



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL

April 10, 2023
7:00 PM

Mayor/Alcaldesa

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

City Clerk:/Secretaria de la Ciudad

3. Roll Call / Lista de Asistencia

Communications/Comunicaciones

4. Approval of the minutes from the City Council meeting of March 27, 2023 / Aprobacion del Acta de la Reunion General del Consejo del 27 de marzo de 2023
5. City Manager Update / Gerente de la Ciudad Pone al Dia a la Audiencia de los Planes de Cada Departamento

Presentations/Presentaciones

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

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

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

6. Resolution No. 55 - 2023 - PIN No. 8761.57 Lake Street (Route 32) Bridge Supplemental Agreement with HVEA

Resolution authorizing the City Manager to accept a proposal and execute a contract amendment with Hudson Valley Engineering Associates, P.C. for construction inspection services related to the Route 32/ Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project BIN No. 2022260 at a cost of \$107,611.49

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar una enmienda al contrato con Hudson Valley Engineering Associates, P.C. para servicios de inspección de construcción relacionados con el Proyecto de Rehabilitación de la Ruta 32/ Puente Metal Arch Culvert (Puente de Lake Street) BIN No. 2022260 a un costo de \$107,611.49

7. Resolution No. 56 - 2023 - Natural Gas Services Contract - Gas Bid Ratification

A resolution to authorize the award of a bid and the execution of a contract for gas supply to the City of Newburgh for a winter term to the lowest responsible bidder

Una resolución para autorizar la adjudicación de una oferta y la ejecución de un contrato de suministro de gas a la Ciudad de Newburgh por un período de invierno al mejor licitador responsable

8. Resolution No. 57 - 2023 - Agreement with CMA for Financial Advisory Services

Resolution authorizing the City Manager to execute an agreement with Capital Markets Advisors LLC to provide professional services to the City of Newburgh relating to new issue bonds, bond anticipation notes, tax anticipation notes, deficit notes and budget notes

Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo con Capital Markets Advisors LLC para proporcionar servicios profesionales a la Ciudad de Newburgh relacionados con bonos de nueva emisión, notas de anticipación de bonos, notas de anticipación de impuestos, notas de deficiencia y notas presupuestarias

9. Resolution No. 58 - 2023 - 22 Bay View Terrace - Extension of Time to Rehabilitate

Resolution authorizing an extension of time to rehabilitate the premises known as 22 Bay View Terrace (Section 48, Block 5, Lot 13) in the City of Newburgh until October 10, 2023

Resolución que autoriza una prórroga de tiempo para rehabilitar las instalaciones conocidas como 22 Bay View Terrace (Sección 48, Bloque 5, Lote 13) en la Ciudad de Newburgh hasta el 10 de octubre de 2023

10. Resolution No. 59 - 2023 - 36 Hasbrouck Street - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to the Jose Alexander Palomino to the premises known as 36 Hasbrouck Street (Section 38, Block 3, Lot 46)

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y derecho de reingreso de una escritura emitida a nombre de José Alejandro Palomino a las instalaciones conocidas como 36 Hasbrouck Street (Sección 38, Bloque 3, Lote 46)

11. Resolution No. 60 - 2023 - 182 Broadway - Release of Restrictive Covenants

Resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to Moishe Herczl to the premises known as 182 Broadway (Section 30, Block 1, Lot 32)

Resolución que autoriza la ejecución de una liberación de cláusulas restrictivas y derecho de reingreso de una escritura emitida a Moishe Herczl a las instalaciones conocidas como 182 Broadway (Sección 30, Bloque 1, Lote 32)

12. Resolution No. 61 - 2023 - 2024 Police Traffic Services Grant

Resolution authorizing the City Manager to apply for and accept if awarded a New York State Governor's Traffic Safety Committee 2024 Police Traffic Services Program Grant in an amount not to exceed \$46,000.00 with no City match required

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado un Subsidio del Programa de Servicios Policiales de Tráfico 2024 del Comité de Seguridad Vial del Gobernador del Estado de Nueva York en una cantidad que no exceda los \$46,000.00 el cual no requiere que la Ciudad iguale los fondos

13. Resolution No. 62 - 2023 - License Agreement with City of Newburgh IDA - Access to West Street Properties

Resolution authorizing the City Manager to execute a license agreement with the City of Newburgh Industrial Development Agency to gain access to property known as 159 West Street (Section 14, Block 3, Lot 26.1), Keefe Street (Section 14, Block 3, Lots 49 and 50) and Cassedy Street (Section 14, Block 3, Lot 59) for professional land surveying services

Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo de licencia con la Agencia de Desarrollo Industrial de la Ciudad de Newburgh para acceder a la propiedad conocida como 159 West Street (Sección 14, Bloque 3, Lote 26.1), Keefe Street (Sección 14, Bloque 3, Lotes 49 y 50) y Cassedy Street (Sección 14, Bloque 3, Lote 59) para servicios profesionales de topografía

14. Resolution No. 63 - 2023 - Contract for Land Surveying Services with Howard Weeden, PLS, P.C. - West Street Properties

Resolution authorizing the City Manager to execute a contract with Howard A. Weeden, PLS, P.C. for professional land surveying services of 17 parcels of property near West Street, Keefe Street, and Cassedy Street in the amount of \$24,000.00

Resolución que autoriza al Gerente de la Ciudad a ejecutar un contrato con Howard A. Weeden, PLS, P.C. para servicios profesionales de topografía de 17 parcelas de propiedad cerca de West Street, Keefe Street y Cassedy Street por el monto de \$24,000.00

15. Resolution No. 64 - 2023 - License Agreement with Habitat for Humanity of Greater Newburgh, Inc. for Access to Three Parcels on West Street

Resolution authorizing the City Manager to enter into a license agreement with Habitat for Humanity of Greater Newburgh, Inc. to allow access to three parcels on West Street to store lumber framing for eventual use in the construction of single-family homes in the City of Newburgh

Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de licencia con Habitat for Humanity of Greater Newburgh, Inc. para permitir el acceso a tres parcelas en West Street para almacenar entramado de madera para su uso eventual en la construcción de viviendas unifamiliares en la Ciudad de Newburgh

16. Resolution No. 65 - 2023 - 2023 Summer Youth Employment & Training Program Worksite Application

Resolution authorizing the City Manager to enter into an agreement with the County of Orange for the Summer Youth Employment and Training Program to provide young people to work for the City of Newburgh for the summer of 2023

Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo con el Condado de Orange para el Programa de Empleo y Capacitación Juvenil para proporcionar a los jóvenes a trabajar para la Ciudad de Newburgh para el verano de 2023

17. Resolution No. 66 - 2023 - Conservation Advisory Council - Designation as Climate Smart Communities TaskForce

Resolution of the City Council of the City of Newburgh appointing the Conservation Advisory Council as the City of Newburgh Climate Smart Communities Taskforce

Resolución del Concejo Municipal de la Ciudad de Newburgh nombrando al Consejo Consultivo de Conservación como el grupo de trabajo de comunidades inteligentes del clima de la Ciudad de Newburgh

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

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

Adjournment/ Aplazamiento:

RESOLUTION NO.: 55 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE A CONTRACT AMENDMENT WITH
HUDSON VALLEY ENGINEERING ASSOCIATES, P.C.
FOR CONSTRUCTION INSPECTION SERVICES RELATED TO
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE (LAKE STREET BRIDGE)
REHABILITATION PROJECT BIN NO. 2022260 AT A COST OF \$107,611.49**

WHEREAS, by Resolution No. 225-2014 of September 8, 2014, the City of Newburgh approved an agreement with McLaren Engineering Group for inspection and engineering design services for the Route 32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (the "Project"); and

WHEREAS, the Project was suspended until the City was awarded a New York State Department of Transportation Bridge NY 2016 Program grant to fund the Project; and

WHEREAS, by Resolution No. 16-2021 of February 8, 2021, the City Council approved a contract with Hudson Valley Engineering Associates, P.C. in the amount of \$284,441.36. for professional engineering and construction inspection services for the Project; and

WHEREAS, by Resolution No. 295-2022 of December 12, 2022, the City Council approved Change Order No. 3 to extend the Project construction contract completion date until March 31, 2023; and

WHEREAS, Hudson Valley Engineering Associates, P.C. has submitted a proposal for a contract amendment to the professional engineering services agreement to continue to provide construction inspection services for the Project through the construction contract extension at a cost of \$107,611.49 with funding for the additional services to be derived from NYSDOT Touring Route Program A.5680.0206.0000.0000; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute a contract amendment with Hudson Valley Engineering Associates, P.C. for professional engineering and construction inspection services in connection with repairing and rehabilitating the Route 32/Metal Arch Culvert Bridge (Lake Street Bridge) BIN No. 2022260 Rehabilitation Project at a cost of \$107,611.49.



March 27, 2023

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

**Re: Construction Inspection Services
PIN 8761.57 Lake Street Bridge Rehabilitation Project**

Dear Mr. Morris:

Our original contract for construction inspection on the Lake Street Bridge assumed a 6-month duration. We were able to manage our staff to extend the budget to cover the first approved time extension, however, we exhausted our funds in December 2022. As the contractor was given a second extension until the end of March 2023, we respectfully request supplemental funds to cover the additional inspection time required.

Attached please find a workup for the anticipated time needed to complete the construction and close-out activities.

If you have any questions, please call me.

Sincerely,

HVEA Engineers

A handwritten signature in blue ink, appearing to read "JG", is written over a light blue circular stamp.

Jack Gorton, P.E.

Exhibit A, Page 1
Salary Schedule

JOB TITLE	ASCE (A) OR	AVERAGE ENGINEERING SALARY RATES			
	NICET (N)	PRESENT	PROJECTED	MAX RATE	OVERTIME
	GRADE	(12/22)	(1/23)	2023	CATEGORY
Project Manager	VI (A)	\$78.28	\$81.41	\$86.00	A
Resident/Office Engineer	IV (A)	\$59.00	\$61.36	\$68.00	C
Project Engineer	IV (A)	\$53.56	\$55.70	\$72.00	B
Chief Inspector	IV (N)	\$56.56	\$58.82	\$63.86	C
Office Engineer	III (N)	\$50.97	\$53.01	\$53.01	C
Senior Inspector	III (N)	\$48.92	\$50.88	\$61.64	C
Inspector	II (N)	\$36.84	\$38.31	\$45.08	C

OVERTIME POLICY

- Category A - No overtime compensation.
Category B - Overtime compensated at straight time rate.
Category C - Overtime compensated at straight time rate x 1.50.

Exhibit A, Page 2
Staffing Table

JOB TITLE	ASCE OR NICET GRADE	2022			2023									Hours	Rate	Premium Portion of	
		O	N	D	J	F	M	A	M	J	J	A	S			Overtime	Direct Labor
Project Manager	VI (A)													0	\$81.41		\$0.00
Resident/ Office Engineer	IV (A)				86	86	86	86						344	\$61.36		\$21,107.84
Overtime														0	\$61.36		\$0.00
Project Engineer	IV (A)													0	\$55.70		\$0.00
Chief Inspector	IV (N)													0	\$58.82		\$0.00
Office Engineer	III (N)													0	\$53.01		\$0.00
Senior Inspector	III (N)													0	\$50.88		\$0.00
Overtime														0	\$50.88	\$0.00	\$0.00
Inspector	II (N)			100	170	170	170							610	\$38.31		\$23,371.30
Overtime														0	\$38.31	\$0.00	\$0.00
														954		\$0.00	\$44,479.14

1. TRAVEL

3 months x	10 miles/day =	\$630.00
630 mi. x	\$0.625 /mi.=	\$393.75

SUBTOTAL, TRAVEL	<u>\$393.75</u>
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SUBTOTAL, MATERIAL TESTING	\$0.00
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7 inspector Months - Appia Construction Estimating Software @	\$158.33 per month	\$1,108.31
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SUBTOTAL, SOFTWARE	<u>\$1,108.31</u>
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TOTAL DIRECT NON-SALARY COST	<u>\$1,502.06</u>
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Exhibit C
Summary

Item IA, Direct Technical Salaries (estimated) subject to audit	\$44,479.14
Item IA, Direct Technical Salaries, Premium Portion of Overtime (estimated) subject to audit	\$0.00
Item II, Direct Non-Salary Cost (estimated) subject to audit	\$1,502.06
Item III, Overhead, 113% subject to audit	\$50,261.42
Item IV, Fixed Fee (12%) (applied to Items IA & III)	<u>\$11,368.87</u>
Total:	\$107,611.49

RESOLUTION NO.: 56 - 2023

OF

APRIL 10, 2023

**A RESOLUTION TO AUTHORIZE THE AWARD OF A BID AND THE EXECUTION
OF A CONTRACT FOR GAS SUPPLY TO THE CITY OF NEWBURGH FOR
A WINTER TERM TO THE LOWEST RESPONSIBLE BIDDER**

WHEREAS, on behalf of the City of Newburgh, M&R Energy Resources Corporation has duly advertised for bids for the electric supply services contract and for gas supply services contract in 2015, 2017, 2019 and 2021; and

WHEREAS, M&R Energy Resources Corporation has advised that there are several factors driving volatility in the New York gas market; and

WHEREAS, M&R Energy Resources Corporation intends to extend the time to submit bids to lock in rates for a winter term beginning in October 2023 and ending in April 2024 in order to obtain the best possible renewal pricing and yield predictable natural gas costs for the renewal period; and

WHEREAS, securing the lowest bid and locking in the greatest annual savings, gas supply services contracts will occur between City Council meetings; and

WHEREAS, the City Council finds that authorizing M&R Energy Resources Corporation to duly advertise for bids for the gas supply services contract and to open and return said bids before the next City Council meeting and authorizing the City Manager to execute contracts for the lowest prices to be in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the gas supply services contract be and hereby is awarded to the lowest responsible bidder, providing for a six month winter term beginning in October 2023 and ending in April 2024, and that the City Manager be and he is hereby authorized to execute a contract for the provision of gas services, with all such terms and conditions as may be required by the Corporation Counsel and subject to ratification of the final pricing by this Council.



