrants are City of Newburgh resident; or 80% if at least 95% of the Program registrants are City of Newburgh residents.

Football/Soccer field:

City of Newburgh-based youth teams

All games may be approved pursuant to a separate license agreement between the Program and the City Manager for a fee of \$1,000 which may be discounted as follows: 40% if at least 50% of the Program registrants are City of Newburgh residents; or 60% if at least 75% of the Program registrants are City of Newburgh resident; or 80% if at least 95% of the Program registrants are City of Newburgh residents.

Non-City youth teams

~~\$250~~200 per day game; ~~\$400~~350 per night game

City of Newburgh-based adult teams

~~\$200~~150 per day game; ~~\$225~~175 per night game

Non-City adult teams

~~\$350~~300 per day game; ~~\$400~~350 per night game

Adult league

~~\$900~~800 per team

Delano-Hitch\_Basketball courts:

Tournaments

City Resident or Organization

~~\$300~~150 per day

Non-City Resident or Organization

~~\$500~~300 per day

Leagues

City-based league: ~~\$225~~150 per team

Non-City-based league: ~~\$300~~200 per team

Use of area for non-sports event

\$250 per day

Underlining denotes additions

~~Strikethrough~~ denotes deletions

§220-34 Use of Delano-Hitch Stadium

Non-sporting event:

Application fee	\$50
Usage fees:	
City of Newburgh non-profit organization	<u>\$300</u> <del>200</del> per day
Non-City of Newburgh not-for-profit organization	<u>\$400</u> <del>300</del> per day
City of Newburgh Resident or Organization	<u>\$400</u> <del>350</del> per day
Non-City of Newburgh Resident or Organization	<u>\$1,000</u> <del>800</del> per day

Usage fees shall be reduced by 25% for any group or organization sponsoring 10 to 20 events in any calendar year.

Any group or organization sponsoring more than 20 events in any calendar year shall pay usage fees set by the City Manager with the approval of the City Council.

Security deposit:	\$500
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Sporting events:

City-of-Newburgh youth teams	<u>\$50</u> <del>25</del> per game
City-of-Newburgh adult teams	<u>\$75</u> <del>60</del> per game
Non-City youth or adult teams	<u>\$100</u> <del>75</del> per day game; <u>\$150</u> <del>100</del> per night game; <u>\$175</u> <del>150</del> per double-header; <u>\$400</u> <del>250</del> for ½ day; <u>\$600</u> <del>500</del> for full day

All fees and charges referred to in this entry may be included in a license agreement, upon the approval of the City Council, as may be deemed appropriate by the City Manager or the City Manager's designee.

Underlining denotes additions  
~~Strikethrough~~ denotes deletions

Use of parking lot for non-sporting event      ~~\$500~~250 per day

#### Chapter 230, Plumbing

§230-32      Plumbing permit      1-5 fixtures: ~~\$100~~30.00  
6 or more fixtures: ~~\$30~~50 per fixture

#### Chapter 239, Public Records

Police Department reports:      All reports: ~~\$6~~5.00  
Copies: \$0.25 per page  
Certification: ~~\$5~~4.00

#### Chapter 240, Rental Properties

##### § 240-3      Rental License Application and Renewal

A non-refundable permit application fee shall be paid, upon filing an application for a rental license or for a renewal rental license in accordance with the following schedule of rental dwelling units per structure:

Number of Dwelling Units	Fee per unit
1 to 2 dwelling units	\$95.00 per unit
3 to 5 dwelling units	\$80.00 per unit
6 to 9 dwelling units	\$66.50 per unit
10 to 11 dwelling units	<del>\$60</del> <u>62</u> .00 per unit
12 to 14 dwelling units	<del>\$60</del> <u>55</u> .00 per unit
15 to 20 dwelling units	<del>\$60</del> <u>50</u> .00 per unit
21 or more dwelling units	<del>\$60</del> <u>39</u> .50 per unit

#### Chapter 263, Streets and Sidewalks

§263-15      Street opening permit      ~~\$200~~175.00

§263-24      Permit for installation of combustible liquid tank

Tanks of 275 gallons (up to two tanks)      ~~\$25.00~~no fee

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~~Strikethrough~~ denotes deletions

