



City of Newburgh Council Work Session  
*Sesion de trabajo del Concejal de la  
Ciudad de Newburgh*  
September 7, 2023  
6:00 PM

Council Meeting Presentations/ Presentaciones de la Reunion General

1. Public Hearing - Local Law Enacting Exemption for Disabled Persons with Limited Incomes

There will be a public hearing on Monday, September 11, 2023 to receive comments concerning a Local Law adding Article IX, entitled "Exemption for Disabled Persons with Limited Incomes" to Chapter 270 entitled "Taxation" of the City Code of the City of Newburgh

*Habr  una audiencia p blica el lunes 11 de septiembre de 2023 para recibir comentarios sobre una ley local que a ade el Art culo IX, titulado "Exenci n para personas discapacitadas con ingresos limitados" al Cap tulo 270 titulado "Impuestos" del C digo Municipal de la Ciudad de Newburgh*

Work Session Presentations/ Presentaciones de la Session de Trabajo

2. Introduction of New Police Recruits

Police department will be introducing new police recruits to the council

*El departamento de polic a presentar  al consejo nuevos reclutas de polic a*

3. Route 17 Widening Presentation

*Presentaci n sobre la ampliaci n de la Ruta 17*

4. Presentation Update on the African American Civil Rights Oral History Grant Project

*Presentaci n sobre la actualizaci n del Proyecto de Subvenci n de Historia Oral de los Derechos Civiles de los Afroamericanos*

Engineering/Ingenier a

5. PIN No. 8761.39 Lake Drive Bridge Replacement Supplemental Agreement No. 1 to Contract No. D040396

Resolution authorizing the City Manager to execute Supplemental Agreement No. 1 to a Master Federal-Aid Local Project Agreement with the New York State Department of Transportation to fund in the first instance 100% of the

Federal-Aid eligible costs of a transportation project identified as the Lake Drive Over Quassaick Creek Bridge Replacement Project (PIN 8761.39/BIN2223630) and appropriating funds therefore

*Resolución que autoriza al Gerente de la Ciudad a ejecutar el Acuerdo Suplementario No. 1 del Proyecto Local de Ayuda Federal con el Departamento de Transportación del Estado de Nueva York para financiar en primera instancia 100% de los costos elegibles de Ayuda Federal y No Federal para financiar a un proyecto de transporte identificado como el Proyecto de Reemplazo del Puente de Lake Drive sobre Quassaick Creek (PIN 8761.39/BIN2223630) y asignar fondos para este fin*

6. FEMA DR-4723 Severe Storm Public Assistance Application - Lake Drive Bridge

Resolution authorizing the City Manager to apply for and accept if awarded a Federal Emergency Management Agency Severe Storm Public Assistance Disaster Relief Program Grant for the Lake Drive Bridge

*Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si es otorgado un Subsidio del Programa de Ayuda para Desastres de la Agencia Federal para el Manejo de Emergencias por Tormentas Severas para el Puente de Lake Drive*

7. PIN No. 8761.57 Lake Street (Route 32) Bridge Rehabilitation Change Order No. 7 McNamee Construction

Resolution authorizing the City Manager to execute Change Order No. 7 with McNamee Construction Corporation to the construction contract in the Route 32/ Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260)

*Resolución que autoriza al Gerente de la Ciudad a ejecutar la Orden de Cambio No. 7 con McNamee Construction Corporation al contrato de construcción en el Puente Ruta 32/Metal Arch Culvert (Puente de Lake Street) Proyecto de Rehabilitación (PIN# 8761.57/BIN# 2022260)*

8. PIN No. 8761.57 Lake Street (Route 32) Bridge Rehabilitation Change Order No. 8 McNamee Construction

Resolution authorizing the City Manager to execute Change Order No. 8 with McNamee Construction Corporation for a time extension to the construction contract in the Route 32/ Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260)

*Resolución que autoriza al Gerente de la Ciudad a ejecutar la Orden de Cambio No. 8 con McNamee Construction Corporation para una prórroga de tiempo del contrato de construcción en el Puente Ruta 32/Metal Arch Culvert (Puente de Lake Street) Proyecto de Rehabilitación (PIN# 8761.57/BIN# 2022260)*



## Finance/Finanza

### 9. 2023 PKFOD Engagement Letter (Audit)

Resolution authorizing the City Manager to execute a letter agreement between the City of Newburgh and the firm of PKF O'Connor Davies, LLP for auditing services for fiscal year ending December 31, 2023 for the price of \$94,500.00

*Resolución que autoriza al Gerente de la Ciudad a ejecutar una carta de acuerdo entre la Ciudad de Newburgh y la firma PKF O'Connor Davies, LLP para servicios de auditoría para el año fiscal que finaliza el 31 de diciembre de 2023 por la cantidad de \$94,500.00*

### 10. Contract with July 4 Ever Fireworks Inc & Rocco Polifrone- International Festival

Resolution authorizing the City Manager to accept a proposal and execute a contract with July 4 Ever Fireworks, Inc. & Rocco Polifrone to provide a fireworks display at the City of Newburgh Annual International Festival for the amount of \$18,500.00

*Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un contrato con July 4 Ever Fireworks, Inc. y Rocco Polifrone para proporcionar un espectáculo de fuegos artificiales en el Festival Internacional Anual de la Ciudad de Newburgh por el monto de \$18,500.00*

## Planning and Economic Development/Planificación y Desarrollo Económico

### 11. Letter of Support for Michael Robinson's Application for the NYSERDA Buildings of Excellence Competition

*Carta de apoyo a la solicitud de Michael Robinson para el Concurso de Edificios de Excelencia del NYSERDA*

## Grants/Contracts/Agreements / Becas /Contratos/Convenios

### 12. Lead Service Line Replacement Funding - American Rescue Plan Act of 2021 Allocation

Resolution authorizing and allocating an additional \$1,000,000.00 of American Rescue Plan Act of 2021 funding to the City of Newburgh Lead Service Line Replacement Program

*Resolución que autoriza y asigna \$1,000,000.00 \$ adicionales de financiación de la Ley del Plan de Rescate Americano de 2021 al Programa de Sustitución de Líneas de Servicio de Plomo de la Ciudad de Newburgh*

13. ARPA Small Business Assistance Grant Recipients

*Beneficiarios de la subvención ARPA de ayuda a pequeñas empresas*

14. Schedule 2nd Public Hearing and Open 2nd 30-Day Public Comment Period for the City of Newburgh Community Development Block Grant (CDBG) FY2024 Annual Action Plan (AAP)

Resolution opening a second 30-day public comment period and scheduling a second public hearing for September 25, 2023 to receive public comment on the City of Newburgh's proposed actions with respect to the Community Development Block Grant Program for the Annual Action Plan for Fiscal Year 2024

*Resolución programando un segundo período de comentarios públicos de 30 días y programar una segunda audiencia pública para el 25 de septiembre de 2023 con el fin de recibir comentarios públicos sobre las acciones propuestas por la Ciudad de Newburgh con respecto al Programa de Subvenciones de los Bloques de Desarrollo Comunitario para el Plan de Acción Anual para el Año Fiscal 2024*

15. To Accept a Division of Criminal Justice Services Grant award for \$175,000 for Portable Radios

Resolution authorizing the City Manager to accept a New York State Division of Criminal Justice Services Law Enforcement Equipment Edward Byrne Memorial Justice Assistance grant in the amount of \$175,000.00 for portable radios for the Police Department

*Resolución que autoriza al Gerente de la Ciudad a aceptar una subvención de la División de Servicios de Justicia Criminal del Estado de Nueva York de Equipos Policiales Edward Byrne Memorial Justice Asistencia por el monto de \$175,000.00 para radios portátiles para el Departamento de Policía*

16. To Accept a U.S. Department of Justice Edward Byrne Memorial Justice Assistance Grant for \$30,580 to purchase Bullet Proof Vests

Resolution authorizing the City Manager to accept a United States Department of Justice Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance grant in the amount of \$30,580.00 to purchase bullet proof vests for the Police Department

*Resolución que autoriza al Gerente de la Ciudad a aceptar una subvención de la División de Servicios de Justicia Criminal del Estado de Nueva York de Equipos Policiales Edward Byrne Memorial Justice Asistencia por el monto de \$30,580.00 para la compra de chalecos antibalas para el Departamento de Policía*

17. Conservation Advisory Council - Natural Resources Inventory Consultant Agreement

Resolution authorizing the City Manager to execute a contract with GREENPLAN Inc. and Hudsonia Ltd to provide consultant services to perform a Natural Resources Inventory

*Resolución que autoriza al Gerente de la Ciudad a ejecutar un contrato con GREENPLAN Inc. y Hudsonia Ltd para proporcionar servicios de consultoría para realizar un Inventario de Recursos Naturales*

18. Arts & Cultural Commission - ArtBiz Program Contract

Resolution authorizing the City Manager to enter into agreements with various parties to provide creative arts classes and related services in connection with the City of Newburgh's Art-Biz Fall Series for 2023

*Resolución que autoriza al Gerente de la Ciudad a entrar en acuerdos con varios partidos para proporcionar clases de artes creativas y servicios relacionados en conexión con la Serie Art-Biz de Otoño para 2023 de la Ciudad de Newburgh*

Executive Session/ Sesión Ejecutiva

19. Proposed, pending or current litigation

*Litigio propuesto, pendiente o actual*

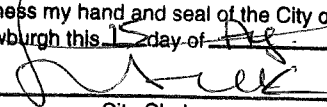
RESOLUTION NO.: 168 - 2023

OF

AUGUST 14, 2023

RESOLUTION SCHEDULING A PUBLIC HEARING FOR SEPTEMBER 11, 2023  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW ADDING ARTICLE IX,  
ENTITLED "EXEMPTION FOR DISABLED PERSONS WITH LIMITED INCOMES"  
TO CHAPTER 270 ENTITLED "TAXATION" OF THE CITY CODE  
OF THE CITY OF NEWBURGH

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law adding Article IX, entitled 'Exemption for Disabled Persons with Limited Incomes' to Chapter 270 entitled 'Taxation' of the Code of Ordinances of the City of Newburgh"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 11th day of September, 2023 in the Council Chambers, 3<sup>rd</sup> Floor, City Hall, 83 Broadway, Newburgh, New York.

I, Lorene Vitek, City Clerk of the City of Newburgh,  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 8/14/23  
and that it is a true and correct copy of such original.  
Witness my hand and seal of the City of  
Newburgh this 15 day of Aug 2023  
  
\_\_\_\_\_  
City Clerk

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

OF

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

A LOCAL LAW ADDING ARTICLE IX,  
ENTITLED “EXEMPTION FOR DISABLED PERSONS WITH LIMITED INCOMES”  
TO CHAPTER 270 ENTITLED “TAXATION” OF THE CITY CODE  
OF THE CITY OF NEWBURGH

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

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law adding Article IX, entitled ‘Exemption for Disabled Persons with Limited Incomes’ to Chapter 270 entitled ‘Taxation’ of the Code of Ordinances of the City of Newburgh”.

**SECTION 2 - AMENDMENT**

The Code of Ordinances of the City of Newburgh is hereby amended to add new Article IX entitled “Exemption for Disabled Persons with Limited Incomes” to Chapter 270 entitled “Taxation” of the Code of Ordinances of the City of Newburgh to read as follows:

**Chapter 270 Taxation**

Article IX. Exemption for Disabled Persons with Limited Incomes

§ 270-101. Legislative intent.

This real property tax exemption for persons with disabilities and limited incomes is adopted pursuant to the authorization for same in § 459-c of the New York State Real Property Tax Law.

§ 270-102. Definitions.

As used in this article, the following terms shall have the meanings indicated:

INCOME – the adjusted gross income for federal income tax purposes as reported on the applicant’s federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions, plus any social security benefits not included in such federal adjusted gross income; provided that if no such return was filed for the applicable income tax year, the applicant’s income shall be determined based on the amounts that would have so been reported if such a return

had been filed and any losses that were applied to reduce the applicant's federal adjusted gross income shall be subject to the following limitations:

- a. the net amount of loss reported on federal Schedule C, D, E, or F shall not exceed three thousand dollars per schedule,
- b. the net amount of any other separate category of loss shall not exceed three thousand dollars, and
- c. the aggregate amount of all losses shall not exceed fifteen thousand dollars.

**INCOME TAX YEAR** – the second most recent calendar year for which the owner or owners filed a federal personal income tax return, except for owners who file on the basis of a fiscal year, the applicable tax year shall be the most recent fiscal year for which an income tax return has been filed.

**PERSON WITH A DISABILITY** – one who has a physical or mental impairment, not due to current use of alcohol or illegal drug use, which substantially limits such person's ability to engage in one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and who:

- a. is certified to receive social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal Social Security Act, or
- b. is certified to receive Railroad Retirement Disability benefits under the federal railroad Retirement Act, or
- c. has received a certificate from the state commission for the blind stating that such person is legally blind, or
- d. is certified to receive a United States Postal Service disability pension, or
- e. is certified to receive a United States Department of Veterans Affairs disability pension pursuant to 38 U.S.C. § 1521.

**SIBLINGS** – A brother or a sister, whether related through half blood, whole blood or adoption.

§ 270-103. Required proof.

An award letter from the Social Security Administration or the Railroad Retirement Board or a certification from the State Commission for the Blind and Visually Handicapped shall be submitted as proof of disability when making application for the exemption.

§ 270-104. Exemption granted.

Pursuant to the provisions of § 459-c of the New York State Real Property Tax Law, and as therein provided, the real property owned by one or more persons with disabilities, or real property owned by a person with a disability, or by one spouse, or both spouses, or by siblings, at least one of whom has a disability, or whose income, as hereinafter defined, is limited by reason of such disability, shall be exempt from taxation by the City of Newburgh to the extent of 50% of the assessed valuation thereof, as hereinafter provided.

§ 270-105. Amount of exemptions.

The percentage of exemption shall be based on the annual income ranges as specified herein, as follows:

Annual Income	Percentage of Assessed Valuation Exempt from Taxation
\$3,000 but less than \$29,000.00	50%
\$29,000.01 but less than \$29,999.99	45%
\$30,000.00 but less than \$30,999.99	40%
\$31,000.00 but less than \$31,999.99	35%
\$32,000.00 but less than \$32,899.99	30%
\$32,900.00 but less than \$33,799.99	25%
\$33,800.00 but less than \$34,699.99	20%
\$34,700.00 but less than \$35,599.99	15%
\$35,600.00 but less than \$36,499.99	10%
\$36,500.00 but less than \$37,399.99	5%

§ 270-106. Computation.

Any exemption provided by this article shall be computed after all other partial exemptions allowed by law have been subtracted from the total amount assessed; provided, however, that no parcel may receive an exemption for the same municipal tax purpose pursuant to both this article and § 467 of the New York State Real Property Tax Law.

§ 270-107. Exemption not granted under certain circumstances.

- A. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.
- B. No exemption shall be granted:
  1. If the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the sums authorized by the provisions of § 459-c of the New York State Real

Property Tax Law. Where title is vested in either spouse, their combined income may not exceed such sum, except that, where one spouse, or ex-spouse, is absent from the property due to divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum.

2. Unless the property is used exclusively for residential purposes; provided, however, that in the event any portion of such property is not so used exclusively for residential purposes, but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this article.
3. Unless the real property is the legal residence of and is occupied in whole or in part by the disabled person; except where the disabled person is absent from the residence while receiving health - related care as an inpatient of a residential health-care facility, as defined in § 2801 of the New York State Public Health Law, provided that any income accruing to that person shall be considered income for purposes of this section only to the extent that it exceeds the amount paid by such person or spouse or sibling of such person for care in the facility.

#### § 270-108. Application process.

- A. Application for such exemption must be made annually by the owner or all of the owners of the property, on forms prescribed by the State Board, and shall be filed in the Assessor's office on or before March 1, the appropriate taxable status date; provided, however, that proof of a permanent disability need be submitted only in the year exemption pursuant to this article is first sought or the disability is first determined to be permanent.
- B. At least 60 days prior to March 1, the taxable status date, the Assessor shall mail, to each person who is granted exemption pursuant to this section on the latest complete assessment roll, an application form and a notice that such application must be filed on or before the taxable status date and be approved in order for the exemption to continue to be granted. Failure to mail such application form or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

#### § 270-109. Property held in trust.

Notwithstanding any other provision of law to the contrary, the provisions of this article shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption pursuant to this article.

#### § 270-110. Effective date.

This article shall take effect on November 1, 2023 after the filing of same with the Secretary of State and shall apply to assessment rolls completed on or after such effective date.



### **SECTION 3 - SEVERABILITY**

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

### **SECTION 4 - CODIFICATION**

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

### **SECTION 5 - VALIDITY**

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

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

This Local Law and shall be effective on November 1, 2023 after the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

RESOLUTION NO.: 156 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT  
WITH DAVID HOCHFELDER, ANN PFAU AND STACY SEWELL TO PROVIDE  
HISTORICAL CONSULTANT AND SUPERVISORY RESEARCH SERVICES  
IN CONNECTION WITH  
THE NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS  
PROGRAM GRANT AND ORAL HISTORY PROJECT**

**WHEREAS**, by Resolution No. 303-2020 of December 14, 2020, the City Council authorized the City Manager to apply for and accept if awarded a National Park Service African American Civil Rights Program (“NPS AACR Program”) grant; and

**WHEREAS**, the City was awarded funds from the NPS AACR Program grant; and

**WHEREAS**, the objective of the grant is for local governments or not-for-profit entities to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights; and

**WHEREAS**, David Hochfelder, Ann Pfau and Stacy Sewell, independent contractors, have applied to work with the City of Newburgh to provide historical consultant and research supervisory services in connection with the NPS AACR Program grant and oral history project; and

**WHEREAS**, funding for this project will derive from budget line CG.8030.0455.4400.2023; and

**WHEREAS**, this Council has reviewed the contract with David Hochfelder Ann Pfau and Stacy Sewell, annexed hereto, and finds that entering into said contract is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with David Hochfelder, Ann Pfau and Stacy Sewell to provide historical consultant and research supervisory services in connection with the National Park Service African American Civil Rights Program grant and oral history project.

**SUBGRANTEE AGREEMENT  
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT**

This subgrantee agreement (“Agreement”), by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the “City”) and David Hochfelder, an individual with a principal place of business at 81 S. Lake Ave., Albany, NY 12203, Ann Pfau, an individual with a principal place of business at 81 S. Lake Ave., Albany, NY 12203, and Stacy Sewell, an individual with a principal place of business at St. Thomas Aquinas College, 125 NY-340, Sparkill, NY 10976 (“Sub-grantees”), is made this dated as of \_\_\_\_\_, 2023, as follows:

**RECITALS**

- A. The City received an award of funds from the National Parks Service (referred to herein as “Grantor”) African American Civil Rights (“AACR”) program.
- B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being to research oral histories and local data in connection with the Grantor’s African American Civil Rights Oral History Project.
- C. Sub-grantees have applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
- D. Sub-grantees have also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.
- E. In addition to the terms and conditions in this Agreement, Sub-grantees have agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement.
- F. The City has identified Sub-grantees as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantees to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

NOW, THEREFORE, the City, and the Sub-grantees, for the consideration and under the conditions hereinafter set forth, do agree as follows:

**ARTICLE I SPECIFIC TERMS OF AGREEMENT**

- 1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantees. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipients shall be an independent entity and not an employee or agent of the City.
- 2. Sub-grantees shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipients a sum not to exceed **00/100 dollars (\$0.00) at an in-kind rate of \$50.00 per hour**, said sum being a part of grant award to the City by Grantor.

## ARTICLE II PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.
2. Total payment under this Contract shall not exceed **00/100 dollars (\$0.00) at an in-kind rate of \$50.00 per hour** as payment for all eligible services incurred by Sub-grantees.
3. The City may withhold any payment whenever the Sub-grantees fail to achieve its program goals for the vouchered expenditure period.

## ARTICLE III METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantees eligible reimbursable costs.
2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.
3. The City shall reimburse Sub-grantees not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4<sup>th</sup> Floor, Newburgh, New York 12550.
4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date **commensurate of the project period specifically set forth in Schedule C**. The final statement of costs shall constitute Sub-grantees' final financial report.
5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

## ARTICLE IV TERMINATION

1. Either party may terminate this agreement with thirty days' written notice to the parties listed below. Upon receipt of notice of termination, the Sub-grantee agrees to cancel, prior to the effective date of termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval.

If to City:

City of Newburgh  
Office of the Corporation Counsel  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

If to Sub-grantees:

David Hochfelder  
81 S. Lake Ave.  
Albany, NY 12203

Ann Pfau  
81 S. Lake Ave.  
Albany, NY 12203

Stacy Sewell  
St. Thomas Aquinas College  
Sparkill, NY 10976

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantees under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.
3. In the event of termination, Sub-grantees shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantees, the City may withhold from any payments due the Sub-grantees for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantees.

#### ARTICLE V NO ASSIGNMENT

1. Sub-grantees represent that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City.

#### ARTICLE VI BOOKS AND RECORDS; REPORTS

1. Sub-grantees shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The City or the Grantor shall have access to the Records during normal business hours at an office within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
2. Sub-grantees shall submit a report to the City identifying prescribed activities funded under this Agreement at the termination of this Agreement. Sub-grantees shall also submit reports

identifying prescribed activities funded under this Agreement upon request by the City while this Agreement is in effect.

## ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Sub-grantees, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantees shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantees agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:
  - a. was known to Sub-grantees prior to receipt from the City, as evidenced through written documentation;
  - b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantees;
  - c. is acquired from a third party entitled to disclose the information to Sub-grantees;
  - d. is developed independently by Sub-grantees;
  - e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantees shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

## ARTICLE VIII INTEREST OF SUB-GRANTEES, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

1. Sub-grantees agree that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.
2. Sub-grantees further agree that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.
3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

## ARTICLE IX INTEREST OF MEMBERS, OFFICERS OR EMPLOYEE THE CITY; MEMBERS OF THE COMMON COUNCIL, OR OTHER PUBLIC OFFICIALS

1. No member, officer or employee of the City or its designees or agents, no member of the Common Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities with respect to the program, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.

2. Sub-grantees shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

#### ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

1. No member of the New York State Assembly or Senate, or any other member of New York State government, shall be permitted to any share or part of this Agreement or to any benefit to arise from the same.

#### ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

1. Sub-grantees represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

#### ARTICLE XII REPRESENTATIONS OF SUBGRANTEES

1. Sub-grantees acknowledge and agree that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Sub-grantees will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Sub-grantees certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

#### ARTICLE XIII EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out the obligation of this Agreement, Sub-grantees shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Sub-grantees shall take affirmative action to ensure that applicants for employment and employees of Sub-grantees are treated without regard to their race, color, religion, sex, national origin or handicap. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

2. Sub-grantees shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Sub-grantees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.
3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

#### ARTICLE XIV FACILITIES AND PERSONNEL

1. Sub-grantees represent that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.
2. Sub-grantees further represent that it will terminate and dismiss from further performance of work and services under this Agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to Sub-grantees by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for Sub-grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve Sub-grantees from meeting its obligations under the terms and conditions of this Agreement.

#### ARTICLE XV INDEMNIFICATION

1. Sub-grantees hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is cause by, results from, arises out of or occurs in connection with any act, or failure to act, of Sub-grantees or its agents, sub-contractors, servants or employees.
2. If any personal shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantees hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.
3. Sub-grantees shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.
  - a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.



b. Sub-grantees shall carry Liability and Property Damage Insurance with limits of not less than:

- i. Property Damage Liability           \$1,000,000 for each occurrence
- ii. Personal Injury Liability           \$1,000,000 for each person  
   \$2,000,000 for each occurrence

4. The Agency, as Sub-grantees shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

## SECTION XVI           NOTICES

1. Notices of any nature referred to in this agreement shall be in writing by certified mail, hand delivery. Notices shall be effective on the date of receipt.

If to City:

City of Newburgh  
Office of the Corporation Counsel  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

If to Sub-grantees:

David Hochfelder  
81 S. Lake Ave.  
Albany, NY 12203

Ann Pfau  
81 S. Lake Ave.  
Albany, NY 12203

Stacy Sewell  
St. Thomas Aquinas College  
125 NY-340  
Sparkill, NY 10976

## SECTION XVII           MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.
2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.
3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.

4. Subrecipients have read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.
5. David Hochfelder, Ann Pfau and Stacy Sewell shall be jointly and severally responsible for the terms and conditions stated in this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

[Signature page to follow]

DRAFT

Signature Page

Subgrantee Agreement, National Parks Service, AACR Grant  
City of Newburgh / David Hochfelder, Ann Pfau and Stacy Sewell

---

IN WITNESS WHEREOF, Sub-grantees and the City have executed this Agreement the day and year herein mentioned.

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

CITY OF NEWBURGH

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

Name: Todd Venning

Title: City Manager

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

SUB-GRANTEES

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

Name: David Hochfelder

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

Name: Ann Pfau

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

Name: Stacy Sewell

STATE OF NEW YORK )

) ss.:

COUNTY OF ORANGE )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared David Hochfelder personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Ann Pfau personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Stacy Sewell personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## **SCHEDULE A**

### **Scope of Services: Historical Consultants**

#### **Objectives:**

To provide principal investigation historical consulting to the African American Civil Rights Oral History Project.

The Project, funded through the United States Department of Interior's African American Civil Rights grant program, will center the legacy of the City's African American community in the East End Historic District (EEHD) to ensure historic preservation efforts prioritize cultural significance and community preservation alongside architectural integrity. The collected stories will spotlight the destabilizing effects of 20<sup>th</sup> century government-led segregation strategies in and around the EEHD, including urban renewal, housing discrimination, anti-Black lending practices, suburbanization, and white flight.

To provide 130 hours of historical consulting services as principal investigators.

#### **Deliverables:**

- Conduct research in the records of the Newburgh Urban Renewal Agency and other relevant archival collections;
- Advise and assist oral history interviews;
- Supervise research assistant;
- Collect economic and demographic data;
- Draft oral history report;
- Others as required.

#### **Timeline:**

Immediate.

## **SCHEDULE B**

### **Compensation:**

The Sub-grantees make this contribution of services as an in-kind match to the Historic Preservation Fund Grants-In-Aid funds awarded to the African-American Civil Rights – City of Newburgh, Oral History Project.