City of Newburgh

Natural Gas Bid Results

Date: 4/4/2023

Annual Average Consumption - Ccf: 140,000
October - April 132,442

Term Start Date: May-23

CenHud 12M Weighted Average Cost of Gas: \$ 0.8839 Term: April 2022 - March 2023

CenHud Winter Only Weighted Average Cost of Gas: \$ 0.8913 Term: October 2022 - March 2023

Proposed Contract - Winter Term - Oct 23 - Apr 24 \$ **0.5407** **Weighted Average of both Winter terms:** \$ **0.5794**
Proposed Savings vs. CenHud \$ **46,436**

Proposed Contract - 12 Months - May 23 - Apr 24 \$ **0.5676**
Proposed Savings vs. CenHud \$ **44,282**

Supplier		Fixed Price Winter Only Oct 23 - Apr 24	Fixed Price Winter Only Oct 24 - Apr 25	Fixed Price 12 Month May Start	Fixed Price 18 Month May Start	Fixed Price 24 Month May Start
Direct Energy	Per Therm	\$ 0.5601	\$ 0.6357	\$ 0.5554	\$ 0.5652	\$ 0.5943
	Per Ccf	\$ 0.5780	\$ 0.6560	\$ 0.5732	\$ 0.5833	\$ 0.6133
Engie Services	Per Therm	Oct 23 - Mar 24 \$ 0.5699	Oct 24 - Mar 25 \$ 0.6579	\$ 0.5614	\$ 0.5881	\$ 0.6047
Energo	Per Therm	\$ 0.5239	\$ 0.5989	\$ 0.5500	\$ 0.5739	\$ 0.5889
	Per Ccf	\$ 0.5407	\$ 0.6181	\$ 0.5676	\$ 0.5923	\$ 0.6077

All pricing is confidential and is for the informational purposes of City of Newburgh.



NON-MASS MARKET ELECTRICITY AND/OR NATURAL GAS SALES AGREEMENT – NEW YORK

New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/>		CUSTOMER INFORMATION		Custom Price <input checked="" type="checkbox"/> Matrix Price <input type="checkbox"/>	
Customer Name: City of Newburgh					
Tax Exempt: <input type="checkbox"/> Yes <input type="checkbox"/> No Tax Exempt #: _____		<input type="checkbox"/> US Mail bills (dual bill only). Unless this box is checked, all bills will be sent via email.			
Natural Gas Rate	Term Months: 6	Start Date: 10/01/2023	Gas Product: Fixed	Gas Price: 0.544900	Gas UOM: therm
Electric Rate	Term Months:	Start Date:	Electric Product:	Electric Price:	Electric UOM: Electric Green %

CUSTOMER DISCLOSURE STATEMENT

Price	Fixed, NYMEX+, Electric Index + or Variable
How Price is Determined	<p>Electric: Fixed, Electric Index + or Variable Price per the UOM as indicated above <input type="checkbox"/> (Does not include Gross Receipts Tax if box is checked)</p> <p>Gas: Fixed, NYMEX+ or Variable Price per the UOM as indicated above <input type="checkbox"/> (Does not include Line Losses if box is checked)</p> <p>Gas Variable Price shall reflect each month the cost to Marathon to obtain natural gas on your behalf, including, but not limited to, commodity, fuel losses, term capacity, storage, balancing, and transportation to the Delivery Point, plus all fees, applicable taxes, charges, or other assessments, and Marathon's costs, expenses, and profit margins. Weather patterns may cause increases in the variable rate.</p> <p>Electric Variable Price shall reflect each month the cost to Marathon to obtain electricity on your behalf, including, but not limited to, energy, UFE losses, capacity, balancing, settlement, ancillaries, and related transmission and distribution charges, and other market-related factors, plus all fees, applicable taxes, charges, or other assessments, and Marathon's costs, expenses, and margins.</p> <p>NYMEX+ Pricing: shall reflect each month a floating price that may vary based on the monthly NYMEX Henry Hub Natural Gas settlement price on the last day of trading per Dth (adjusted for line losses, converted to the UOM as indicated above, adjusted for POR, each where applicable), prorated by the number of days applicable to each month for the billing cycle, plus the Fixed adder per the UOM as indicated above.</p> <p>Electric Index Price shall reflect each month a floating price that may vary based on the weighted average Day Ahead Locational Based Marginal Pricing (LBMP) price per the UOM as indicated above of the ISO Zone for Customer's service location weighted by Customer's load profile as determined by Customer's LDC, plus losses, adjusted for POR where applicable, plus the fixed adder per the UOM as indicated above. Customer has been advised of all risks associated by signing this contract. Once account has been enrolled, and the LDC has identified a different service class, Marathon reserves the right to adjust the account according to LDC rate classification at current corresponding price plan.</p> <p>In the event of any changes in capacity, transmission related charges, changes to environmental attributes (including zero-emission credits or ZECs) and/or regulatory or other changes, Marathon reserves the right to increase or decrease pricing and/or terminate this Agreement. See sections 4 – Pricing and 17 – Applicable Laws</p>
Length of the agreement and end date ("Term")	For Variable Price Service, the Term continues until either party terminates this Agreement. For Non-Variable Price Service, the Term is for 12 months, unless otherwise specified above (the "Initial Term"). See section 5 – Term.
Process customer may use to rescind the agreement	Door-to-door Customers may rescind by calling the toll-free number at 888-378-9898 within three (3) business days of receipt of the sales agreement.
Early Termination Fees ("ETF") and method of calculation	No ETF for Variable Price service. If Non-Variable Price service, the projected amount of natural gas and/or electricity to be consumed by customer for the remainder of the current Term (see section 5 – Term) multiplied by the difference between the Non-Variable price in effect for the remainder of the current Term and the price at which Marathon can sell such gas and/or electricity following the termination; however, for all customers solicited through door-to-door marketing, the ETF will be no greater than \$100.00 if the remaining term is less than 12 months and \$200.00 if the remaining term is 12 months or more. See Section 6 – Termination of Non-Variable Agreements. Agreement is based on the energy consumption used in the prior year. A deviation of <u>100</u> % or more may result in additional fees for all commercial customers. See section 4 – Pricing.
Amount of Late Payment Fee and method of calculation	1.5% per month on overdue balances.
Provisions for renewal of the agreement	For Variable Price Service, the Term continues until either party terminates this Agreement. For Non-Variable Price Service, after the end of the Initial Term, this Agreement will automatically continue at a variable rate methodology unless and until this Agreement is terminated by customer. Not less than 15 days and no more than 60 days prior to the expiration of the Initial Term, Marathon will notify Customer in writing and/or by email of the switch to variable rate methodology at which Marathon will continue to serve Customer. Customer will have 15 days from Customer's receipt of such renewal notice to reject this offer and terminate the Agreement. If Marathon does not receive notice of Customer's termination of this Agreement, this Agreement will continue in full force and effect until canceled by customer. See Section 5 – Term.
Regulatory or Other Changes	If at some future date there is a change in law, rule, regulation, guideline, procedure, tariff, utility, ISO design, ICAP tag, formula or formula input, demand charge, regulatory structure, environmental attribute, emissions requirement, production requirement, component level, component price level or the interpretation or application of any of the foregoing that impacts any term, condition or provision of the agreement, including, but not limited to price, Marathon shall have the right to modify the Agreement. See sections 4 – Pricing and 17 – Applicable Laws. For the avoidance of doubt, any item that is not within the direct control of Marathon and that does or is forecasted to impact Marathon's costs, may result in a modification.
Guaranteed Savings	This Agreement does not offer guaranteed savings and your rate may be higher than the Utility rate.
Special Conditions	

NOTICES AND CONTACTS

	CUSTOMER BUSINESS / PRIMARY CONTACT	CUSTOMER BILLING CONTACT (Required for DUAL) <input type="checkbox"/> Check if same as Primary Contact info	MARATHON ENERGY CONTACT INFORMATION
ATTN NAME:	TODD VENNING		Customer Service
STREET ADDRESS:	City Hall, 83 Broadway	City Hall, 83 Broadway	100 Elwood Davis Road
CITY, STATE, ZIP:	Newburgh, NY, 12550	Newburgh, NY, 12550	Syracuse, New York 13212
PHONE NUMBER:	8455697301	8455697301	888-378-9898
FAX NUMBER:			888-818-9110
EMAIL:	TVenning@cityofnewburgh-ny.gov		customerservice@mecny.com

Customer Representations:

1. The individual signing this Agreement is the customer of record or authorized to execute this Agreement.
2. The individual signing this Agreement is authorized to make the switch to Marathon.
3. The Customer voluntarily wishes to make the supplier change.
4. The individual signing this Agreement has reviewed and agrees to the accompanying Terms and Conditions.
5. Marathon Power LLC ("Marathon") does not offer Utility Price Matching or guarantee savings.
6. Customer has been advised of all risks associated with signing this contract.
7. Customer consents to receiving any notice or correspondence from Marathon by email.

IN WITNESS WHEREOF Customer and Marathon hereby accept all Terms of Service set forth on these pages and incorporated herein and have caused this agreement to be executed:

SIGNATURES	
Marathon Power LLC dba Marathon Energy	Customer:
Signature:	Signature:
Print Name:	Print Name:
Print Title:	Print Title:
Date:	Date:
Sales Rep/Broker:	

Marathon reserves the right to reject any agreement that proves to be unacceptable upon Marathon's Internal Review. Marathon will only notify customer if the agreement is not accepted. This page is part of the terms and conditions of your agreement.

Office Use Only Legacy ID:	Approved by:	Date:
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General Terms and Conditions

1. **Agreement to Sell and Purchase Energy.** This is an agreement between Marathon Power, LLC D/B/A Marathon Energy ("Marathon"), an independent energy services company, and you ("Customer") under which Customer authorizes Marathon to initiate natural gas and/or electricity supply service and begin Customer's enrollment with Marathon ("Agreement"). Subject to the terms and conditions of this Agreement, Marathon agrees to sell, and Customer agrees to purchase and accept all the natural gas and/or electricity required to serve Customer's account(s) listed on Schedule A of this Agreement ("Base Load"). Marathon does not guarantee savings under this Agreement. Customer's utility ("LDC") will continue to deliver the natural gas and/or electricity supplied by Marathon. Marathon is not affiliated with and does not represent Customer's LDC.
2. **Information Release Authorization.** Customer authorizes Marathon to obtain and review information regarding Customer's credit history from credit reporting agencies and information from Customer's LDC, which shall include but not be limited to the following: consumption history, billing determinants, account numbers, credit information; data applicable to cold weather periods under section 32(3) of the NY Public Service Law; information pertaining to section 33 of the NY Public Service Law; tax status; and eligibility for economic development or other incentives (collectively, "Customer Information"). This information may be used by Marathon to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to Marathon. Marathon reserves the right to refuse to provide service to Customer under this Agreement if it is unable to obtain the necessary Customer Information or it obtains Customer Information that it considers unsatisfactory. This authorization will remain in effect during any initial or renewal term of this Agreement; provided, however, that Customer may rescind this authorization at any time by providing written notice to Marathon or by calling Marathon at 1-888-378-9898. Marathon reserves the right to cancel this Agreement in the event Customer rescinds such authorization. The data obtained pursuant to this authorization may be retained by Marathon for a period of six years post-termination of this Agreement consistent with the statute of limitations for contractual disputes and may be used by Marathon in connection with any ongoing business or legal purpose with respect to its obligations under the Agreement, or to offer additional products or services to Customer during the Term, or any Renewal Terms, or at any time in the six year period after the Agreement terminates, or as contained in any derivative work created by Marathon in association with its business as a retail energy provider.
3. **Guaranty.** In consideration of the extensions and maintenance of credit from time to time by Marathon, the undersigned Applicant (1) warrants that the representation made herein are true and accurate and agrees to promptly notify Marathon in writing of any change in financial condition that would adversely affect his/her responsibility and (2) for good and valuable consideration, hereby personally, individually, jointly and severally, guarantees payment to Marathon, its successors and its assigns, of all existing and future indebtedness of the Applicant, including service charges together with accrued interest thereon, collections costs and attorneys' fees. This guaranty shall be effective without first requiring Marathon to proceed against any other party, and the undersigned hereby waive(s) notice of acceptance of this guaranty, default and non-payment and consent(s) to waiver, extension or modification of credit terms. This shall be an open and continuing guaranty that may only be revoked upon written notice to Marathon by certified mail, return receipt requested, which revocation shall be effective 10 days after Marathon's receipt of such notice and shall only release the undersigned from liability for indebtedness incurred after the effective date of such revocation.
4. **Pricing.** Customer's pricing under this Agreement shall be as follows:
 - a. **Electricity/Natural Gas Variable Pricing:** If Customer is receiving electricity or natural gas supply service at a variable price, Customer shall be billed at a variable price that may vary each billing cycle based on the costs including but not limited to commodity, losses, capacity, storage and balancing, ancillary services, related transmission and distribution charges, all supply and agency functions that Marathon performs for the Customer, transportation to the Delivery Point, plus all applicable taxes, fees, charges or other assessments plus Marathon's costs, expenses, and profit margins. There is no guaranteed savings compared to the Utility rate; your rate may be higher than the Utility rate, and there is no limit on how much the price of supply service may change from one billing cycle to the next.
 - b. **Electric and/or Natural Gas Fixed Pricing:** If Customer is receiving natural gas or electric supply service at a Fixed price, Customer will be billed at the Fixed price indicated on page 1 of this Agreement for the Initial Fixed Term, subject, among other things, to Section 4(f) of this Agreement.
 - c. **Natural Gas NYMEX+ Pricing:** If Customer is receiving natural gas supply service at a NYMEX + price for the Initial Term Customer shall be billed at a floating price that may vary based on the monthly NYMEX Henry Hub Natural Gas settlement price on the last day of trading per Dth (adjusted for line losses, converted to the UOM as indicated on page 1, adjusted for POR, each where applicable), prorated by the number of days applicable to each month for the billing cycle, plus the Fixed adder per the UOM as indicated on page 1 (converted to dth/ccf/mcf where applicable) set forth on page 1 of this Agreement, subject, among other things, to Section 4(f) of this Agreement.
 - d. **Electric Index Pricing:** If Customer is receiving electric supply service at an Electric Index+ price for the Initial Term, Customer shall be billed at a floating price that may vary based on the weighted average Day Ahead Locational Based Marginal Pricing (LBMP) price per the UOM as indicated on page 1 of the ISO Zone for Customer's service location weighted by Customer's load profile as determined by Customer's LDC, plus losses, adjusted for POR where applicable, plus the fixed adder per the UOM as indicated on page 1 set forth on page 1 of this Agreement, subject to, among other things, Section 4(f) of this Agreement.
 - e. **All Pricing:** Under all pricing options, Customer is also responsible for paying and reimbursing Marathon for all applicable taxes and other government fees, assessments, and charges, however designated, relating to the service provided under this Agreement. This may not include, but shall not be limited to, utility taxes, gross receipts taxes, and sales and use taxes imposed on Marathon and/or Customer by federal, state, and/or local authorities that Marathon passes through to Customer. If Customer is tax exempt or eligible for economic development incentives, Customer must furnish Marathon with an exemption certificate or other evidence of same satisfactory to Marathon before service commence.
 - f. **Price Adjustments:** Notwithstanding anything else set forth herein, the following potential adjustments may affect Customer's price under this Agreement (see also #17):
 - i. **Service Class:** If during the enrollment process the LDC determines that Customer's service classification is different from the service classification indicated on Schedule A, Marathon reserves the right to adjust Customer's price under this Agreement to reflect that of the service classification identified by the LDC.