Tanks of 550 gallons	<del>\$7550.00</del>
Tanks of 1,000 gallons and larger	\$250 for tanks of 1,000 gallons and \$15 for each additional 1,000 gallons of tank capacity

## Chapter 293, Water

### §293-22 Backflow preventer

Application fee	<del>\$200</del> 100.00
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Administrative processing fee-for late filing of annual backflow prevention device testing report	<del>\$50</del> 25.00
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### §293-34 Tap fees

~~The following utility connection fees shall  
be charged for all n~~New connections to  
water and sewer systems in the  
City of Newburgh

One- and two-family residential:  
~~\$300~~100.00

Multi-family (three and above),  
commercial, industrial: ~~\$500~~300.00

Water meters up to 2 inches in size

Supplied by the City ~~at no cost~~  
5/8 meter: \$250.00  
3/4 meter: \$300.00  
1" meter: \$350.00  
1 1/2 meter: \$1,800.00

Water meters over 2 inches

Paid by the owner/applicant and  
shall be purchased from the supplier  
for the type and manufacturer as  
indicated by the Superintendent

§293-35	Check reading of water meter fee	\$35.00
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§293-36	Charge for maintenance, repair or replacement of the water meter because of improper use, accident, freezing, vandalism, theft or
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Underlining denotes additions

~~Strikethrough~~ denotes deletions

removal without permission of  
the Superintendent or any other  
extraordinary cause

~~\$350250~~, plus the actual cost of labor  
and parts required to repair or replace  
the meter

§293-37      Final/closing reading of meter  
                 at customer request

\$5035.00

#### Chapter 297, Wreckers and Towers

§297-3      Towing storage and cleanup rates:  
                 Initial pickup charge for towing or road service:

Between 8:00 a.m. and 5:00 p.m.	<u>\$150</u> <del>125</del>
Between 5:00 p.m. and 8:00 a.m.	<u>\$175</u> <del>150</del>
Anytime during snow emergency	<u>\$200</u> <del>175</del>
Winching Charge	<u>\$150</u> <del>100</del> per hour

Towing City-owned cars      \$50~~45~~.00 plus \$1.50 per mile if  
   towed from outside City limits

Outside Storage      \$60~~50~~.00 for the initial 24 hours or  
                                 any portion thereof and \$60~~50~~.00 for  
                                 each 24 hour period thereafter or  
                                 portion thereof

Inside Storage      \$100~~60~~.00 for the initial 24 hour  
                                 period or any portion thereof and  
                                 \$100~~60~~.00 for each 24 hour period  
                                 thereafter or portion thereof

Clean-up services      \$80~~50~~.00 per half hour

Application of Speedy Dry  
or similar material      \$50~~40~~.00

§ 297-6      Annual license fee      \$1,500~~150~~ for the first ~~two~~ vehicles  
   For each additional truck or vehicle ~~in~~  
   ~~excess of two~~: \$100~~25~~.00

Underlining denotes additions  
~~Strikethrough~~ denotes deletions

§297-22	Towing of vehicles by City	
	Abandoned Vehicles as defined in the New York State Vehicle and Traffic Law	<u>\$500</u> <del>250</del> .00
	Storage at City facilities	<u>\$60</u> <del>50</del> .00 per day or any part thereof for outside storage
		<u>\$75</u> <del>60</del> .00 per day or any part thereof for inside storage
	Installation of immobilization device	<u>\$150</u> <del>75</del>
	Removal of immobilization device	<u>\$50</u> <del>25</del>
	Removal of Scofflaw Administrative Fee	\$10

## Chapter 300, Zoning

§300-40	Architectural Review Commission	
	Application for certificate of appropriateness	With public hearing: \$100.00 Without public hearing or Consent Agenda: \$25.00
	<del>Application for a certificate of appropriateness only in connection with the erection of a sign subject to a sign permit fee, provided that such sign is to be either a wall sign not exceeding 25 square feet of surface area or a projecting sign not exceeding nine square feet of area on one side</del>	<del>\$50.00</del>
<del>§300-55</del>	<del>Swimming or bathing pool permit</del>	<del>\$50</del>
§300-88	Planning Board	
	Site Plan application	Residential (4 or fewer dwelling units): \$200.00 Residential (5 or more dwelling units): \$200.00, plus \$100 per unit  Commercial ( <u>less than 3,000 square feet</u> ): <u>\$300</u> <del>\$1,000.00 plus \$100.00 per 1,000 square feet of floor area</del>