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09/19/2021

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Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

**REMARKS**

1. Grant Agreement  
between  
the United States Department of the Interior  
National Park Service  
and  
the Above-Named Recipient

**Articles**

1. Department of the Interior Standard Terms and Conditions

Recipients must also adhere the Department of Interior Standard Terms and Conditions located at <https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

2. Legal Authority

NPS enters into this Agreement pursuant to:

1. National Historic Preservation Act (NHPA), 54 USC 300101 *et seq.*
2. Historic Preservation Fund Grants Manual, 2007 and subsequent memos and guidance
3. Further Consolidated Appropriations Act of 2020, P.L. 116-94

3. Performance Goals and Project Objectives

The objective of this Agreement is to provide Historic Preservation Funds (HPF) to a State, Tribe, local government (including Certified Local Governments), or nonprofit to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights and the transatlantic slave trade. Projects may involve a broad range of preservation projects for historic sites including: survey & inventory, National Register nominations, oral histories, collections conservation, architectural services, historic structure reports, preservation plans, and physical preservation of resources listed or eligible National Register resources.

4. Performance Goals and Project Objectives

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This grant program enables eligible grantees, as stated in the Notice of Funding Opportunity, across the nation to participate in a nationwide historic preservation program and meet the goals of 54 U.S.C. 300101 et seq., commonly known as the National Historic Preservation Act.

### 5. COVID-19 Provisions

Due to the COVID-19 pandemic, access to National Park Service (NPS) property, personnel, or resources may be limited at the start of the agreement. Any performance that requires access to National Park Service property, personnel, or resources shall not commence until the recipient receives confirmation from the NPS Financial Assistance Awarding Officer of the availability of those resources. The recipient shall contact the NPS Financial Assistance Awarding Officer for approval prior to incurring any costs for performance that requires access to National Park Service property or resources. Such approvals can only be provided by the NPS Financial Assistance Awarding Officer. In the event of a prolonged unavailability of resources, the period of performance may be modified to a later date, or the agreement may be cancelled, by either the National Park Service or the recipient, in its entirety. In addition, the recipient shall contact the NPS Financial Assistance Awarding Officer to coordinate any other changes to the agreement that may be needed to ensure successful performance during the COVID-19 pandemic.

### 6. Statement of Work

The Statement of Work to be performed in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and as determined eligible in the National Historic Preservation Act (NHPA), 54 U.S.C 300101 et. seq., and in the Historic Preservation Grant Fund Manual.

The Statement of Work is further defined in an addendum at the end of this Notice of Award.

### 7. Responsibilities of the Parties

#### 1. The Recipient agrees to:

1. The Recipient shall carry out the Statement of Work in accordance with the terms and conditions stated herein, such as the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.
2. The Recipient shall adhere to all applicable Federal, state, and local laws, regulations, and codes, such as the National Historic Preservation Act.

2. No substantial involvement on the part of the NPS is anticipated for the successful completion of the statement of work detailed in this award. It is anticipated that involvement will be limited to actions related to monitoring project performance and technical assistance at the request of the recipient.

### 8. Cost-Share Requirement

Non-Federal cost-share is required for costs incurred under this Agreement, as identified in the attached project budget. If pre-award costs are authorized, reimbursement of these costs is limited to Federal cost share percentage identified in this agreement.

### 9. Pre-Award Incurrence of Costs



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The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

### 10. Administrative & Indirect Costs

The Recipient has chose not to use a federally approved negotiated indirect cost rate.

The federally-negotiated indirect rate plus administrative costs to be applied against this agreement, by statute 54 U.S.C. § 302902, shall not exceed 25% of the total budget.

Administrative costs are defined as: Allowable, reasonable, and allocable costs related to the overall management of activities directly related to finance (accounting, auditing, budgeting, contracting), general administrative salaries and wages (grant administration, personnel, property management, equal opportunity) and other overhead functions (general legal services, general liability insurance, depreciation on buildings and equipment, etc.) not directly attributable to specific program areas identified in the grant agreement. All administrative costs reported must be absolutely necessary for project and/or program implementation, such as the cost items identified in the final grant agreement or items otherwise approved in writing by the NPS Awarding Officer (AO).

### 11. Key Officials

1. Communications. Recipient shall address any communication regarding this Agreement to the ATR/Program Officer with a copy to the Awarding/Grants Management Officer. Communications that relate solely to technical matters may be sent only to the ATR/Program Officer.
2. Changes in Key Officials. Neither the NPS nor Recipient may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

### 12. Award and Payment

1. The NPS will provide funding to the Recipient in an amount not to exceed the figure in block 11m of the Notice of Award for the Statement of Work described in Article VI and in accordance with the NPS approved budget. The approved budget detail is incorporated herein. Any award beyond the current fiscal year is subject to availability of funds. Acceptance of a Federal financial assistance award from the Department of the Interior carries with it the responsibility to be aware of, and comply with the terms and conditions within this award document. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means.
2. Recipient shall request payment in accordance with the following:
  1. **Method of Payment.** Payment will be made by advance and/or reimbursement through the Department of Treasury's Automated Standard Application for Payments (ASAP) system.
  2. **Requesting Advances.** Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the Financial Assistance (FA) Recipient to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
  3. **Requesting Reimbursement.** Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each

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request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.

4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.
3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match.** Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

### 13. Prior Approval

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

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### 14. Insurance and Liability

Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

### 15. Reports and/or Outputs/Outcomes

1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.
2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIIS). Each report shall be submitted as described above.
3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.
4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

### 16. Property Utilization

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 applies to this Agreement.

### 17. Modification, Remedies for Noncompliance, Termination

1. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the NPS Awarding Officer and the authorized representative of Recipient.
2. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.339.
3. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

### 18. Reporting of Matters Related to Recipient Integrity and Performance

#### 1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you, as the recipient, during that period of time

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must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### 2. Proceedings You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:
  1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of \$5,000 or more; or reimbursement, restitution, or damages in excess of \$100,000; or
4. Any other criminal, civil, or administrative proceeding if:
  1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
  2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
  3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

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does not include audits, site visits, corrective plans, or inspection of deliverables.

2. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

### 19. Funding Used for the Operation of Unmanned Aircraft Systems (UAS)

If Federal funding is provided to a State, local, tribal, or territorial government for the use of UAS for their operations, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

Per the policy memorandum issued by National Park Service Director, dated June 19, 2014, the launching, landing, and operating of unmanned aircraft, that is not under the control of the Federal government, on lands and waters administered by the National Park Service is prohibited unless approval is received from the Associate Director for such purposes as: Scientific study, search and rescue operations, fire operations, and law enforcement.

Administrative use includes the use of unmanned aircraft by

- NPS personnel as operators or crew;
- cooperators such as government agencies and universities that conduct unmanned aircraft operations for the NPS pursuant to a written agreement; and
- other entities, including commercial entities, conducting unmanned aircraft operations for the NPS, provided such entities are in compliance with all applicable FAA and Department of the Interior requirements.

### 20. Patents and Inventions (37 CFR 401)

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the National Park Service, is hereby included in this agreement:

#### 1. Definitions

1. *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
2. *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement

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performance.

3. *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
4. *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. *Small Business Firm* means a small business concern as defined at section 2 of Public Law. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
6. *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

### 2. Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

### 3. Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

1. The Recipient will disclose each subject invention to the National Park Service within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the National Park Service shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the National Park Service, the Recipient will promptly notify the National Park Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
2. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the National Park Service within two years of disclosure to the National Park Service. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the National Park Service to a date that is no more than 60 days prior to the end of the statutory period.
3. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory

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period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the National Park Service, be granted.

#### 4. Conditions When the Government May Obtain Title

The Recipient will convey to the National Park Service, upon written request, title to any subject inventions

1. If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph 3, above, or elects not to retain title; provided that the National Park Service may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
2. In those countries in which the Recipient fails to file patent applications within the times specified in paragraph 3 above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph 3 above, but prior to its receipt of the written request of the National Park Service, the Recipient shall continue to retain title in that country.
3. In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

#### 5. Minimum Rights to Recipient and Protection of the Recipient Right to File

1. The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph 3, above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the National Park Service except when transferred to the successor of that party of the Recipient's business to which the invention pertains.
2. The Recipient's domestic license may be revoked or modified by the National Park Service to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the National Park Service licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the National Park Service to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the National Park Service will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient

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will be allowed thirty days (or such other time as may be authorized by the National Park Service for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and National Park Service regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

### 6. Recipient Action to Protect the Government's Interest

1. The Recipient agrees to execute or to have executed and promptly deliver to the National Park Service all instruments necessary to
  1. establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and
  2. convey title to the National Park Service when requested under paragraph 4 above and to enable the government to obtain patent protection throughout the world in that subject invention.
2. The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (3)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Recipient will notify the National Park Service of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
4. The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

### 7. Subcontracts

The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental, developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

### 8. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the National Park Service may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the



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National Park Service in connection with any march-in proceeding undertaken by the National Park Service in accordance with paragraph (10) of this provision. As required by 35 U.S.C. 202(c)(5), the National Park Service agrees it will not disclose such information to persons outside the government without permission of the Recipient.

### 9. Preference for United States Industry

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the National Park Service upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

### 10. March-in Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:

1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

### 11. Special Provisions for Agreements with Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

1. Rights to a subject invention in the United States may not be assigned without the approval of the National Park Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
2. The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the National Park Service deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
3. The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the

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administration of subject inventions, will be utilized for the support of scientific research or education; and

4. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the National Park Service may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the National Park Service when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (11)(4).

### 12. Communication

Communications regarding matters relating to this provision shall be directed to:

Deputy Associate Solicitor  
Branch of Procurements and Patents  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

### 21. Strengthening Buy-American Preferences for Infrastructure Projects per E.O. 13858

Per Executive Order 13858, entitled "Strengthening Buy-American Preferences for Infrastructure Projects" the Recipient shall maximize, consistent with law, the use of iron and steel goods, products, and materials produced in the United States, for infrastructure projects as defined by the Executive Order when the statement of work includes alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair.

### 22. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Quarterly Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act, Standards and Guidelines for detailed information (<https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>).

The following summarizes some of the requirements for preparing NPS reports in conformance with

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Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to <https://section508.gov/create>. All accessible digital content must conform to the requirements and techniques of the Web Content Accessibility Guidelines (WCAG) 2.0 or later (<https://www.w3.org/WAI/standards-guidelines/wcag/>), Level AA Success Criteria.

- **Electronic documents with images**

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

- **Electronic documents with complex charts or data tables**

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

- **Electronic documents with forms**

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

### 23. General and Special Provisions

1. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
2. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
3. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
4. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
5. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
6. **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS

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employees are not agents of the Recipient and will not act on behalf of the Recipient.

7. **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
8. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
9. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
10. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
11. **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305 (5)). As allowed under 2 CFR §200.307, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.
12. **Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
13. **Conflict of Interest**
  1. Applicability.
    1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
    2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.
  2. Requirements.
    1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
    2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

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3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.
3. Notification.
  1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.
4. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
5. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
6. Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

### 24. Signatures

Recipients are **not** required to sign the Notice of Financial Assistance Award letter or any other award document. As per DOI standard terms and conditions, the recipient's acceptance of a financial assistance award is defined as the start of work, drawing down of funds, or accepting the award via electronic means.

### 25. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  1. Procure or obtain;
  2. Extend or renew a contract to procure or obtain; or
  3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  2. Telecommunications or video surveillance services provided by such entities or using such equipment.
  3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the secretary of defense, in consultation with the director of the

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national intelligence or the director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services and to ensure that communications service to users and customers is sustained.
3. See Public Law 115-232, section 889, for additional information.
4. See also §200.471.

### Program Specific Requirements

#### 1. NPS Oversight

The NPS will provide oversight of this grant project through the following NPS reviews:

1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;
2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;
3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;
4. Review and approval for compliance with the National Environmental Policy Act (NEPA);
5. Review and approval of project signage to notify the public of federal involvement; and
6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

#### 2. Determination of Risk

In accordance with 2 C.F.R. § 200.205, the application for this award was subjected to a pre-award risk assessment which included a review of information contained within the application, past audits, Federal Awardee Performance and Integrity Information System (FAPIIS), and/or past performance on previous Federal financial assistance awards and other factors.

This award has been determined to be a low risk with the following requirements:

Requests for payment may be made directly from the ASAP grant account without prior NPS approval after expenses have been incurred, invoiced, and paid. All documentation of expenses must be kept on file for audit purposes and may be requested by the NPS at any time. If payments are drawn down prior to invoice and payment or in amounts larger than costs incurred, the Recipient may be determined medium or high risk and be subject to additional grant terms and conditions.

#### 3. Eligible Costs

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Eligible costs under this award are as described in this Notice, 2 CFR 200, and the Historic Preservation Fund Grants Manual (HPF Manual).

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);
2. Administrative costs necessary to complete and administer the grant requirements;
3. Rehabilitation of properties;
  1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
  2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
  3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
  4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement
4. Survey and Inventory of historic resources to determine eligibility;
5. Cost for producing a nomination to the National Register of Historic Places (if applicable);
6. Conservation of collections;
7. Cost for any required audits or financial requests;
8. Cost for the production of project signs;
9. Costs for public notice of grant opportunities;
10. Costs associated with required training or reporting; and/
11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

#### 4. Equipment Purchases

Each item of equipment purchased under this award must be approved specifically and in writing by the NPS prior to purchase to confirm the allowability of the costs. Approval of the application is not approval of equipment included within the application. Equipment is defined by 2 CFR 200.1 as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000.

#### 5. Consultants & Contractors

Consultant/contractor(s) must have the requisite experience and training in historic preservation or relevant field to oversee the project work. All consultants and contractors must be competitively selected and documentation of this selection must be maintained by the grantee and be made readily available for

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examination by the NPS. Federal contracting and procurement guidance can be found in 2 CFR 200.318. Maximum rates charged to this grant may not exceed 120% of a Federal Civil Service GS-15, step 10 salary per project location. Current regional salary tables can be found on the Office of Personnel and Management website: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

### 6. Requirement for Project Sign & Public Notification

As stipulated in 36 CFR Part 800, public views and comments regarding all Federally-funded undertakings on historic properties must be sought and considered by the authorizing Federal agency. Therefore, the grantee is required to post a public notification regarding the undertaking under this grant in one or more of the major newspapers or news sources that cover the area affected by the project within 30 days of receiving this awarded grant agreement. A copy of the posted release must be submitted to NPS within 30 days of the posting.

HPF funded projects must create public notification of the project in the form of a project sign, website posting, and proper credit for announcements and publications as appropriate. Signage/notification must be submitted for approval by the ATR in advance. Also the sign/notification must be of reasonable and adequate design and construction to withstand weather exposure (if appropriate); be of a size that can be easily read from the public right-of-way; and be accessible to the public throughout the project term as stipulated in this agreement. At a minimum, all notifications must contain the following statement:

*"[Project Name] is being supported in part by an African American Civil Rights grant from the Historic Preservation Fund administered by the National Park Service, Department of the Interior."*

Additional information briefly identifying the historical significance of the property and recognizing other contributors is encouraged and permissible. The NPS arrowhead logo may only be used in conjunction with the HPF approved signage format that can be provided upon request. Any other use of the logo is prohibited.

Cost of posting, fabricating, and erecting notification are eligible grant costs.

### 7. Publicity & Press Releases

Press releases about this project must acknowledge the grant assistance provided by the Historic Preservation Fund and the National Park Service, and copies of the press releases must be provided to the NPS. The Recipient must transmit notice of any public ceremonies planned to publicize funded or related projects in a timely enough manner so that the NPS, Department of the Interior, Congressional or other Federal officials can attend if desired. All publicity and press releases related to activities funded with this award should include a statement that funding for the activity was provided (in part or in whole) by the Historic Preservation Fund (HPF) administered by the National Park Service.

### 8. Funding Acknowledgement

The grantee must include acknowledgment of grant support from the Historic Preservation Fund of the National Park Service, Department of Interior, in all deliverables and publications concerning NPS grant-supported activities as referenced in the Statement of Work.

All deliverables must contain the following disclaimer and acknowledgement:

*"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number [insert grant number, block 4a of this Notice of Award's coversheet]. Any opinions, findings, and conclusions or recommendations*



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*expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."*

1. Deliverables/publications include but are not limited to grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation of events, including programs; invitations and photos; websites; mobile apps; exhibits; and interpretive signs.
2. All digital copies must follow the file naming convention described in the attached Digital Product Submission Guidelines. Refer to the attached guidance document for instructions on creating, naming and submitting digital copies of deliverables/publications.
3. All consultants hired by the grantee must be informed of this requirement.
4. Grantees, subgrantees, contractors may not use the NPS Arrowhead in any form without written permission.

### 9. Copyright

Per 2 CFR 200.315(b), the NPS reserves a royalty-free right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, any materials produced under this grant. All photos included as part of the interim & final reporting and deliverables/publication will be considered released to the NPS for future official use. Photographer, date, and caption should be identified on each photo, so NPS may provide proper credit for use.

A digital (preferred) or physical copy of all deliverables must be available for public access. Sensitive information may be redacted from the public access copy.

All consultants hired by the Recipient must be informed of this requirement.

### 10. NPS Review of Planning/Design Documents for National Historic Landmarks

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;
2. a city/county map with the site of the property clearly labeled;
3. set of plans and specifications for the project;
4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;
5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;
6. for NHL Districts include overall views of the district from the project area; and
7. any additional information that will better enable a technical review of the project to be completed.

The grantee must submit documents for the entire undertaking to the NPS for its review and approval to ensure conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, Historic Preservation Fund Grant Manual, and with the conditions listed in this Grant Agreement, **prior** to the beginning of grant-assisted work. Work that does not comply with these Standards in the judgment of the NPS will not be reimbursed, and may cause the grant to be terminated

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and funds deobligated.

Plans & specifications for the project must be marked on the cover with this statement:

*The {name of property} is designated a National Historic Landmark for its architectural and historic significance. It is considered to have irreplaceable cultural, material, and aesthetic value. The work is funded in part by the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. The funding of which is subject to having all work items meet The Secretary of the Interior's Standards for the Treatment of Historic Properties.*

### 11. Compliance with Section 106

Pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), the NPS and the grantee must complete the consultation process stipulated in the regulations issued by the Advisory Council on Historic Preservation (ACHP) in 36 CFR 800 **prior** to the commencement of all grant-assisted construction or ground disturbance on the property.

### 12. Compliance with Section 110

Section 110 of The National Historic Preservation Act identifies the responsibility of the federal agency in their treatment of historic properties. Section 110(f) (54 USC 306107) clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm. See this agreement for submission requirements regarding NHL properties. In addition, Section 110(k) (54 USC 306113) prohibits the NPS from funding any grantee or subgrantee that attempts to avoid the requirements of Section 106. Grantees must make every effort to fund preservation projects that do no harm or adverse effects to NHL properties. Should it be discovered a grantee has deliberately damaged a property (e.g., pre-emptive demolition) to avoid requirements, the NPS must be notified to determine, in consultation with the ACHP, if the project can proceed.

### 13. Requirement for NEPA Compliance

All HPF funded grants are subject to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. This Act requires Federal agencies to consider the reasonably foreseeable environmental consequences of all grant-supported activities. As part of the NPS implementation of NEPA, grantees are required to notify the NPS of any reasonably foreseeable impacts to the environment from grant-supported activities, or to certify that no such impacts will arise upon receipt of a grant award. In addition, the NPS has determined that most HPF grant funds are not expected to individually or cumulatively have a significant impact on the environment, unless the activity involves development (construction) or archeology. For construction or archeology projects, the applicant/grantee should submit an *Environmental Screening Worksheet*, in order to assist the NPS in determining if a Categorical Exclusion (found in NPS Director's Order 12) can be utilized.

### 14. Compliance with the Americans with Disabilities Act and the Architectural Barriers Act

The use of federal funds to improve public buildings, to finance services or programs contained in public buildings, or alter any building or facility financed in whole or in part with Federal funds (except privately owned residential structures), requires compliance with the 1990 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the Architectural Barriers Act (ABA). Work done to alter the property should be in compliance with all applicable regulations and guidance.

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### 15. Unanticipated Discovery Protocols

At a minimum, unanticipated discovery protocols for subgrants or contracts shall require the sub-grantee or contractor to immediately stop construction in the vicinity of the affected historic resource and take reasonable measures to avoid and minimize harm to the resource until the SHPO or THPO, sub-grantee or contractor, and Indian Tribes, as appropriate, have determined a suitable course of action within 15 calendar days. With the express permission of the SHPO and/or THPO, the sub-grantee or contractor may perform additional measures to secure the jobsite if the sub-grantee or contractor determines that unfinished work in the vicinity of the affected historic property would cause safety or security concerns.

### 16. NAGPRA Costs Are Unallowable

Cost related to Native American Graves Protection and Repatriation Act (NAGPRA) activities are unallowable under this agreement. Funds for NAGPRA activities are available through the NPS National NAGPRA Program.

### 17. GIS Spatial Data Transfer Standards

All GIS data collected with HPF funds shall be in compliance with the NPS Cultural Resource Spatial Data Transfer Standards with complete feature level metadata. Template GeoDatabases and guidelines for creating GIS data in the NPS cultural resource spatial data transfer standards can be found at the NPS Cultural Resource GIS Facility webpage:

[https://www.nps.gov/crgis/crgis\\_standards.htm](https://www.nps.gov/crgis/crgis_standards.htm)

Technical assistance to meet the NPS Cultural Resource Spatial Data Transfer Standard specifications will be made available if requested. Execution of a Data Sharing Agreement between the NPS and the Recipient shall take place prior to collection of GIS data using HPF funds.

### 18. Funding for Use of Unmanned Aircraft Systems (UAS) (AKA Drones)

HPF funding for unmanned aircraft systems (UAS) usage is eligible only in the contracting of an experienced, licensed contractor of UAS who possesses the appropriate license, certifications, and training to operate UAS. The contractor is required to provide proof of liability insurance in the operation of UAS for commercial use.

If HPF funding is provided to a state, tribal, local, or territorial government, or other non-profit organization for the use of UAS as part of their scope of work, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

### 19. Subgrant Awards

The awarding of subgrants must follow the general criteria described below in addition to the eligibility factors outlined in the Notice of Funding Opportunity, OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual.

The Grantee must publicly announce the availability of HPF funds and include the following information:

1. A summary statement of the priorities for funding;
2. Description of eligible activities for which funding is to be provided;

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3. The total amount available, or expected to be available for subgrants;
4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;
5. The deadline for submitting the completed application;
6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;
7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;
8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;
10. Notice of the requirement for easements or covenants for grant assisted preservation work.

To qualify a subgrantee as responsible, the grantee must ensure that a subgrantee will:

1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;
2. Be able to comply with the proposed or required completion schedule for the project;
3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;
4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;
2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);
4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

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5. Verification of submission of any subgrants over \$30,000 federal share to Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS);

6. Review of final executed preservation easement/covenant;

7. Additional requirements as determined for the grantee based on risk or program requirements.

### 20. Requirement for Training

At the direction of the National Park Service, personnel associated with management of the grant program may be required to attend trainings and/or meetings. The grantee will be provided adequate notice to plan for any required activities; expenses incurred as part of this requirement are eligible to charge towards the grant.

### 21. Demonstration of Effort – Performance Goals

In order to ensure the timely and successful completion of all HPF grant awards, the NPS requires acceptable demonstration of effort by the grantee on project work supported by all HPF funded grants.

Demonstration of effort means acceptable performance by undertaking meaningful progress on grant-supported activities and complying with award terms and conditions.

### 22. Notice of Financial Management Review

As part of government-wide efforts to improve coordination of financial management and increase financial accountability and transparency in the receipt and use of federal funding, the grantee is hereby notified that this award may be subject to higher scrutiny. This may include a requirement to submit additional reporting documentation.

### 23. Catalog of Federal Domestic Assistance/Assistance Listing Inclusion in Single Audit

Non-Federal entities receiving financial assistance through the Historic Preservation Fund must include the appropriate Catalog of Federal Domestic Assistance (CFDA) number in the Schedule of Expenditures of Federal Award in their Single-Audit. The CFDA number applicable to this award as identified in block 2 on the first page of this agreement document.

### 24. Audit Findings and Follow-Up

The Recipient is hereby informed that the NPS may withhold or suspend award funds, or may impose other related conditions, if the recipient does not satisfactorily and promptly address findings from Single or program-specific audits, investigations, or reviews of NPS programs and awards. Each year the award is active, the Recipient must require its auditors to provide status report updates of all audit findings included in the prior audit's Schedule of Findings and Questioned Costs, as required by 2 CFR 200, Subpart F ("Grants and Agreements, Audit Requirements"). Upon review of subsequent annual audits, the NPS will determine if further corrective action is warranted.

When findings exist, the Recipient must submit a status report every six months to the NPS of all steps being taken to resolve related audit findings included in the prior audit's *Schedule of Findings and Questioned Costs* to remain in good standing for all NPS grant awards. If the Recipient fails to meet these deadlines without written approval of extension from the NPS, NPS may withhold remaining and future award funds, or may impose other related requirements to ensure compliance with this condition.

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Outstanding audit findings, if any, are included in the attachments of this Agreement.

## AWARD ATTACHMENTS

NEWBURGH, CITY OF

P21AP11742-00

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1. Environmental Certification
2. Digital Products Submission Guidelines, AACR
3. Addenda of Budget, Scope, and Deliverables



## United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW

Washington, DC 20240

# ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposed work, and the supporting documentation contacting in the applications, it has been determined that the proposed HPF funded work meets the criteria for categorical exclusion under the current Interim Director's Order 12 *Categorical Exclusions* (replacing DO-12 Handbook, Chapter 3, Sections 3.3, 3.4, and 3.5).

Applicable categorical exclusion(s) below apply to all proposed projects **except** development and archeological survey which must be reviewed independently: **F.1 – F.6 – Actions Related to Grant Programs**

Megan J. Brown  
Chief State, Tribal, Local, Plans & Grants  
National Park Service

3/25/2021

Date



## Digital Product Submission Guidelines

The National Park Service's (NPS) State, Tribal, Local Plans & Grants (STLPG) Division developed these guidelines to outline the digital product submission process for grant recipients. These guidelines specify the types of products that should be submitted, supply guidance on the file names and formats grant recipients should use, and define how submissions should be made.

Products submitted digitally may be uploaded and shared with the general public through the [Integrated Resource Management Application \(IRMA\)](#), the NPS's digital repository system. The see grant products that have already been uploaded, use the above link, choose Historic Preservation Fund (HPF) under "Select a Park, Office, Program or Region" and selected a category of featured context.