- ii. **Transportation Adjustment Clause Charge ("TAC Charge"):** If Customer is receiving natural gas supply service under a Fixed or NYMEX + price and Customer's gas utility shifts any TAC Charge from Customer's gas transportation charges to Customer's gas supply portion, Marathon may adjust Customer's gas supply price to include such additional TAC Charge. Marathon will provide Customer 15 days' written notice of any such adjustment in charges.
- iii. **Quantity Variances:** Unless otherwise indicated on page 1 of this Agreement, for all Fixed, LBMP Index + and NYMEX + agreements, if usage in any period exceeds the level of usage in the same period indicated in the "Usage Base Load" on Schedule A by more than the tolerance band indicated, Marathon reserves the right to charge a customer the current variable price for all usage in excess of the Usage Base Load. If a customer's usage in any period falls by the tolerance band indicated or more below the level of usage in the same period indicated in the Usage Base Load, Marathon reserves the right to charge such Customer an additional amount equal to the Fixed price indicated on page 1 of this agreement multiplied by the difference between the Usage Base Load and Customer's actual usage. Marathon also reserves the right to charge a customer for all hedging, cash-out, settlement, and/or balancing costs related to the positive difference between the Usage Base Load and actual usage. The previous 12 months of the Customer's historical usage obtained from the LDC shall be used where no Usage Base Load addendum is attached hereto.
- iv. **Changes in Capacity, Transmission or Transmission Related Charges, Environmental Attributes, Non-Market Based Rates or POR Rates:** Any increase in obligations (net quantity or net price) from the Fixed Capacity, Transmission Values, Purchase of Receivables ("POR"), Environmental Attributes (e.g. RECs, ZECs, ORECs, carbon, or any other future environmental related surcharge that may be imposed), Non-Market Based Rates (e.g. NTAC, SSC&D, Black Start) at the time of this Agreement, specified in Schedule A, or in effect at the time of contract consummation, may result in the additional cost being passed through at the prevailing market rate. As such, Marathon reserves the right to pass through to Customer any and all fees, costs, expenses and charges associated with and/or arising out of any change to Customer's capacity obligation, transmission obligation, pipeline allocation, or gas capacity rates, POR rates, any change in the price or cost of environmental attributes (including zero-emission credits or ZECs), or any changes outside of Marathon's control since the time of contracting. This may result in a change in price. Schedule A shall be provided to Customer upon acceptance of this Agreement.
- v. **On-site and off-site Generation.** The Customer agrees to provide Marathon sixty (60) days' prior written notice of (1) installation of solar or other on-site generation or energy storage equipment and/or (2) Customer's participation in or utilization of baseload generation, community solar subscriptions, net metering, onsite renewable energy including wind, solar and/or biomass, and power purchase agreements. If Customer utilizes any of the foregoing, Marathon reserves the right to modify the rate or terminate this Agreement and recover costs, if any.

5. Term.

- a. **Variable Price Supply Service:** If Customer is receiving variable pricing, this Agreement shall commence as of the date set by Customer's LDC and shall continue until either party cancels or terminates this Agreement by providing at least 30 days' advance written notice of such termination to the other. There will be no charge to Customer for cancelling variable price natural gas and/or electric supply service from Marathon if Customer does so in accordance with the terms of this Agreement.
- b. **Non-Variable Price Service:** If Customer is receiving non-Variable price service (Fixed price, NYMEX + or Electric Index +), this Agreement shall commence as of the date set by Customer's LDC and shall continue in full force and effect until the service end date set forth on page 1 of this Agreement (the "Initial Fixed Term"). If the service start date established by the Customer's LDC is delayed for any reason due to no fault of Marathon (e.g., blocked account, customer delay, etc.), then the original intended service end date for this Agreement, determined by the term length set forth on page 1 of this Agreement and the original projected service start date, will remain as the service end date or adjusted, at Marathon's discretion unless otherwise agreed to by Customer and Marathon, if Customer is receiving supply service under a Non-Variable price service, after the end of the Initial Fixed Term, this Agreement will automatically continue at a variable rate methodology unless and until this Agreement is terminated by customer. Not less than 15 days and no more than 60 days prior to the expiration of the Initial Fixed Term, Marathon will notify Customer in writing and/or by email of the switch to variable rate methodology at which Marathon will continue to serve Customer. Customer will have 15 days from Customer's receipt of such renewal notice to reject this offer and terminate the Agreement. If Marathon does not receive notice of Customer's termination of this Agreement, this Agreement will continue in full force and effect until canceled by Customer.

- 6. **Termination of Non-Variable Price Agreements:** If there is a material adverse change in the business or financial condition of Customer on a Non-Variable Price Agreement, or a material adverse change in the cost to Marathon to continue supplying and/or servicing this Customer, as determined by Marathon at its sole discretion, or if Marathon terminates its service offerings in Customer's LDC service territory or across New York State, or if such Customer fails to meet any of its obligations under this Agreement, then in addition to any other remedies Marathon may have, Marathon may terminate this Agreement upon 15 days' written notice to Customer. In addition, if Customer terminates this Agreement prior to the end of the Initial Fixed Term, Customer shall pay Marathon all outstanding gas and/or electric supply charges and other amounts owing to Marathon as well all reasonable attorneys' fees and expenses incurred by Marathon in connection with Marathon's attempt to collect and recover same. If Customer terminates this Agreement by returning to Customer's LDC or switching to another ESCO, the effective date of any such switch from Marathon will be determined by Customer's LDC. As an ETF, if Customer terminates this Agreement prior to the end of the Initial Fixed Term, or if Marathon terminates this Agreement due to Customer's breach of this Agreement, Customer shall pay Marathon, in addition to any other applicable charges, the projected amount of natural gas and/or electricity to be consumed by customer for the remainder of the current Term (see section 5 – Term) multiplied by the difference between the Non-Variable price in effect for the remainder of the current Term and the price at which Marathon can sell such gas and/or electricity following the termination. If a Customer that Marathon, in its discretion, determines to be Single Utility Billed, fails to qualify for the LDC's POR program, Marathon may terminate the Agreement and Customer shall be liable to Marathon for any loss it incurs (using the calculation methodology described above). However, for all customers solicited through door-to-door marketing, the ETF will be no greater than \$100.00 if the remaining term is less than 12 months and \$200.00 if the remaining term is 12 months or more. In addition, for all customers solicited through door-to-door marketing, in the event of a renewal of a Non-Variable Price agreement, Customer shall not be charged an ETF if Customer objects to such renewal within 3 business days of receipt of the first billing statement under the renewed agreement. In addition, if there

is a gap in service due to the customer's termination and subsequent request for re-enrollment, during the non-Variable contract period, the customer may be liable to Marathon for any loss it incurs (using the calculation methodology described above).

The services provided by Marathon to Customer are governed by the Terms & Conditions of this Agreement. Marathon shall have the right to terminate this Agreement in the event of a breach of the term(s) of the Agreement by Customer, including, but not limited to, failure to remit payment as required under this Agreement. Marathon may cancel this Agreement at any time and for any reason. Marathon will provide at least 30 days' written notice prior to the termination of service and provide Customer with the opportunity to remedy the termination condition. A final bill will be rendered within thirty (30) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trued up subsequent to the final meter reading. Switching to a competitive Third-Party Supplier ("TPS") is not mandatory and Customer has the option of remaining with the LDC for basic gas supply service or basic electric generation service.

7. **Billing:** Customer's LDC or Marathon may send Customer a single bill for both supply and delivery charges ("Consolidated Billing"), or Customer's LDC may send a separate bill for Customer's delivery charges and Marathon may send Customer a separate bill for Customer supply and charges ("Dual Billing"). Customer will pay Marathon for natural gas supply service and/or electric supply service based on meter readings and consumption information measured by and/or received from Customer's LDC ("Billing Quantity"). Marathon will have the option to adjust the Billing Quantity for fuel and distribution/line loss retained by the LDC and interstate transporters from the Purchase Quantity. Payment for gas and/or electric supply service is due on Customer's receipt of the bill(s). Customer shall pay a late payment charge on all unpaid amounts (including arrears and late payment charges) owing and not received by Marathon within twenty (20) days of the date of the bill at a rate of 1.5% per month or the maximum attorneys' fees and expenses incurred by it in collecting any payment from you. Marathon may delay enforcing its rights and/or accept late payments, partial payments, or partial payments marked to the effect of "payment in full" without losing any of its rights under this Agreement or applicable law. Customer payments remitted for Consolidated Billing that are not in dispute shall be allocated in the following order of priority of payment: (1) to amounts owed to avoid termination, suspension, or disconnection of commodity or delivery service; (2) to amounts owed under a deferred payment agreement; (3) to arrears; and (4) to current charges not associated with a deferred payment agreement. Payments will be pro-rated to the charges within each of the above categories in proportion to Marathon's and the LDC's charges in that category. Marathon may assign and sell Customer accounts receivable to the LDC. Failure by a non-residential customer to remit full payment of Marathon charges due on any Consolidated Bill prepared by the LDC or Marathon will be grounds for disconnection of utility services in accordance with NYPSC rules and regulations on the termination of service to non-residential customers, 16 NYCRR Part 13. A \$30.00 fee will be charge for all returned payments.
8. **Consumer Protections.** Marathon will provide at least 15 days' notice prior to the cancellation of service to Customer. In the event of non-payment of any charges owed to Marathon, Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the Department of Public Service ("DPS"). Customer may obtain additional information by contacting Marathon at 1-888-378-9898 or the DPS at 1-800-342-3377, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: www.dps.ny.gov. Customer may also contact the DPS's ESCO hotline for inquiries regarding the competitive retail energy market at 1-888-697-7728.
9. **Rescission.** A door-to-door Customer may rescind this Agreement within three (3) business days after Customer's signing or receipt of this Agreement, whichever comes first, by contacting Marathon at 1-888-378-9898 or in writing at 62-01 34th Avenue, Woodside, NY 11377. If Customer rescinds this Agreement, Marathon will provide Customer a cancellation number.
10. **Agency. Gas:** Customer hereby designates Marathon as agent to (a) arrange and administer contracts and service arrangements between Customer and Customer's LDC and between Customer and the interstate transporters of Customer's natural gas (including capacity release, re-release and recall arrangements); (b) nominate and schedule with interstate pipeline(s) the transportation of Customer's natural gas supplies from the Sales Point(s) to the Delivery Point(s), and with the LDC for the transportation of the Customer's natural gas supplies from the Delivery Point(s) to the Customer's end- use premises; and (c) aggregate, if necessary, Customer's natural gas supplies with such supplies of other customers served by Marathon to qualify for LDC transportation service, and to address and resolve imbalances (if any) that may arise during the term of this Agreement. As Agent of Customer, Marathon will schedule the delivery of supplies of natural gas at the Sales Point(s) necessary to meet the Customer's city gate requirements based on the consumption and other information that Marathon receives from the LDC. The Sales Point(s) for the natural gas will be a point or points located outside of New York State selected from time to time by Marathon to assure service reliability. The Delivery Point(s) for the natural gas transported by the interstate pipeline(s) will be the city gate stations of the LDC. As Customer's agent, Marathon agrees to arrange for the transportation of the natural gas supplied under this Agreement from the Sales Point(s) to the Delivery Point(s) and from the Delivery Point(s) to the Customer's end-use premises. These services are provided on an arm's-length basis. **Electric:** Customer hereby designates Marathon as Customer's agent for the purpose of arranging, contracting for, and administering transmission services (including those provided by Customer's LDC) for the delivery of electricity. The Sales Point(s) for electricity will be one or more points on the NYISO-administered transmission system (located outside of the jurisdictional limits of the municipality of Customer's service address location), selected from time to time by Marathon to assure service reliability. The Delivery Point(s) for electricity will be one or more points at which Marathon, as Customer's agent, has arranged for the delivery of electricity to Customer or to a third party (such as Customer's LDC) for Customer's account. These services are provided on an arm's-length basis.
11. **Title, Risk of Loss.** Title to, control of, and risk of loss of the Purchase Quantities supplied under this Agreement will transfer from Marathon to Customer at the Sales Point(s). Marathon and Customer agree that transactions under this Agreement are originated and consummated outside the jurisdictional limits of the municipality, county or other taxing authority where Customer's service address(es) is located. If a taxing authority determines that a gross receipts tax or other tax is applicable to the sale of natural gas or electric supply under this Agreement, Customer agrees to pay such tax.
12. **No Warranties.** MARATHON MAKES NO REPRESENTATIONS, WARRANTIES, AFFIRMATIONS OF FACT, OR PROMISES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND MARATHON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