Underlining denotes additions  
~~Strikethrough~~ denotes deletions

Commercial (3,00 square feet or more): \$1,000

Inspection of public improvements

2% of the approved estimated dwelling units): \$200.00

~~\$300.89 Recreation fee in lieu of land As determined by the Planning Board~~

\$163-2. Miscellaneous fees.

Type of Fee

Amount

Assessor

Copies of records

\$0.25 per page

Code compliance

Boiler permit

~~\$50~~25.00

Place of assembly category buildings,  
annual inspection:

~~\$200~~150.00

Commercial buildings  
(other than public assembly category),  
annual inspection:

~~\$100~~75.00

Dumpster permit for construction,  
demolition or rehabilitation of property

~~\$100 per week For the first 7 days: \$35.00~~  
~~Per week after the first 7 days: \$35.00~~

City Collector

Search of tax records and calculation  
of taxes owed

~~\$100~~75.00 per tax lot

Geographic information systems

Mapping

\$40.00 per hour billed in 15 minute increments for work exceeding 30 minutes in length (length of time to be determined by the GIS Analyst)

Underlining denotes additions

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Printing (by paper size)	
8 ½ inches by 11 inches	\$5.00; each additional copy: \$3.00
11 inches by 17 inches	\$10.00; each additional copy: \$6.00
Customized paper size up to 36 inches by 40 inches	<del>\$5025.00; each additional copy: \$15.00</del>
Larger than 36 inches by 40 inches	<del>\$7530.00</del>
Subscription	<del>\$100.00 per year for Interactive Mapping Services</del>

## SECTION 2. Severability.

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

## SECTION 3. Codification.

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

## SECTION 4. Validity

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

## SECTION 5. This Ordinance shall take effect on January 10, 2023.

Underlining denotes additions  
~~Strikethrough~~ denotes deletions



ORDINANCE NO.: \_\_\_\_\_ - 2023

OF

JANUARY 9, 2023

AN ORDINANCE AMENDING SECTION 297-6, "LICENSE FEES"  
OF CHAPTER 297 "WRECKERS AND TOWERS"  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

**BE IT ORDAINED**, by the Council of the City of Newburgh, New York that Section 297-6 of the Code of the City of Newburgh is hereby amended as follows:

**SECTION 1.** Amendment

**§ 297-6. License fees.**

The annual license fee for the ~~first two~~ vehicles licensed hereunder for 12 months or any part thereof, ~~payable to the City Clerk~~, and for each such license or renewal thereof shall be as set forth in Chapter 263, Fees of this Code. Such fees shall be payable to the City Clerk.

**SECTION 2.** Severability.

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

**SECTION 3.** Codification.

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

Underlining denotes additions

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**SECTION 4.** Validity

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

**SECTION 5.** This ordinance shall take effect on January 10, 2023.

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RESOLUTION NO.: \_\_\_\_\_ - 2023

OF

JANUARY 9, 2023

**RESOLUTION SCHEDULING A PUBLIC HEARING FOR JANUARY 23, 2023  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW ADDING  
ARTICLE XIII, ENTITLED “HOTEL ROOM OCCUPANCY TAX”  
TO CHAPTER 270 ENTITLED “TAXATION” OF THE CITY CODE  
OF THE CITY OF NEWBURGH**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning “A Local Law adding Article XIII, entitled ‘Hotel Room Occupancy Tax’ to Chapter 270 entitled ‘Taxation’ of the Code of Ordinances of the City of Newburgh”; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 23rd day of January, 2023 in the Activity Center, 401 Washington Street, Newburgh, New York.