### What to submit:

- Provide one digital copy of each deliverable or publication under your grant agreement. Refer to the Reports, Outputs, & Outcomes article to find the deliverables and publications specified in your grant agreement.
- Deliverables and publications include, but are not limited to, the following materials:

SUBMIT	DO NOT SUBMIT
<b>Reports, plans and guidelines</b> (including historic structure reports, design guidelines, economic impact studies, treatment reports, historic context statements, preservation plans)	<b>Digital copies saved on CD/DVD-Rs or flash drives</b> (unless arrangements have been made with your grant administrator)
<b>Substantive event materials</b> (including programs, proceedings, handouts, photographs)	<b>Confidential/restricted reports that cannot be viewed by the general public</b> (including archeological reports, architectural reports on federal buildings or restricted sites)
<b>Professionally produced content</b> (including books, documentaries, oral histories, presentations and PSAs)	<b>Other documentation not intended for the general public</b> (including survey forms, financial records, correspondence)
<b>Interpretive products</b> (including books, brochures, posters, interpretive tours, coloring books or other youth-focused products, lesson plans)	<b>Ephemeral products unlikely to be of future value to the general public</b> (including flyers, postcards, invitations, meeting minutes)
<b>Online content</b> (including websites, story maps, and other web-based projects)	

- **Final grant products may be made available to the general public and should, by default, feature the NPS disclaimer.** Printed products must feature a printed disclaimer when feasible. Audio products must include a spoken version of the disclaimer. Video products must include the disclaimer as an on-screen graphic. A disclaimer is not required when it would be unreasonable to do so, such as on size-restrictive publications like postcards or flyers.

*"This material was produced with assistance from the African American Civil Rights grant program, administered by the National Park Service, Department of the Interior. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."*

- For additional questions about the required disclaimer, consult with your NPS grant manager.

### Naming files for submission:

- Name each file you will be submitting using the following naming convention:  
**AACR\_[Fiscal Year]\_[Grantee's State Abbreviation]\_[Legal Name of Grantee or Subgrantee]\_[Grant Number]\_[Short File Description]**
- Do not use spaces or special characters (#, %, &, ?) in the file name.
- For "Short File Description," write a brief (less than 50 characters), unique description that would help someone easily and quickly identify the file.
- If files are part of a series, append the number 001, 002, etc. to the end of the description.  
*Ex: Audio files submitted under a FY2020 grants by the DC State Historic Preservation Office*  
*AACR\_20\_DC\_DCSHPO\_P21AP00001\_JohnDoeInterview001.mp3*  
*AACR\_20\_DC\_DCSHPO\_P21AP00001\_JohnDoeInterview002.mp3*

### Required file formats and resolution standards:

- *Reports and publications:* PDF files created at 300 ppi (pixels per inch) minimum and 100% of the original document size. Convert authoring formats to PDFs (for example, saving Word or InDesign files as PDFs). When born-digital is not available, provide high resolution scans of printed materials as PDFs. Preference is for PDF/A-1 or PDF/A-2 format over standard PDF.
- *Photos:* JPEG or TIFF files saved at a minimum resolution of 3000 x 2000 pixels (or 6 megapixels).
  - **When submitting photographs, include captions, photo credit, and a signed release form (if needed).** [Photo release forms are available on the STLPG website.](#)
  - **Development (construction) grants must submit photographs of all work completed under the grant, including at least three views of the overall structure and all elements of the scope of work.** Refer to the [NPS Documenting Historic Places on Film guidelines](#) for more information on photographing a variety of historic environments and buildings.
- *Videos:* MP4 files saved at a resolution of 1280 by 720 pixels. All videos produced with HPF funding should include closed captioning. When reasonable, provide transcripts of videos as Word documents.
- *Audio:* Uncompressed WAV files. When reasonable, provide transcripts of audio files as Word documents.
- For more information about formatting deliverables, consult the [National Archives' Tables of File Formats](#).

### Creating an index file for your submission:

- Include this information in the index file for each product that is being submitted:
  - Grant Number
  - Subgrant Number (if applicable)
  - Title of Product
  - Filename
  - Product Creator(s) (give full names and their roles include up to 5 names or organizations)
  - Date Completed
  - Extent (number of pages, photographs, or length of audio/video files; use when applicable)
  - Description (up to 200 words)
- Save the index file as a Microsoft Word document using the following naming convention:  
**AACR\_[Fiscal Year]\_[Grantee's State Abbreviation]\_[Legal Name of Grantee or Subgrantee]\_[Grant Number]\_Index.docx**  
*Ex. AACR\_20\_DC\_DCSHPO\_P21AP00001\_Index.docx*
- Only submit one index per submission, including all of the products in that submission

### **Submitting Your Files:**

1. Email [stlpg@nps.gov](mailto:stlpg@nps.gov) to ask to be added to your grant folder.
2. You will receive an e-mail from the Records Management Assistant's e-mail account (currently [caitlin\\_white@partner.nps.gov](mailto:caitlin_white@partner.nps.gov)) with the subject 'White, Caitlin E shared the folder "[Grant Name]" with you'. Click 'Open' in the e-mail.
3. You will be sent to a page asking you to Request Verification Code. Click 'Send Code.'
4. A second e-mail from [no-reply@sharepointonline.com](mailto:no-reply@sharepointonline.com) with the subject 'Code [Eight digit number] is your Microsoft SharePoint verification code.'
  - a. Copy the code from the e-mail and paste into the box on the 'Enter Verification Code' page that appeared after you requested a code be sent to you.
5. Click the 'Upload' button at the top of the page.
  - a. It will give you the option to either upload file(s) or a folder.
6. In the new window, click on the file you wish to upload and then 'Open'. The file should now appear on the page.
7. E-mail the [stlpg@nps.gov](mailto:stlpg@nps.gov) account to notify them that the files have been submitted using the template provided in your welcome e-mail. Unlike the previous system, there is no notification given when a file is uploaded and YOUR FILES WILL NOT BE CONSIDERED SUBMITTED UNTIL THIS EMAIL IS RECEIVED.

### **Reviewing submitted files:**

- When NPS receives the files, we will review your submitted products for compliance with the HPF grants manual, the Secretary of the Interior's Standards of Archeology and Historic Preservation, and any other relevant requirements.
- If there are issues with the submitted files or grants products, your grant manager will contact you and may ask for corrections and resubmission if necessary.
- NPS will also determine whether the submitted products are suitable for sharing with the general public through the [Integrated Resource Management Application \(IRMA\)](#), the NPS's digital repository system. If so, we will upload the files there and make them publicly available.

**Addenda  
to  
Grant Agreement  
P21AP11742**

**1. Addendum to Approved Budget**

The approved budget to complete the work under this grant is further defined as follows:

Budget Item	Fed Admin	Federal Program	Recipient Share Admin	Recipient Share Program	Total
<i>Personnel</i>		\$ -	\$ -	\$ 30,093.50	\$ 30,093.50
<i>Fringe Benefits</i>		\$ -	\$ -	\$ 1,271.86	\$ 1,271.86
<i>Travel</i>		\$ 1,680.00	\$ -	\$ -	\$ 1,680.00
<i>Supplies</i>		\$ 1,820.00	\$ -	\$ -	\$ 1,820.00
<i>Equipment</i>	\$ -	\$ -	\$ -	\$ -	\$ -
<i>Contractual/Consultant</i>		\$ 46,000.00	\$ -	\$ 500.00	\$ 46,500.00
<i>Construction</i>		\$ 500.00	\$ -	\$ -	\$ 500.00
<i>Other</i>		\$ -	\$ -	\$ -	\$ -
<i>Indirect Costs</i>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTAL</b>	\$ -	\$ 50,000.00	\$ -	\$ 31,865.36	\$ 81,865.36

**2. Addendum to Article VI - Statement of Work**

The **Statement of Work** is further defined to include:

1. Conduct a context study to update the City of Newburgh's East End Historic District (EEHD) nomination through the lens of African American Civil Rights history per the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, to include:
  - i. Research and Survey the historic district as per the National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation.
  - ii. Prepare a National Register Nomination Form (10-900) to include significance, description and all registration requirements as stated in the National Register Bulletin 16A: How to Complete the National Register Form.
  - iii. Nominate at least one (1) site and/or amend existing historic district nominations to the National Register of Historic Places. Such sites will be associated with African-American Civil Rights and the prepared historic context. Selected sites will comply with the National Historic Landmark theme study, Civil Rights in America, and the National Register of Historic Places, Criteria for Evaluation. Draft documentation must be submitted to NPS ATR as described in the deliverables below.

Final National Register nominations must be submitted to the appropriate State Historic Preservation Office

- iv. Hire a Historic Preservation Consultant to translate findings into an update of the EEHD National Register nomination
  - 1. Lead consultant must meet the Secretary of the Interior's Professional Qualifications for Historian or Architectural Historian.
- v. Research and conduct oral histories in accordance with the Secretary of the Interior's Standards and Guidelines for Historic Preservation and Archeology, in addition to best practices as identified by the Oral History Association and the American Folklife Center of the Library of Congress. ( <http://www.oralhistory.org/about/principles-and-practices/> and <https://www.loc.gov/folklife/familyfolklife/oralhistory.html>)
  - 1. Provide research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
  - 2. Hire an oral history facilitator.
  - 3. Oral histories must be conducted and/or supervised by a qualified professional. Oral histories may also be subject to Institutional Review Board (IRB) approval, as applicable.
  - 4. Prepare a written oral history report
- vi. Select approximately ten sites significant to the African American community for the installation of historic markers.
  - 1. A letter of permission from the site owners must be submitted, as applicable, if the grantee is not the owner of the site and a letter was not submitted with the application.
- vii. Procure an educational consultant to review research findings alongside curricula benchmarks for grades K-12 and prepare recommendations for future curriculum development
- viii. Consultant service\*

\*Requires approval by NPS ATR prior to hire

### **3. Addendum to Article XV – Reports, Outcomes, & Deliverables**

The Reports, Outcomes, and Deliverables are further defined to include:

- 2. **Draft documents** to be submitted digitally and reviewed as related to the Statement of Work:

- i. Draft documents including text, layout, etc., for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee, by name or title (see Department of the Interior Standard Terms and Conditions)
  - ii. Draft press release posted upon receipt of the grant funding (see Requirement for Project Sign & Public Notification)
  - iii. Draft oral history research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
  - iv. Draft proposals of the text of the historic markers at 80% to NPS. Such documentation must include any construction details related to signage installation and letters of owner consent, as applicable.
  - v. Selected consultant qualifications (prior to signing contract)
  - vi. Draft nominations or amendments should be presented to the NPS and the relevant State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) at 50% completion to ensure that the document is in keeping with the necessary requirements.
  - vii. Written oral history report and educational materials at 80% completion
- 3. The Final Report must be submitted digitally and include:
  - i. Complete and attach the SF-428B *Tangible Personal Property Report Final Report* or SF-428C, *Tangible Personal Property Disposition Request/Report*, if applicable
  - ii. **Final project deliverables:**
    - 1. A detailed project report, which includes which includes: description of the project's process, an analysis of the data, and any conclusion that sums up the findings, plans for dissemination and next steps. The report should incorporate any special material such as photos, maps, or copies of important documents.
    - 2. Index of collected Oral Histories.
    - 3. Sample oral history transcripts or digital recordings
    - 4. Markers installed
    - 5. Publications or products (workshops, handouts, pamphlets, videotapes, etc.) produced using this grant (one digital copy), if applicable
    - 6. Final written oral history report and educational materials (digital copies)

7. Final National Register nomination amendment submitted to the SHPO

RESOLUTION NO.: 157 - 2023

OF

AUGUST 14, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A CONTRACT WITH MARISSA BROWN  
TO PROVIDE RESEARCH ASSISTANT SERVICES IN CONNECTION WITH  
THE NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS  
PROGRAM GRANT AND ORAL HISTORY PROJECT**

**WHEREAS**, by Resolution No. 303-2020 of December 14, 2020, the City Council authorized the City Manager to apply for and accept if awarded a National Park Service African American Civil Rights Program (“NPS AACR Program”) grant; and

**WHEREAS**, the City was awarded funds from the NPS AACR Program grant; and

**WHEREAS**, the objective of the grant is for local governments or not-for-profit entities to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights; and

**WHEREAS**, Marissa Brown, an independent contractor, has applied to work with the City of Newburgh to provide research assistant services over the course of approximately ten (10) weeks in August 2023 through October 2023 in connection with the NPS AACR Program grant and oral history project; and

**WHEREAS**, funding for this project will derive from budget line CG.8030.0455.4400.2023; and

**WHEREAS**, this Council has reviewed the contract with Marissa Brown, annexed hereto, and finds that entering into said contract is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with Marissa Brown to provide research assistant services in connection with the National Park Service African American Civil Rights Program grant and oral history project.



**SUBGRANTEE AGREEMENT  
NATIONAL PARK SERVICE AFRICAN AMERICAN CIVIL RIGHTS GRANT**

This subgrantee agreement (“Agreement”), by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the “City”) and Marissa Brown, an individual with a principal place of business at , 12 Euclid Avenue, Middletown, New York 10940 (“Sub-grantee”), is made this dated as of \_\_\_\_\_, 2023, as follows:

**RECITALS**

- A. The City received an award of funds from the National Parks Service (referred to herein as “Grantor”) African American Civil Rights (“AACR”) program.
- B. The City has been duly designated to carry out activities authorized by the terms of the Grantor and the AACR program, one such activity being to research oral histories and local data in connection with the Grantor’s African American Civil Rights Oral History Project.
- C. Sub-grantee has applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
- D. Sub-grantee has also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.
- E. In addition to the terms and conditions in this Agreement, Sub-grantee has agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement.
- F. The City has identified Sub-grantee as competent, willing, and able to assist the City in performing the services contained in paragraph B, above, and now wishes to engage Sub-grantee to carry out the objectives of the AACR program as stated in the Grant Agreement with the Grantor.

NOW, THEREFORE, the City, and the Sub-grantee, for the consideration and under the conditions hereinafter set forth, do agree as follows:

**ARTICLE I SPECIFIC TERMS OF AGREEMENT**

- 1. The City hereby awards a cost reimbursable subaward, as described above, to Sub-grantee. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipient shall be an independent entity and not an employee or agent of the City.
- 2. Sub-grantee shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.

3. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipient a sum not to exceed **four thousand two hundred and 00/100 dollars (\$4,200.00) at a rate of \$35.00 per hour**, said sum being a part of grant award to the City by Grantor.

## ARTICLE II            PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.
2. Total payment under this Contract shall not exceed **four thousand two hundred and 00/100 dollars (\$4,200.00)** as payment for all eligible services incurred by Sub-grantee.
3. The City may withhold any payment whenever the Sub-grantee fails to achieve its program goals for the vouchered expenditure period.

## ARTICLE III            METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Sub-grantee eligible reimbursable costs.
2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.
3. The City shall reimburse Sub-grantee not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4<sup>th</sup> Floor, Newburgh, New York 12550.
4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date **commensurate of the project period specifically set forth in Schedule C**. The final statement of costs shall constitute Sub-grantee's final financial report.
5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Sub-grantee.

#### ARTICLE IV                      TERMINATION

1. Either party may terminate this agreement with thirty days' written notice to the parties listed below. Upon receipt of notice of termination, the Sub-grantee agrees to cancel, prior to the effective date of termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval.

If to City:

City of Newburgh  
Office of the Corporation Counsel  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

If to Sub-grantee

Marissa Brown  
12 Euclid Avenue  
Middletown, NY 10940

2. In the event of termination as herein provided, any completed reports prepared by Sub-grantee under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.
3. In the event of termination, Sub-grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-grantee, the City may withhold from any payments due the Sub-grantee for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Sub-grantee.

#### ARTICLE V                      NO ASSIGNMENT

1. Sub-grantee represents that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City.

#### ARTICLE VI                      BOOKS AND RECORDS; REPORTS

1. Sub-grantee shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The City or the Grantor shall have access to the Records during normal business hours at an office within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

2. Sub-grantee shall submit a report to the City identifying prescribed activities funded under this Agreement at the termination of this Agreement. Sub-grantee shall also submit reports identifying prescribed activities funded under this Agreement upon request by the City while this Agreement is in effect.

## ARTICLE VII                      CONFIDENTIAL INFORMATION

1. In the event that Sub-grantee, in the course of performance hereunder, obtains access to information, data or records deemed confidential by the City, Sub-grantee shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Sub-grantee agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:
  - a. was known to Sub-grantee prior to receipt from the City, as evidenced through written documentation;
  - b. was or becomes a matter of public information or publicly available through no fault on the part of Sub-grantee;
  - c. is acquired from a third party entitled to disclose the information to Sub-grantee;
  - d. is developed independently by Sub-grantee;
  - e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Sub-grantee shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

## ARTICLE VIII                      INTEREST OF SUB-GRANTEE, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

1. Sub-grantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.
2. Sub-grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.
3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

ARTICLE IX                    INTEREST OF MEMBERS, OFFICERS OR EMPLOYEE THE CITY;  
MEMBERS OF THE COMMON COUNCIL, OR OTHER PUBLIC  
OFFICIALS

1. No member, officer or employee of the City or its designees or agents, no member of the Common Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities with respect to the program, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.
2. Sub-grantee shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE X                    INTEREST OF CERTAIN STATE OFFICIALS

1. No member of the New York State Assembly or Senate, or any other member of New York State government, shall be permitted to any share or part of this Agreement or to any benefit to arise from the same.

ARTICLE XI                    SOLICITATION OR PROCUREMENT OF AGREEMENT

1. Sub-grantee represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

ARTICLE XII                    REPRESENTATIONS OF SUBGRANTEE

1. Sub-grantee acknowledges and agrees that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Sub-grantee will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Sub-grantee certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency. Sub-grantee agrees to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

## ARTICLE XIII            EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out the obligation of this Agreement, Sub-grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Sub-grantee shall take affirmative action to ensure that applicants for employment and employees of Sub-grantee are treated without regard to their race, color, religion, sex, national origin or handicap. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
2. Sub-grantee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Sub-grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.
3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

## ARTICLE XIV            FACILITIES AND PERSONNEL

1. Sub-grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.
2. Sub-grantee further represents that it will terminate and dismiss from further performance of work and services under this Agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to Sub-grantee by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for Sub-grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve Sub-grantee from meeting its obligations under the terms and conditions of this Agreement.

## ARTICLE XV            INDEMNIFICATION

1. Sub-grantee hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of Sub-grantee or its agents, sub-contractors, servants or employees.

2. If any personal shall make a claim for any damage or injury (including death resulting therefrom) as described above, Sub-grantee hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.
3. Sub-grantee shall procure and maintain at its own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance company as may be approved by the City Manager.
  - a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.
  - b. Sub-grantee shall carry Liability and Property Damage Insurance with limits of not less than:
    - i. Property Damage Liability \$1,000,000 for each occurrence
    - ii. Personal Injury Liability \$1,000,000 for each person  
\$2,000,000 for each occurrence
4. The Agency, as Sub-grantee shall provide Worker's Compensation Insurance, if it has employees, in accordance with the statutes of the State of New York.

## SECTION XVI NOTICES

1. Notices of any nature referred to in this agreement shall be in writing by certified mail, hand delivery. Notices shall be effective on the date of receipt.

If to City:

City of Newburgh  
Office of the Corporation Counsel  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

If to Sub-grantee

Marissa Brown  
12 Euclid Avenue  
Middletown, NY 10940

SECTION XVII MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.
2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.
3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.
4. Subrecipient has read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

[Signature page to follow]



IN WITNESS WHEREOF, Sub-grantee and the City have executed this Agreement the day and year herein mentioned.

DATED: \_\_\_\_\_, 2023                      CITY OF NEWBURGH

By: \_\_\_\_\_  
Name: Todd Venning  
Title: City Manager

DATED: \_\_\_\_\_, 2023                      SUB-GRANTEE

By: \_\_\_\_\_  
Name: Marissa Brown

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

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Marissa Brown personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## **SCHEDULE A**

### **Scope of Services**

#### **Objectives:**

To provide research assistance to the African American Civil Rights Oral History Project.

The Project, funded through the United States Department of Interior's African American Civil Rights grant program, will center the legacy of the City's African American community in the East End Historic District (EEHD) to ensure historic preservation efforts prioritize cultural significance and community preservation alongside architectural integrity. The collected stories will spotlight the destabilizing effects of 20<sup>th</sup> century government-led segregation strategies in and around the EEHD, including urban renewal, housing discrimination, anti-Black lending practices, suburbanization, and white flight.

To work under the guidance of researchers from the University of Albany, as well as City Staff, to analyze the collection of oral history audio files in relation to Urban Renewal.

#### **Deliverables:**

- Review oral histories for references to Black community leaders, social institutions, and businesses.
- Inventory archival collections as directed including scans and photographs.
- Collect textual and visual content.
- Coordinate the research agenda with research team leaders.
- Contextualize individual oral histories and the broader history of Urban Renewal in Newburgh.
- Draft introductions to the oral histories and further drafting as needed, including report findings.
- Others as required.

#### **Timeline:**

Immediate (8-10 weeks)

## **SCHEDULE B**

### **Compensation:**

The Subgrantee will be compensated at \$35 per hour, total cost not to exceed \$4,200.

DRAFT

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Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
09/30/2021	09/30/2021	Annual	12/29/2021
10/01/2021	09/30/2022	Annual	12/29/2022
10/01/2022	09/30/2023	Final	01/28/2024

### REMARKS

1. Grant Agreement  
between  
the United States Department of the Interior  
National Park Service  
and  
the Above-Named Recipient

### Articles

1. Department of the Interior Standard Terms and Conditions

Recipients must also adhere the Department of Interior Standard Terms and Conditions located at <https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

2. Legal Authority

NPS enters into this Agreement pursuant to:

1. National Historic Preservation Act (NHPA), 54 USC 300101 *et seq.*
2. Historic Preservation Fund Grants Manual, 2007 and subsequent memos and guidance
3. Further Consolidated Appropriations Act of 2020, P.L. 116-94

3. Performance Goals and Project Objectives

The objective of this Agreement is to provide Historic Preservation Funds (HPF) to a State, Tribe, local government (including Certified Local Governments), or nonprofit to complete a project that documents, interprets, and/or preserves the sites and stories of the full history of the African American struggle to gain equal rights and the transatlantic slave trade. Projects may involve a broad range of preservation projects for historic sites including: survey & inventory, National Register nominations, oral histories, collections conservation, architectural services, historic structure reports, preservation plans, and physical preservation of resources listed or eligible National Register resources.

4. Performance Goals and Project Objectives

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This grant program enables eligible grantees, as stated in the Notice of Funding Opportunity, across the nation to participate in a nationwide historic preservation program and meet the goals of 54 U.S.C. 300101 et seq., commonly known as the National Historic Preservation Act.

### 5. COVID-19 Provisions

Due to the COVID-19 pandemic, access to National Park Service (NPS) property, personnel, or resources may be limited at the start of the agreement. Any performance that requires access to National Park Service property, personnel, or resources shall not commence until the recipient receives confirmation from the NPS Financial Assistance Awarding Officer of the availability of those resources. The recipient shall contact the NPS Financial Assistance Awarding Officer for approval prior to incurring any costs for performance that requires access to National Park Service property or resources. Such approvals can only be provided by the NPS Financial Assistance Awarding Officer. In the event of a prolonged unavailability of resources, the period of performance may be modified to a later date, or the agreement may be cancelled, by either the National Park Service or the recipient, in its entirety. In addition, the recipient shall contact the NPS Financial Assistance Awarding Officer to coordinate any other changes to the agreement that may be needed to ensure successful performance during the COVID-19 pandemic.

### 6. Statement of Work

The Statement of Work to be performed in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and as determined eligible in the National Historic Preservation Act (NHPA), 54 U.S.C 300101 et. seq., and in the Historic Preservation Grant Fund Manual.

The Statement of Work is further defined in an addendum at the end of this Notice of Award.

### 7. Responsibilities of the Parties

#### 1. The Recipient agrees to:

1. The Recipient shall carry out the Statement of Work in accordance with the terms and conditions stated herein, such as the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.
2. The Recipient shall adhere to all applicable Federal, state, and local laws, regulations, and codes, such as the National Historic Preservation Act.

2. No substantial involvement on the part of the NPS is anticipated for the successful completion of the statement of work detailed in this award. It is anticipated that involvement will be limited to actions related to monitoring project performance and technical assistance at the request of the recipient.

### 8. Cost-Share Requirement

Non-Federal cost-share is required for costs incurred under this Agreement, as identified in the attached project budget. If pre-award costs are authorized, reimbursement of these costs is limited to Federal cost share percentage identified in this agreement.

### 9. Pre-Award Incurrence of Costs

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The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

### 10. Administrative & Indirect Costs

The Recipient has chose not to use a federally approved negotiated indirect cost rate.

The federally-negotiated indirect rate plus administrative costs to be applied against this agreement, by statute 54 U.S.C. § 302902, shall not exceed 25% of the total budget.

Administrative costs are defined as: Allowable, reasonable, and allocable costs related to the overall management of activities directly related to finance (accounting, auditing, budgeting, contracting), general administrative salaries and wages (grant administration, personnel, property management, equal opportunity) and other overhead functions (general legal services, general liability insurance, depreciation on buildings and equipment, etc.) not directly attributable to specific program areas identified in the grant agreement. All administrative costs reported must be absolutely necessary for project and/or program implementation, such as the cost items identified in the final grant agreement or items otherwise approved in writing by the NPS Awarding Officer (AO).

### 11. Key Officials

1. Communications. Recipient shall address any communication regarding this Agreement to the ATR/Program Officer with a copy to the Awarding/Grants Management Officer. Communications that relate solely to technical matters may be sent only to the ATR/Program Officer.
2. Changes in Key Officials. Neither the NPS nor Recipient may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

### 12. Award and Payment

1. The NPS will provide funding to the Recipient in an amount not to exceed the figure in block 11m of the Notice of Award for the Statement of Work described in Article VI and in accordance with the NPS approved budget. The approved budget detail is incorporated herein. Any award beyond the current fiscal year is subject to availability of funds. Acceptance of a Federal financial assistance award from the Department of the Interior carries with it the responsibility to be aware of, and comply with the terms and conditions within this award document. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means.
2. Recipient shall request payment in accordance with the following:
  1. **Method of Payment.** Payment will be made by advance and/or reimbursement through the Department of Treasury's Automated Standard Application for Payments (ASAP) system.
  2. **Requesting Advances.** Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the Financial Assistance (FA) Recipient to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
  3. **Requesting Reimbursement.** Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each

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request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.