13. **Force Majeure.** Marathon will make commercially reasonable efforts to provide natural gas and/or electricity supply service hereunder, but Marathon does not guarantee a continuous supply of natural gas and/or electricity to Customer. Certain causes and events out of the control of Marathon ("Force Majeure Events") may result in interruptions in service. Marathon will not be liable for any such interruptions caused by a Force Majeure Event. A Force Majeure Event means a material or unavoidable occurrence beyond Marathon's control and shall include but not be limited to acts of God or public enemy, fire, flood, storm, hurricane, explosion, terrorism, war, civil disturbance, pandemics or other medical outbreaks and emergencies, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDC (including, but not limited to, a facility outage on its gas distribution lines or electric facilities), or any other cause beyond Marathon's control.
14. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE NEW YORK LAW, NEITHER YOU NOR MARATHON WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES ARISING FROM ANY CLAIM OR LEGAL PROCEEDING BETWEEN YOU AND MARATHON, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST REVENUES. THE REMEDY FOR ANY CLAIM OR SUIT AGAINST MARATHON WILL BE LIMITED TO DIRECT ACTUAL DAMAGES, WHICH SHALL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING 12 MONTHS. CUSTOMER SHALL NOT PURSUE OR RECOVER ANY ADDITIONAL DAMAGES OR AMOUNTS FROM MARATHON, AND HEREBY WAIVES ALL OTHER REMEDIES IN LAW OR EQUITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES. CUSTOMER AND MARATHON ACKNOWLEDGE THAT THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT.
15. **Marathon Contact Information.** Customer may contact Marathon's Customer Service Center at 1-888-378-9898, Monday through Friday 9:00AM - 4:00PM EST (contact hours' subject to change). Customer may also contact Marathon Energy by mail at: 100 Elwood Davis Rd, Syracuse, NY 13212, or email at customerservice@mecny.com.
16. **Arbitration of Disputes, Waiver of Jury Trial, and Participation in Class Actions.** MARATHON AND CUSTOMER SHALL NOT BE PERMITTED TO JOIN OR CONSOLIDATE COMPLAINTS, CLAIMS, OR DISPUTES INVOLVING OTHERS, NOR SHALL ANY COMPLAINTS, CLAIMS, OR DISPUTES BE BROUGHT OR MAINTAINED AS A CLASS ACTION OR IN ANY REPRESENTATIVE CAPACITY. MARATHON AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO A TRIAL BY JURY. MARATHON AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION OR CLASS ARBITRATION. Any questions or complaints should be directed to Marathon's Customer Service Center. The parties are required to use their best efforts to resolve any disputes that may arise. Any unresolved disputes may be presented to a court of competent jurisdiction in New York County, New York. During the pendency of any dispute, Customer must pay all bills in full, except for the specific disputed amount, if any. Alternatively, a dispute or complaint may be submitted by either party at any time to the DPS Office of Consumer Services, New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; by phone at 1-888-697-7728 or by visiting www.dps.state.ny.us.
17. **Applicable Laws.**
- Applicable Laws.** This Agreement is subject to all applicable federal, state, and local laws, and the orders, rules, and regulations of the governmental agencies having jurisdiction over the subject matter of this Agreement, including the DPS. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles. Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York.
 - Regulatory or Other Changes.** Marathon and Customer recognize that a change in any law, rule, regulation, guideline, procedure, tariff, utility, ISO design, ICAP tag, gas capacity release, formula or formula input, demand charge, transmission value, Environmental Attribute (e.g. RECs, ZECs, carbon), Non-Market Based Rates (e.g. NTAC, SSC&D, Black Start), regulatory structure, or the interpretation or application of any of the foregoing applicable to Marathon or this Agreement by any entity, including but not limited to the LDC, Department of Public Service, New York State Public Service Commission, New York State Energy Research and Development Authority, Federal Energy Regulatory Commission or the New York Independent System Operator (each, a "Regulatory or Other Change") could materially impact a term, condition, or provision of this Agreement including, but not limited to price. Marathon and Customer further recognize that Marathon's ability to perform under this Agreement or the financial impact of a Regulatory Change that occurred prior to the date the parties executed this Agreement (the "Execution Date") may not be known until a future date. Accordingly, Marathon retains the right, at its sole discretion to (i) terminate this Agreement and return the Customer to the LDC at the next available meter read date; (ii) modify this Agreement to reflect a Regulatory Change that occurs after the Execution Date, including modifying Customer's price; and/or (iii) pass through to Customer any capital, operating, commodity, or other costs it incurs as a result of a Regulatory or Other Change ("New Costs") that occurred prior to the Execution Date where such: (a) New Costs were unknown or (b) New Costs did not become effective until after the Execution Date. In all cases, Marathon shall provide 15 days' prior written notice to Customer of any termination or modification to this Agreement resulting from a Regulatory or Other Change and/or application of any New Costs.
 - Material Adverse Changes.** If there is a material adverse change in the business operation or financial condition and/or creditworthiness of Customer (as determined by Marathon at its discretion) or if Customer fails to meet its obligations under this Agreement or pay or post any required security deposit, or if Marathon terminates its service offerings in Customer's LDC service territory or across New York State, then, in addition to any other remedies that it may have, Marathon may terminate this Agreement upon 15 days' written notice to Customer. If Customer's Usage indicates that Customer belongs to a different Customer Class than determined by Marathon at the time of contracting, Marathon shall have the option to drop Customer's supply back to the LDC and charge Customer an ETF as set forth in Section 6 of this Agreement.
 - Non-Mass Market Customer.** Customer represents, warrants, and covenants that (i) it is not a mass market customer, as defined by the New York State Public Service Commission. Customer agrees that if it is or becomes a mass market customer then the breach of the foregoing covenant is a default under this Agreement by Customer, and notwithstanding anything to the contrary herein, this Agreement may be

terminated by Marathon without further notice and Customer shall be liable to Marathon for any loss it incurs (using the calculation methodology described in Section 6).

18. **Emergency Service.** Customer's LDC will continue to respond to leaks and emergencies. In the event of a gas leak, electric service interruption, or other emergency, Customer should immediately DIAL 911. Then call LDC emergency personnel. Customer may also call Marathon at 1-888-378-9898.

Central Hudson	1-800-527-2714	National Grid Metro	1-718-643-4050	NYSEG	1-800-572-1121
Con Edison	1-800-75-CONED	National Grid LI	1-800-490-0045	O&R Electric	1-877-434-4100
National Fuel Gas	1-800-444-3130	National Grid Upstate	1-800-892-2345	Rochester G&E	1-800-743-1701

19. **Assignment.** Customer may not assign its interests in or delegate its obligations under this Agreement without the express written consent of Marathon. Marathon may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may, upon 30 days' prior written notice to you, assign this Agreement to another energy supplier, energy services company or other entity as authorized by the DPS, without Customer's consent.
20. **Miscellaneous.** This Agreement, including any enrollment form and applicable attachments, is the entire Agreement between Customer and Marathon with respect to the subject matter hereof and there are no promises, covenants, or undertakings other than those expressly set forth in this Agreement. This Agreement will inure to and be binding upon the successors and assignees of the parties. If any provision of the Agreement is held by a Court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way. No waiver of any provision of this Agreement shall be construed as a continuing waiver or shall constitute a waiver of any other provision.
21. **Electronic Signature.** Any signature (including any electronic symbol or process attached to, or associated with, this Agreement and adopted by Customer or Marathon with the intent to sign, authenticate, or accept such Agreement) hereto, or to any other certificate or document related to this transaction, through electronic means shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and the New York State Electronic Signatures and Records Act, and the parties hereby waive any objection to the contrary.
22. **Electronic Communications.** By signing this Agreement, Customer consents to receiving any notice or correspondence (and for dual billed customers, bills) from Marathon by email. Customer may send any notice or correspondence to Marathon by email at customerservice@mecny.com. Customer agrees to provide Marathon with a current email address and to notify Marathon of any change of Customer's email address. Notwithstanding anything contained in this Agreement, if you are a customer enrolled as a result of door-to-door marketing, any renewal notice will be sent to you by U.S. Mail.
23. **Renewably Sourced Energy.** Marathon Energy will match the Customer's selected electric percentage with renewable energy credits (RECs) from nationally sourced resources. RECs represent the environmental attributes associated with the applicable amount of renewable energy generation from various renewable sources including, but not limited to, solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells, or other qualifying renewable resources. RECs will be purchased and retired to satisfy the percentage of renewable generation guaranteed by this Agreement.

IN WITNESS WHEREOF Customer hereby accepts all Terms & Conditions set forth above and incorporated herein, and have caused this Agreement to be executed:

For Customer:

Customer Signature

Signature Date

Print Name

Print Title



Contract Addendum

LDC	Account Name	LDC Number	Rate Class	Service Address	City	State	Zip Code	Start Date	Product	Term (months)	Rate	Unit
CHUD	CITY OF NEWBURGH FILTRATION PLANT	210040668621000404328	G02HTFS	493 RT 207	NEWBURGH	NY	125500000	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH	210041146541000403451	G02HTFS	375 WASHINGTON ST	NEWBURGH	NY	125505330	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH	210041466561000401798	G02HTFS	129 S ROBINSON AVE	NEWBURGH	NY	125505821	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH RECREATION PARK OFFICE	210041128151000403440	G02HTFS	WASHINGTON ST ACTIVITY CTR	NEWBURGH	NY	125500000	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH SOFTBALL HALL OF FAME	210041132431000403442	G02HTFS	399 WASHINGTON ST	NEWBURGH	NY	125505330	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH INCINERATOR	210041401051000401741	G02HTFS	2 RENWICK ST	NEWBURGH	NY	125506034	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH	210041160301000402890	G02HTFS	294-306 BROADWAY BROADWAY SCHOOL	NEWBURGH	NY	125505409	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH GARAGE	210041184731000402274	G02HTFS	88 PIERCES RD	NEWBURGH	NY	125503247	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH FIRE DEPARTMENT	210041333571000401678	G02HTFS	22 GRAND ST	NEWBURGH	NY	125505626	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH RECREATION DEPT.	210041481811000403101	G02HTFS	DOWNING PARK	NEWBURGH	NY	125500000	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH	210041352871000402332	G02HTFS	492 BROADWAY FIREHOUSE	NEWBURGH	NY	125500000	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH NEWBURGH COMMUNITY CTR.	210041456331000401781	G02HTFS	104 S LANDER ST	NEWBURGH	NY	125506325	October 2023	Fixed	6	0.544900	therm
CHUD	CITY OF NEWBURGH	210041322841000401673	G02HTFS	83 BROADWAY	NEWBURGH	NY	125505617	October 2023	Fixed	6	0.544900	therm



Contract Addendum

For Marathon Energy:

For Customer:

Marathon Representative Name

Customer's Printed Name & Title

Marathon Representative Signature

Date

Customer's Signature

Date

Toll Free 888.378.9898

100 Elwood Davis Road, Syracuse, NY 13212 / www.mecny.com

Rev 3.2 20201026

SCHEDULE A - Account Listing, Features and Base Load Usage

Baseload Usage: Monthly Usage (therm) @100% Swing																	
Account Number	LDC	SC	Pool	TransClass	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Usage
210040668621000404328	CHUD	G02HTFS		Firm	3488	3024	2455	1316	468	0	0	0	106	956	2020	2998	16831
210041146541000403451	CHUD	G02HTFS		Firm	1009	890	744	452	235	100	75	78	142	360	633	883	5601
210041466561000401798	CHUD	G02HTFS		Firm	254	220	177	60	22	0	0	0	6	44	144	218	1145
210041128151000403440	CHUD	G02HTFS		Firm	825	721	594	338	148	30	8	11	67	257	496	715	4210
210041132431000403442	CHUD	G02HTFS		Firm	622	542	445	251	106	16	0	1	44	189	371	538	3125
210041401051000401741	CHUD	G02HTFS		Firm	1034	899	734	405	159	6	0	0	54	300	609	891	5091
210041160301000402890	CHUD	G02HTFS		Firm	4161	3656	3039	1796	840	244	135	148	431	1390	2567	3628	22035
210041184731000402274	CHUD	G02HTFS		Firm	5557	4808	3894	2059	695	0	0	0	111	1480	3194	4767	26565
210041333571000401678	CHUD	G02HTFS		Firm	7159	6287	5220	3130	1349	240	36	60	587	2374	4404	6238	37084
210041481811000403101	CHUD	G02HTFS		Firm	150	129	104	54	16	0	0	0	0	38	85	128	704
210041352871000402332	CHUD	G02HTFS		Firm	495	432	354	198	82	10	0	0	32	149	295	428	2475
210041456331000401781	CHUD	G02HTFS		Firm	626	542	439	233	79	0	0	0	14	168	360	537	2998
210041322841000401673	CHUD	G02HTFS		Firm	2341	2043	1679	949	406	68	6	13	174	719	1401	2027	11826
				Totals	27721	24193	19878	11241	4605	714	260	311	1768	8424	16579	23996	139690

RESOLUTION NO.: 57 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH CAPITAL MARKETS ADVISORS LLC
TO PROVIDE PROFESSIONAL SERVICES TO THE CITY OF NEWBURGH
RELATING TO NEW ISSUE BONDS, BOND ANTICIPATION NOTES,
TAX ANTICIPATION NOTES, DEFICIT NOTES AND BUDGET NOTES**

WHEREAS, the City of Newburgh is authorized under the New York State Local Finance Law to issue bonds, bond anticipation notes, tax anticipation notes, deficit notes, budget notes and other securities; and

WHEREAS, it is necessary and appropriate for the City of Newburgh to retain independent professional services in connection with the planning, marketing and sales associated with such securities and financing; and

WHEREAS, by Resolution No. 164-2016 of July 11, 2016, Resolution No. 149-2017 of June 12, 2017, Resolution No. 35-2020 of February 10, 2020, and Resolution No. 191-2021 of August 9, 2021, the City Council authorized the City Manager to enter into a professional services agreement with Capital Markets Advisors, LLC to provide such securities and financing services; and

WHEREAS, a written professional services agreement between the municipal advisor and its municipal clients is required by the Securities and Exchange Commission and City Council deems it to be in the best interests of the City to continue such professional services agreement with Capital Markets Advisors, LLC for such services;

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 an agreement in substantially the same form as annexed hereto with Capital Markets Advisors, LLC to provide professional services in connection with the planning, marketing and sales associated with the issuance of bonds, bond anticipation notes, tax anticipation notes, deficit notes, budget notes and other securities.

Capital Markets Advisors, LLC

Independent Financial Advisors

FINANCIAL ADVISORY SERVICES AGREEMENT

This Agreement has been entered into this _____ day of _____, 2023 by and between the City of Newburgh, New York (the "City") and Capital Markets Advisors, LLC ("CMA"), a limited liability company created under the laws of the State of New York and having its principal place of business at 11 Grace Avenue, Suite 308, Great Neck, New York 11021.

Section 1 Financial Advisory Services

CMA will provide the following services in connection with bond and note financings (the "Issue"), undertaken by City during the term of this Agreement.