LOCAL LAW NO.: \_\_\_\_\_ - 2023

OF

\_\_\_\_\_, 2023

**A LOCAL LAW ADDING ARTICLE XIII,  
ENTITLED “HOTEL ROOM OCCUPANCY TAX”  
TO CHAPTER 270 ENTITLED “TAXATION” OF THE CITY CODE  
OF THE CITY OF NEWBURGH**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York that

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law adding Article XIII, entitled ‘Hotel Room Occupancy Tax’ to Chapter 270 entitled ‘Taxation’ of the Code of Ordinances of the City of Newburgh”.

**SECTION 2 - AMENDMENT**

The Code of Ordinances of the City of Newburgh is hereby amended to add new Article XIII entitled “Hotel Room Occupancy Tax” to Chapter 270 entitled “Taxation” of the Code of Ordinances of the City of Newburgh to read as follows:

**Chapter 270 Taxation**

**Article XIII. Taxation of Hotel Room Occupancy**

**§ 270-78. Title**

This Article shall be known as the “City of Newburgh Hotel Room Occupancy Tax Law.”

**§ 270-79. Definitions.**

For the purpose of this article, the following terms shall have the meanings indicated:

**COMPTROLLER** – The Comptroller of the City of Newburgh.

**DIRECTOR OF FINANCE** – The Director of Finance of the City of Newburgh.

**EFFECTIVE DATE** – The date on which the local law enacting this article is filed with the Secretary of State.

**HOSTING COMPANY** – An internet, application, technology, and/or similarly based service through which a third party desiring to offer lodging (a “host”) and a third party desiring to book lodging (a “guest”) for one or more nights have the opportunity to communicate, negotiate, and consummate a booking transaction for transient lodging accommodations pursuant to a direct agreement between a host and guest to which the hosting company is not a party but still facilitates and is entitled to receive payments for rent on behalf of or for the host. Merely publishing an advertisement for transient accommodations does not make the publisher a hosting company.

**HOTEL or MOTEL** – Any facility, or portion thereof, consisting of rentable units and providing lodging of guests on an overnight basis. For the purposes of this article, the term “hotel” shall mean and include any facility providing lodging on an overnight basis including those facilities designated and commonly known as “bed-and-breakfast” and “tourist” facilities, and shall include but not be limited to hotels, motels, tourist homes, motel courts, bed-and-breakfast establishments, short-term rentals, vacation rentals, clubs or similar facilities, whether or not meals are served to guests or residents thereof, and/or a location that is otherwise made available for transient lodging accommodation for rent directly by the owner or through an agent, operator or hosting companies.

**OCCUPANCY** – The use or possession, or the right to the use or possession, of any room in a hotel.

**OCCUPANT** – A natural person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

**OPERATOR** – Any person operating a hotel or motel in the City of Newburgh, including, but not limited to, an owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or motel and entitled to be paid the rent. Such term shall also include a hosting company and a room remarketer and such hosting company or room remarketer shall be deemed to operate a hotel, motel or tourist home, or portion thereof, with respect to which such person has the rights of a hosting company or room remarketer.

**PERMANENT RESIDENT** – Any natural person occupying any room or rooms in a hotel for at least 90 consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

**PERSON** – An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the foregoing.

**RENT** – The per diem rental rate or charge received for occupancy of each room, valued in money, whether received in money or otherwise, for the occupancy of a room in a hotel for any period of time.

**RETURN** – Any return filed or required to be filed as herein provided.

ROOM – Any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than a place of assembly.

ROOM REMARKETER – A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy directly or indirectly, and to determine rent therefore, shall be the “rights of a room remarketer”. A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

#### § 270-80. Imposition of tax.

On or after the effective date of this article, there is hereby imposed and there shall be paid a tax of 5% upon the rent for every occupancy of a room or rooms in a hotel or motel in the City of Newburgh, except that the tax shall not be imposed upon a permanent resident, or as otherwise provided herein.