4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Recipient.
6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Recipient is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Recipient when they submit a request for payment. The Recipient must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the Recipient to support the payment request prior to approving the release of funds, as deemed necessary. The FA Recipient is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.
3. In order to receive a financial assistance award and to ensure proper payment, it is required that the Recipient maintain their registration with the System for Award Management (SAM), accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurement documents the Recipient may have with the Federal government.
4. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
5. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
6. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Recipient in its regular operations as a result of the Recipient's written travel policy. If the Recipient does not have written travel policies established, the Recipient and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
7. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
8. **Recipient Cost Share or Match.** Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

### 13. Prior Approval

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

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### 14. Insurance and Liability

Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

### 15. Reports and/or Outputs/Outcomes

1. Refer to the last page of the Notice of Award document for Federal Financial reporting frequency and due dates. Performance reports are also required at the same reporting frequency and due dates as the FFR. Reports must be submitted through the GrantSolutions "Manage Reports" functionality.
2. A final Performance Report and a final Federal Financial Report will be due 120 days after the end-date of the Term of Agreement. If the recipient does not submit the final report before the required due date, NPS is required to submit a finding of non-compliance to the Federal Awardee Performance and Integrity Information System (FAPIIS). Each report shall be submitted as described above.
3. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.
4. Specific projects, tasks, or activities for which funds are reimbursed and/or advanced will be tracked and reported by the grantee's submission as defined in an addendum at the end of this Notice of Award.

### 16. Property Utilization

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 applies to this Agreement.

### 17. Modification, Remedies for Noncompliance, Termination

1. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the NPS Awarding Officer and the authorized representative of Recipient.
2. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.339.
3. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

### 18. Reporting of Matters Related to Recipient Integrity and Performance

#### 1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you, as the recipient, during that period of time



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must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### 2. Proceedings You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:
  1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  3. An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of \$5,000 or more; or reimbursement, restitution, or damages in excess of \$100,000; or
  4. Any other criminal, civil, or administrative proceeding if:
    1. It could have led to an outcome described in paragraph 2.3.(1), (2), or (3) of this award term and condition;
    2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

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does not include audits, site visits, corrective plans, or inspection of deliverables.

2. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

### 19. Funding Used for the Operation of Unmanned Aircraft Systems (UAS)

If Federal funding is provided to a State, local, tribal, or territorial government for the use of UAS for their operations, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

Per the policy memorandum issued by National Park Service Director, dated June 19, 2014, the launching, landing, and operating of unmanned aircraft, that is not under the control of the Federal government, on lands and waters administered by the National Park Service is prohibited unless approval is received from the Associate Director for such purposes as: Scientific study, search and rescue operations, fire operations, and law enforcement.

Administrative use includes the use of unmanned aircraft by

- NPS personnel as operators or crew;
- cooperators such as government agencies and universities that conduct unmanned aircraft operations for the NPS pursuant to a written agreement; and
- other entities, including commercial entities, conducting unmanned aircraft operations for the NPS, provided such entities are in compliance with all applicable FAA and Department of the Interior requirements.

### 20. Patents and Inventions (37 CFR 401)

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the National Park Service, is hereby included in this agreement:

#### 1. Definitions

1. *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
2. *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement

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performance.

3. *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
4. *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. *Small Business Firm* means a small business concern as defined at section 2 of Public Law. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
6. *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

### 2. Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

### 3. Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

1. The Recipient will disclose each subject invention to the National Park Service within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the National Park Service shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the National Park Service, the Recipient will promptly notify the National Park Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
2. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the National Park Service within two years of disclosure to the National Park Service. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the National Park Service to a date that is no more than 60 days prior to the end of the statutory period.
3. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory

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period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the National Park Service, be granted.

#### 4. Conditions When the Government May Obtain Title

The Recipient will convey to the National Park Service, upon written request, title to any subject inventions

1. If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph 3, above, or elects not to retain title; provided that the National Park Service may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
2. In those countries in which the Recipient fails to file patent applications within the times specified in paragraph 3 above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph 3 above, but prior to its receipt of the written request of the National Park Service, the Recipient shall continue to retain title in that country.
3. In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

#### 5. Minimum Rights to Recipient and Protection of the Recipient Right to File

1. The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph 3, above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the National Park Service except when transferred to the successor of that party of the Recipient's business to which the invention pertains.
2. The Recipient's domestic license may be revoked or modified by the National Park Service to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the National Park Service licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the National Park Service to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the National Park Service will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient

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will be allowed thirty days (or such other time as may be authorized by the National Park Service for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and National Park Service regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

### 6. Recipient Action to Protect the Government's Interest

1. The Recipient agrees to execute or to have executed and promptly deliver to the National Park Service all instruments necessary to
  1. establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and
  2. convey title to the National Park Service when requested under paragraph 4 above and to enable the government to obtain patent protection throughout the world in that subject invention.
2. The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (3)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Recipient will notify the National Park Service of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
4. The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

### 7. Subcontracts

The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental, developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

### 8. Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the National Park Service may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the

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National Park Service in connection with any march-in proceeding undertaken by the National Park Service in accordance with paragraph (10) of this provision. As required by 35 U.S.C. 202(c)(5), the National Park Service agrees it will not disclose such information to persons outside the government without permission of the Recipient.

### 9. Preference for United States Industry

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the National Park Service upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

### 10. March-in Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:

1. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
4. Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

### 11. Special Provisions for Agreements with Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

1. Rights to a subject invention in the United States may not be assigned without the approval of the National Park Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
2. The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the National Park Service deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
3. The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the

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administration of subject inventions, will be utilized for the support of scientific research or education; and

4. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the National Park Service may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the National Park Service when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (11)(4).

### 12. Communication

Communications regarding matters relating to this provision shall be directed to:

Deputy Associate Solicitor  
Branch of Procurements and Patents  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

### 21. Strengthening Buy-American Preferences for Infrastructure Projects per E.O. 13858

Per Executive Order 13858, entitled "Strengthening Buy-American Preferences for Infrastructure Projects" the Recipient shall maximize, consistent with law, the use of iron and steel goods, products, and materials produced in the United States, for infrastructure projects as defined by the Executive Order when the statement of work includes alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair.

### 22. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Quarterly Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act, Standards and Guidelines for detailed information (<https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>).

The following summarizes some of the requirements for preparing NPS reports in conformance with

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Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to <https://section508.gov/create>. All accessible digital content must conform to the requirements and techniques of the Web Content Accessibility Guidelines (WCAG) 2.0 or later (<https://www.w3.org/WAI/standards-guidelines/wcag/>), Level AA Success Criteria.

- **Electronic documents with images**

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

- **Electronic documents with complex charts or data tables**

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

- **Electronic documents with forms**

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

### 23. General and Special Provisions

1. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
2. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
3. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
4. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
5. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
6. **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS



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employees are not agents of the Recipient and will not act on behalf of the Recipient.

7. **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
8. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
9. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
10. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
11. **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305 (5)). As allowed under 2 CFR §200.307, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.
12. **Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
13. **Conflict of Interest**
  1. Applicability.
    1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
    2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.
  2. Requirements.
    1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
    2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

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3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.
3. Notification.
  1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.
4. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
5. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
6. Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

### 24. Signatures

Recipients are **not** required to sign the Notice of Financial Assistance Award letter or any other award document. As per DOI standard terms and conditions, the recipient's acceptance of a financial assistance award is defined as the start of work, drawing down of funds, or accepting the award via electronic means.

### 25. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  1. Procure or obtain;
  2. Extend or renew a contract to procure or obtain; or
  3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  2. Telecommunications or video surveillance services provided by such entities or using such equipment.
  3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the secretary of defense, in consultation with the director of the

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national intelligence or the director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services and to ensure that communications service to users and customers is sustained.
3. See Public Law 115-232, section 889, for additional information.
4. See also §200.471.

### Program Specific Requirements

#### 1. NPS Oversight

The NPS will provide oversight of this grant project through the following NPS reviews:

1. Review and approval of annual and final reporting to include compliance with 2 CFR 200;
2. Review and approval for compliance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*;
3. Review and approval for compliance with Sections 106 (54 USC 306108) and 110f (54 USC 306107) of the National Historic Preservation Act in coordination with the appropriate State Historic Preservation Office;
4. Review and approval for compliance with the National Environmental Policy Act (NEPA);
5. Review and approval of project signage to notify the public of federal involvement; and
6. Any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors (i.e., draft National Register nomination if required, etc.).

#### 2. Determination of Risk

In accordance with 2 C.F.R. § 200.205, the application for this award was subjected to a pre-award risk assessment which included a review of information contained within the application, past audits, Federal Awardee Performance and Integrity Information System (FAPIIS), and/or past performance on previous Federal financial assistance awards and other factors.

This award has been determined to be a low risk with the following requirements:

Requests for payment may be made directly from the ASAP grant account without prior NPS approval after expenses have been incurred, invoiced, and paid. All documentation of expenses must be kept on file for audit purposes and may be requested by the NPS at any time. If payments are drawn down prior to invoice and payment or in amounts larger than costs incurred, the Recipient may be determined medium or high risk and be subject to additional grant terms and conditions.

#### 3. Eligible Costs

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Eligible costs under this award are as described in this Notice, 2 CFR 200, and the Historic Preservation Fund Grants Manual (HPF Manual).

For this program eligible costs also include:

1. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA);
2. Administrative costs necessary to complete and administer the grant requirements;
3. Rehabilitation of properties;
  1. Eligible properties include historic districts, buildings, sites, structures and objects listed or eligible for listing in the National Register of Historic Places or applicable Tribal Register;
  2. Unlisted properties that receive funding must complete and submit a nomination as part of the project;
  3. All work must meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*; and
  4. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement
4. Survey and Inventory of historic resources to determine eligibility;
5. Cost for producing a nomination to the National Register of Historic Places (if applicable);
6. Conservation of collections;
7. Cost for any required audits or financial requests;
8. Cost for the production of project signs;
9. Costs for public notice of grant opportunities;
10. Costs associated with required training or reporting; and/
11. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

#### 4. Equipment Purchases

Each item of equipment purchased under this award must be approved specifically and in writing by the NPS prior to purchase to confirm the allowability of the costs. Approval of the application is not approval of equipment included within the application. Equipment is defined by 2 CFR 200.1 as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000.

#### 5. Consultants & Contractors

Consultant/contractor(s) must have the requisite experience and training in historic preservation or relevant field to oversee the project work. All consultants and contractors must be competitively selected and documentation of this selection must be maintained by the grantee and be made readily available for

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examination by the NPS. Federal contracting and procurement guidance can be found in 2 CFR 200.318. Maximum rates charged to this grant may not exceed 120% of a Federal Civil Service GS-15, step 10 salary per project location. Current regional salary tables can be found on the Office of Personnel and Management website: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

### 6. Requirement for Project Sign & Public Notification

As stipulated in 36 CFR Part 800, public views and comments regarding all Federally-funded undertakings on historic properties must be sought and considered by the authorizing Federal agency. Therefore, the grantee is required to post a public notification regarding the undertaking under this grant in one or more of the major newspapers or news sources that cover the area affected by the project within 30 days of receiving this awarded grant agreement. A copy of the posted release must be submitted to NPS within 30 days of the posting.

HPF funded projects must create public notification of the project in the form of a project sign, website posting, and proper credit for announcements and publications as appropriate. Signage/notification must be submitted for approval by the ATR in advance. Also the sign/notification must be of reasonable and adequate design and construction to withstand weather exposure (if appropriate); be of a size that can be easily read from the public right-of-way; and be accessible to the public throughout the project term as stipulated in this agreement. At a minimum, all notifications must contain the following statement:

*"[Project Name] is being supported in part by an African American Civil Rights grant from the Historic Preservation Fund administered by the National Park Service, Department of the Interior."*

Additional information briefly identifying the historical significance of the property and recognizing other contributors is encouraged and permissible. The NPS arrowhead logo may only be used in conjunction with the HPF approved signage format that can be provided upon request. Any other use of the logo is prohibited.

Cost of posting, fabricating, and erecting notification are eligible grant costs.

### 7. Publicity & Press Releases

Press releases about this project must acknowledge the grant assistance provided by the Historic Preservation Fund and the National Park Service, and copies of the press releases must be provided to the NPS. The Recipient must transmit notice of any public ceremonies planned to publicize funded or related projects in a timely enough manner so that the NPS, Department of the Interior, Congressional or other Federal officials can attend if desired. All publicity and press releases related to activities funded with this award should include a statement that funding for the activity was provided (in part or in whole) by the Historic Preservation Fund (HPF) administered by the National Park Service.

### 8. Funding Acknowledgement

The grantee must include acknowledgment of grant support from the Historic Preservation Fund of the National Park Service, Department of Interior, in all deliverables and publications concerning NPS grant-supported activities as referenced in the Statement of Work.

All deliverables must contain the following disclaimer and acknowledgement:

*"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number [insert grant number, block 4a of this Notice of Award's coversheet]. Any opinions, findings, and conclusions or recommendations*

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*expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."*

1. Deliverables/publications include but are not limited to grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation of events, including programs; invitations and photos; websites; mobile apps; exhibits; and interpretive signs.
2. All digital copies must follow the file naming convention described in the attached Digital Product Submission Guidelines. Refer to the attached guidance document for instructions on creating, naming and submitting digital copies of deliverables/publications.
3. All consultants hired by the grantee must be informed of this requirement.
4. Grantees, subgrantees, contractors may not use the NPS Arrowhead in any form without written permission.

### 9. Copyright

Per 2 CFR 200.315(b), the NPS reserves a royalty-free right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, any materials produced under this grant. All photos included as part of the interim & final reporting and deliverables/publication will be considered released to the NPS for future official use. Photographer, date, and caption should be identified on each photo, so NPS may provide proper credit for use.

A digital (preferred) or physical copy of all deliverables must be available for public access. Sensitive information may be redacted from the public access copy.

All consultants hired by the Recipient must be informed of this requirement.

### 10. NPS Review of Planning/Design Documents for National Historic Landmarks

The grantee must submit the following through HPFOnline:

1. a site plan that has the north direction clearly marked;
2. a city/county map with the site of the property clearly labeled;
3. set of plans and specifications for the project;
4. photographs (or digital images) of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;
5. interior photographs of all major rooms and those involved in the project, labeled and keyed to a floor plan;
6. for NHL Districts include overall views of the district from the project area; and
7. any additional information that will better enable a technical review of the project to be completed.

The grantee must submit documents for the entire undertaking to the NPS for its review and approval to ensure conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, Historic Preservation Fund Grant Manual, and with the conditions listed in this Grant Agreement, **prior** to the beginning of grant-assisted work. Work that does not comply with these Standards in the judgment of the NPS will not be reimbursed, and may cause the grant to be terminated

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and funds deobligated.

Plans & specifications for the project must be marked on the cover with this statement:

*The {name of property} is designated a National Historic Landmark for its architectural and historic significance. It is considered to have irreplaceable cultural, material, and aesthetic value. The work is funded in part by the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. The funding of which is subject to having all work items meet The Secretary of the Interior's Standards for the Treatment of Historic Properties.*

### 11. Compliance with Section 106

Pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), the NPS and the grantee must complete the consultation process stipulated in the regulations issued by the Advisory Council on Historic Preservation (ACHP) in 36 CFR 800 **prior** to the commencement of all grant-assisted construction or ground disturbance on the property.

### 12. Compliance with Section 110

Section 110 of The National Historic Preservation Act identifies the responsibility of the federal agency in their treatment of historic properties. Section 110(f) (54 USC 306107) clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm. See this agreement for submission requirements regarding NHL properties. In addition, Section 110(k) (54 USC 306113) prohibits the NPS from funding any grantee or subgrantee that attempts to avoid the requirements of Section 106. Grantees must make every effort to fund preservation projects that do no harm or adverse effects to NHL properties. Should it be discovered a grantee has deliberately damaged a property (e.g., pre-emptive demolition) to avoid requirements, the NPS must be notified to determine, in consultation with the ACHP, if the project can proceed.

### 13. Requirement for NEPA Compliance

All HPF funded grants are subject to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. This Act requires Federal agencies to consider the reasonably foreseeable environmental consequences of all grant-supported activities. As part of the NPS implementation of NEPA, grantees are required to notify the NPS of any reasonably foreseeable impacts to the environment from grant-supported activities, or to certify that no such impacts will arise upon receipt of a grant award. In addition, the NPS has determined that most HPF grant funds are not expected to individually or cumulatively have a significant impact on the environment, unless the activity involves development (construction) or archeology. For construction or archeology projects, the applicant/grantee should submit an *Environmental Screening Worksheet*, in order to assist the NPS in determining if a Categorical Exclusion (found in NPS Director's Order 12) can be utilized.

### 14. Compliance with the Americans with Disabilities Act and the Architectural Barriers Act

The use of federal funds to improve public buildings, to finance services or programs contained in public buildings, or alter any building or facility financed in whole or in part with Federal funds (except privately owned residential structures), requires compliance with the 1990 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the Architectural Barriers Act (ABA). Work done to alter the property should be in compliance with all applicable regulations and guidance.

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### 15. Unanticipated Discovery Protocols

At a minimum, unanticipated discovery protocols for subgrants or contracts shall require the sub-grantee or contractor to immediately stop construction in the vicinity of the affected historic resource and take reasonable measures to avoid and minimize harm to the resource until the SHPO or THPO, sub-grantee or contractor, and Indian Tribes, as appropriate, have determined a suitable course of action within 15 calendar days. With the express permission of the SHPO and/or THPO, the sub-grantee or contractor may perform additional measures to secure the jobsite if the sub-grantee or contractor determines that unfinished work in the vicinity of the affected historic property would cause safety or security concerns.

### 16. NAGPRA Costs Are Unallowable

Cost related to Native American Graves Protection and Repatriation Act (NAGPRA) activities are unallowable under this agreement. Funds for NAGPRA activities are available through the NPS National NAGPRA Program.

### 17. GIS Spatial Data Transfer Standards

All GIS data collected with HPF funds shall be in compliance with the NPS Cultural Resource Spatial Data Transfer Standards with complete feature level metadata. Template GeoDatabases and guidelines for creating GIS data in the NPS cultural resource spatial data transfer standards can be found at the NPS Cultural Resource GIS Facility webpage:

[https://www.nps.gov/crgis/crgis\\_standards.htm](https://www.nps.gov/crgis/crgis_standards.htm)

Technical assistance to meet the NPS Cultural Resource Spatial Data Transfer Standard specifications will be made available if requested. Execution of a Data Sharing Agreement between the NPS and the Recipient shall take place prior to collection of GIS data using HPF funds.

### 18. Funding for Use of Unmanned Aircraft Systems (UAS) (AKA Drones)

HPF funding for unmanned aircraft systems (UAS) usage is eligible only in the contracting of an experienced, licensed contractor of UAS who possesses the appropriate license, certifications, and training to operate UAS. The contractor is required to provide proof of liability insurance in the operation of UAS for commercial use.

If HPF funding is provided to a state, tribal, local, or territorial government, or other non-profit organization for the use of UAS as part of their scope of work, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

### 19. Subgrant Awards

The awarding of subgrants must follow the general criteria described below in addition to the eligibility factors outlined in the Notice of Funding Opportunity, OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual.

The Grantee must publicly announce the availability of HPF funds and include the following information:

1. A summary statement of the priorities for funding;
2. Description of eligible activities for which funding is to be provided;



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3. The total amount available, or expected to be available for subgrants;
4. An explanation of the required selection process used, including evaluation criteria, that will provide an opportunity for all eligible entities to submit applications and have them considered on an equal basis;
5. The deadline for submitting the completed application;
6. Directions to the applicant to include a detailed and specific list of the final products to be accomplished with the subgrant, and to provide a detailed line-item budget that includes all major work elements;
7. Identification of the donor, source, kind, and amount of nonfederal matching share to be contributed, if applicable;
8. An explanation that all elements funded must meet the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
9. An explanation that all subgrants must follow OMB regulations in 2 CFR 200, and the Historic Preservation Fund Grant Manual;
10. Notice of the requirement for easements or covenants for grant assisted preservation work.

To qualify a subgrantee as responsible, the grantee must ensure that a subgrantee will:

1. Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities; or a firm commitment, arrangement, or ability to obtain such;
2. Be able to comply with the proposed or required completion schedule for the project;
3. Have a satisfactory record of integrity, sound judgment, and satisfactory performance, especially with prior performance upon grants and contracts;
4. Have an adequate accounting system and auditing procedures to provide effective accountability and control of property, funds, and assets sufficient to meet audit requirements.

NPS oversight of subgrants will include:

1. Review of selected subgrants;
2. Review of any physical preservation work for compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
3. Review of any physical preservation work or archeological surveys for compliance with National Environmental Policy Act (NEPA);
4. Review, in concert with National Park Service regional office(s), physical preservation work as per Section 110(f) (54 USC 306107) which clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm;

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5. Verification of submission of any subgrants over \$30,000 federal share to Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS);

6. Review of final executed preservation easement/covenant;

7. Additional requirements as determined for the grantee based on risk or program requirements.

### 20. Requirement for Training

At the direction of the National Park Service, personnel associated with management of the grant program may be required to attend trainings and/or meetings. The grantee will be provided adequate notice to plan for any required activities; expenses incurred as part of this requirement are eligible to charge towards the grant.

### 21. Demonstration of Effort – Performance Goals

In order to ensure the timely and successful completion of all HPF grant awards, the NPS requires acceptable demonstration of effort by the grantee on project work supported by all HPF funded grants.

Demonstration of effort means acceptable performance by undertaking meaningful progress on grant-supported activities and complying with award terms and conditions.

### 22. Notice of Financial Management Review

As part of government-wide efforts to improve coordination of financial management and increase financial accountability and transparency in the receipt and use of federal funding, the grantee is hereby notified that this award may be subject to higher scrutiny. This may include a requirement to submit additional reporting documentation.

### 23. Catalog of Federal Domestic Assistance/Assistance Listing Inclusion in Single Audit

Non-Federal entities receiving financial assistance through the Historic Preservation Fund must include the appropriate Catalog of Federal Domestic Assistance (CFDA) number in the Schedule of Expenditures of Federal Award in their Single-Audit. The CFDA number applicable to this award as identified in block 2 on the first page of this agreement document.

### 24. Audit Findings and Follow-Up

The Recipient is hereby informed that the NPS may withhold or suspend award funds, or may impose other related conditions, if the recipient does not satisfactorily and promptly address findings from Single or program-specific audits, investigations, or reviews of NPS programs and awards. Each year the award is active, the Recipient must require its auditors to provide status report updates of all audit findings included in the prior audit's Schedule of Findings and Questioned Costs, as required by 2 CFR 200, Subpart F ("Grants and Agreements, Audit Requirements"). Upon review of subsequent annual audits, the NPS will determine if further corrective action is warranted.

When findings exist, the Recipient must submit a status report every six months to the NPS of all steps being taken to resolve related audit findings included in the prior audit's *Schedule of Findings and Questioned Costs* to remain in good standing for all NPS grant awards. If the Recipient fails to meet these deadlines without written approval of extension from the NPS, NPS may withhold remaining and future award funds, or may impose other related requirements to ensure compliance with this condition.

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Outstanding audit findings, if any, are included in the attachments of this Agreement.

## AWARD ATTACHMENTS

NEWBURGH, CITY OF

P21AP11742-00

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1. Environmental Certification
2. Digital Products Submission Guidelines, AACR
3. Addenda of Budget, Scope, and Deliverables



## United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW

Washington, DC 20240

# ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposed work, and the supporting documentation contacting in the applications, it has been determined that the proposed HPF funded work meets the criteria for categorical exclusion under the current Interim Director's Order 12 *Categorical Exclusions* (replacing DO-12 Handbook, Chapter 3, Sections 3.3, 3.4, and 3.5).

Applicable categorical exclusion(s) below apply to all proposed projects **except** development and archeological survey which must be reviewed independently: **F.1 – F.6 – Actions Related to Grant Programs**

Megan J. Brown  
Chief State, Tribal, Local, Plans & Grants  
National Park Service

3/25/2021

Date

## Digital Product Submission Guidelines

The National Park Service's (NPS) State, Tribal, Local Plans & Grants (STLPG) Division developed these guidelines to outline the digital product submission process for grant recipients. These guidelines specify the types of products that should be submitted, supply guidance on the file names and formats grant recipients should use, and define how submissions should be made.

Products submitted digitally may be uploaded and shared with the general public through the [Integrated Resource Management Application \(IRMA\)](#), the NPS's digital repository system. The see grant products that have already been uploaded, use the above link, choose Historic Preservation Fund (HPF) under "Select a Park, Office, Program or Region" and selected a category of featured context.

### What to submit:

- Provide one digital copy of each deliverable or publication under your grant agreement. Refer to the Reports, Outputs, & Outcomes article to find the deliverables and publications specified in your grant agreement.
- Deliverables and publications include, but are not limited to, the following materials:

SUBMIT	DO NOT SUBMIT
<b>Reports, plans and guidelines</b> (including historic structure reports, design guidelines, economic impact studies, treatment reports, historic context statements, preservation plans)	<b>Digital copies saved on CD/DVD-Rs or flash drives</b> (unless arrangements have been made with your grant administrator)
<b>Substantive event materials</b> (including programs, proceedings, handouts, photographs)	<b>Confidential/restricted reports that cannot be viewed by the general public</b> (including archeological reports, architectural reports on federal buildings or restricted sites)
<b>Professionally produced content</b> (including books, documentaries, oral histories, presentations and PSAs)	<b>Other documentation not intended for the general public</b> (including survey forms, financial records, correspondence)
<b>Interpretive products</b> (including books, brochures, posters, interpretive tours, coloring books or other youth-focused products, lesson plans)	<b>Ephemeral products unlikely to be of future value to the general public</b> (including flyers, postcards, invitations, meeting minutes)
<b>Online content</b> (including websites, story maps, and other web-based projects)	

- **Final grant products may be made available to the general public and should, by default, feature the NPS disclaimer.** Printed products must feature a printed disclaimer when feasible. Audio products must include a spoken version of the disclaimer. Video products must include the disclaimer as an on-screen graphic. A disclaimer is not required when it would be unreasonable to do so, such as on size-restrictive publications like postcards or flyers.

*"This material was produced with assistance from the African American Civil Rights grant program, administered by the National Park Service, Department of the Interior. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."*

- For additional questions about the required disclaimer, consult with your NPS grant manager.