- 1.01 Review legal, financial, economic and other information necessary for CMA to advise the City in planning, structuring and otherwise completing each Issue to be undertaken by the City.
- 1.02 Discuss a plan of financing which will include CMA's analysis and recommendations to the City regarding funding requirements, structuring alternatives, marketing, method of sale, security features, call provisions, credit ratings, credit enhancement, term, federal tax implications and such other matters which the City and CMA agree should be included in the plan of financing.
- 1.03 Prepare or assist in the preparation of financing documents, as required by the City, including but not limited to: term sheet, Official Statement, Notice of Sale and bid sheet, request for a credit rating, request for bond insurance, DTC Letter of Representations, and post-sale analysis.
- 1.04 Upon the request of the City, CMA will assist the City in the selection of other service providers necessary to conduct each Issue including but not limited to Bond Counsel, rating agencies, bond insurer, underwriters, trustee and financial printer, if appropriate.
- 1.05 Prepare and maintain a financing schedule, costs of issue, list of participants, and take such other actions requested by the City to efficiently manage each Issue to meet City's objectives.
- 1.06 Participate in the sale of the debt, confirm net interest cost calculation, verify underwriter's compensation and make a recommendation as to award.
- 1.07 Assist the City with the delivery of proceeds of each Issue, payment of issuance costs and other matters related to closing each Issue.
- 1.08 Prepare final debt service schedules.
- 1.09 Assist with the closing of the Issue and verify receipt of Issue proceeds.
- 1.10 Provide Continuing Disclosure as required by SEC Rule 15c 2-12.

Section 2 Compensation

- 2.01 For CMA's performance of services on behalf of the City as described in Section 1 hereof, CMA's compensation, some of which were contingent on an issue closing, will be as follows:
 - For bond issues: base fee \$10,000 plus \$0.50 per \$1,000 of bonds issued over \$5 million
 - For note issues: base fee of \$5,100 plus \$0.50 per \$1,000 of notes issued for issues over \$5 million
 - For note issues with no Official Statement: \$4,000

Capital Markets Advisors, LLC

Independent Financial Advisors

- For issues through NYS EFC: a fee of \$25,000 which includes both short-term and long-term financing of the loan. Such fee is due upon receipt of funding from EFC in the amount of \$12,500 at the closing of the short-term financing and \$12,500 upon the closing of the long term financing. If only a long-term EFC issue is issued: a fee is \$15,000 at the closing of the loan
 - For capital leases: a base fee of \$6,500 plus \$0.50 per \$1,000 of lease debt issued
 - For Continuing Disclosure services: an annual fee of \$2,500
- 2.02 For advisory services rendered for which the above fees are not applicable, CMA will be compensated on an hourly basis at a rate of \$175 per hour.
- 2.03 The City will pay normal issuance costs such as printing, postage, photocopying, overnight delivery, web posting, Bond Counsel, rating agency fees and other associated expenses.
- 2.04 Payment of CMA's compensation for a financing is due within 30 days of receipt by the City of CMA's invoice.

Section 3 Term of Agreement

The term of this Agreement shall be from the date hereof to December 31, 2024.

Section 4 Responsibilities of Parties

CMA does not assume the responsibilities of the City, nor the responsibilities of the other professionals and vendors representing the City, in the provision of services and the preparation of financing documents for financings under this agreement. CMA accepts the relationship of trust and confidence established between it and the City. CMA agrees to furnish its best skill and judgment in the performance of its services in the most expeditious and economical manner consistent with the interests of the City. Information obtained by the CMA, either through its own efforts or provided by the City, included in the financing documents, or otherwise provided to the City, is by reason of experience and professional judgment, believed to be accurate; however, such information is not guaranteed by the CMA. However, nothing in this paragraph shall relieve CMA from liability due to negligence or want of due diligence in the performance of its services.

Section 5 Binding Effect

All agreements and covenants contained herein are severable and in the event any of them shall be held to be invalid by any competent court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained herein, and the remaining provisions of this agreement shall remain in full force and effect. Each party hereto represents and warrants that this agreement has been duly authorized and executed by it and constitutes its valid and binding agreement and any governmental approvals necessary for the performance of this agreement have been obtained.

Section 6 Required Regulatory Disclosure

Municipal Advisor Regulators

Municipal Securities Rulemaking Board ("MSRB") Rule G-10 requires that municipal advisors, including CMA, provide to their clients the following information once each calendar year: (i) CMA is registered as an independent municipal advisor with the MSRB and the US Securities and Exchange Commission

Capital Markets Advisors, LLC

Independent Financial Advisors

("SEC"); (ii) CMA is subject to the regulations and rules on municipal advisory activities established by the SEC and MSRB; (iii) the website for the MSRB is www.msrb.org and the website for the SEC is www.sec.gov and (iv) in addition to having educational materials about the municipal securities market, the MSRB website has a municipal advisory client brochure that describes the protections that may be provided by the MSRB rules and how to file a complaint with the appropriate regulatory authority.

Conflicts of Interest Disclosure

CMA is an MSRB Registered Municipal Advisor that conducts all municipal advisory activities subject to the fiduciary standards of conduct. MSRB Rule G-42 requires that municipal advisors disclose to their clients any actual or potential material conflict of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. If no such material conflicts of interest are known to exist, municipal advisors are required to provide a written statement to that effect.

To the best of CMA's knowledge and belief, neither CMA nor any associated person has any material undisclosed conflict of interest.

- CMA has no financial interest in, nor does CMA receive any undisclosed compensation from, any firm or person that CMA may use in providing any advice, service, or product to or on behalf of any CMA client.
- CMA does not pay contracted MSRB registered solicitors or other MSRB registered municipal advisors directly or indirectly in order to obtain or retain an engagement to perform municipal advisory services for any municipal entity.
- CMA does not receive any payments from a third party to enlist CMA's recommendation of services, municipal securities transactions, or any municipal financial product or service.
- CMA does not have any fee-splitting arrangements with any provider of investments or services to any municipal entity.
- CMA may have conflicts of interest arising from compensation for municipal activities to be performed that are contingent on the size or closing of such transaction for which CMA is providing advice. This potential conflict of interest exists if CMA should fail to get paid for its work on a transaction in the event that transaction does not close. Given the wide diversity of CMA's clients and sources of revenue, we do not believe that the contingent nature of CMA's compensation in this agreement creates a material conflict of interest.
- CMA services a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of other municipal clients. These other clients may, from time to time and depending on specific circumstances, have competing interests, such as accessing the market with the most advantageous timing. In acting in the interests of its various clients, CMA could potentially face a conflict of interest arising from these competing client interests. However, none of these other engagements or relationships would impair CMA's ability to fulfill its regulatory duties to its municipal clients.
- There are no other actual conflicts of interest that could reasonably be anticipated to impair CMA's ability to provide advice to any municipal entity in accordance with the standard of fiduciary conduct.

Information Regarding Legal Events and Disciplinary History Disclosure

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to the client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Capital Markets Advisors, LLC

Independent Financial Advisors

- CMA and two of its Associated Persons are currently subject to a legal event that could be material to a client's evaluation of the Firm.
- CMA's Form MA and Form MA-Is for each of the Firm's Associated Persons are posted in the Edgar Database located on the U.S. Securities and Exchange Commission's website (www.sec.gov).
- CMA has made a legal event disclosure on its Form MA and two of its Associated Persons' Form MA-I's filed with the U.S. Securities and Exchange Commission.

Future Supplemental Disclosures

As required by MSRB Rule G-42, these disclosures may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described, or to provide information with regard to any legal or disciplinary events. CMA will provide its municipal clients with any supplement or amendment as it becomes available throughout the terms of each agreement or contract.

Section 7 Independent Contractor

CMA hereby acknowledges and agrees that its status under this Agreement will be that of an independent contractor. CMA and its officers, agents and employees shall not represent themselves as City employees to any third party, nor shall they make any claim to the City, or to any other person or entity, for benefits or privileges granted to City employees, including but not limited to, Unemployment and Workers Compensation benefits. CMA further acknowledges and agrees that the City shall not take any deductions or withholdings from CMA's compensation to pay federal or state taxes, or any other assessment, cost, expense or obligation which CMA or its officers, employees or agents may incur as a result of CMA receiving compensation pursuant to this agreement.

Section 8 Modification

This Agreement contains the entire agreement of the parties. It may be amended in whole or in part from time to time in writing by mutual consent of the parties.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first set forth on the first page hereof.

Capital Markets Advisors, LLC

Richard Tortora

Richard R. Tortora
President

City of Newburgh, New York

By: _____

Name: _____

Title: _____

Date: _____

RESOLUTION NO. 58 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING AN EXTENSION OF TIME
TO REHABILITATE THE PREMISES KNOWN AS 22 BAY VIEW TERRACE
(SECTION 48, BLOCK 5, LOT 13) IN THE CITY OF NEWBURGH
UNTIL OCTOBER 10, 2023**

WHEREAS, the City of Newburgh did convey the premises located at 22 Bay View Terrace, more accurately described as Section 48, Block 5, Lot 13 on the Official Tax Map of the City of Newburgh, by deed dated June 9, 2021; and

WHEREAS, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about December 9, 2022; and

WHEREAS, the owners of the property, Leopoldo and Anne Mancilla, stated they would be unable to comply with the December 9, 2022 deadline, but have attempted a good faith effort and intent to complete the rehabilitation; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its future development to grant an extension of time to rehabilitate the premises;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that Leopoldo and Anne Mancilla be granted an extension to rehabilitate the premises known as 22 Bay View Terrace in the City of Newburgh until October 10, 2023.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Todd Venning, City Manager

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

FROM: Charlotte Mountain, Code Compliance Supervisor

DATE: March 3, 2023

SUBJECT: 22 Bay View Terrace Request for Extension to Rehabilitate

This office received a request for an extension of time to rehabilitate the property on March 1, 2023.

The property file was reviewed. The property continues to have valid construction permits and is obtaining regular inspections.

This office conducted a site visit on March 3, 2023.

Based upon the site visit, the project is approximately 80% complete. In conjunction with the review of the file, the property owner's request for an extension of six months is reasonable.



FDC







RESOLUTION NO.: 59-2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO JOSE ALEXANDER PALOMINO TO THE PREMISES
KNOWN AS 36 HASBROUCK STREET (SECTION 38, BLOCK 3, LOT 46)**

WHEREAS, on December 20, 2019, the City of Newburgh conveyed property located at 36 Hasbrouck Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 38, Block 3, Lot 46, to Jose Alexander Palomino; and

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

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

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

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

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 36 Hasbrouck Street, Section 38, Block 3, Lot 46 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 December 20, 2019, from THE CITY OF NEWBURGH to JOSE ALEXANDER PALOMINO, recorded in the Orange County Clerk's Office on January 3, 2020, in Liber 14680, Page 1373 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: April _____, 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 _____ 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.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Todd Venning, City Manager

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

FROM: Charlotte Mountain, Code Compliance Supervisor

DATE: March 14, 2023

SUBJECT: 36 Hasbrouck Street

This office received a request for an inspection for the release of restrictive covenants on the subject property.

The structure is a single family dwelling.

The property was inspected on March 13, 2023.

There are no open code violations.

No violations were observed during my inspection at the property.

There are no open permits on the property.

The structure has valid rental license.

There is a valid Certificate of Occupancy on the property dated October 13, 1972.





RESOLUTION NO.: 60-2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED
ISSUED TO MOISHE HERCZL TO THE PREMISES
KNOWN AS 182 BROADWAY (SECTION 30, BLOCK 1, LOT 32)**

WHEREAS, on April 15, 2021, the City of Newburgh conveyed property located at 182 Broadway, being more accurately described on the official Tax Map of the City of Newburgh as Section 30, Block 1, Lot 32, to Moishe Herczl; and

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

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

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

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

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 182 Broadway, Section 30, Block 1, Lot 32 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 April 15, 2021, from THE CITY OF NEWBURGH to MOISHE HERCZL, recorded in the Orange County Clerk's Office on May 7, 2021, in Liber 14957, Page 1636 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: April _____, 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 _____ 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.



CITY OF NEWBURGH

Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

Phone: (845) 569-7400 / Fax: (845) 569-0096

TO: Todd Venning, City Manager

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

FROM: Charlotte Mountain, Code Compliance Supervisor

DATE: March 14, 2023

SUBJECT: 182 Broadway

This office received a request for an inspection for the release of restrictive covenants on the subject property.

The structure is a mixed use structure containing one commercial space and two dwelling units.

The property was inspected on March 13, 2023.

The work in general at this location is of poor quality however it meets the minimum code requirements.

The public sidewalk is intact.

No violations were observed during my inspection at the property.

There is a valid certificate of occupancy on the property dated September 16, 1968.





RESOLUTION NO.: 61 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED A NEW YORK STATE
GOVERNOR'S TRAFFIC SAFETY COMMITTEE 2024 POLICE TRAFFIC SERVICES
PROGRAM GRANT IN AN AMOUNT NOT TO EXCEED \$46,000.00
WITH NO CITY MATCH REQUIRED**

WHEREAS, the City of Newburgh wishes to apply for a State of New York Governor's Traffic Safety Committee 2024 Police Traffic Services Program Grant in the amount of \$46,000.00 with no City match required, except the City of Newburgh will be responsible for certain fringe benefit costs which are not covered by the grant; and

WHEREAS, the Governor's Traffic Safety Committee Police Traffic Services Program offers grant funding to conduct traffic enforcement details based on the crash data of their local patrol area with the goal of impacting motorist behavior and improving traffic safety within their jurisdiction; and

WHEREAS, if awarded the City of Newburgh Police Department will use the funds for traffic enforcement, and in addition to having a current mandatory seat belt use policy in place for police officers of the department, they will participate in the national Click it or Ticket seat belt enforcement mobilization, and to cover costs of attending the 2024 ESLETS and the 2024 Governor's Highway Safety Association (GHSA) conference to be held in Indianapolis; and

WHEREAS, this Council has determined that applying for and accepting such grant is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Governor's Traffic Safety Committee 2024 Police Traffic Services Program Grant in an amount not to exceed \$46,000.00 with no City match required; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 62 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A LICENSE AGREEMENT WITH THE CITY OF NEWBURGH INDUSTRIAL
DEVELOPMENT AGENCY TO GAIN ACCESS TO PROPERTY KNOWN AS
159 WEST STREET (SECTION 14, BLOCK 3, LOT 26.1), KEEFE STREET (SECTION 14,
BLOCK 3, LOTS 49 AND 50), AND CASSEDY STREET (SECTION 14, BLOCK 3, LOT 59)
FOR PROFESSIONAL LAND SURVEYING SERVICES**

WHEREAS, the City of Newburgh intends to undertake a review of the area around parcels near West Street, Keefe Street, and Cassedy Street for potential development; and

WHEREAS, the City intends to engage a professional land surveyor to provide land surveying services to 17 parcels of property in the subject area; and

WHEREAS, the City requires access to 4 parcels of property currently owned by the City of Newburgh Industrial Development Agency in order to facilitate the land surveying project, said parcels being known as 159 West Street (Section 14, Block 3, Lot 26.1), Keefe Street (Section 14, Block 3, Lots 49 and 50) and Cassedy Street (Section 14, Block 3, Lot 59); and

WHEREAS, the City of Newburgh Industrial Development Agency reviewed and approved a license agreement for this purpose at its regular meeting held on February 22, 2023; and

WHEREAS, this Council has reviewed such license agreement and has determined that entering into the same would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with the City of Newburgh Industrial Development Agency to gain access to parcels known as 159 West Street (Section 14, Block 3, Lot 26.1), Keefe Street (Section 14, Block 3, Lots 49 and 50) and Cassedy Street (Section 14, Block 3, Lot 59) for purposes of obtaining professional land surveying services.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, dated as of _____, 2023, by and between:

THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY, with offices at 83 Broadway, Third Floor, Newburgh, New York 12550 ("Licensor"); and

THE CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("Licensee").