#### § 270-81. Transitional provisions.

The tax imposed by this chapter shall be paid upon any occupancy on and after April 1, 2023, although such occupancy is pursuant to a prior contract, lease or other arrangement. However, for any occupancy taking place on or after April 1, 2023, where rent for such occupancy has been pre-paid through a third-party room remarketer or pre-paid in full to the hotel and where such rent is paid prior to the effective date, and for which the hotel has no other direct financial transaction with the occupant, that occupancy shall not be subject to the tax. Where rent is paid on a weekly, monthly or other term basis, the rent shall be subject to the tax imposed by this chapter to the extent that it covers any period on and after the April 1, 2023.

#### § 270-82. Exemptions.

Except as otherwise provided in this section, any use or occupancy by any of the following shall not be subject to the tax imposed by this article.

- A. The State of New York, or any public corporation, including any public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, improvement district, or other political subdivision of the state;
- B. The United States of America, insofar as it is immune from taxation;
- C. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; provided, however, that nothing in this subsection shall include an organization operated

for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this section;

D. A permanent resident of a hotel or motel.

#### § 270-83. Territorial limits.

The tax imposed by this article shall apply only within the territorial limits of the City of Newburgh.

#### § 270-84. Registration.

- A. Within 10 days after the effective date of this article, or in the case of operators commencing business after such effective date, within three days after such commencement or opening, every operator shall file with the Director of Finance a certificate of registration in a form prescribed by the Director of Finance.
- B. The Director of Finance shall, within five days after such registration, issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant and a duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificate of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificate shall be non-assignable and nontransferable and shall be surrendered immediately to the Director of Finance upon the cessation of business at the hotel named or upon its sale or transfer.

#### § 270-85. Administration and collection.

- A. The tax imposed by this article shall be administered and collected by the Comptroller, such other City employee as the Director of Finance may designate, by such means and in such manner as other taxes which are now collected and administered or as otherwise provided by this article.
- B. The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or state of charges made for said occupancy issued or delivered by the operator as trustee for and on account of the City, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this article, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to the nonpayment of the tax by the occupant, as if the tax were owing, including all rights of eviction, dispossession, repossession, and enforcement of any innkeeper's lien that he/she may have in the event of nonpayment of the rent by the occupant; provided, however, that the Comptroller or employees or agents duly designated by the Director of Finance shall be joined as a party in any action or proceeding brought by the operator to collect and enforce collection of the tax.

- C. Hosting companies and/or room remarketers shall collect and remit the applicable tax to the City, as the collector, for booking transactions completed through the respective hosting company or room remarketer for hotels located within the City; and the host or operator of the hotel who is not the collector hosting company or room remarketer shall not be responsible for collecting and remitting the tax to the City on any transaction for which it has received confirmation that the hosting company or room remarketer has collected the aforementioned tax and remitted it back to the City; otherwise, operators or hosts of hotels and motels shall be liable for the collection and remittance of the tax. For the sole purposes of tax registration, collection, and remittance under this article, a hosting company or room remarketer shall assume and be limited to the duties of hotel/motel operator for only those booking transactions completed through the respective hosting company or room remarketer.
1. If the hosting company or room remarketer fails to separately state the tax on the rent on a sales slip, invoice, receipt or other statement of the transaction between the hosting company or room remarketer and the occupant or fails to maintain records of all prices of all components of a transaction covered by this Article, the entire consideration shall be treated as rent subject to tax under the Article. Nothing herein shall be construed to subject to tax or exempt from tax any service or property or amusement charge or other items otherwise subject to tax or exempt from tax under any other New York State law. A hosting company's or room remarketer's records of the consideration payable for all components of a transaction covered by this Article are records required to be maintained for purposes of §270-86 of this Article.
  2. In regard to the collection of tax on occupancies by hosting companies and room remarketers, the requirements of this Article shall be deemed satisfied if the hosting company or room remarketer provides the customer and/or occupant a sales slip, invoice, receipt or other statement of the price prior to the customer and/or occupant's completion of occupancy, on which the amount of tax due under this Article is stated. The hosting company or room remarketer must keep a copy of the sales, slip, invoice, receipt or statement as require by §270-86 of this Article, or must keep electronic records that accurately reflect the information on the sales slip, invoice, receipt or statement provided to the customer and/or occupant.
- D. The Comptroller may, whenever he/she deems it necessary for the proper enforcement of this article, provide by regulation that the occupant shall file returns and pay directly to the Comptroller the tax imposed at such times as returns are required to be filed and payment made over by the operator.
- E. Except at to and where the occupant has paid rent in full prior to the effective date, the tax imposed by this article shall be paid upon any occupancy on and after April 1, 2023, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid or charged or billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after the effective date of this article. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Comptroller may, by regulation, provide for credit and/or



refund of the amount of such tax upon the application therefor as provided in § 270-91 of this article.