### Naming files for submission:

- Name each file you will be submitting using the following naming convention:  
**AACR\_[Fiscal Year]\_[Grantee's State Abbreviation]\_[Legal Name of Grantee or Subgrantee]\_[Grant Number]\_[Short File Description]**
- Do not use spaces or special characters (#, %, &, ?) in the file name.
- For "Short File Description," write a brief (less than 50 characters), unique description that would help someone easily and quickly identify the file.
- If files are part of a series, append the number 001, 002, etc. to the end of the description.  
*Ex: Audio files submitted under a FY2020 grants by the DC State Historic Preservation Office*  
*AACR\_20\_DC\_DCSHPO\_P21AP00001\_JohnDoeInterview001.mp3*  
*AACR\_20\_DC\_DCSHPO\_P21AP00001\_JohnDoeInterview002.mp3*

### Required file formats and resolution standards:

- *Reports and publications:* PDF files created at 300 ppi (pixels per inch) minimum and 100% of the original document size. Convert authoring formats to PDFs (for example, saving Word or InDesign files as PDFs). When born-digital is not available, provide high resolution scans of printed materials as PDFs. Preference is for PDF/A-1 or PDF/A-2 format over standard PDF.
- *Photos:* JPEG or TIFF files saved at a minimum resolution of 3000 x 2000 pixels (or 6 megapixels).
  - **When submitting photographs, include captions, photo credit, and a signed release form (if needed).** [Photo release forms are available on the STLPG website.](#)
  - **Development (construction) grants must submit photographs of all work completed under the grant, including at least three views of the overall structure and all elements of the scope of work.** Refer to the [NPS Documenting Historic Places on Film guidelines](#) for more information on photographing a variety of historic environments and buildings.
- *Videos:* MP4 files saved at a resolution of 1280 by 720 pixels. All videos produced with HPF funding should include closed captioning. When reasonable, provide transcripts of videos as Word documents.
- *Audio:* Uncompressed WAV files. When reasonable, provide transcripts of audio files as Word documents.
- For more information about formatting deliverables, consult the [National Archives' Tables of File Formats](#).

### Creating an index file for your submission:

- Include this information in the index file for each product that is being submitted:
  - Grant Number
  - Subgrant Number (if applicable)
  - Title of Product
  - Filename
  - Product Creator(s) (give full names and their roles include up to 5 names or organizations)
  - Date Completed
  - Extent (number of pages, photographs, or length of audio/video files; use when applicable)
  - Description (up to 200 words)
- Save the index file as a Microsoft Word document using the following naming convention:  
**AACR\_[Fiscal Year]\_[Grantee's State Abbreviation]\_[Legal Name of Grantee or Subgrantee]\_[Grant Number]\_Index.docx**  
*Ex. AACR\_20\_DC\_DCSHPO\_P21AP00001\_Index.docx*
- Only submit one index per submission, including all of the products in that submission

### **Submitting Your Files:**

1. Email [stlpg@nps.gov](mailto:stlpg@nps.gov) to ask to be added to your grant folder.
2. You will receive an e-mail from the Records Management Assistant's e-mail account (currently [caitlin\\_white@partner.nps.gov](mailto:caitlin_white@partner.nps.gov)) with the subject 'White, Caitlin E shared the folder "[Grant Name]" with you'. Click 'Open' in the e-mail.
3. You will be sent to a page asking you to Request Verification Code. Click 'Send Code.'
4. A second e-mail from [no-reply@sharepointonline.com](mailto:no-reply@sharepointonline.com) with the subject 'Code [Eight digit number] is your Microsoft SharePoint verification code.'
  - a. Copy the code from the e-mail and paste into the box on the 'Enter Verification Code' page that appeared after you requested a code be sent to you.
5. Click the 'Upload' button at the top of the page.
  - a. It will give you the option to either upload file(s) or a folder.
6. In the new window, click on the file you wish to upload and then 'Open'. The file should now appear on the page.
7. E-mail the [stlpg@nps.gov](mailto:stlpg@nps.gov) account to notify them that the files have been submitted using the template provided in your welcome e-mail. Unlike the previous system, there is no notification given when a file is uploaded and YOUR FILES WILL NOT BE CONSIDERED SUBMITTED UNTIL THIS EMAIL IS RECEIVED.

### **Reviewing submitted files:**

- When NPS receives the files, we will review your submitted products for compliance with the HPF grants manual, the Secretary of the Interior's Standards of Archeology and Historic Preservation, and any other relevant requirements.
- If there are issues with the submitted files or grants products, your grant manager will contact you and may ask for corrections and resubmission if necessary.
- NPS will also determine whether the submitted products are suitable for sharing with the general public through the [Integrated Resource Management Application \(IRMA\)](#), the NPS's digital repository system. If so, we will upload the files there and make them publicly available.



**Addenda  
to  
Grant Agreement  
P21AP11742**

**1. Addendum to Approved Budget**

The approved budget to complete the work under this grant is further defined as follows:

Budget Item	Fed Admin	Federal Program	Recipient Share Admin	Recipient Share Program	Total
<i>Personnel</i>		\$ -	\$ -	\$ 30,093.50	\$ 30,093.50
<i>Fringe Benefits</i>		\$ -	\$ -	\$ 1,271.86	\$ 1,271.86
<i>Travel</i>		\$ 1,680.00	\$ -	\$ -	\$ 1,680.00
<i>Supplies</i>		\$ 1,820.00	\$ -	\$ -	\$ 1,820.00
<i>Equipment</i>	\$ -	\$ -	\$ -	\$ -	\$ -
<i>Contractual/Consultant</i>		\$ 46,000.00	\$ -	\$ 500.00	\$ 46,500.00
<i>Construction</i>		\$ 500.00	\$ -	\$ -	\$ 500.00
<i>Other</i>		\$ -	\$ -	\$ -	\$ -
<i>Indirect Costs</i>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTAL</b>	\$ -	\$ 50,000.00	\$ -	\$ 31,865.36	\$ 81,865.36

**2. Addendum to Article VI - Statement of Work**

The **Statement of Work** is further defined to include:

1. Conduct a context study to update the City of Newburgh's East End Historic District (EEHD) nomination through the lens of African American Civil Rights history per the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, to include:
  - i. Research and Survey the historic district as per the National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation.
  - ii. Prepare a National Register Nomination Form (10-900) to include significance, description and all registration requirements as stated in the National Register Bulletin 16A: How to Complete the National Register Form.
  - iii. Nominate at least one (1) site and/or amend existing historic district nominations to the National Register of Historic Places. Such sites will be associated with African-American Civil Rights and the prepared historic context. Selected sites will comply with the National Historic Landmark theme study, Civil Rights in America, and the National Register of Historic Places, Criteria for Evaluation. Draft documentation must be submitted to NPS ATR as described in the deliverables below.

Final National Register nominations must be submitted to the appropriate State Historic Preservation Office

- iv. Hire a Historic Preservation Consultant to translate findings into an update of the EEHD National Register nomination
  - 1. Lead consultant must meet the Secretary of the Interior's Professional Qualifications for Historian or Architectural Historian.
- v. Research and conduct oral histories in accordance with the Secretary of the Interior's Standards and Guidelines for Historic Preservation and Archeology, in addition to best practices as identified by the Oral History Association and the American Folklife Center of the Library of Congress. ( <http://www.oralhistory.org/about/principles-and-practices/> and <https://www.loc.gov/folklife/familyfolklife/oralhistory.html>)
  - 1. Provide research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
  - 2. Hire an oral history facilitator.
  - 3. Oral histories must be conducted and/or supervised by a qualified professional. Oral histories may also be subject to Institutional Review Board (IRB) approval, as applicable.
  - 4. Prepare a written oral history report
- vi. Select approximately ten sites significant to the African American community for the installation of historic markers.
  - 1. A letter of permission from the site owners must be submitted, as applicable, if the grantee is not the owner of the site and a letter was not submitted with the application.
- vii. Procure an educational consultant to review research findings alongside curricula benchmarks for grades K-12 and prepare recommendations for future curriculum development
- viii. Consultant service\*

\*Requires approval by NPS ATR prior to hire

### **3. Addendum to Article XV – Reports, Outcomes, & Deliverables**

The Reports, Outcomes, and Deliverables are further defined to include:

- 2. **Draft documents** to be submitted digitally and reviewed as related to the Statement of Work:

- i. Draft documents including text, layout, etc., for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee, by name or title (see Department of the Interior Standard Terms and Conditions)
  - ii. Draft press release posted upon receipt of the grant funding (see Requirement for Project Sign & Public Notification)
  - iii. Draft oral history research design to NPS including, but not limited to, identified audience, a clear plan for outreach and dissemination, methods, sample questions, number of interviews, release forms, and storage.
  - iv. Draft proposals of the text of the historic markers at 80% to NPS. Such documentation must include any construction details related to signage installation and letters of owner consent, as applicable.
  - v. Selected consultant qualifications (prior to signing contract)
  - vi. Draft nominations or amendments should be presented to the NPS and the relevant State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) at 50% completion to ensure that the document is in keeping with the necessary requirements.
  - vii. Written oral history report and educational materials at 80% completion
- 3. The Final Report must be submitted digitally and include:
  - i. Complete and attach the SF-428B *Tangible Personal Property Report Final Report* or SF-428C, *Tangible Personal Property Disposition Request/Report*, if applicable
  - ii. **Final project deliverables:**
    - 1. A detailed project report, which includes which includes: description of the project's process, an analysis of the data, and any conclusion that sums up the findings, plans for dissemination and next steps. The report should incorporate any special material such as photos, maps, or copies of important documents.
    - 2. Index of collected Oral Histories.
    - 3. Sample oral history transcripts or digital recordings
    - 4. Markers installed
    - 5. Publications or products (workshops, handouts, pamphlets, videotapes, etc.) produced using this grant (one digital copy), if applicable
    - 6. Final written oral history report and educational materials (digital copies)

7. Final National Register nomination amendment submitted to the SHPO

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE SUPPLEMENTAL AGREEMENT NO. 1  
TO A MASTER FEDERAL-AID LOCAL PROJECT AGREEMENT  
WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
TO FUND IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID ELIGIBLE COSTS  
OF A TRANSPORTATION PROJECT IDENTIFIED AS THE LAKE DRIVE OVER  
QUASSAICK CREEK BRIDGE REPLACEMENT PROJECT (PIN 8761.39/BIN2223630)  
AND APPROPRIATING FUNDS THEREFORE**

**WHEREAS**, a Project for the Lake Drive over Quassaick Creek Bridge Replacement (BIN 2223630) in the City of Newburgh, Orange County, PIN 8761.39 (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

**WHEREAS**, by Resolution No. 28-2021 adopted by the City of Newburgh on February 22, 2021 approved and agreed to advance the Project by making a commitment of 100% of the non-federal share of the costs of the construction and construction inspection; and

**WHEREAS**, it was subsequently found necessary to undertake additional construction and construction and construction inspection work not contemplated in the original agreement authorized by Resolution No. 28-2021 of February 22, 2021; and

**WHEREAS**, the City of Newburgh desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of construction and construction inspection;

**NOW, THEREFORE**, the Newburgh City Council, duly convened does hereby

**RESOLVE**, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

**RESOLVED**, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of construction and construction inspection work for the Project or portions thereof; and it is further

**RESOLVED**, that the sum of \$189,284 (\$1,039,284 minus the previous \$850,000) is hereby appropriated from 2016 BAN, OCTC TIP Reserve Fund and the City's allocation of NYSDOT Touring Route Funds and made available to cover the cost of participation in the above phase of the Project; and it is further

PIN 8761.39

Sponsor: **City of Newburgh**  
 PIN: **8761.39** BIN: **2223630**  
 Comptroller's Contract No. **D040396**  
 Supplemental Agreement No. **1**  
 Date Prepared: **8/8/2023** By: **GC**  
 Initials

Press F1 for instructions in the blank fields:

**SUPPLEMENTAL AGREEMENT No. 1 to D040396** (Comptroller's Contract No.)

This Supplemental Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State")  
 and

**City of Newburgh** (the Sponsor)  
 Acting by and through the **City Manager**  
 with its office at **83 Broadway, Newburgh, NY 12550.**

This amends the existing Agreement between the parties in the following respects only:

Amends a previously adopted Schedule A by (check as applicable):

- ☐ amending a project description
- ☒ amending the contract end date
- ☐ amending the scheduled funding by:
  - ☐ adding additional funding (check and enter the # phase(s) as applicable):
    - ☐ adding phase \_\_\_\_\_ which covers eligible costs incurred on/after   /  /
    - ☐ adding phase \_\_\_\_\_ which covers eligible costs incurred on/after   /  /
  - ☒ increasing funding for a project phase(s)
  - ☒ adding a pin extension
  - ☐ change from Non-Marchiselli to Marchiselli
  - ☐ deleting/reducing funding for a project phase(s)
  - ☐ other (\_\_\_\_\_)

- ☐ Amends a previously adopted Schedule "B" (Phases, Sub-phase/Tasks, and Allocation of Responsibility)
- ☒ Amends a previously adopted Agreement by replacing the Appendix A dated October 2019 with the Appendix A dated June 2023.
- ☐ Amends a previously adopted Agreement by adding:
  - ☐ Appendix B M/WBE/SDVOB.
  - ☐ Retention Exhibit.
  - ☐ Other: \_\_\_\_\_
- ☐ Amends the text of the Agreement as follows (insert text below):

Sponsor: **City of Newburgh**  
 PIN: **8761.39** BIN: **2223630**  
 Comptroller's Contract No. **D040396**  
 Supplemental Agreement No. **1**  
 Date Prepared: **8/8/2023** By: **GC**  
 Initials

Press F1 for instructions in the blank fields:

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

SPONSOR:

SPONSOR ATTORNEY:

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK

)ss.:

COUNTY OF **ORANGE**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the \_\_\_\_\_ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on \_\_\_\_\_ and which a certified copy is attached and made a part hereof; and that he/she signed his/her name thereto by like order.

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

**APPROVED FOR NYSDOT:**

**APPROVED AS TO FORM:**  
**STATE OF NEW YORK ATTORNEY GENERAL**

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

\_\_\_\_\_  
 For Commissioner of Transportation

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

By: \_\_\_\_\_  
 Assistant Attorney General

Date: \_\_\_\_\_

**COMPTROLLER'S APPROVAL:**

By: \_\_\_\_\_  
 For the New York State Comptroller  
 Pursuant to State Finance Law ' 112



**SCHEDULE A – Description of Project Phase, Funding and Deposit Requirements**  
**NYSDOT/ State-Local Agreement - Schedule A for PIN 8761.39**

<b>OSC Contract #:</b> <u>D040396</u>	<b>Contract Start Date:</b> <u>5/26/2021</u> (mm/dd/yyyy) <b>Contract End Date:</b> <u>12/30/2026</u> (mm/dd/yyyy) <input checked="" type="checkbox"/> Check, if date changed from the last Schedule A
<b>Purpose:</b> <input type="checkbox"/> Original Standard Agreement <input checked="" type="checkbox"/> Supplemental Schedule A No. 1	
<b>Agreement Type:</b> <input checked="" type="checkbox"/> Locally Administered Municipality/Sponsor (Contract Payee): City of Newburgh Other Municipality/Sponsor (if applicable): _____  <input type="checkbox"/> State Administered <small>List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.</small> <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Municipality: _____ % of Cost share         <input type="checkbox"/> Municipality: _____ % of Cost share         <input type="checkbox"/> Municipality: _____ % of Cost share       </div>	
<b>Authorized Project Phase(s) to which this Schedule applies:</b> <input type="checkbox"/> PE/Design <input type="checkbox"/> ROW Incidentals <input type="checkbox"/> ROW Acquisition <input checked="" type="checkbox"/> Construction/CI/CS	
<b>Work Type:</b> BR REPLACE	<b>County</b> (If different from Municipality): Orange County
(Check, if Project Description has changed from last Schedule A): <input type="checkbox"/> <b>Project Description:</b> BIN 2223630 Lake Drive Over Quassaick Creek, City of Newburgh, Orange County	
<b>Marchiselli Eligible</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

**A. Summary of Participating Costs FOR ALL PHASES** For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

PIN Fiscal Share	"Current" or "Old" entry indicator	Funding Source (Percentage)	TOTAL Costs	FEDERAL Funds	STATE Funds	LOCAL Funds	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
8761.39.323	Current	HPP (80%)	\$850,000.00	\$680,000.00	\$0.00	\$170,000.00	\$0.00
	Old	HPP (80%)	\$850,000.00	\$680,000.00	\$0.00	\$170,000.00	\$0.00
8761.39.326	Current	HPP (80%)	\$189,284.00	\$151,427.00	\$0.00	\$37,857.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL CURRENT COSTS:</b>			\$1,039,284.00	\$831,427.00	\$ 0.00	\$207,857.00	\$ 0.00



## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

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

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

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

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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



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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

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

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

SAMPLE RESOLUTION BY MUNICIPALITY  
(Locally Administered Project)  
RESOLUTION NUMBER:\_\_\_\_\_

**Authorizing the implementation, and funding in the first instance 100% of the federal-aid eligible costs, of a transportation federal-aid project, and appropriating funds therefore.**

WHEREAS, a Project for the **Lake Drive over Quassaick Creek Bridge Replacement (BIN 2223630) in the City of Newburgh, Orange County, PIN 8761.39** (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, Resolution No. 28-2021 adopted by the Town of Warwick on February 22, 2021 approved and agreed to advance the Project by making a commitment of 100% of the non-federal share of the costs of the construction and construction inspection work.

WHEREAS, it was subsequently found necessary to undertake additional construction and construction inspection work not contemplated in the original agreement authorized by the previous Resolution; and

WHEREAS, the City of Newburgh desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of construction and construction inspection.

NOW, THEREFORE, the Newburgh City Council, duly convened does hereby

RESOLVE, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of construction and construction inspection work for the Project or portions thereof; and it is further

RESOLVED, that the sum of **\$189,284 (\$1,039,284 minus the previous \$850,000)** is hereby appropriated from \_\_\_\_\_ [or, appropriated pursuant to \_\_\_\_\_] and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Newburgh City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the City Manager thereof, and it is further

RESOLVED, that the Newburgh City Manager be and is hereby authorized to

execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Newburgh with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that in addition to the City Manager, the following municipal titles: Mayor, Deputy Mayor, City Engineer, City Comptroller, \_\_\_\_\_ are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further

RESOLVED, this Resolution shall take effect immediately.

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

I, \_\_\_\_\_, Clerk of the City of Newburgh, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said \_\_\_\_\_ at a meeting duly called and held at the \_\_\_\_\_ on \_\_\_\_\_ by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the City of Newburgh, New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Clerk, City of Newburgh

RESOLUTION NO.: 28 - 2021

OF

FEBRUARY 22, 2021

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A MASTER FEDERAL-AID LOCAL PROJECT AGREEMENT  
WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
TO FUND IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND NON-FEDERAL  
AID ELIGIBLE COSTS FOR THE CONSTRUCTION OF  
THE LAKE DRIVE OVER QUASSAICK CREEK BRIDGE REPLACEMENT PROJECT  
(PIN 8761.39/BIN2223630)

WHEREAS, a Project for the Lake Drive over Quassaick Creek Bridge Replacement (BIN 2223630) in the City of Newburgh, Orange County, PIN 8761.39 (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, the City of Newburgh desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of construction and construction inspection;

NOW, THEREFORE, the Newburgh City Council, duly convened does hereby

RESOLVE, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of construction and construction inspection work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$850,000.00 is hereby appropriated from the OCTC TIP Reserve Fund A.0000.0882.0000 and the 2016 BAN H1.5110.0208.8102.2016 and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Newburgh City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the City Manager thereof, and it is further

RESOLVED, that the Newburgh City Manager be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Newburgh with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for

the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that in addition to the City Manager, the following municipal titles: Mayor, City Engineer, City Comptroller, and Superintendent of Public Works are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

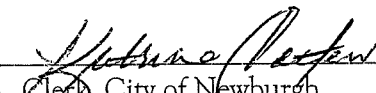
RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further

RESOLVED, this Resolution shall take effect immediately.

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

I, Katrina Cotten Deputy Clerk of the City of Newburgh, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said City Council at a meeting duly called and held at the via Zoom Digital Platform Feb. 22, 2021 by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the City of Newburgh, New York, this 23rd day of February, 2021.

  
Dep. Clerk, City of Newburgh

PIN 8761.39

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND  
ACCEPT IF AWARDED A FEDERAL EMERGENCY MANAGEMENT AGENCY  
SEVERE STORM PUBLIC ASSISTANCE DISASTER RELIEF PROGRAM GRANT  
FOR THE LAKE DRIVE BRIDGE**

**WHEREAS**, the City of Newburgh as a unit of local government is eligible for funding under the Federal Emergency Management Agency (“FEMA”) Severe Storm Public Assistance Disaster Relief Program; and

**WHEREAS**, the FEMA Disaster Relief Program provides funding for costs related to addressing damage caused by natural disasters; and

**WHEREAS**, funding is available to support infrastructure repairs associated with the severe storm that occurred on July 9, 2023 and July 10, 2023 which caused scour and erosion on the abutments of the Lake Drive Bridge; and

**WHEREAS**, this Council has determined that applying for and accepting such funding is in the best interests and for the safety of City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and is hereby authorized to apply for and accept if awarded a Federal Emergency Management Agency (“FEMA”) Severe Storm Public Assistance Disaster Relief Program Grant for repairs to the Lake Drive Bridge; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**REQUEST FOR PUBLIC ASSISTANCE**

OMB Control Number 1660-0017  
Expires November 30, 2023

**Paperwork Burden Disclosure Notice**

Public reporting burden for this data collection is estimated to average 15 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. This collection of information is required to obtain or retain benefits. You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Paperwork Reduction Project (1660-0017) **NOTE: Do not send your completed form to this address.**

**Privacy Act Statement**

Authority: FEMA is authorized to collect the information requested pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, §§ 402-403, 406-407, 417, 423, and 427, 42 U.S.C. 5170a-b, 5172-73, 5184, 5189a, 5189e; The American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, § 601; and "Public Assistance Project Administration," 44 C.F.R. §§ 206.202, and 206.209.

APPLICANT (Political subdivision or eligible applicant)	DATE SUBMITTED
---	----------------

COUNTY (Location of Damages. If located in multiple counties, please indicate)

**APPLICANT PHYSICAL LOCATION**

STREET ADDRESS

CITY	COUNTY	STATE	ZIP CODE
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**MAILING ADDRESS (If different from Physical Location)**

STREET ADDRESS

POST OFFICE BOX	CITY	STATE	ZIP CODE
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**Primary Contact/Applicant's Authorized Agent**

**Alternate Contact**

NAME	NAME
TITLE	TITLE
BUSINESS PHONE	BUSINESS PHONE
FAX NUMBER	FAX NUMBER
HOME PHONE (Optional)	HOME PHONE (Optional)
CELL PHONE	CELL PHONE
E-MAIL ADDRESS	E-MAIL ADDRESS
PAGER & PIN NUMBER	PAGER & PIN NUMBER

Did you participate in the Federal/State Preliminary Damage Assessment (PDA)? ☐ YES ☐ NO

Private Non-Profit Organization? ☐ YES ☐ NO

If yes, which of the facilities identified below best describe your organization? \_\_\_\_\_

Title 44 CFR, part 206.221(e) defines an eligible private non-profit facility as: "... any private non-profit educational, utility, emergency, medical or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations." "Other essential governmental service facility means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public."

**Private Non-Profit Organizations must attach copies of their Tax Exemption Certificate and Organization Charter or By-Laws. If your organization is a school or educational facility, please attach information on accreditation or certification.**

OFFICIAL USE ONLY: FEMA - \_\_\_\_\_ -DR- \_\_\_\_\_ - \_\_\_\_\_ FIPS# \_\_\_\_\_ DATE RECEIVED \_\_\_\_\_

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
CHANGE ORDER NO. 7 WITH MCNAMEE CONSTRUCTION CORPORATION  
TO THE CONSTRUCTION CONTRACT IN  
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE (LAKE STREET BRIDGE)  
REHABILITATION PROJECT (PIN# 8761.57/BIN# 2022260)**

**WHEREAS**, by Resolution No. 162-2021 of July 12, 2021, the City Council of the City of Newburgh awarded a bid for the construction of the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260) to McNamee Construction Corporation in an amount not to exceed \$1,678,560.00; and

**WHEREAS**, additional work related to the installation of drainage improvements will add \$137,361.35 to the total contract price with funding to be derived from an existing NYSDOT Local Project Agreement in the amount of 80% grant reimbursement (H1.8761.4597.8761.2022) and the 20% match coming from the City's allocation of the NYSDOT Touring Route Funds (A.5680.0206.0000.0000); the same being in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to execute Change Order No. 7 with McNamee Construction Corporation for contract increase in the amount of \$137,361.36 for a new contract price of \$1,978,122.86 in the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260).





# HVEA Engineers

## Change Order Details

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation

<b>Description</b>	Lake Street/Route 32 over Quassaick Creek bridge rehabilitation. Project will rehabilitate the existing bridge that carries Lake Street (Route 32) over the Quassaick Creek located in the City of Newburgh, Orange County, BIN 2022260.
<b>Prime Contractor</b>	McNamee Construction Corp 154 Route 202, PO Box 182 Lincolndale, NY 10540
<b>Change Order</b>	7
<b>Status</b>	Pending
<b>Date Created</b>	05/19/2023
<b>Type</b>	New Items
<b>Summary</b>	New item to install drainage.
<b>Change Order Description</b>	This CO is for a new item to install a drainage structure to address water ponding in the northbound right lane at the low point of the roadway profile. The ponding encroaches on most of the right lane resulting in the lane being kept closed to traffic. The project designer developed a plan to install a new drainage structure and connect it to an existing drainage structure to the south. The drainage structure to the south will also be altered to lower the top of grate elevation slightly. The project designer submitted the plan to DOT and received DOT approval for the plan.
<b>Awarded Project Amount</b>	\$1,678,560.00
<b>Authorized Project Amount</b>	\$1,840,761.51
<b>Change Order Amount</b>	\$137,361.35
<b>Revised Project Amount</b>	\$1,978,122.86

## New Items

Line Number	Item ID	Unit	Quantity	Unit Price	Extension
Section: 1 - Description					
0476	950.09	DC	137,361.350	\$1.000	\$137,361.35
Drainage: A - INSTALL NEW DRAINAGE STRUCTURE					
<b>Reason:</b> This CO is for a new item to install a drainage structure to address water ponding in the northbound right lane at the low point of the roadway profile. The ponding encroaches on most of the right lane resulting in the lane being kept closed to traffic. The project designer developed a plan to install a new drainage structure and connect it to an existing drainage structure to the south. The drainage structure to the south will also be altered to lower the top of grate elevation slightly. The project designer submitted the plan to DOT and received DOT approval for the plan.					
1 item					Total: \$137,361.35

## Attachments

Document	Name	Description	Submission Date
PIN_8761.57_CO-07_20230329_0741_email_DOT_to_McLEG_Drainage_Modification_Approved.pdf	PIN 8761.57 CO-07 20230329_0741_email_DOT to McLEG_Drainage Modification Approved.pdf	Email notification of NYSDOT LPU approval of drainage Modification	08/16/2023 03:47 PM EDT
PIN_8761.57_CO-07_Lake_St_Catch_Basin_Installation_Plan.pdf	PIN 8761.57 CO-07 Lake_St_Catch_Basin_Installation_Plan.pdf	Plans and profiles for Drainage Unit installation	08/16/2023 03:47 PM EDT
2 attachments			

(Sponsor) Certificate of Recommended Order on Contract

PIN 8761.57

LD040218

City of Newburgh Purchase Order No.: 29815

Contractor Name: **McNamee Construction Corporation**

Change Order No. 7

I, Peter Teliska, PE, hereby certify that I am the officially designated project manager of the subject project, that the adjustments here within and the material incorporated under the subject contract as stated in this Change Order No. 7 are necessary, and to the best of my knowledge and belief, the said information is correct and in strict compliance with the terms of the said contract.