WHEREAS, Licensor is the owner of various parcels of land located within the City of Newburgh and more specifically described in **Schedule A**, annexed hereto and made a part hereof (all parcels collectively hereinafter referred to as the "Property"); and

WHEREAS, Licensee has requested access to the Property for the purpose of conducting land surveys of the Property and other parcels owned by Licensee that are adjacent to the Property; and

NOW, THEREFORE, it is hereby agreed between the parties as follows:

Section 1. Grant of License. Licensor hereby represents that it owns the Property, and that it has duly authorized this License Agreement. Licensor hereby grants Licensee a revocable license for Licensee and Licensee's employees, agents, and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon the Property, and taking thereupon such equipment, tools, machinery and other materials as may be necessary, for the purpose of conducting land surveys of the Property and other parcels owned by Licensee that are adjacent to the Property.

Section 2. Use of, and Access to, the Property.

- A. Entry to the Property is limited to the use and access necessary to conducting land surveys of the Property and other parcels owned by Licensee that are adjacent to the Property, as administered by the Licensee. In addition to Property access, Licensee shall be permitted to install iron stakes into the ground at various places in the Property to demarcate survey boundaries. Licensee shall perform its land surveying project in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority.

Section 3. Damages. The relation of the Licensee to Licensor as to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, Licensee shall be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances arising out of the negligent performance, other than those wholly caused by Acts of God or hidden defects. Licensee shall make good any damages that may occur in consequence of the performances or any part of it. Licensee shall assume blame, loss and responsibility of any nature to the extent of Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to Licensee and/or the nature of its performance or arising out of its activities licensed hereby. Licensee will

not be liable for damages in excess of Licensee's insurance coverage per occurrence, except such limitations will not apply to claims based on Licensee's intentional breach of this agreement or willful misconduct.

Section 4. Defense and Indemnity. Licensee shall defend, indemnify and hold Licensors harmless against any and all claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, in connection with any actions, proceedings, and lawsuits arising out of or relating to the access and use of the Property conducted by Licensee, its employees, agents, representatives or contractors under this License Agreement, the restoration or failure to perform restoration of the Property pursuant to Section 8 hereof, excepting gross negligence, intentional breach of this agreement or misconduct by the Licensors.

Section 5. Term of License. The license or privilege hereby given shall commence upon the signing of this License Agreement and shall expire without further notice to either party to the other one (1) year from the date of this License ("Expiration Date"), subject to Section 9 below. The License may be renewed thereafter by the mutual consent of both parties on such terms and conditions as the parties shall agree at that time.

Section 6. Assignment of License; No Sub-Licensing. This License may not be assigned or sub-let to any other party.

Section 7. Insurance. Licensee shall require all contractors and/or subcontractors performing activities on the Property to maintain insurance policies as are customary with the work to be performed and shall name Licensors as additional named insured on such insurance policies. Such policies shall be maintained in companies having a "General Policyholders Rating" of at least "A Minus, VII" as set forth in the most current issue of "Best's Insurance Guide," and will be written as primary policy coverage and not contributing with, or in excess of, any coverage which Licensors may carry.

Section 8. Repair/Restoration. Licensee shall promptly restore the Property to substantially the same condition that existed prior to the commencement of the access provided for in this License Agreement, as follows: (i) repair or replace any and all damage caused by Licensee's, or its employees', agents', representatives' or contractors' activities on the Property in accordance with all applicable laws; (ii) remove any materials that Licensee or its employees, agents, representatives or contractors have placed on the Property; and (iii) properly manage and dispose of any waste and other materials from the work performed at the Property. Any unperformed repairs or replacements or uncured damage caused by Licensee, or its employees', agents', representatives' or contractors' activities on the Property shall be made within thirty (30) days of the date Licensee has received notice of such damage from Licensors, unless otherwise agreed to in writing by the parties. The Licensors shall have the right, but not the obligation, to undertake any such repair work on behalf and at the expense of the Licensee should the Licensee fail to undertake or, once undertaken, to pursue such work in sufficient time to complete such work in the manner and by the time required pursuant to written notice from the Licensors to the Licensee.

Section 9. Termination of License. Either party may terminate this license prior to the Expiration Date, with or without cause, on at least sixty (60) days prior written notice to the other party. Upon termination by either party, Licensee shall not be entitled to reimbursement of any of its costs, and Licensee and its agents, employees and contractors will restore of the property to a clean and orderly state and in substantially the same condition as existed prior to the granting of this License.

Section 10. Notices. Notices shall be in writing and shall be deemed properly served when deposited with the United States Postal Service, as certified mail, return receipt requested, bearing adequate postage or being deposited with a reputable overnight courier service for guaranteed next business day delivery and addressed as follows:

a. If to Licensors:

City of Newburgh Industrial Development Agency
attn: Executive Director
83 Broadway, Third Floor
Newburgh, New York 12550

With a copy to:

Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12210

b. If to Licensee:

City of Newburgh
attn: City Manager
City Hall, 83 Broadway
Newburgh, New York 12550

With a copy to

Corporation Counsel
City Hall, 83 Broadway
Newburgh, New York 12550

Section 11. New York Law. This License Agreement shall be construed under New York law and any and all proceedings brought by either party arising out of or related to this License shall be brought in the New York Supreme Court, Orange County.

Section 12. Modification of License Agreement. This License Agreement may not be modified except by a writing subscribed by both parties to this Agreement.

Section 13. No Vested Right. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this License.

Section 14. Counterparts. This License Agreement may be executed in multiple parts in which case it shall become effective when the last party has executed the License Agreement and delivered a copy to the other party

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

Signature Page

License Agreement: City of Newburgh Industrial Development Agency / City of Newburgh

IN WITNESS WHEREOF, Licenser and Licensee have executed this Agreement the day and year herein mentioned.

WITNESSETH:

THE CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY

LICENSOR

By: _____
Cherisse Vickers, Executive Director

THE CITY OF NEWBURGH

LICENSEE

By: _____
Todd Venning, City Manager
Per Resolution No.:

Remainder of this page intentionally left blank/Schedule A to follow

Schedule A – Property List

<u>Street Number</u>	<u>Street Name</u>	<u>Section/Block/Lot</u>
159	West	14 – 3 – 26.1
(None)	Keefe	14 – 3 – 49
(None)	Keefe	14 – 3 – 50
(None)	Cassedy	14 – 3 – 59

RESOLUTION NO.: 63 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE A CONTRACT WITH HOWARD W. WEEDEN, PLS, P.C.
FOR PROFESSIONAL LAND SURVEYING SERVICES OF
17 PARCELS OF PROPERTY NEAR WEST STREET, KEEFE STREET,
AND CASSEDY STREET IN THE AMOUNT OF \$24,000.00**

WHEREAS, the City of Newburgh intends to undertake a review of the area around parcels near West Street, Keefe Street, and Cassedy Street for potential development; and

WHEREAS, the City has solicited and received proposals to provide professional land surveying services as an important first step in the development process; and

WHEREAS, the City received a proposal from Howard W. Weeden, PLS, P.C., to provide land surveying services to 17 parcels of property in the subject area; and

WHEREAS, the funding for the land surveying services shall be derived from A.8684.0448; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that accepting the proposal and entering into a contract for such work as proposed 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 is hereby authorized to accept a proposal and execute a contract for professional land surveying services with Howard W. Weeden, PLS, P.C. in the amount of \$24,000.00 in connection with future development of property near West Street, Keefe Street, and Cassedy Street.

CITY OF NEWBURGH
Land Survey Services Agreement

This 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 Howard W. Weeden, PLS, P.C., with an office address of 62 Main Street, Walden, New York 10586 ("Contractor").

WITNESSETH

WHEREAS, Contractor, in consideration of the terms and conditions herein, agrees to furnish labor, materials, and equipment, and to perform work necessary to complete, in a skillful and professional manner, land surveying services related to 17 parcels of real property located in and around West Street, Orchard Street, and Cassedy Street, all in the City of Newburgh, New York.

WHEREAS, Contractor shall provide such services as more fully described in this Agreement, along with any schedules or exhibits, which are incorporated by reference and made part of this Agreement, as follows:

- **Schedule A** – Contractor Proposal to City

WHEREAS, the term shall begin upon receipt of a fully-executed Agreement by Contractor from the City, with work elements being started during the term and continuing to completion and acceptance by the City.

WHEREAS, Contractor assumes responsibility for the services and deliverables proposed in **Schedule A**.

WHEREAS, the services amount to be expended under this Agreement shall not exceed **twenty-four thousand and 00/100 dollars (\$24,000.00)**, with payment being made in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, In consideration of the statements and conditions herein, the City does hereby engage Contractor to perform the services in **Schedule A**, and Contractor does hereby agree to perform such services described herein. The City and Contractor agree as follows:

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

1. DEFINITIONS

The following terms as used in this Agreement are defined as follows:

- 1.1 Agreement: The Agreement executed by both the City and Contractor.
- 1.2 Additional Services: A written authorization for additional work beyond that required to be provided by Section 2, Scope of Services.
- 1.3 Base Design: The design arising out of the provision of the Contractor's basic services that meets project scope and budget.
- 1.4 Budgeted Direct Construction Cost: The City's budgeted cost to construct the project.
- 1.5 City: The City of Newburgh.
- 1.6 Contractor: The individual or design firm represented who is identified on the signature line of the Agreement.
- 1.7 Contract: Same as Agreement.
- 1.8 Contract Documents: Any Requests for Proposals, Technical and Cost Proposals, this Agreement, Construction Documents, Bid Proposal Form, Notice to Contractors, bonds, and insurance certificates relative to the project.
- 1.9 Cost Control Report: Documentation providing cost data for the continuing evaluation of the work. The cost figures shall be a reasonable estimate of expenditures at the end of the reporting period based on current information.
- 1.10 Final Design Documents: The design drawings, specifications, design analysis, cost estimate, general conditions, supplementary general conditions, and special conditions developed to convey in detail the design, function and construction of the project.
- 1.11 Normal Consulting and Engineering Services: Professional services provided by architect, civil engineer, landscape architect, structural, electrical, and mechanical engineers, design-assist or design-build trade contractors, and cost estimators which are necessary and appropriate to define the project's design and direct the project's construction.
- 1.12 Principal(s): The individual(s) of the Contractor authorized on behalf of the firm to act as signatories to agreements for this project.
- 1.13 Project Manager: A representative of the City designated to act on behalf of the City with respect to the project.

2. SCOPE OF SERVICES

- 2.1 Contractor shall render all services and furnish all materials and equipment necessary to provide the City with plans, estimates, and other services and deliverables more specifically described in **Schedule A** in a timely and professional manner.
- 2.2 Contractor shall ascertain the applicable practices of the City, New York State (including any relevant agencies thereto) and/or the United States of America (including any relevant agencies thereto), as applicable, before beginning any of the work of this Project. All work required under this Contract shall be performed in accordance with these practices, sound design and engineering standards, practices and criteria, and any special requirements as may be described in **Schedule A**.
- 2.3 Prior to the start of work, Contractor shall submit for approval by the City the names of any subcontractor firms and key individuals proposed for the project design team. The City shall have the exclusive discretion to accept or reject for cause any subcontractor or individual proposed. If a subcontractor is rejected, the Contractor shall propose an alternate subcontractor acceptable to the City. Nothing in this Agreement shall create any contractual relationship between the City and any subcontractor retained by the Contractor.
- 2.4 Prior to the start of work, Contractor shall review the document needs and organization, including coordination with the Project Manager. Based on this review, Contractor shall issue a letter to the Project Manager describing measures to be employed by the design team to ensure document coordination on the project.
- 2.5 Prior to the start of work, Contractor shall propose the number of visits and meetings as required to meet the scope and complete the phase. Project meetings/site visits shall be provided with the Scope of Services and as described in **Schedule A**. Absent specific agreement, no less than the following minimums shall be provided:
 - 2.5.1 One (1) start meeting, which shall include a site visit.
 - 2.5.2 One (1) project progress review meeting.
 - 2.5.3 One (1) project completion meeting.
- 2.6 Contractor will commence work no later than ten (10) days after receiving written notice to proceed from the City.
- 2.7 Physical prints and electronic copies of documents shall be provided upon request by the City at any time, including after project completion, at Contractor's sole cost and expense. Absent specific exclusion no less than the following minimums shall be provided:

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- 2.7.1 One (1) full size print copies of completed work, with size to be determined by the City.
 - 2.7.2 One (1) electronic copy of all plans, and specification in an electronic format acceptable to the City.
 - 2.7.3 One (1) copy of an integrated 3D BIM model (if applicable), DWG, Word, and/or PDF of plans and specifications.
- 2.8 Contractor's performance of this Contract within the compensation provided shall be continuously reviewed in good faith by Contractor. Contractor shall notify the City of the results of those reviews in writing by submitting of a Cost Control Report to the Project Manager. Such Cost Control Report shall be submitted to the City monthly or at such alternative interval as may be described in **Schedule A**.
- 2.9 If Contractor believes that any work the Contractor has been directed to perform is beyond the Scope of Services as outlined in Section 2 and in the Agreement, and constitutes Additional Services, the Contractor shall promptly notify the City, in writing, of its objections prior to the commencement of the objected to work. The City shall review said objections in good faith and, in its sole discretion, decide whether such work is beyond the Scope of Services and in the Agreement generally, and constitutes Additional Services. If the City determines that such work does constitute Additional Services, the City shall provide extra compensation to the Contractor as provided for in Sections 3 and 4, below. In this instance, an amendment to the Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the City.