- F. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that rent for occupancy is not taxable hereunder shall be upon the operator or occupant. Where an occupant claims exemption from the tax under the provisions of Section 270-82 of this article, the rent shall be deemed taxable hereunder unless:
1. The operator shall receive from the occupant claiming such exemption a copy of a New York State sales tax exemption certificate; or
  2. The operator shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the occupant is its agent, representative, or employee, together with a certificate executed by the occupant that the occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the occupant's duties as a representative of such corporation or association.

#### § 270-86. Records.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the Comptroller may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the Comptroller or the Comptroller's duly authorized agent or employee, and shall be preserved for a period of three years, except that the Comptroller may consent to their destruction within that period or may require that they be kept together.

#### § 270-87. Returns.

- A. Every operator shall file with the Comptroller a return of occupancy and of rents and of the taxes payable thereon for the three-month periods ending the last day of March, June, September and December on and after the effective date of this article. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The Comptroller may permit or require returns to be made for other periods upon such dates as it may specify. If the Comptroller deems it necessary in order to ensure the payment of the tax imposed by this article, it may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as it may specify.
- B. The forms of return shall be prescribed by the Comptroller and shall contain such information as it may deem necessary for the proper administration of this article. The Comptroller may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.
- C. If a return required by this article is not filed, or if a return is incorrectly filed or is insufficient on its face, the Comptroller shall take such steps as he/she deems necessary to enforce the filing of such return or of a corrected return.

#### § 270-88. Payment of tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the Comptroller the taxes imposed by this article upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this article; even though it be judicially determined that the tax collected is invalidly required to be filed, it shall be due from the operator and payable to the Comptroller on the date prescribed herein for the filing of the return which is filed correctly shows the amount of rents and taxes due thereon. Where the Comptroller in his/her discretion deems it necessary to protect revenues to be obtained under this article, he/she may require any operator required to collect the tax imposed by this article to file with him/her a bond, issued by a surety company authorized to transact business in this state and approved by the Superintendent of Insurance of this state as to solvency and responsibility, in such amount as the Comptroller may find to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the Comptroller determines that an operator is to file such bonds, he/she shall give notice to such operator to that effect, specifying the amount of the bond required. The operator shall file such bond within five days after the giving of such notice unless, within such five days, the operator shall request, in writing, a hearing before the Comptroller at which the necessity, propriety and amount of the bond shall be determined by the Comptroller. Such determination shall be final and shall be complied with within 15 days after the giving of notices thereof. In lieu of such bond, securities approved by the Comptroller, or cash in such amount as he/she may prescribe, may be deposited with him/her, which shall be kept in the custody of the Comptroller, who may at any time, without notice of the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him/her at public or private sale without notice to the depositor thereof.

#### § 270-89. Determination of tax.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within 30 days after the giving of the notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the Superintendent of Insurance of this state as to solvency and responsibility, in such amount as a Justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or
- B. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

§ 270-90. Disposition of revenues.

All revenue resulting from the imposition of the tax under this article shall be paid into the treasury of the City and shall be credited to and deposited in the general fund of the City. Such revenues may be used for any lawful purpose.

§ 270-91. Refunds.