I further certify that the records from which this order on contract was developed and any other record required by statute, rule or regulation of the New York State Department of Transportation or the Federal Government or prescribed in the contract have been established and will be filed in the Consultant's Office, in accordance with the terms of the contract.



Peter Teliska, PE, HVEA Engineers, Resident Engineer



Date

Todd Venning

Date

City Manager/CEO

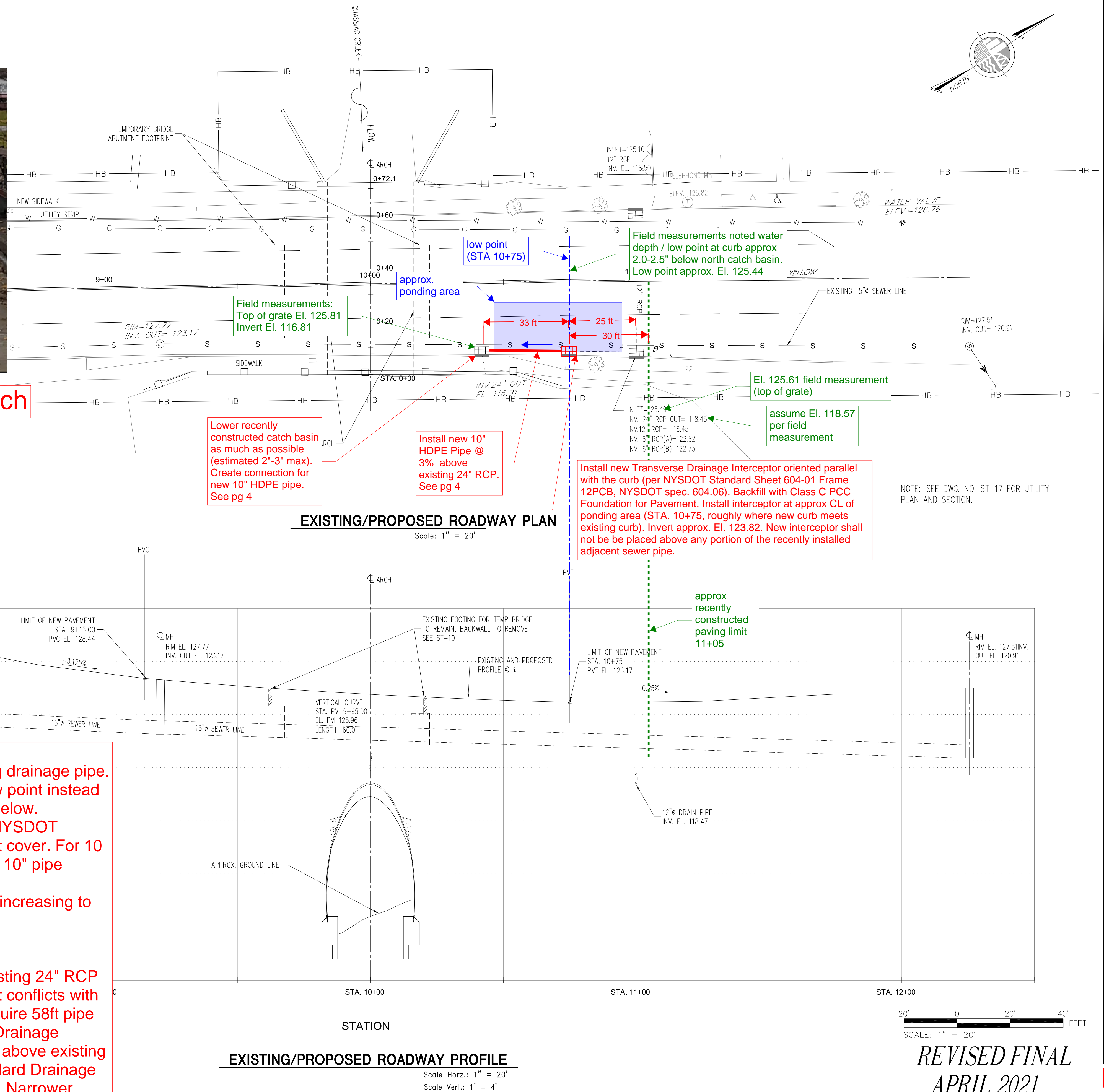
City of Newburgh, Sponsor



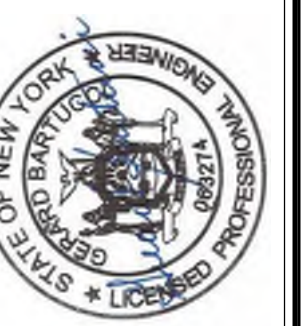
## A photograph of a road shoulder. In the foreground, there is a concrete curb and a grassy area. A red dashed line with an arrow points to a low point on the curb, labeled "Approx low point" in a white box. The background shows a grassy field and some trees.

- Placing a new drainage interceptor and pipe directly above an existing drainage pipe.
- Non-standard use of NYSDOT Transverse Drainage Interceptor at low point instead of standard Drainage Structure to avoid conflict with existing 24" RCP below.
- Use of smaller diameter 10" pipe than the 12" min recommended by NYSDOT Highway Design Manual 8.7.5.1 as a larger pipe would have insufficient cover. For 10 year design storm with 2,700 sf drainage area, flow demand = 0.34 cfs, 10" pipe capacity is 4.07 cfs.
- Shallow Pipe Cover of min 7.7in below top course at new interceptor (increasing to 24in at south basin). Mitigated by use of Class C concrete fill.

Cannot install standard Drainage Structure at low point and replace existing 24" RCP drainage pipe as would require excessive excavation depth (8-10ft) that conflicts with recently installed adjacent sewer line buried in concrete, would also require 58ft pipe replacement length. Alternative solution proposes shallow Transverse Drainage Interceptor with shallow drainage pipe installed for a shorter 33ft length above existing drainage pipe and connecting to south catch basin. Cannot install standard Drainage Structure as it is too wide (50"), would conflict with adjacent sewer line. Narrower interceptor chosen (34" wide).



Route 32 Lake Street  
Bridge Rehabilitation  
BIN: 2022260

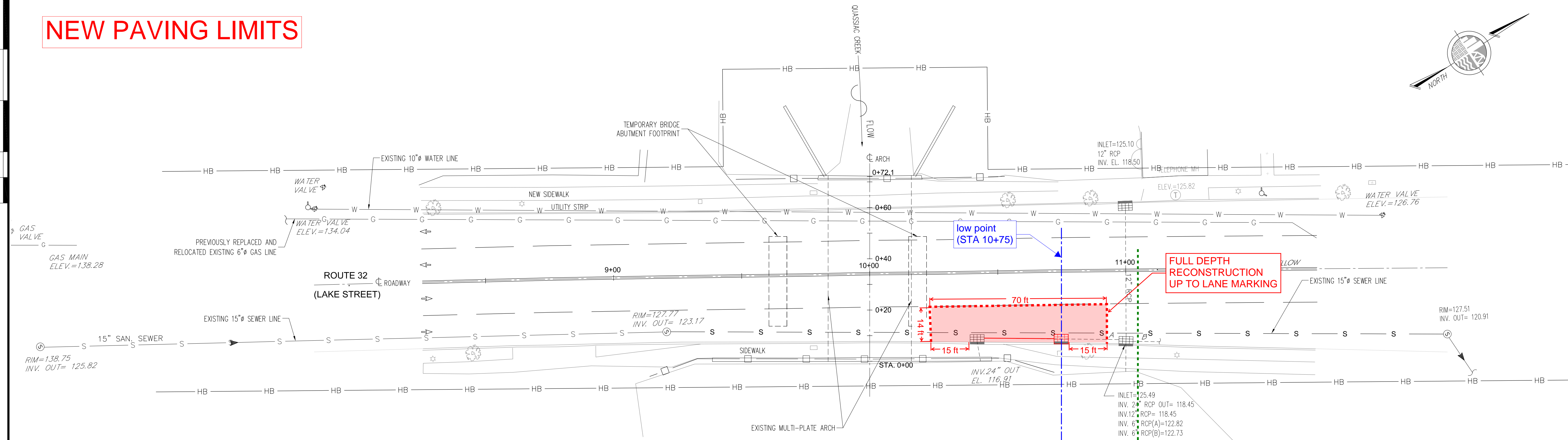


## EXISTING/PROPOSED ROADWAY PLAN AND PROFILE

PROJECT NO.	140246
SALE	AS SHOWN
DATE	04/21/2021
DRAWN BY	J.G.I.
CHECKED BY	J.J.M.
DRAWING NO.	



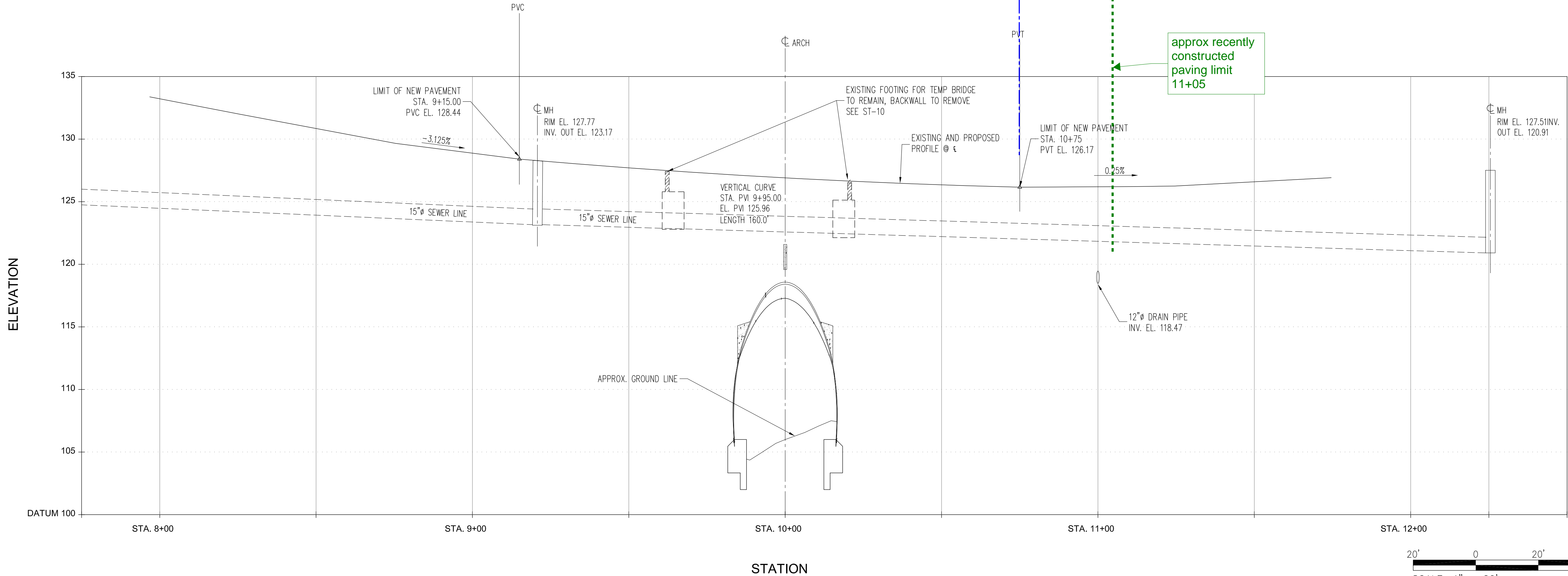
NEW PAVING LIMITS



Notes for Contractor:  
- Approx. paving limits shown are suggested, contractor to adjust as-needed to provide positive drainage between catch basins and from crown of roadway to curb.

EXISTING/PROPOSED ROADWAY PLAN  
Scale: 1" = 20'

NOTE: SEE DWG. NO. ST-17 FOR UTILITY PLAN AND SECTION.



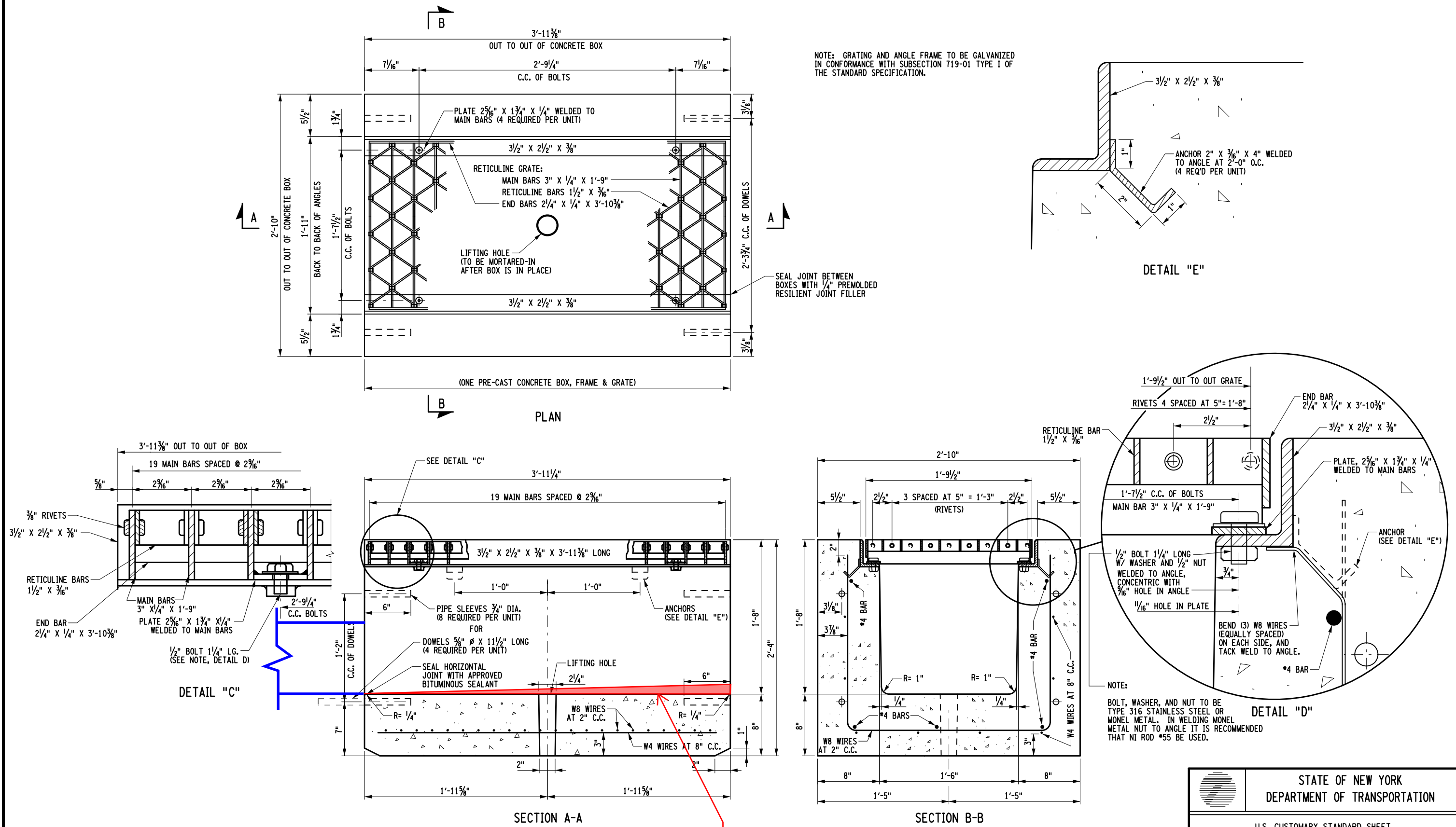
EXISTING/PROPOSED ROADWAY PROFILE  
Scale Horiz.: 1" = 20'  
Scale Vert.: 1" = 4'

REVISED FINAL  
APRIL 2021

COPYRIGHT © 2021, McLAREN ENGINEERING GROUP


McLaren ENGINEERING GROUP		M. G. McLaren P.C.	
530 Chestnut Ridge Road, WoodCliff Lake, NJ 07677		T: 201.775.6000 F: 201.746.8522 www.mclaren.com	
PROJECT	Route 32 Lake Street Bridge Rehabilitation	BIN: 2022260	NEW YORK
NEWBURGH, ORANGE COUNTY			
SHEET TITLE			
EXISTING/PROPOSED ROADWAY PLAN AND PROFILE			
PROJECT NO.	140246	SCALE	AS SHOWN
DATE	04/21/2021	DRAWN BY	J.G.I.
CHECKED BY	J.J.M.	DRAWING NO.	
Pg 2 of 4			

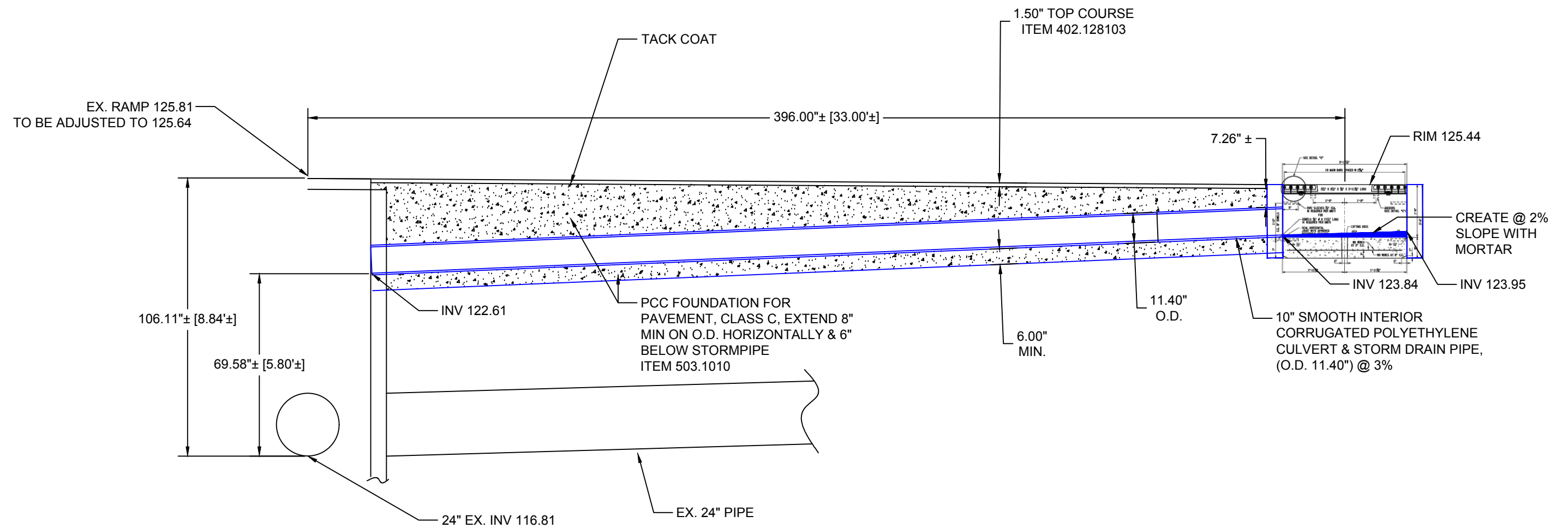
FILE NAME = 604-01e1.dgn  
DATE/TIME = 06-AUG-2014 13:37  
USER = jturley



Contractor to mortar inside face of drain to provide 2% slope to the southern catch basin.

ERRATA 1 EFF. 09/04/2014  
ISSUED WITH EB 14-025  
EFFECTIVE DATE: 01/08/09

	STATE OF NEW YORK DEPARTMENT OF TRANSPORTATION	
U.S. CUSTOMARY STANDARD SHEET		
PRE-CAST CONCRETE TRANSVERSE DRAINAGE INTERCEPTOR		
APPROVED JULY 28, 2014 /S/ RICHARD W. LEE, P.E. DEPUTY CHIEF ENGINEER (DESIGN)	ISSUED UNDER EB 08-036 <div>Pg 3 of 4</div>	



**From:** Trocard, Orietta V (DOT) <Orietta.Trocard@dot.ny.gov>  
**Sent:** Wednesday, March 29, 2023 07:41  
**To:** Gavin Daly; Morris, Jason  
**Cc:** (gbartucci@mgmclaren.com); Wallace Pishtey; Pete Teliska;  
(powens@mgmclaren.com); Shing-Wai C. Leung  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

Thank you. The proposed drainage modification is approved.

**Orietta Trocard, P.E.**  
Regional Local Projects Manager

**New York State Department of Transportation, Hudson Valley Region**  
4 Burnett Boulevard, Poughkeepsie, NY 12603  
(845) 437-3386 | [orietta.trocard@dot.ny.gov](mailto:orietta.trocard@dot.ny.gov)



---

**From:** Gavin Daly <[gdaly@MGMcLaren.com](mailto:gdaly@MGMcLaren.com)>  
**Sent:** Tuesday, March 28, 2023 3:52 PM  
**To:** Morris, Jason <[JMorris@cityofnewburgh-ny.gov](mailto:JMorris@cityofnewburgh-ny.gov)>; Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Cc:** (gbartucci@mgmclaren.com) <[gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; (pteliska@hveapc.com) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; (powens@mgmclaren.com) <[powens@mgmclaren.com](mailto:powens@mgmclaren.com)>; Shing-Wai C. Leung <[SLeung@MGMcLaren.com](mailto:SLeung@MGMcLaren.com)>  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

**ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.**

Orietta,

7.26in is the largest pipe cover below the top course that can be obtained at the pipe/interceptor connection using the proposed shallow interceptor solution, it cannot be increased. We tried to get a standard drainage structure to work but while allowing greater pipe cover it is too wide (conflicting with the adjacent sewer line) and the bottom of the structure would also conflict with the existing 24 in dia. drain pipe directly below.

However, the 7.26in cover condition is only local to the immediate vicinity of the interceptor, as cover will increase linearly over the 30ft pipe length to the south catch basin. Minimum concrete encasement is 7.26in at the interceptor, maximum of 23.52in at the south basin.

Gavin



---

**From:** Morris, Jason <[JMorris@cityofnewburgh-ny.gov](mailto:JMorris@cityofnewburgh-ny.gov)>  
**Sent:** Tuesday, March 28, 2023 2:25 PM  
**To:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>; Gavin Daly <[gdaly@MGMcLaren.com](mailto:gdaly@MGMcLaren.com)>  
**Cc:** Gerard J. Bartucci <[gbartucci@MGMcLaren.com](mailto:gbartucci@MGMcLaren.com)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>;  
([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; Paul F. Owens <[powens@MGMcLaren.com](mailto:powens@MGMcLaren.com)>  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

Orietta,  
The City has no objection to the increased maintenance obligation associated with the smaller pipe diameter proposed.  
Thanks,

Jason C. Morris, PE  
Commissioner of Public Works & City Engineer  
83 Broadway  
Newburgh, New York 12550  
Phone: (845) 569-7448  
Fax: (845) 569-7349  
[jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)

---

**From:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Sent:** Tuesday, March 28, 2023 2:20 PM  
**To:** Gavin Daly <[gdaly@MGMcLaren.com](mailto:gdaly@MGMcLaren.com)>  
**Cc:** ([gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)) <[gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)>; Morris, Jason <[JMorris@cityofnewburgh-ny.gov](mailto:JMorris@cityofnewburgh-ny.gov)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; ([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; ([powens@mgmclaren.com](mailto:powens@mgmclaren.com)) <[powens@mgmclaren.com](mailto:powens@mgmclaren.com)>  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

Gavin,  
I have reviewed the proposed drainage modification and have the following questions.  
1. Is 7.26in the maximum pipe cover that can be obtained?  
2. From our experience, the Pre-cast drainage interceptor (along with the smaller diameter pipe) gets clogged very easily, is the sponsor prepared to perform additional maintenance?

**Orietta Trocard, P.E.**  
Regional Local Projects Manager

**New York State Department of Transportation, Hudson Valley Region**  
4 Burnett Boulevard, Poughkeepsie, NY 12603  
(845) 437-3386 | [orietta.trocard@dot.ny.gov](mailto:orietta.trocard@dot.ny.gov)



---

**From:** Gavin Daly <[gdaly@MGMcLaren.com](mailto:gdaly@MGMcLaren.com)>  
**Sent:** Tuesday, March 28, 2023 12:03 PM  
**To:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Cc:** ([gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)) <[gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)>; Jason Morris <[jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; ([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; ([powens@mgmclaren.com](mailto:powens@mgmclaren.com)) <[powens@mgmclaren.com](mailto:powens@mgmclaren.com)>  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

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Hi Orietta,

Just following up to see if anyone has been able to review our proposed drainage modification.

Thanks,

Gavin

---

**From:** Gavin Daly  
**Sent:** Monday, March 20, 2023 3:24 PM  
**To:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Cc:** Gerard J. Bartucci <[gbartucci@MGMcLaren.com](mailto:gbartucci@MGMcLaren.com)>; Jason Morris <[jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; ([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; Paul F. Owens <[powens@MGMcLaren.com](mailto:powens@MGMcLaren.com)>  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

Hi Orietta,

See attached drainage modification sketch for DOT review.

Gavin

---

**From:** Gavin Daly  
**Sent:** Wednesday, March 15, 2023 4:56 PM  
**To:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Cc:** Gerard J. Bartucci <[gbartucci@MGMcLaren.com](mailto:gbartucci@MGMcLaren.com)>; Jason Morris <[jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; ([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; Paul F. Owens <[powens@MGMcLaren.com](mailto:powens@MGMcLaren.com)>  
**Subject:** RE: [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

Thanks Orietta, we are drafting a sketch for your review. Will follow up shortly.

Gavin

---

**From:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Sent:** Monday, March 13, 2023 11:42 AM  
**To:** Gavin Daly <[gdaly@MGMcLaren.com](mailto:gdaly@MGMcLaren.com)>  
**Cc:** Gerard J. Bartucci <[gbartucci@MGMcLaren.com](mailto:gbartucci@MGMcLaren.com)>; Jason Morris <[jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; ([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; Paul F. Owens <[powens@MGMcLaren.com](mailto:powens@MGMcLaren.com)>  
**Subject:** [External Sender] RE: 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

**Please be cautious, this e-mail was sent from outside our organization.**

Can you submit the drainage modification for our review?