3. ADDITIONAL SERVICES

- 3.1 During the project, the City may elect to seek additional work that, in its discretion, is substantially beyond that required to be provided by Section 2 (Scope of Services). Such work shall be considered Additional Services.
 - 3.2 Additional Services require pre-authorization in writing by the parties. When Additional Services are authorized and accepted, they shall be provided by the Contractor and shall be paid for by the City as provided in Section 4 (Compensation).
 - 3.3 The following services are expressly not covered by Section 2 (Scope of Services) of this Agreement and are considered extra services unless otherwise described in **Schedule A**:
 - 3.3.1 Revising previously approved work, notwithstanding Section 3.4.2.
 - 3.3.2 Providing additional design assessments and remedial documentation for the replacement of work during construction damaged by fire or other causes not the fault of the Contractor.
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- 3.3.3 Providing additional professional services made necessary through no fault of the Contractor.
 - 3.3.4 Providing additional professional services made necessary to affect a material change of the Agreement requested by the City.
 - 3.3.5 Providing special delineations or renderings, other than that required in Section 2 (Scope of Services).
 - 3.4 The following services are expressly covered by Section 2 (Scope of Services), of this Agreement and shall not be considered extra services:
 - 3.4.1 Changes required by Federal, New York State, or local code laws, rules, or regulations, as may be applicable.
 - 3.4.2 Changes resulting from Contractor's errors, omissions, or design deficiencies.

4. COMPENSATION

- 4.1 This Contract shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the City beyond the monies legally available for the purposes hereof.
- 4.2 Compensation for Contractor's Scope of Services shall be as indicated in **Schedule A**.
- 4.3 Fee proposals by the Contractor shall be reflective of the actual effort necessary to design and document the condition identified in Section 2 (Scope of Services).
- 4.4 For Contractor's Additional Services, as described in Section 3 (Additional Services), the compensation to be paid will be identified in a supplemental agreement as applicable.
- 4.5 Payments under this Agreement shall be made in arrears of work increment(s) completed to the satisfaction of the City and upon submittal of an invoice to the City. If not otherwise specified, payment for services rendered will be processed within thirty (30) days upon presentation of the invoice.
- 4.6 At the conclusion of work on the project, the Contractor shall submit a final invoice for any remaining amounts due. This invoice shall be prominently identified as 'FINAL INVOICE'.
- 4.7 Contractor agrees that no charges or claim for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be

compensated for by an extension of time for such reasonable period as the City may decide, it being understood, however, that the permitting of the Contractor to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein. Nothing in this Section will prevent the Contractor from exercising his rights under Section 2 (Scope of Services) of this contract.

- 4.8 All subcontractors performing work on this project shall be bound by the same required contract provisions as the Contractor. All agreements between the Contractor and a subcontractor shall include all standard required contract provisions, and such agreements shall be subject to review by the City.
- 4.9 Payment to Contractor is subject to the following audit rights of the City:
 - 4.9.1 For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.
 - 4.9.2 For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the City.
 - 4.9.3 For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the City.

5. CITY RESPONSIBILITIES

- 5.1 The City shall make any surveys, reports, or other documents in the City's possession that the parties deem relevant to the project available to the Contractor as required, at City expense. Said documents shall be for reference only, and the City makes no representations as to the quality, propriety, or accuracy of the information contained in said documents.
- 5.2 To the best of its ability, the City shall provide site information that indicates lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries, grades and contours of the site; locations, dimensions and data pertaining to known utilities, existing structures, landscaping and trees, and other improvements.
- 5.3 The City shall provide a geotechnical report, test borings, test pit information, soil bearing values, and other geotechnical assessments appropriate to define sub-surface conditions, if available.

6. CONTRACTOR RESPONSIBILITIES

- 6.1 Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services as determined by the City.
- 6.2 Neither the City's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Contractor shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Contractor's negligent performance or breach of contract of any of the services furnished under this Agreement.
- 6.3 The rights and remedies of the City provided for under this contract are in addition to any other rights and remedies provided by law.

7. OWNERSHIP AND USE OF DOCUMENTS

- 7.1 Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years from the date of creation or three (3) years after final payment is remitted by the City, whichever is later. Any authorized representatives of the City, New York State, or Federal Government shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for inspection, auditing, and copying.
- 7.2 All technical data related to this Agreement that exists in the offices of the City or in the offices of the Contractor shall be made available to the other party to this Agreement upon written request and without expense to such other party.
- 7.3 Contractor agrees that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement, whether in draft or final form, shall become the property of the City. The City shall have access, during regular business hours, to inspect and obtain copies of notes, designs, drawings, specifications, electronic files, calculations, and other technical data pertaining to the work performed under this Agreement.
- 7.4 The City reserves the right to use documents prepared under this Agreement regardless of whether the Agreement is terminated or the project is suspended or abandoned. This right allows the City to use these documents in the future for the same project, a modified version of it, or for one that is similar.

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- 7.5 At the time of completion of the work, the Contractor shall make available to the City all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the City. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Contractor shall make available to the City all the aforementioned data and material. All original tracings of maps and other engineering data furnished to the City by the Contractor shall bear thereon the endorsement of the Contractor. All plans, estimates, and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the City.
- 7.6 Contractor agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Contractor. However, the Contractor agrees to, and does hereby grant, to the City, the State of New York, and the Federal Government, a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world, all in accordance with the provisions of 48 CFR 1-27.

8. TERMINATION

- 8.1 The City may terminate this Agreement or suspend or abandon the project upon fourteen (14) days written notice to the Contractor. Contractor may terminate this Agreement only if the City substantially fails to perform in accordance with Section 5 (City Responsibilities) of this Agreement. Prior to Contractor terminating this Agreement, a Notice of Termination must be given in writing and in accordance with the notice provision is Section 10 (Miscellaneous Provisions), below, to the City that allows the City fourteen (14) days to correct any default. If the default is corrected/cured, Contractor may not terminate this Agreement.
- 8.2 In the event the City terminates this Agreement, suspends the project for more than 180 days, abandons the project or the Contractor terminates this Agreement in accordance with Section 8.1, the City shall pay to the Contractor full payment for services performed and expenses incurred under this Agreement as follows:
- 8.2.1 The sum due under Section 4 (Compensation) as shall have become payable because of progress in the work plus a pro-rata portion of the next succeeding and uncompleted step, if any, for services actually rendered by Contractor, plus any pro-rata sums due to Contractor for Additional Services.
- 8.2.2 In ascertaining the services actually rendered up to the date of termination of this Agreement, suspension or abandonment of the project, consideration will be given to completed work and work in process including incomplete drawings and other documents whether delivered to the City or in the possession of the Contractor.

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- 8.3 The City may immediately cancel this Agreement on notice to Contractor if the City receives information that any work under this Agreement conflicts with the provisions of any applicable law establishing a Code of Ethics for Federal, State or City officers and employees.

9. INSURANCE AND RISK MANAGEMENT

- 9.1 The parties agree that Contractor, its agents, officers, and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the City.
- 9.2 Contractor agrees to hold harmless, defend, and indemnify the City, and the officers, agents, and employees of the City from all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of the Contractor, its officers, agents, and employees, in the performance of this Agreement. This provision shall survive the expiration or termination of this Agreement.
- 9.3 Contractor shall not commence work until the City has received evidence of the insurance required in this section and approved the same.
- 9.4 Contractor shall obtain the following policies and coverages. The insurance furnished by the Contractor under this section shall provide coverage in amounts not less than the following unless a different amount is stated herein:
- 9.4.1 Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, shall cover work done or to be done by or on behalf of the Contractor and shall provide insurance coverage for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.
- The minimum liability limits shall be as follows:
- | | |
|-------------|---|
| \$3,000,000 | General Aggregate |
| \$1,000,000 | Each Claim - combined single limit for bodily injury and property damage. |
- 9.4.2 Business Automobile Liability Insurance, on an occurrence basis, shall cover owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Contractor and shall provide insurance coverage for bodily injury, property damage, and contractual liability.

The minimum liability limits shall be as follows:

\$1,000,000 Each Accident - combined single limit for bodily injury and property damage.

- 9.4.3 Workers' Compensation Insurance, shall include Employer Liability limits of \$1,000,000 and other limits required under New York law.
- 9.4.4 Professional Liability Insurance (a/k/a Errors and Omissions insurance) on an occurrence basis, shall cover work done or to be done by or on behalf of the Contractor and provide insurance for professional liability in the amount of \$1,000,000 each occurrence. At a minimum Contractor shall obtain and maintain professional liability insurance on a claims-made basis for no less than \$1,000,000 each claim and \$2,000,000 annual aggregate, and certification of coverage shall be submitted to the City upon signing of this Agreement. If the total contract amount exceeds \$1,000,000, the Contractor shall renew and keep such insurance in effect for at least ten (10) years after the recordation of the notice of completion.
- 9.4.5 Insurers shall be authorized in the State of New York to transact insurance and shall hold a current A.M. Best's rating of no less than A: VII or carrier acceptable to the City.
- 9.4.6 Contractor shall submit to the City certificates of insurance and endorsements to the policies of insurance required by the Agreement as evidence of the insurance coverage.
- 9.4.7 The scope of coverage and deductible shall be shown on the certificate of insurance.
- 9.4.8 The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the City, and without ten (10) days' notice for non-payment of premium.
- 9.4.9 Renewal certifications shall be timely filed by the Contractor for coverage until the work is accepted as complete.
- 9.4.10 Contractor shall notify the City in writing of any material change in insurance coverage.
- 9.4.11 Insurance policies shall contain, or be endorsed to contain, the following provisions and/or endorsements:
- 9.4.11.1 For the general and automobile liability policies, the City of Newburgh, its officers, employees, representatives,

volunteers, and agents shall be covered as additional insureds.

9.4.11.2 For claims related to the work, Contractor's insurance coverage shall be primary insurance as respects the City of Newburgh, their officers, employees, representatives, volunteers, and agents. Insurance or self-insurance maintained by the City, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.

9.4.11.3 Supplementing sections 9.4.11.1 and 9.4.11.2, the City of Newburgh Industrial Development Agency, its officers, employees, representatives, volunteers, and agents shall also be named and covered as additional insureds.

9.4.11.4 Each insurance policy required by this section shall state that coverage shall not be canceled, except after thirty (30) days prior written notice by mail, return receipt requested, has been given to the City, ten (10) days' notice for non-payment of premium.

9.4.11.5 The City, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

9.4.12 Any deductible under any policy of insurance required in this section shall be the Contractor's liability.

9.4.13 Acceptance of certificates of insurance by the City shall not limit the Contractor's liability under the Agreement.

9.4.14 If the City is damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the City for such damages.

9.4.15 Contractor's obligations to obtain and maintain required insurance are non-delegable duties under this Agreement.

10. MISCELLANEOUS

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

not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

- 10.2 Contractor agrees to comply with all applicable Federal, State and City Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, Contractor agrees that neither it nor its sub-Contractors shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement.
- 10.3 Contractor certifies compliance with providing a drug-free workplace.
- 10.4 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 10.5 Contractor warrants that no officer or employee of the City of Newburgh has received, or shall receive, compensation from the Contractor or subContractors for work performed in the execution of this Agreement, or for any architectural or engineering services, public or private, performed for the Contractor or its subContractors.
- 10.6 This Agreement shall be binding on, and inure to the benefit of, the successors and permitted assigns of the parties.
- 10.7 Contractor may not assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or its power to execute such Agreement, to any other person, company or corporation, without written consent of the City. If this provision is violated, the City may revoke and annul the Agreement and the City shall be relieved from all liability and obligations thereunder to the person, company or corporation to whom the Contractor shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of the City.
- 10.8 Notice for either party may be served by delivering it in writing via any form of United States Postal Service that contains a tracking number, or by Federal Express, or by

United Parcel Service, to the respective party and address as shown on the Agreement page.

10.8.1 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

10.8.2 Notice served upon Contractor shall be delivered to:

Howard W. Weeden, PLS, P.C.
62 Main Street
Walden, New York 12586

- 10.9 In the event of any claims made or any actions brought against the City in connection with the Agreement, Contractor agrees to provide all information and assistance in the City's opinion that is reasonably necessary to defend such Claim.
- 10.10 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.
- 10.11 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.
- 10.12 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.

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- 10.13 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.
- 10.14 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.
- 10.15 Studio HIP Landscape Architecture and PUSH Studio shall be jointly and severally responsible for the terms and conditions stated in this Agreement.

11. CERTIFICATION FOR FEDERAL-AID CONTRACTS (IF APPLICABLE)

- 11.1 Should this Agreement, or any portion thereof, be funded with federal aid, Contractor certifies, by signing this Agreement, to the best of its knowledge and belief, that:
- 11.1.1 No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 11.1.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 11.1.3 The signator to this Contract, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):
- 11.1.3.1 Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- 11.1.3.2 Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

11.1.3.3 Does not have a proposed debarment pending; and

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

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[Signature and Acknowledgment Pages to Follow]

DRAFT

Signature Page
Agreement for Land Survey Services
City of Newburgh with Howard W. Weeden, PLS, P.C.

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

Howard W. Weeden, PLS, P.C.

By: _____

Name: Howard W. Weeden
Title: Owner

**SCHEDULE A – CONTRACTOR SCOPE OF SERVICES
[WITH PAYMENT PROPOSAL]**

DRAFT



Howard W. Weeden, PLS, PC
Professional Land Surveying Services since 1991
62 Main Street, Walden, New York 12586
tel.: 845.778.7643 fax.: 845.778.7307
hwwpls@yahoo.com



Mr. David Kohl
Economic Development Specialist
Department of Planning & Development
City of Newburgh
123 Grand Street
Newburgh, NY 12550

re.: survey of City-owned properties

Mr. Kohl;

Thank you for sending me the list of properties that your office needs surveyed and the requirements needed. The properties in question are Section 14, Block 3, Lots 26.1, 26.2, 26.3, 26.4, 26.52, 26.3, 56.2, 50, 49, 48, 62, 63, 59, Section 26, Block 3. Lot 8.2 and the paper streets of Orchard, Keefe and Cassedy.