- A. In the manner provided in this section, the Comptroller shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Comptroller for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the Comptroller, he/she shall state the reason therefor in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the Comptroller, provided that the application is made within one year of the payment to the operator, but no actual refund of moneys shall be made to such operator until it shall first establish to the satisfaction of the Comptroller, under such regulations as the Comptroller may prescribe, that it has repaid to the occupant, or other person who has actually paid the tax, the amount for which the application for refund is made. The Comptroller may, in lieu of any refund required to be made, allow credit therefor on payments due or to become due from the applicant.
- B. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Comptroller, and such Comptroller shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is instituted within 30 days after the giving of the notice of such denial that a final determination of tax due was not previously made and that an undertaking is filed with the Comptroller in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.
- C. A person shall not be entitled to a revision, refund or credit of a tax, interest or penalty which had been determined to be due pursuant to the provisions of §270-94 of this article where it has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail itself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Comptroller made pursuant to § 270-94 of this article unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Comptroller after a hearing or on his/her own motion or in a proceeding under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 270-92. Reserves.

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to him/her on his/her application for a refund, the Director of Finance shall have the option of crediting future tax payment to meet the cost of any settlement or judgments or, at his/her option, may, in the first instance, set up appropriate reserves to meet any decision adverse to the City.

§ 270-93. Remedies exclusive.

The remedies provided by §§ 270-89 and 270-91 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article, and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he/she institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Comptroller prior to the institution of such suit and posts a bond for costs as provided in §270-88 of this article.

§ 270-94. Penalties for offenses; interest.

- A. Any person failing to file a return or to pay or pay over any tax to the Comptroller within in the time required by this article shall be subject to a penalty of 5% of the amount of the tax due, plus interest at the rate of 1% of such tax, for each month of delay, except the first month after such return was required to be filed or such tax became due. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this article.
- B. Any operator or occupant and any officer of an operator or occupant failing to file a return required by this article, or filing or causing to be filed or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this article which is willfully false, and any operator and any officer of a corporate operator willfully failing to file a bond required to be filed pursuant to § 270-88 of this article, or failing to file a registration certificate and such data in connection therewith as the Comptroller may by regulation or otherwise require, or failing to display or surrender the certificate of authority as required by this article or assigning or transferring such certificate of authority; and any operator or any officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issued or employed by the operator or willfully failing or refusing to collect such tax from the occupant; any operator or any officer of a corporate operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this article, and any such person or operator failing to keep records

required by this article, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishable by a fine of up to \$1,000.00, imprisonment for not more than one year, or both such fine and imprisonment. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this article and penalties and interest thereon and subject to the fines and imprisonment herein authorized.

- C. The certificate of the Comptroller to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed or that information has not been supplied pursuant to the provisions of this article shall be presumptive evidence thereof.

#### § 270-95. Returns to be secret.

It shall be unlawful, except in accordance with proper judicial order or as otherwise provided to the fullest extent permitted by law, for the Comptroller or Comptroller's designee to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Comptroller in an action or proceeding under the provisions of this article or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return filed in connection with his/her tax nor to prohibit the publication of statistics so classified to prevent the identification of particular returns and items thereof or the inspection by the Corporation Counsel or other legal representatives of the City or by the District Attorney of any county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter, until the Comptroller permits them to be destroyed.

#### § 270-96. Notices; limitations of time.

- A. Any notice authorized or required under the provisions of this article may be given to the person to whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him/her pursuant to the provisions of this article or in any application made by him/her or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence five days after the date of mailing of such notice.
- B. The provisions of the Civil Practice Law and Rules, or any other law relative to limitations of time for the enforcement of a civil remedy, shall not apply to any proceeding or action taken by the City to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this article. However, except in the case of a willfully false, fraudulent

return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of filing of a return; provided, however, that where no return has been filed as provided by law, the tax may be assessed at any time.

- C. Where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented, in writing, that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents, in writing, made before the expiration of the extended period.

#### § 270-97. Proceedings to recover tax.

Whenever any operator, any officer of a corporate operator, any occupant, or other person fails to collect and pay over any tax and/or penalty or interest as imposed by this article, the Corporation Counsel shall, at the request of the City Council, bring or cause to be brought an action to enforce the payment of the same on behalf of the City in any court of the State of New York or of any other state or of the United States. If, however, the Comptroller believes that any such operator, officer, occupant, or other person is about to cease business, leave the state, or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, such tax or penalty may be declared to be immediately due and payable, and the Comptroller may issue a warrant immediately.