**Orietta Trocard, P.E.**  
Regional Local Projects Manager

**New York State Department of Transportation, Hudson Valley Region**  
4 Burnett Boulevard, Poughkeepsie, NY 12603  
(845) 437-3386 | [orietta.trocard@dot.ny.gov](mailto:orietta.trocard@dot.ny.gov)



**From:** Gavin Daly <[gdaly@MGMcLaren.com](mailto:gdaly@MGMcLaren.com)>  
**Sent:** Friday, March 10, 2023 4:53 PM  
**To:** Trocard, Orietta V (DOT) <[Orietta.Trocard@dot.ny.gov](mailto:Orietta.Trocard@dot.ny.gov)>  
**Cc:** ([gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)) <[gbartucci@mgmclaren.com](mailto:gbartucci@mgmclaren.com)>; Jason Morris <[jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)>; Wallace Pishtey <[wpishtey@hveapc.com](mailto:wpishtey@hveapc.com)>; ([pteliska@hveapc.com](mailto:pteliska@hveapc.com)) <[pteliska@hveapc.com](mailto:pteliska@hveapc.com)>; ([powens@mgmclaren.com](mailto:powens@mgmclaren.com)) <[powens@mgmclaren.com](mailto:powens@mgmclaren.com)>  
**Subject:** 140246 PIN 8761.57 Lake St Bridge, Newburgh - Drainage Question

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hi Orietta,

My colleagues and I from McLaren have been working with the City of Newburgh on a local bridge replacement project (Lake St / Route 32, BIN 2022260). The bridge and approach road is owned by the city but the project is funded as a NYSDOT local project under the federal aid program.

The City Engineer Jason Morris suggested I reach out to you regarding a drainage construction issue. The bridge replacement has been completed but a ponding condition has been observed at one of the approach curbs. Due to certain site constraints a drainage modification to remove the ponding is required that would not be in conformance with typical NYSDOT details and guidelines – would you be able to tell us whether NYSDOT review and approval is required, and if so, who in the Local Projects Group could review the proposed solution?

Regards,

**Gavin Daly, P.E.**

Senior Bridge Engineer, McLaren Engineering Group

212.324.6319 (d) | 609.751.6719 (c) | [www.mgmclaren.com](http://www.mgmclaren.com) | 



**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
AUTHORIZATION OF EXTRA WORK**

Region #	08	D040218	PIN:	8761.57	AEW#:	3 (CO#07)
County/Countries:	Orange			Date:	08/17/2023	
Contract Description: Rte 32 Lake Street Bridge Rehabilitation						
Engineer-in-Charge: Peter Teliska				Field Office Fax:		
Contractor: McNamee Construction Corp.						
Is Contract FHWA RFA or NCA?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	FHWA Concurrence Obtained?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A		
Municipal/Local Share Involvement?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sufficient Funding in Place?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Proposed Work within the Contract Limits?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Proposed work within the Contract Scope?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Significant Change?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Has Project Manager been Notified?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Contract Bid Amount: \$1,678,560.00			Contract Current Amount: \$1,840,761.51			
Estimated Increase Due to this Change: \$137,361.35						
Description of Proposed Extra Work:						
<p>This CO is for a new item to install a drainage structure to address water ponding in the northbound right lane at the low point of the roadway profile. The ponding encroaches on most of the right lane resulting in the lane being kept closed to traffic. The project designer developed a plan to install a new drainage structure and connect it to an existing drainage structure to the south. The drainage structure to the south will also be altered to lower the top of grate elevation slightly. The project designer submitted the plan to DOT and received DOT approval for the plan.</p>						

**Items Included in Description of Proposed Extra Work**

Item No.	Description	Unit of Measure	Original Bid Quantity	Authorized To Date Quantity	Added Quantity	Price Type	Unit Price
950.09	A - INSTALL NEW DRAINAGE STRUCTURE	DS	0.00	0.00	137,361.35	Agreed Price	\$1.00

☐ AEW has a value less than \$50,000    ☐ AEW has a value between \$50,000 & \$100,000    ☒ AEW has a value greater than \$100,000

Send a copy back to the EIC and the CO Specialist

Estimated AEW Total : \$137,361.35

**RECOMMENDED:**

Resident Engineer

Peter Teliska, P.E.  
Peter Teliska (Aug 22, 2023 14:42 EDT)

Date: Aug 22, 2023

**APPROVED:**

Responsible Local Official

Date: \_\_\_\_\_

## **ITEM 950.09 – A – INSTALL NEW DRAINAGE STRUCTURE**

### **DESCRIPTION**

Under this item, the contractor shall install a new traverse drainage interceptor, HDPE pipe and modify an existing drainage structure and repair and restore the roadway corridor, including installation of new asphalt paving, curbing, and sidewalk.

### **MATERIALS**

Materials shall be as specified on the approved design drawings and as follows:

Transverse Drainage Interceptor shall be as specified in 604-2.02 of the Standard Specifications

Altering drainage structures shall be as specified in 604-2.05 of the Standard Specifications

HDPE pipe shall be as specified in 706-12 of the Standard Specifications

Class C concrete shall be as specified in 502-2.01 of the Standard Specifications

Concrete Sidewalk shall be as specified in 608-2.01 of the Standard Specifications

Concrete Curb shall be as specified in 609-2.02 of the Standard Specifications

Subbase shall be as specified in 733-04 of the Standard Specifications

Asphalt pavement shall be as specified in 402-2 of the Standard Specifications

All steel components permanently incorporated into the work shall comply with section 106-11 Buy America.

### **CONSTRUCTION DETAILS**

The contractor shall mobilize and set up WZTC for the work. The contractor shall layout the new drainage installation in accordance with the design plan. The contractor shall remove curb and sidewalk and excavate the roadway as needed for the work. The existing drainage structure shall be altered, and the new drainage structure and pipe shall be installed in accordance with the design plan and sections 603-3 and 604-3 of the Standard Specifications. Backfill shall be Class C concrete to 1.5 inches below finished pavement elevation. Curb and Sidewalk shall be restored in accordance with sections 608-3 and 609-3 of the Standard Specifications. Pavement grades shall be checked and additional pavement milling shall be done to allow a full 1.5 inch thick top course asphalt pavement and provide positive drainage. Paving work shall be done in accordance with section 402-3 of the Standard Specifications.

### **METHOD OF MEASUREMENT**

Payment will be measured on a Dollar Cents basis.

### **BASIS OF PAYMENT**

The price bid shall include the cost of furnishing all labor, equipment, and materials necessary to install the new drainage system and restore the roadway in accordance with the design plans.



CONSTRUCTION CORP.

August 22, 2023

Peter Teliska  
HVEA  
560 Route 52  
Suite 201  
Beacon, NY 12508

**RE: 8761.57; Route 32 Lake Street Bridge Rehab – Agreed Price Item 950.09 A – Install New Drainage Structure**

Dear Mr. Teliska,

McNamee Construction Corp agrees with the following item price:

Item 950.09 A – Install New Drainage Structure

- Unit Price: \$1.00 D.C.
  - o Quantity: 137,361.35 D.C.

Please proceed with processing a change order for this item.

Thank you,

A handwritten signature in blue ink, appearing to be "DZ" or "DM", written in a cursive style.

Dan MacNamee  
McNamee Construction Corp.

Reset Form

# NEW YORK STATE DEPARTMENT OF TRANSPORTATION

## COST ANALYSIS WORKSHEET (9/22)

Print Form

Contract D# 040218

Change Order # 7

Field Change Payment # NA

CO Item Qty 137,361.35

**Section 1 - Existing Contract Item**

Use the Item Analysis Report and CONR 22 Composite Report in BI to fill out the below information. Follow Added Work Cost Analysis Decision Flow Chart.

Item Spec No

Unit Bid Price

Bid Qty

Current Contract Qty

Major Item ☐Minor Item ☐

75% Threshold

Renegotiation Threshold

125% Threshold

(200% and \$5,000 over original contract amount)

High Bid Item (over 125%)

Yes ☐No ☐**Section 2 - New Contract Item or Continuation of Existing Item**

New Item Spec No 950.09

Renegotiated Qty

Contractor Quoted Unit Price

\$137,361.35

**Method Chosen:**

- ☐ Original Bid Price Acceptable?
- ☐ Contractor agrees to work at the Original Contract Bid Price adjusted for documented changes in material costs, equipment rates, mobilization, and/or site conditions, and bid price is reasonable compensation for the quantity of added work: include letter from contractor, and supporting documentation for adjustments (need price analysis) on CO Header

- ☐ Weighted Average Price (WAP) Comparison (must have at least 3 contracts)

Pay Item Catalog Date Range

to

PIC Qty Range

to

N/A ☐

Regional WAP

Statewide WAP

Printout of PIC w/ Qty Range, dates, prices attached? ☐

- ☐ Comparison to Average of 3 Lowest Bidders (on contract, not item)

Average Price

\$0.00

Bidder 1

Bidder 2

Bidder 3

Printout of 3 Lowest Bidders on the Contract attached? ☐

- ☒ Price Analysis

☒ MURK 26/27 Price Analysis Worksheet attached and all documentation attached?

- ☐ Force Account Work (FAW)

☐ FE (Force Estimate) Estimate of Labor, Materials, and Equipment work up included?

☐ FAW (Final) Included with all MURK forms and documentation attached?

Project Conditions/Variance Explanation attached? ☐

Signature

*Peter Teliska, P.E.*  
Peter Teliska | Aug 22, 2023 14:42 EDT

Date

Aug 22, 2023



**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**  
**Agreed Price Worksheet - Prime Contractor**

Page 1/2

Contract: 8761.57 Item No.: 950.09 Quantity: 137,361.35 Units: DC

Item Description : **A - Install New Drainage Structure**

**(A) LABOR**

(A) LABOR		Reg Hours	Wage Rate	Cost	Fringe Hours	Fringe Rate	Cost
L-1	Trade Laborer	480.00	\$ 44.80	\$21,504.00	480.00	\$ 32.28	\$15,494.40
L-2	Operator	80.00	\$ 61.63	\$ 4,930.40	80.00	\$ 33.50	\$ 2,680.00
L-3	Teamster	150.00	\$ 33.69	\$ 5,053.50	150.00	\$ 44.59	\$ 6,688.50

Wages	\$31,487.90	Fringes	\$24,862.90
-------	-------------	---------	-------------

If Fringes are paid directly to employee  
via cash or check, Enter value here:

**\$ 0.00**

**Worker's Compensation Rate (%):**

16.29 %

Total of Wages and Fringes:	\$56,350.80
-----------------------------	-------------

<b>Workers Compensation:</b>	<b>\$ 5,129.38</b>
------------------------------	--------------------

Standard Labor Markup:	\$ 3,935.99
------------------------	-------------

<b>Fringe Benefit Markup:</b>	<b>\$ 0.00</b>
-------------------------------	----------------

<b>Labor Total:</b>	<b>\$65,416.17</b>
---------------------	--------------------

**(B) MATERIALS**

	Description	Units	# of Units	Cost/Unit	Cost	Description	Units	# of Units	Cost/Unit	Cost	
M-1	ESP Pipe	LF	40.00	\$11.94	\$477.60	12. F1 Top Course	Tons	33.00	\$92.00	\$3,036.00	M-5
M-2	AR Concrete	EA	1.00	\$2,899.75	\$2,899.75	Class C Concrete	CY	5.00	\$151.00	\$755.00	M-6
M-3	2x4 Forms	EA	26.00	\$6.98	\$181.48	Item 4	TON	6.00	\$15.10	\$90.60	M-7
M-4	Class D Concrete	CY	7.00	\$173.45	\$1,214.15						

<b>Materials Total:</b>	<b>\$8,654.58</b>
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### (C) EQUIPMENT

(C) EQUIPMENT	Description	Hours	FHWA Rate	Cost	Description	Hours	FHWA Rate	Cost
E-1	Pickup Truck	72.00	\$47.98	\$3,454.56	Excavator	24.00	\$160.72	\$3,857.28
E-2	Lowboy Trailer	116.00	\$42.13	\$4,887.08	Skid Steer Loader	8.00	\$53.23	\$425.84
E-3	Sweeper Truck	8.00	\$242.17	\$1,937.36	Water Truck	8.00	\$52.40	\$419.20
E-4	Paver	8.00	\$384.11	\$3,072.88	FROM PAGE 2	1.00	\$10,275.16	\$10,275.16

<b>Equipment Total:</b>	<b>\$28,329.36</b>
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**(D) SERVICES**

(a) Subcontractor				(b) Supplier			
Description / Type	# of Units	Cost / Unit	Cost	Description / Type	# of Units	Cost / Unit	Cost
<b>Milling Rental - A&amp;J</b>	<b>1</b>	<b>\$ 7,650.00</b>	<b>\$ 7,650.00</b>				

<b>Services Total:</b>	<b>\$ 7,650.00</b>
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**(E) OVERHEAD & PROFIT**

(E) OVERHEAD & PROFIT		OH & Profit %	Cost
Labor, Materials, & Equipment Total :	\$ 102,400.11	20.00	\$ 20,480.02
Services:	\$ 7,650.00	5.00	\$ 382.50

<b>Overhead &amp; Profit Total:</b>	<b>\$20,862.52</b>
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## (F) INSURANCE

Enter rate here if based on payroll

### Payroll Based Cost Basis

Enter rate here if based on sales

### Sales Based Cost Basis

20.48 %

**\$ 31,487.90**

**\$ 0.00**

**Insurance Total:** \$ 6,448.72

**Item Total: \$ 137,361.35**

Unit Price: \$ 1.00 per DC

**Contractor's Rep Name** Daniel F. MacNamee III, Pres.

Signature \_\_\_\_\_

8/15/23  
Date

**Peter Teliska**  
Engineer-In-Charge's Name

Peter Teliska, P.E.  
Peter Teliska (Aug 22, 2023 14:42 EDT)  
Signature

Aug 22, 2023  
Date

NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
Agreed Price Worksheet - Prime ContractorContract: **8761.57** Item No.: **950.09** Quantity: **1.00** Units: **DC**  
Item Description: **A - Install New Drainage Structure**

Page 2/2

## (A) LABOR

Trade	Reg Hours	Wage Rate	Cost	Fringe Hours	Fringe Rate	Cost

Wages

Fringes

If Fringes are paid directly to employee  
via cash or check, Enter value here:

\$ 0.00

Worker's Compensation Rate (%):

16.51 %

Total of Wages and Fringes:

Workers Compensation: \$ 0.00

Standard Labor Markup: \$ 0.00

Fringe Benefit Markup: \$ 0.00

Labor Total: \$ 0.00

(The Contractor shall submit an insurance policy declaration / rate page from its insurer to  
validate the Workers Comp insurance rate based on an EMR of 1.0.)

## (B) MATERIALS

Description	Units	# of Units	Cost/Unit	Cost	Description	Units	# of Units	Cost/Unit	Cost

Materials Total:

## (C) EQUIPMENT

Description	Hours	FHWA Rate	Cost	Description	Hours	FHWA Rate	Cost
E-8 Roller	8.00	\$58.83	\$470.64	Sign Stand (FHWA	60.00	\$2.10	\$126.00
E-9 Dump Truck	4.00	\$94.18	\$376.72	Type III Barricad	300.00	\$2.50	\$750.00
E-10 Road Saw	8.00	\$23.55	\$188.40	Construction Signs	10.00	\$8.10	\$81.00
E-11 Tractor	116.00	\$71.40	\$8,282.40				

Equipment Total:

\$10,275.16

## (D) SERVICES

Description / Type	# of Units	Cost / Unit	Cost	Description / Type	# of Units	Cost / Unit	Cost

Services Total:

## (E) OVERHEAD &amp; PROFIT

	OH & Profit %	Cost
Labor, Materials, & Equipment Total:	\$ 10,275.16	\$ 0.00
Services:		\$ 0.00

Overhead &amp; Profit Total:

\$ 0.00

## (F) INSURANCE

Enter rate here if  
based on payroll

Payroll Based Cost Basis

17.87 %

\$ 0.00

Enter rate here if  
based on sales

Sales Based Cost Basis

\$ 0.00

Insurance Total:

\$ 0.00

Item Total: \$ 10,275.16

Unit Price: \$ 10,275.16 per DC

Daniel F. MacNamee III  
Contractor's Rep Name  
President

Signature

Date

8/15/23

Peter Teliska

Engineer-in-Charge's Name

Peter Teliska, P.E.  
SignatureAug 22, 2023  
Date

(A) LABOR

ITEM 950.09

CO-07 NE CURB PONDING

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation

## PARTIAL COUNTIES

Delaware: Only the Townships of Andes, Bovina, Middletown, Roxbury, Franklin, Hamden, Stamford, Delhi, Kortright, Harpersfield, Meredith, and Davenport.

Greene: Only the Township of Catskill.

## WAGES

CLASS 1: Flagperson, gateperson.

CLASS 2: General laborer, chuck tender, nipper, powder carrier, magazine tender, concrete men, vibrator men, mason tender, mortar men, traffic control, custodial work, temporary heat, pump men, pit men, dump men, asphalt men, joint setter, signalman, pipe men, riprap, dry stone layers, jack hammer, bush hammer, pavement breaker, men on mulching & seeding machines, all seeding & sod laying, landscape work, walk behind self-propelled power saws, grinder, walk behind rollers and tampers of all types, burner men, filling and wiring of baskets for gabion walls, chain saw operator, railroad track laborers, power buggy, plaster & acoustic pump, power brush cutter, retention liners, walk behind surface planer, chipping hammer, manhole, catch basin or inlet installing, mortar mixer, laser men. \*Micropaving and crack sealing.

CLASS 3: Asbestos, toxic, bio remediation and phyto-remediation, lead or hazardous materials abatement when certification or license is required, Drilling Equipment Only Where a Separate Air Compressor Unit Supplies Power.

CLASS 4: Asphalt screedman, blaster, all laborers involved in pipejacking and boring operations not exceeding more than 10 feet into pipe, boring or drilled area.

WAGES: (per hour)	07/01/2023	06/01/2024
Class 1	\$ 40.80	Additional \$ 2.65**
Class 2	44.80	2.35**
Class 3	49.40	2.45**
Class 4	54.70	2.20**

\* When laborers are performing micro paving, crack sealing or slurry application when not part of asphalt prep operations laborers shall receive an additional \$2.50 per hour over rate.

\*\*To be allocated at a later date.

SHIFT DIFFERENTIAL: Night work and irregular shift require 20% increase on wages for all Government mandated night and irregular shift work.

NOTE - The 'Employer Registration' (30.1) use of a '4 Day/10 Hour Work schedules' will no longer be accepted or processed. All registered projects prior to June 30, 2023 will expire within the granted time frame.

For Pre-Registered Projects Four (4), Ten (10) hour days may be worked at straight time during a week, Monday thru Thursday. Friday may be used as a make-up day. Tuesday thru Friday may be worked with no make-up day. For further clarification contact your local Bureau Office.

## SUPPLEMENTAL BENEFITS

Per hour:

Journeyman	\$ 32.28
Shift	37.96

## OVERTIME PAY

See (B, E, P, \*R, \*\*S, \*\*\*T, X) on OVERTIME PAGE

\*For Mon-Fri Holidays, Double Benefits to be paid for all hours worked.

\*\*For Saturday Holidays, Two and one Half Benefits for all hours worked.

\*\*\*For Sunday Holidays, Triple Benefits for all hours worked.

## HOLIDAY

Paid: See (5, 6, 15, 25) on HOLIDAY PAGE

Overtime: See (5, 6, 15, 25) on HOLIDAY PAGE

To be eligible for a paid holiday, an employee must work at least two (2) days in the calendar week or payroll week in which the holiday falls.

## REGISTERED APPRENTICES

(1000) hour terms at the following wages.

	07/01/2023	06/01/2024
1st term	\$ 27.05	\$ 28.05
2nd term	31.25	32.35
3rd term	35.40	36.70
4th term	39.55	41.00

Supplemental Benefits per hour:

All Terms Regular	\$ 28.33	\$ 29.23
All Terms Shift Rate	33.08	TBD

Pointer/Caulker 46.39

Additional \$1.00 per hour for power saw work  
Additional \$0.50 per hour for swing scaffold or staging work

SHIFT WORK: When shift work or an irregular workday is mandated or required by state, federal, county, local or other governmental contracts, the following rates apply:

Irregular workday requires 15% premium  
Second shift an additional 15% of wage plus benefits to be paid  
Third shift an additional 25% of wage plus benefits to be paid

### SUPPLEMENTAL BENEFITS

Per hour:

Journeyman \$ 37.95

### OVERTIME PAY

Cement Mason See ( B, E, Q, W )  
All Others See ( B, E, Q, )

### HOLIDAY

Paid: See (5, 6, 16, 25) on HOLIDAY PAGE  
Overtime: See (5, 6, 16, 25) on HOLIDAY PAGE

- Whenever any of the above holidays fall on Sunday, they will be observed on Monday. Whenever any of the above holidays fall on Saturday, they will be observed on Friday.

- Supplemental Benefits are not paid for paid Holiday

- If Holiday is worked, Supplemental Benefits are paid for hours worked.

- Whenever an Employee works within three (3) calendar days before a holiday, the Employee shall be paid for the Holiday.

### REGISTERED APPRENTICES

Wages per hour:

750 hour terms at the following percentage of Journeyman's wage

1st	2nd	3rd	4th	5th	6th	7th	8th
50%	55%	60%	65%	70%	75%	80%	85%

Supplemental Benefits per hour

750 hour terms at the following percentage of journeyman supplements

1st	2nd	3rd	4th	5th	6th	7th	8th
50%	55%	60%	65%	70%	75%	80%	85%

Apprentices indentured before June 1st, 2011 receive full journeyman benefits

11-5WP-H/H

### Operating Engineer - Building / Heavy&Highway

07/01/2023

**JOB DESCRIPTION** Operating Engineer - Building / Heavy&Highway

**DISTRICT** 11

### ENTIRE COUNTIES

Delaware, Orange, Rockland, Sullivan, Ulster

### WAGES

CLASS A5: Cranes, Derricks and Pile Drivers 100 tons or more and Tower Cranes, with 140ft boom and over.

CLASS A4: Cranes, Derricks and Pile Drivers 100 tons or more and Tower Cranes, with 100ft to 139ft boom.

CLASS A3: Cranes, Derricks and Pile Drivers 100 tons or more and Tower Cranes with a boom under 100ft.

CLASS A2: Cranes, Derricks and Pile Drivers less than 100 tons with 140ft boom and over.

CLASS A1: Cranes, Derricks and Pile Drivers less than 100 tons with a 100ft to 139ft boom.

CLASS A: Cranes, Derricks and Pile Drivers less than 100 tons with a boom under 100ft.; Autograde Combination Subgrader, Base Material Spreader and Base Trimmer (CMI and Similar Types); Autograde Pavement profiler (CMI and Similar Types); Autograde Pavement Profiler and Recycle type (CMI and Similar Type); Autograde Placer-Trimmer-Spreader Comb. (CMI & Similar types); Autograde Slipform Paver (CMI & Similar Types); Central Power Plants (all types); Chief of Party; Concrete Paving Machines; Drill (Bauer, AMI and Similar Types); Drillmaster, Quarrymaster (Down the Hole Drill), Rotary Drill, Self-Propelled Hydraulic Drill, Self-Powered Drill; Draglines; Elevator Graders; Excavator; Front End Loaders (5 yds. and over); Gradalls; Grader-Rago; Helicopters (Co-Pilot); Helicopters (Communications Engineer);Juntann Pile Driver; Locomotive (Large); Mucking Machines; Pavement & Concrete Breaker, i.e., Superhammer & Hoe Ram; Roadway Surface Grinder; Prentice Truck; Scooper (Loader and Shovel); Shovels; Tree Chopper with Boom; Trench Machines (Cable Plow); Tunnel Boring Machine; Vacuum Truck

CLASS B: "A" Frame; Backhoe (Combination); Boom Attachment on Loaders (Rate based on size of Bucket) not applicable to Pipehook; Boring and Drilling Machines; Brush Chopper, Shredder and Tree Shredder, Tree Shearer; Bulldozer(Fine Grade); Cableways; Carryalls; Concrete Pump; Concrete Pumping System, Pump Concrete and Similar Types; Conveyors (125 ft. and over); Drill Doctor (duties incl. Dust Collector Maintenance); Front End Loaders (2 yds. but less than 5 yds.); Graders (Finish); Groove Cutting Machine (Ride on Type); Heater Planer; Hoists (all type Hoists, shall also include Steam, Gas, Diesel, Electric, Air Hydraulic, Single and Double Drum, Concrete, Brick Shaft Caisson, Snorkel Roof, and/or any other Similar Type Hoisting Machines, portable or stationary, except Chicago Boom Type); Long Boom Rate to be applied if Hoist is "Outside Material Tower Hoist"\*\*\*; Hydraulic Cranes-10 tons and under; Hydraulic Dredge; Hydro-Axe; Hydro Blaster; Jacks-Screw Air Hydraulic Power Operated Unit or Console Type (not hand Jack or Pile Load Test Type); Log Skidder; Pans; Pavers (all) concrete; Plate and Frame Filter Press; Pumpcrete Machines, Squeezeconcrete & Concrete Pumping (regardless of size); Scrapers; Side Booms; "Straddle"Carrier-Ross and similar types; Winch Trucks (Hoisting); Whip Hammer

CLASS C: Asphalt Curbing Machine; Asphalt Plant Engineer; Asphalt Spreader; Autograde Tube Finisher and Texturing Machine (CMI & Similar types); Autograde Curecrete Machine (CMI & Similar Types); Autograde Curb Trimmer & Sidewalk, Shoulder, Slipform (CMI & Similar Types); Bar Bending Machines (Power); Barrier Moving Machine-Zipper; Batchers, Batching Plant and Crusher on Site; Belt Conveyor Systems; Boom Type Skimmer Machines; Bridge Deck Finisher; Bulldozer(except fine grade); Car Dumpers (Railroad); Compressor and Blower Type Units (used independently or mounted on dual purpose Trucks, on Job Site or in conjunction with jobsite, in Loading and Unloading of Concrete, Cement, Fly Ash, Instantcrete, or Similar Type Materials); Compressors (2 or 3 in Battery); Concrete Finishing Machines; Concrete cleaning decontamination machine operator; Concrete Saws and Cutters (Ride-on type); Concrete Spreaders (Hetzl, Rexomatic and Similar Types); Concrete Vibrators; Conveyors (under 125 feet); Crushing Machines; Directional Boring Machines; Ditching Machine-small (Ditch-witch, Vermeer, or Similar type); Dope Pots (Mechanical with or without pump); Dumpsters; Elevator; Fireman; Fork Lifts (Economobile, Lull and Similar Types of Equipment); Front End Loaders (1 yd. and over but under 2 yds.); Generators (2 or 3 in Battery); Giraffe Grinders; Grout Pump; Gunnite Machines (excluding nozzle); Hammer Vibrator (in conjunction with Generator); Heavy Equipment Robotics Operator Technician; Hoists-Roof, Tugger, Aerial Platform Hoist & House Cars; Hoppers; Hopper Doors (power operated); Hydro Blaster; Hydraulic Jacking Trailer; Ladders (motorized); Laddervator; Locomotive-dinky type; Maintenance -Utility Man; Master Environmental Maintenance Technician; Mechanics; Mixers (Excepting Paving Mixers); Motor Patrols; Pavement Breakers (small self - propelled ride on type-also maintains compressor hydraulic unit); Pavement Breaker-truck mounted; Pipe Bending Machine (Power); Pitch Pump; Plaster Pump (regardless of size); Post Hole Digger (Post Pounder & Auger); Pot Hole Killer Trucks or equivalent; Rod Bending Machines (Power); Roller-Black Top; Scales (Power); Seaman pulverizing mixer; Shoulder widener; Silos; Skidsteer (all attachments); Skimmer Machines (boom-type); Steel Cutting Machine (service & maintain); Tam Rock Drill; Tractors; Transfer Machine; Captain (Power Boats); Tug Master (powerboats); Ultra High Pressure Waterjet Cutting Tool System operator/maintenance technician; Vacuum Blasting Machine; Vibrating Plants (used in conjunction with unloading); Welder and Repair Mechanics