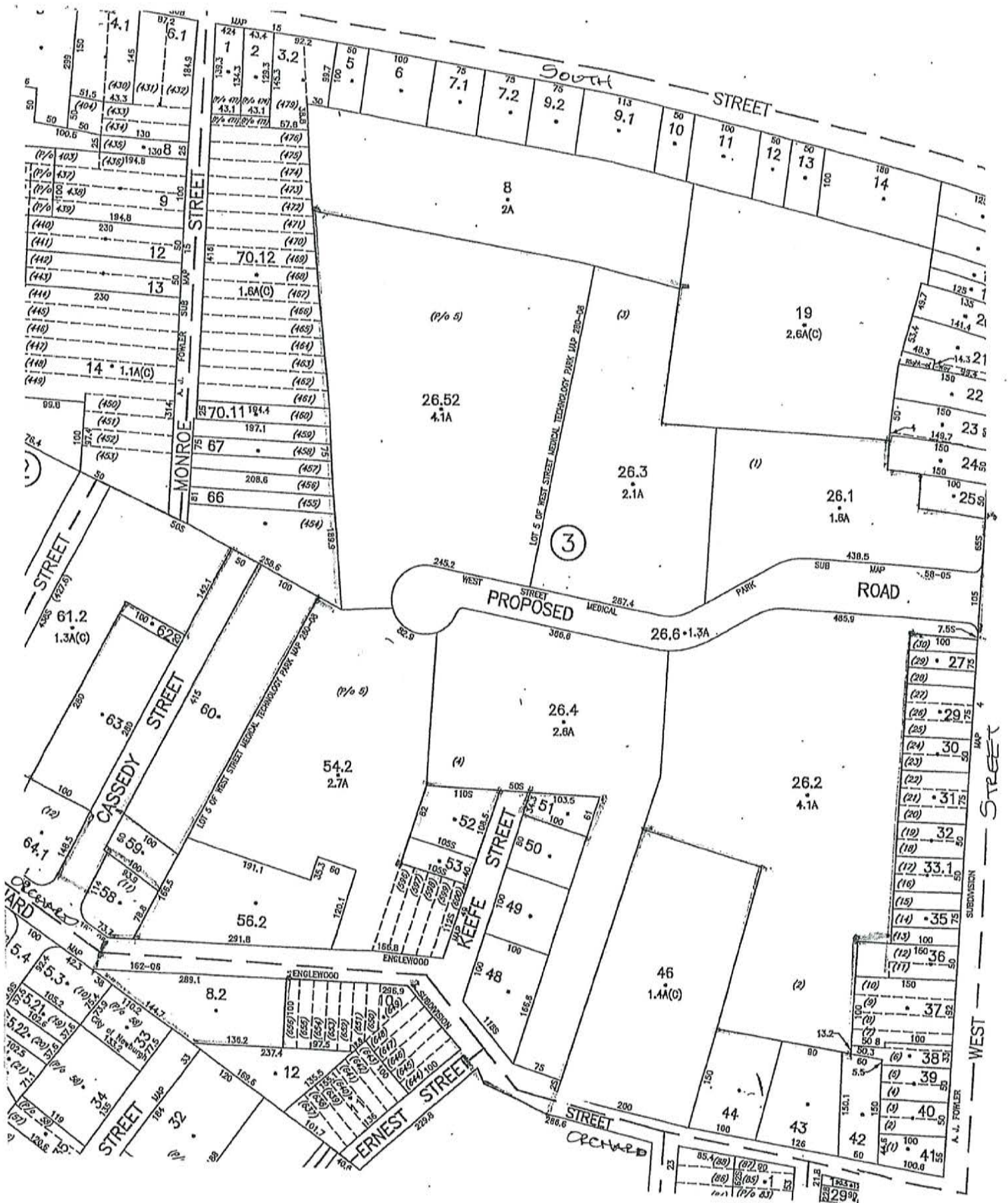
My fee for doing the surveys with your requirements will be \$24,000 and the job will be completed in 2 months from your go-ahead. The requirements to be provided on the surveys will include:

- boundary survey, including investigation of recorded records, maps and deeds; deed plots; field survey and improvement locations; signed copies of the boundary survey; visible and/or recorded easements; survey markers to be set at unmarked property corners, as necessary.
- location of all existing manmade improvements to properties.
- location of abutting streets and utilities including walkways, placement types, utility structures with overhead lines, manholes, hydrants, catch basins with pipe sizes and inverts where accessible and other visible and marked drainage and utility structures.
- 2 foot topography.

Please let me know if I have missed anything with this proposal. It would be ideal if we could proceed prior to the foliage coming out in the spring, since the area would be more open for locations. Also, let me know if need individual maps or a large map showing all properties. I will also provide you with signed paper copies and an electronic (AutoCAD) file at completion.

If you wish us to proceed, please contact me and we will start immediately. I hope to be working with you on this project.

Howard W. Weeden, PLS



SECTION 26



ORANGE COUNTY—NEW YORK



Parcels to be Surveyed

<u>Tax Map</u>	<u>Address</u>	<u>Owner</u>
14-3-26.1	159 West St	City of Newburgh IDA
14-3-26.2	141 West St	City of Newburgh
14-3-26.3	155 West St (Building)	City of Newburgh
14-3-26.4	143 West St	City of Newburgh
14-3-26.52	151 West St	City of Newburgh
14-3-26.3	Undedicated Road	City of Newburgh
14-3-56.2	96 Orchard St	City of Newburgh
26-3-8.2	117 Orchard St	City of Newburgh
No SBL	Orchard St (paper street portion)	City of Newburgh
14-3-50	Keefe St (paper street)	City of Newburgh IDA
14-3-49	Keefe St (paper street)	City of Newburgh IDA
14-3-48	Keefe St (paper street)	City of Newburgh
No SBL	Keefe St (paper street)	City of Newburgh
14-3-62	Cassedy St (paper street)	City of Newburgh
14-3-63	Cassedy St (paper street)	City of Newburgh
14-3-59	Cassedy St (paper street)	City of Newburgh IDA
No SBL	Cassedy St (paper street)	City of Newburgh

RESOLUTION NO.: 64 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH
HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC.
TO ALLOW ACCESS TO THREE PARCELS ON WEST STREET
TO STORE LUMBER FRAMING FOR EVENTUAL USE IN THE
CONSTRUCTION OF SINGLE-FAMILY HOMES IN THE CITY OF NEWBURGH**

WHEREAS, Habitat for Humanity of Greater Newburgh, Inc. has requested access to, and use of, the City-owned properties known as 151 West Street (Section 14, Block 3, Lot 26.52), 155 West Street (Section 14, Block 3, Lot 26.3), and the private road commonly known as West Street (Section 14, Block 3, Lot 26.6) (collectively the “Property”) for the storage of lumber frames, with said frames eventually being used to construct single-family homes on property currently known as 511 South Street (Section 14, Block 3, Lot 14) on the tax map of the City of Newburgh; and

WHEREAS, such access to, and use of, the Property requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Habitat for Humanity of Greater Newburgh, Inc. to allow access to, and use of, City-owned property identified as 151 West Street (Section 14, Block 3, Lot 26.52), 155 West Street (Section 14, Block 3, Lot 26.3), and the private road commonly known as West Street (Section 14, Block 3, Lot 26.6), for the purpose of storing lumber frames, with said frames eventually being used to construct single-family homes on property currently known as 511 South Street.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, dated as of _____, 2023, by and between:

THE CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, City Hall, Newburgh, New York 12550 (“City” or “Licensor”); and

HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC., a New York not-for-profit corporation with a mailing address of 125 Washington Street, Newburgh, New York 12550 (“Licensee”).

WHEREAS, the City is the owner of real property identified as 151 West Street, 155 West Street, and the private road commonly known as West Street in the City of Newburgh, and more accurately described as Section 14, Block 3, Lots 26.52, 26.3, and 26.6, respectively, on the official tax map of the City of Newburgh (collectively the “Property”); and

WHEREAS, the Licensee has requested a license or privilege of gaining access to the Property, on behalf of itself and its employees, agents and contractors for the purpose of storing lumber frames on the Property for eventual use in the construction of single-family homes in the City of Newburgh; and

WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, it is hereby agreed between the parties as follows:

Section 1. Grant of License. The City hereby represents that it owns the real property located at 151 West Street, 155 West Street, and the private road commonly known as West Street in the City of Newburgh, more accurately described as Section 14, Block 3, Lots 26.52, 26.3, and 26.6, respectively, (collectively the “Property”) and that it has duly authorized this License Agreement. The City hereby grants Licensee a revocable license for Licensee and Licensee’s employees, volunteers, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon the Property, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary, for the purposes of and to store lumber frames on the Property for a period of time as defined in Section 6 of this license agreement.

Section 2. Scope of License. Entry to the Property is limited to the minimum access necessary to facilitate and accomplish the purpose of Licensees request. Licensee agrees to store such lumber frames in a neat and orderly manner to the extent practicable in the determination of the Licensor, along with any other associated tasks as needed to comply fully with the provisions of any laws, ordinances or other lawful authority, including obtaining any and all permits that may be required.

Section 3. Insurance. The Licensee shall not commence or perform site investigation work nor operate machinery under this License Agreement until it has obtained all insurance required under this Section 3 and such insurance has been approved by the City.

A. Compensation Insurance - The Licensee shall take out and maintain during the life of this agreement such Workers' Compensation Insurance for its employees or members to be assigned to the work hereunder as may be required by New York State Law.

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it and the City which shall be named as additional insured on all such policies from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.

2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this License Agreement.

C. Licensee may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, Licensee and such agents shall provide and maintain insurances as required by this Section 3 and name Licensor as additional insured under insurance coverage concerning Licensee's performance of the work referenced herein.

Section 4. Damages. The relation of the Licensee to the City as to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances arising out of the negligent performance, other than those wholly caused by Acts of God. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance or arising out of its activities licensed hereby.

Section 5. Defense and Indemnity. Licensee shall defend, indemnify and hold the City harmless against any and all claims, actions, proceedings, and lawsuits arising out of or relating to the access

and use of the Property under this License Agreement, excepting gross negligence or misconduct by the City.

Section 6. Term of License. The license or privilege hereby given shall expire and terminate at 11:59 p.m. on Friday, July 7, 2023. On or before that date, Licensee shall restore the property to a clean and orderly state and in the same condition as existed prior to the granting of this license.

Section 7. Assignment of License; No Sub-Licensing. This License may not be assigned or sub-let to any other party.

Section 8. Termination of License. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by 48 hours' notice to the Licensee, terminate the agreement.

Section 9. New York Law. This License Agreement shall be construed under New York law and any and all proceedings brought by either party arising out of or related to this License shall be brought in the New York Supreme Court, Orange County.

Section 10. Modification of License Agreement. This License Agreement may not be modified except by a writing subscribed by both parties to this Agreement.

Section 11. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

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Signature Page

License Agreement – City of Newburgh with Habitat for Humanity of Greater Newburgh
License for Use of West Street Parcels (3 parcels)

WITNESSETH:

THE CITY OF NEWBURGH
LICENSOR

By: _____

Todd Venning, City Manager
Per Resolution No.:

HABITAT FOR HUMANITY OF GREATER
NEWBURGH, INC.
LICENSEE

By: _____

Jill Marie
Executive Director

Approved as to form:

MICHELLE KELSON
Corporation Counsel

JANICE GASTON
City Comptroller

RESOLUTION NO.: 65 - 2023

OF

APRIL 10, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH THE COUNTY OF ORANGE
FOR THE SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAM TO
PROVIDE YOUNG PEOPLE TO WORK FOR THE CITY OF NEWBURGH
FOR THE SUMMER OF 2023**

WHEREAS, the County of Orange is once again offering a Summer Youth Employment and Training Program for the purpose of providing meaningful work experience for participants; and

WHEREAS, the City of Newburgh wishes to apply for 15 youth participants for 5 Recreational Labor positions and 5 Day Camp staff positions in the Recreation Department, 3 Assistant Maintenance Mechanic positions in the Water Department, and 2 Laborer positions in the Department of Public Works; and

WHEREAS, this Council finds that entering into the attached agreement with Orange County for this purpose is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement and other necessary documents with the County of Orange in order to participate in the Summer Youth Employment and Training Program which provides young people to work in the City of Newburgh for the Summer of 2023.

RESOLUTION NO.: 66 - 2023

OF

APRIL 10, 2023

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
APPOINTING THE CONSERVATION ADVISORY COUNCIL
AS THE CITY OF NEWBURGH CLIMATE SMART COMMUNITIES TASKFORCE**

WHEREAS, by Resolution No. 100-2018 of April 23, 2018, the City of Newburgh adopted the New York State Climate Smart Communities Pledge in order to reduce greenhouse gas emissions and adapt to a changing climate; and

WHEREAS, the City of Newburgh has joined the New York State Climate Smart Communities Program in order to accelerate a path to becoming a more sustainable, and eco-friendly city; and

WHEREAS, the New York State Climate Smart Communities program requires extensive administrative work in order to document sustainability efforts, and plan and coordinate future climate related projects; and

WHEREAS, the City of Newburgh Conservation Advisory Council has agreed to serve as the Climate Smart Communities Taskforce; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE BE IT RESOLVED, that the City of Newburgh City Council hereby appoints the City of Newburgh Conservation Advisory Council as the Climate Smart Communities Taskforce and the Conservation Advisory Council will hold both titles.

RESOLUTION NO.: 100 - 2018

OF

APRIL 23, 2018

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ADOPTING THE NEW YORK STATE CLIMATE SMART COMMUNITIES PLEDGE**

WHEREAS, the City of Newburgh (hereinafter "local government") believes that climate change poses a real and increasing threat to our local and global environments and is primarily due to the burning of fossil fuels; and

WHEREAS, the effects of climate change will endanger our infrastructure, economy and livelihoods; harm our farms, orchards, and ecological communities, including native fish and wildlife populations; spread invasive species and exotic diseases; reduce drinking water supplies and recreational opportunities; and pose health threats to our citizens; and

WHEREAS, we believe that our response to climate change provides us with an unprecedented opportunity to save money, and to build livable, energy-independent and secure communities, vibrant innovation economies, healthy and safe schools, and resilient infrastructures; and

WHEREAS, we believe the scale of greenhouse gas (GHG) emissions reductions required for climate stabilization will require sustained and substantial efforts; and

WHEREAS, we believe that even if emissions were dramatically reduced today, communities would still be required to adapt to the effects of climate change for decades to come;

NOW, THEREFORE, BE IT RESOLVED by the City Council that the City of Newburgh in order to reduce greenhouse gas emissions and adapt to a changing climate, adopts the New York State Climate Smart Communities Pledge, which comprises the following ten elements:

1. Pledge to be a Climate Smart Community.
2. Set goals, inventory emissions, plan for climate action.
3. Decrease community energy use.
4. Increase community use of renewable energy.
5. Realize benefits of recycling and other climate-smart solid waste management practices.
6. Reduce greenhouse gas emissions through use of climate-smart land-use tools.
7. Enhance community resilience and prepare for the effects of climate change.
8. Support development of a green innovation economy.
9. Inform and inspire the public.
10. Commit to an evolving process of climate action.