#### § 270-98. General powers of the Director of Finance.

In addition to the powers granted in this article, the Director of Finance is hereby authorized and empowered to:

- A. Extend, for cause shown, the time of filing any return for a period not exceeding 30 days; and, for cause shown, to remit penalties, but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;
- B. Request information from the Tax Commission of the State of New York or the Treasury Department of the United States relative to any person; and afford information to such Tax Commission or Treasury Department relative to any person, notwithstanding any other provision of this article;
- C. Delegate functions hereunder to the Comptroller;
- D. Prescribe methods for confirming the rents for occupancy and confirm the accuracy of information on the taxable and non-taxable rents;
- E. Require any operator within the City, if it is determined that adequate records are not being maintained, to keep detailed records of the nature and type of hotel maintained; nature and type of service rendered; number of rooms available and occupied; daily leases, occupancy contracts or arrangements; rents received, charged, and accrued; the names and addresses of the occupants; whether or not any occupancy is claimed to be subject to the tax imposed by this article; and to furnish such information at the request of the Director of Finance;
- F. Impose as a penalty upon any operator within the City any necessary cost of auditing services generated by discrepancies discovered, upon audit, in the records of the operator; and

- G. Make, adopt, and amend such other rules and regulations appropriate to the carrying out of this article and the purposes thereof as may be approved by the City Council of the City of Newburgh.

§ 270-99. Administration of oaths; compelling testimony.

- A. The Director of Finance, or employees or agent(s) duly designated and authorized, shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this article. The Director of Finance shall have power to subpoena and require the attendance of witnesses and the production of books, papers, and documents to secure information pertinent to the performance of the duties hereunder in the enforcement of this article and to examine them in relation thereto. The Director of Finance shall also have the power to issue commissions for the examination of witnesses who are out of the state, unable to attend, or who are excused from attendance.
- B. A Supreme Court Justice, either in court or in chambers, shall have the power to summarily enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and documents called for by the subpoena of the Director of Finance under this article.
- C. Any subpoenaed person who refuses to testify or produce books or records, or who testifies falsely in any material matter pending before the Director of Finance under this article, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000.00 or imprisonment for not more than one year, or both such fine and imprisonment.
- D. The officers who serve the summons or subpoena of the Director of Finance and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except herein provided otherwise. Such officers shall be the City of Newburgh Police, or any officers or employees of the City designated to serve such process.

§ 270-100. Accounting and reporting of tax.

From time to time, but no less than quarterly each year, the Comptroller shall provide a report to the City Council, for its audit and review, of all actions taken pursuant to this article. The report shall contain a list of all certificates of registration filed or issued to any operator in the City of Newburgh and for each operator shall state the returns filed by all operators; the returns that have not been timely filed by any operator; the amount of tax determined to be payable by any operator; the tax paid and collected from any operator; any tax that may be due and owing or past due from any operator, and any enforcement action taken to collect any tax due under this article.

**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.



McKinney's Consolidated Laws of New York Annotated

Tax Law (Refs & Annos)

Chapter Sixty. Of the Consolidated Laws

Article 29. Taxes Authorized for Cities, Counties and School Districts (Refs & Annos)

Part I. Authority to Impose Taxes

Subpart A. Taxes Administered by Cities, Counties and School Districts

McKinney's Tax Law § 1202-hh

## § 1202-hh. Hotel or motel taxes in the city of Newburgh

Effective: July 21, 2022

[Currentness](#)

<[As added by L.2022, c. 418, § 1. See, also, §§ 1202-hh as added by other acts. Expires and deemed repealed July 21, 2025, pursuant to L.2022, c. 418, § 2.]>

(1) Notwithstanding any other provisions of law to the contrary, the city of Newburgh, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term “hotel” or “motel” shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as “bed and breakfast” and “tourist” facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term “permanent resident” shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Newburgh by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Newburgh imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with [section twelve hundred thirty](#) of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Newburgh and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

**Credits**

(Added L.2022, c. 418, § 1, eff. July 21, 2022.)

McKinney's Tax Law § 1202-hh, NY TAX § 1202-hh

Current through L.2022, chapters 1 to 566. Some statute sections may be more current, see credits for details.

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