CLASS D: Brooms and Sweepers; Chippers; Compressor (single); Concrete Spreaders (small type); Conveyor Loaders (not including Elevator Graders); Engines-large diesel (1620 HP) and Staging Pump; Farm Tractors; Fertilizing Equipment (Operation & Maintenance of); Fine Grade Machine (small type); Form Line Graders (small type); Front End Loader (under 1 yard); Generator (single); Grease, Gas, Fuel and Oil supply trucks; Heaters (Nelson or other type incl. Propane, Natural Gas or Flowtype Units); Lights, Portable Generating Light Plants; Mixers (Concrete, small); Mulching Equipment (Operation and Maintenance of); Pumps (2 or less than 4 inch suction); Pumps (4 inch suction and over incl. submersible pumps); Pumps (Diesel Engine and Hydraulic-immaterial of power); Road Finishing Machines (small type); Rollers-grade, fill or stone base; Seeding Equip. (Operation and Maintenance of); Sprinkler & Water Pump Trucks (used on jobsite or in conjunction with jobsite); Steam Jennies and Boilers-irrespective of use; Stone Spreader; Tamping Machines, Vibrating Ride-on; Temporary Heating Plant (Nelson or other type, incl. Propane, Natural Gas or Flow Type Units); Water & Sprinkler Trucks (used on or in conjunction with jobsite); Welding Machines (Gas, Diesel, and/or Electric Converters of any type, single, two, or three in a battery); Wellpoint Systems (including installation by Bull Gang and Maintenance of)

CLASS E: Assistant Engineer/Oiler; Drillers Helper; Maintenance Apprentice (Deck Hand); Maintenance Apprentice (Oiler); Mechanics' Helper; Tire Repair and Maintenance; Transit/Instrument Man

WAGES:(per hour)

	07/01/2023	07/01/2024 Additional	07/01/2025 Additional
Class A5	\$ 65.72 plus 4.00*	\$ 2.75***	\$ 2.50***
Class A4	64.72 plus 4.00*	2.75***	2.50***
Class A3	63.72 plus 4.00*	2.75***	2.50***
Class A2	61.22 plus 4.00*	2.75***	2.50***
Class A1	60.22 plus 4.00*	2.75***	2.50***
Class A	59.22 plus 4.00*	2.75***	2.50***
Class B	57.63 plus 4.00*	2.75***	2.50***
Class C	55.72 plus 4.00*	2.75***	2.50***
Class D	54.09 plus 4.00*	2.75***	2.50***
Class E	50.38 plus 4.00*	2.75***	2.50***
Safety Engineer	59.96 plus 4.00*	2.75***	2.50***
Helicopter:			
Pilot/Engineer	61.04 plus 4.00*	2.75***	2.50***
Co Pilot	59.22 plus 4.00*	2.75***	2.50***
Communications Engineer	59.22 plus 4.00*	2.75***	2.50***



Surveying:

Chief of Party	59.22 plus 4.00*	2.75***	2.50***
Transit/Instrument Man	50.38 plus 4.00*	2.75***	2.50***
Rod/Chainman	49.80 plus 4.00*	2.75***	2.50***
Additional \$0.75 for Survey work Tunnel under compressed air.			
Additional \$0.50 for Hydrographic work.			

\*The \$4.00 is added to the Class Base Wage for all hours worked. Additionally, the \$4.00 is subject to the V-Code listed on the OVERTIME CODE Sheet.

\*\*Outside Material Hoist (Class B) receives additional \$ 1.00 per hour on 110 feet up to 199 feet total height, \$ 2.00 per hour on 200 feet and over total height.

\*\*\*To be allocated at a later date

- SHIFT WORK: On all Government mandated irregular or off shift work, an additional 15% on straight time hours.

- On HAZARDOUS WASTE REMOVAL or ASBESTOS REMOVAL work, or any state or federally DESIGNATED HAZARDOUS WASTE SITE:

For projects bid on or before April 1, 2020...Where the Operating Engineer is in direct contact with hazardous material and when personal protective equipment is required for respiratory, skin and eye protection, the Operating Engineer shall receive the hourly wage plus an additional twenty percent (20%) of that wage for the entire shift.

For projects bid after April 1, 2020...On hazardous waste removal work of any kind, including state or federally designated site where the operating engineer is required to wear level A, B, or C personal protection the operating engineer shall receive an hourly wage rate of his regular hourly wage plus \$5.00 per hour. An operating engineer working at a hazardous waste removal project or site at a task requiring hazardous waste related certification, but who is not working in a zone requiring level A, B, or C personal protection, shall receive an hourly wage rate of his regular rate plus \$ 1.00 per hour. This shall also apply to sites where the level D personal protection is required.

**SUPPLEMENTAL BENEFITS**

Per hour:

Journeyman

\$ 33.50

SHIFT WORK: On all Government mandated irregular or off shift work, an additional 15% on straight time hours.

**OVERTIME PAY**

See (B, E, Q, \*V, X) on OVERTIME PAGE

\*15% premium is also required on shift work benefits

**HOLIDAY**

Paid: See (5, 6, 10, 13, 15) on HOLIDAY PAGE

Overtime: See (5, 6, 10, 13, 15) on HOLIDAY PAGE

Holidays falling on Sunday will be celebrated on Monday.

**REGISTERED APPRENTICES**

(1) year terms at the following percentage of journeyman's wage:

1st year	60% of Class base wage plus \$4.00*
2nd year	70% of Class base wage plus \$4.00*
3rd year	80% of Class base wage plus \$4.00*
4th year	90% of Class base wage plus \$4.00*

\*The \$4.00 is added to the Class Base Wage for all hours worked. Additionally, the \$4.00 is subject to the V-Code listed on the OVERTIME CODE Sheet.

Supplemental Benefits per hour:

Apprentices	\$ 33.50
-------------	----------

11-825

**Operating Engineer - Marine Dredging**

**07/01/2023**

**JOB DESCRIPTION** Operating Engineer - Marine Dredging

**DISTRICT 4**

**ENTIRE COUNTIES**

Albany, Bronx, Cayuga, Clinton, Columbia, Dutchess, Essex, Franklin, Greene, Jefferson, Kings, Monroe, Nassau, New York, Orange, Oswego, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Suffolk, Ulster, Washington, Wayne, Westchester

**WAGES**

Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester

## WAGES

Per hour 07/01/2023

Sprinkler \$ 50.86  
Fitter

## SUPPLEMENTAL BENEFITS

Per hour

Journey person \$ 30.19

## OVERTIME PAY

See (B, E, Q) on OVERTIME PAGE

## HOLIDAY

Paid: See (1) on HOLIDAY PAGE

Overtime: See (5, 6) on HOLIDAY PAGE

Note: When a holiday falls on Sunday, the following Monday shall be considered a holiday and all work performed on either day shall be at the double time rate. When a holiday falls on Saturday, the preceding Friday shall be considered a holiday and all work performed on either day shall be at the double time rate.

## REGISTERED APPRENTICES

Wages per hour

One Half Year terms at the following wage.

1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
\$ 24.77	\$ 27.53	\$ 30.03	\$ 32.78	\$ 35.53	\$ 38.29	\$ 41.04	\$ 43.79	\$ 46.54	\$ 49.30

Supplemental Benefits per hour

1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
\$ 8.74	\$ 8.74	\$ 20.32	\$ 20.32	\$ 20.57	\$ 20.57	\$ 20.57	\$ 20.57	\$ 20.57	\$ 20.57
									1-669.2

## Teamster - Building / Heavy&Highway

07/01/2023

**JOB DESCRIPTION** Teamster - Building / Heavy&Highway

**DISTRICT** 11

## ENTIRE COUNTIES

Dutchess, Orange, Rockland, Sullivan, Ulster

## WAGES

GROUP 1: LeTourneau Tractors, Double Barrel Euclids, Athney Wagons and similar equipment (except when hooked to scrapers), I-Beam and Pole Trailers, Tire Trucks, Tractor and Trailers with 5 axles and over, Articulated Back Dumps and Road Oil Distributors, Articulated Water Trucks and Fuel Trucks/Trailers, positions requiring a HAZMAT CDL endorsement.

GROUP 1A: Drivers on detachable Gooseneck Low Bed Trailers rated over 35 tons.

GROUP 2: All equipment 25 yards and up to and including 30 yard bodies and cable Dump Trailers and Powder and Dynamite Trucks.

GROUP 3: All Equipment up to and including 24-yard bodies, Mixer Trucks, Dump Crete Trucks and similar types of equipment, Fuel Trucks, Batch Trucks and all other Tractor Trailers, Hi-Rail Truck.

GROUP 4: Tri-Axles, Ten Wheelers, Grease Trucks, Tillerman, Pattern Trucks, Attenuator Trucks, Water Trucks, Bus.

GROUP 5: Straight Trucks.

GROUP 6: Pick-up Trucks for hauling materials and parts, and Escort Man over-the-road.

WAGES: (per hour) 07/01/2023

GROUP 1	\$ 34.58
GROUP 1A	35.72
GROUP 2	34.02
GROUP 3	33.80
GROUP 4	33.69
GROUP 5	33.57
GROUP 6	33.57

NOTE ADDITIONAL PREMIUMS:



- On projects requiring an irregular shift a premium of 10% will be paid on wages. The premium will be paid for off-shift or irregular shift work when mandated by Governmental Agency.
- Employees engaged in hazardous/toxic waste removal, on a State or Federally designated hazardous/toxic waste site, where the employee comes in contact with hazardous/toxic waste material and when personal protective equipment is required for respiratory, skin, or eye protection, the employee shall receive an additional 20% premium above the hourly wage.

NOTE - The 'Employer Registration' (30.1) use of a '4 Day/10 Hour Work schedules' will no longer be accepted or processed. All registered projects prior to June 30,2023 will expire within the granted time frame.

For Pre-Registered Projects Four (4), Ten (10) hour days may be worked at straight time during a week, Monday thru Thursday. Friday may be used as a make-up day. Tuesday thru Friday may be worked with no make-up day. For further clarification contact your local Bureau Office.

#### SUPPLEMENTAL BENEFITS

Per hour:

First 40 hours

\$ 44.59

Over 40 hours

36.99

#### OVERTIME PAY

See (\*B, E, \*\*E2, \*\*\*P, X) on OVERTIME PAGE

\*Holidays worked Monday through Friday receive Double Time (2x) after 8 hours.

\*\*Makeup day limited to the employees who were working on the site that week.

\*\*\*Sunday Holidays are paid at a rate of double time and one half (2.5x) for all hours worked.

#### HOLIDAY

Paid: See (5, 6, 15, 25) on HOLIDAY PAGE

Overtime: See (\*1) on HOLIDAY PAGE

- Any employee working two (2) days in any calendar week during which a holiday occurs shall receive a days pay for each holiday occurring during said week. This provision shall also apply if a holiday falls on a Saturday or Sunday.

\*See OVERTIME PAY section for when additional premium is applicable on Holiday hours worked.

11-445B/HH

### Teamster - Delivery - Building / Heavy&Highway

07/01/2023

**JOB DESCRIPTION** Teamster - Delivery - Building / Heavy&Highway

**DISTRICT** 11

#### ENTIRE COUNTIES

Dutchess, Orange, Rockland, Sullivan, Ulster

#### WAGES

Group 1 Tractor Trailer Drivers

Group 2 Tri- Axle

Wages: 07/01/2023

Group 1 \$ 33.70

Group 2 29.70

Hazardous/Toxic Waste Removal additional 20% when personal protective equipment is required.

#### SUPPLEMENTAL BENEFITS

Per hour paid:

First 40 hours \$ 32.30

Over 40 hours 0.00

#### OVERTIME PAY

See (B, E, Q, X) on OVERTIME PAGE

#### HOLIDAY

Paid: See (5, 13, 15, 16, 20, 22, 25, 26) on HOLIDAY PAGE

Overtime: See (5, 13, 15, 16, 20, 22, 25, 26) on HOLIDAY PAGE

- Employee must work either the scheduled day of work before or the scheduled day of work after the holiday in the workweek.

- Any employee working one (1) day in the calendar week during which a holiday occurs shall receive a day's pay for each holiday occurring during said week. This provision shall also apply if a holiday falls on a Saturday.

- When any of the recognized holidays occur on Sunday and are celebrated any day before or after the holiday Sunday, such days shall be considered as the holiday and paid for as such.

11-445 B/HH Delivery

### Welder

07/01/2023

**JOB DESCRIPTION** Welder

**DISTRICT** 1

#### ENTIRE COUNTIES

(B) MATERIALS

ITEM 950.09

CO-07 NE CURB PONDING

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation



Expanded Supply Products, Inc.

3330 Route 9

Cold Spring, NY 10516

(845) 265-3771

FAX (845) 265-3772 or 3729

Web Site: <http://ExpandedSupplyProducts.com>E-mail: [jesse.ESP@outlook.com](mailto:jesse.ESP@outlook.com)

Quote Date: 6/15/2023

Inq. Date: 6/15/2023

Quote #: J061523-1

Salesperson: Jesse

Page #: 1 of 1

Take off Source: email  
project ID #

## Quotation

Quoted To:  
McNamee Const  
Shirley

Ship To:  
Newburgh

We are pleased to submit the following quotation in accordance with your request.

<u>Est. Ship Date</u>	<u>Shipped Via</u>	<u>FOB</u>	<u>Terms</u>
		Cold Spring	
<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Total</u>
40 If	10"x20" ADS ASTM N-12 Ultra bell end F2648	\$11.94	If \$ 477.60
<b><u>add, if you want delivery:</u></b>			
ea	Orange County delivery charge (per load from ESP's yard)	\$185.00	ea
ea	fuel surcharge (per load from ESP's yard)	\$50.00	ea

PVC/HDPE/CMP pipe and/or fittings pricing based on current costs with immediate order and delivery ASAP thereafter; actual selling prices to be determined at time of order based on costs at that time  
due to the highly volatile situation in the world oil market, prices for oil based products, i.e. PVC, HDPE, CMP, and related fittings are based on current costs as of day of quote; pricing subject to change without notice and/or obligation  
The information shown on ESP's quotation is based on our interpretation of the information supplied to us; it is the buyer's responsibility to verify descriptions, quantities, sizes and/or of actual materials needed to do the job. ESP accepts no responsibility for reliance on these quantities by the Buyer. It is Buyer's responsibility to insure that materials quoted are acceptable for the application they are planned for and acceptable to the local municipalities.

If you do not have an ESP credit account, you will be expected to pay for your order on delivery. Some items require deposits or prepayment; you will be advised which ones when ordering.

ESP's Terms & Conditions apply and are available by fax or mail upon request.

Quantities are approximate, changes could alter unit prices.

Estimated freight based on above quantities shipping in one complete shipment.

Pricing shown is subject to change at any time without notice and or obligation, however, ESP will try its best to maintain the pricing shown for a minimum of 30 days.

Accepted by: \_\_\_\_\_

Date: \_\_\_\_\_

Please sign and return to enter your order. Thank you!!



A&R Concrete Products, LLC  
 PO Box 372  
 Salisbury Mills, NY 12577  
 Phone: (845) 562-0640  
 Fax: (845) 562-1518

**Quote Number: 23-1492**

Quote Date: 6/15/2023

Office

<b>Bill to:</b>	MCNAMEE CONSTRUCTION PO Box 182 Lincolndale, NY 10540		<b>Project:</b>	Lake Street  Newburgh, NY	
<b>Contact:</b>			<b>Project Manager:</b>		
<b>Phone :</b>	(914) 243-5910	<b>Fax:</b>		<b>Phone :</b>	<b>Fax:</b>
<b>Customer ID:</b>	MCNA1591	<b>PO:</b>		<b>ShipVia:</b>	
<b>Terms:</b>	NET 30			<b>Sales Rep:</b>	Randee Ogden

Qty	Item	Description	Height	Weight	Unit Price	TX	Extension
Structure: <input type="checkbox"/> Delivery							
1.00	DELIVERY	DELIVERY (See T&C)		0.00	\$350.00	<input checked="" type="checkbox"/>	\$350.00
				<b>Structure Totals:</b>	0.00		<b>\$350.00</b>
Structure: <input type="checkbox"/> Trench Drain							
4.00	TRENCH	NYSDOT Transverse Interceptor, 18" wide x 21" deep ID, per LF		0.00	\$152.00	<input checked="" type="checkbox"/>	\$608.00
2.00	TRENCH	NYSDOT Transverse Interceptor end walls.		0.00	\$161.50	<input checked="" type="checkbox"/>	\$323.00
1.00	CAS_EJ_Transverse Intercep	Item 604-01 Tranverse Interceptor Reticuline Grate and Frame Rails, 4 LF (domestic)		0.00	\$1,618.75	<input checked="" type="checkbox"/>	\$1,618.75
				<b>Structure Totals:</b>	0.00		<b>\$2,549.75</b>

$$350.00 + 2549.75 = \underline{2899.75}$$



A&R Concrete Products, LLC  
 PO Box 372  
 Salisbury Mills, NY 12577  
 Phone: (845) 562-0640  
 Fax: (845) 562-1518

**Quote Number: 23-1492**

Quote Date: 6/15/2023

Office

Total Weight 0

Taxable	\$2,899.75
Non-Taxable	\$0.00
<b>Sub Total</b>	<b>\$2,899.75</b>
Tax	\$235.60
<b>Total</b>	<b>\$3,135.35</b>

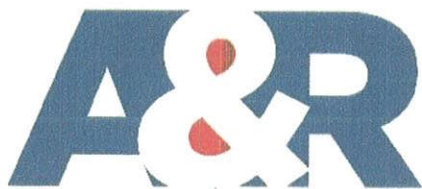
**GENERAL NOTES FOR ABOVE QUOTED ITEMS:**

1) Transverse interceptor includes open holes at pipe locations. Contractor to mortar pipes into place in the field.

NO Tax

**SEE TERMS & CONDITIONS FOR ADDITIONAL NOTES.**





**A&R Concrete Products, LLC**  
**PO Box 372**  
**Salisbury Mills, NY 12577**  
**Phone: (845) 562-0640**  
**Fax: (845) 562-1518**

**Quote Number: 23-1492**

**Quote Date: 6/15/2023**

Office

# **TERMS & CONDITIONS:**

## **Pricing:**

All above prices are valid for 30 days from date on quote. Casting prices are volatile and subject to change.

Prices, as noted above are based upon contract plans and specifications (when provided). Contractor is responsible for verifying all items within this quote meet the requirements of the contract documents and specifications prior to placing order.

This quote is based on original details and specs. No addendums have been or will be reviewed by A&R Concrete. Contractor is responsible for reviewing addendums and requesting specific changes to the quote. If additional engineering is required, that will be billed after the original quote is reviewed by the contractor.

Availability for quoted materials may be extended beyond normal lead times due to raw material shortages and protracted production times. A&R's quotation is not an assurance of availability. Actual lead times will vary and will be addressed on a case-by-case basis.

For HDPE pipe prices quoted, assume full truckload quantities delivered to the jobsite and are firm for orders placed within 30 days of quote date and shipments within 60 days of quote date. If a short-load quantity is required, then a short load drop charge will be applied. Contractor to review, verify and approve all item descriptions, specifications and quantities prior to acceptance.

Unless otherwise noted, Light Pole Base prices exclude anchor bolts, template, conduit and ground wire. These items are to be supplied by the contractor and cast into the bases by A&R. Conduit must be provided UNASSEMBLED.

Prices include steps and joint sealant for Manholes only. Sealant for basins is only included in price if it is shown on submittal drawing.

## **Deliveries:**

All above quoted prices are valid for full truckload quantities delivered to jobsite. If a short-load delivery is required, then the delivery charge will be applied.

All disputes regarding this delivery need to be made within 24 hours of delivery date. After that A&R Concrete will not be responsible for any damages or missing pieces.

One hour off-loading time will be allowed per truck. Additional off-loading time will be charged at \$200 per hour.

Customer is responsible for taking delivery of any product ordered within 60 days of production date. If delivery is not taken after 60 days, or an item is cancelled, then the customer will be charged the full amount for the product plus a disposal charge. Disposal charge will be determined after the 60 days or at the time of cancellation.

## **SIY:**

Any material released for production and stored in A&R's yard for over 30 days will be invoiced as Stock In Yard. Payment of such invoices will be due within 30 days of invoice date. Items left in yard with outstanding invoices may be sold as stock items and will have to be remade/reordered upon request and subject to current lead times.

All quoted prices are subject to the approval of submittal drawings, which may cause price differences.

Acceptance of this proposal is subject to the terms and conditions listed on the credit application.

## **Returns:**

Damaged items or custom-made items are not eligible for return.

Any stock items/structures that are returned and can be restocked or resold will be charged a 25% restocking fee (75% credit).

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



# Newburgh Ponding

① Price valid until: Jul. 18, 2023 at 11:59PM

Quote ID: HB100036143915

(914)243-5910

**MCNAMEE CONSTRUCTION**

Created By:

154 RT 202

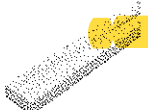
Created On: Jul. 11, 2023

LINCOLNDALE, NY 10540

PO/Job Name:

Items: **26**

Total: **\$181.48**

Item	How To Get It	Unit Price	Qty	Item Total
1  WeatherShield 2 in. x 4 in. x 10 ft. 2 Prime Ground Contact Pressure- Treated Southern Yellow Pine Lumber Model #253920 Store Sku #1001753748	Pick Up In Store	\$6.98/item	26	\$181.48

## Notes and Description:

<b>Subtotal</b>	<b>\$181.48</b>
Pick Up In Store	FREE
Estimated Delivery*	-
Sales Tax (determined in checkout)	-
<b>Total</b>	<b>\$181.48</b>



## OFFER

Cranesville Block Co., Inc.  
1250 Riverfront Center  
Amsterdam, NY 12010  
[www.cranesville.com](http://www.cranesville.com)

Phone: 518-684-6000  
Dispatch: 518-684-6085  
Sales: 518-684-6078  
Sales Fax: 518-684-0128  
Credit: 518-684-6004

M-4  
M-6

Ready Mixed Concrete – Aggregates – Masonry Units – Precast – Masonry Supplies

Customer Name McNamee Construction Corp.

Attention Shirley Correia

Contractor Number 5126

Office Phone (914) 424-5913

Email [sferreira@mcnameeconstruction.net](mailto:sferreira@mcnameeconstruction.net)

Yards 220

Quote Number 00004794

Project Name Lake St Bridge Rehab - Newburgh

Project Address Route 32 - Lake St.

Project Newburgh, NY

Address(Cont'd)

Quote Date 8/7/2023

Expiration Date 12/31/2023

Project Salesman Bill Cobey

Salesman Mobile 845-313-0626

Salesman Email [wcobey@cranesville.com](mailto:wcobey@cranesville.com)

Sales Assoc. Patti Bieniek

Sales Assoc. Phone 518-684-6119

Sales Assoc. Email [pbieniek@cranesville.com](mailto:pbieniek@cranesville.com)

Quantity	Product	Line Item Description	Sales Price	UM
220.00	Flowfill	Controlled Low Strength material	\$140.00	CY
1.00	Flowfill	CLSM Pumpable Mix	\$144.00	CY
1.00	Class A Concrete		\$149.00	CY
1.00	Class C Concrete M-6		\$151.00	CY
30.00	Class D Concrete M-4	Includes 1.5 lbs fiber and Water Reducer (sidewalks)	\$173.45	CY

**\*Due to the potential disruption in the cement supply chain, we reserve the right to requote as necessary.**

Above mixes are designed to have a 2"- 4" slump.

If a 4"- 6" slump is required a Midrange will need to be used at additional price listed below

If a 7"-9" slump is required a Super Plasticizer will need to be used at additional price listed below

Plants are NYSDOT approved; not NRMCA.

Additional  
Information:

**THESE PRICES REFLECT THE INCREASE FOR 2023 AS PREVIOUS QUOTE EXPIRED 12/31/2022**

Please see the Terms & Conditions on the last page of this Offer.

MINIMUM OF A 6% INCREASE ON ALL BELOW PRODUCTS FOR EACH SUBSEQUENT YEAR.





M-5

**Jointa Lime Company**  
269 Ballard Road  
Wilton, NY 12831  
Sales Office (518) 584-2421  
FAX (518) 584-4382

Quote: **21910-A**

Quote Date: 5/31/2023  
Expire Date: 8/31/2024  
Account #: 413024  
Sales Rep: Manso, Yvonne

Page 1 of 1

McNamee Construction Corp.  
PO BOX 182

Licolndale, NY 10540

Contact: Shirley Correia  
Phone: (914)243-5910  
Fax: (914)243-5918  
Email: sferreira@mcnameeconstruction.net

**Project :**

Source	Product ID	Product Description	Quantity	Unit	Material Rate
AP6	S12	404.128101 12.5 F1 Top Course WMA [64E-22]	50.00	Tons	92.00
AP6	S19	404.198901 19 F9 Binder Course WMA [64E-22]	60.00	Tons	87.00
AP6	S37	404.378901 37.5 F9 Base Course WMA [64E-22]	150.00	Tons	73.00
OFFICE	ESC	Asphalt Price Index	0.00	Tons	621.00

**Comments:****Blacktop Conditions**

- Asphalt Concrete prices will be adjusted based on current Asphalt price adjustment formula per NYSDOT specifications applicable to this project.
- This quote is subject to EI 98-031 which refers to Section 402, Quality Control Asphalt Concrete, and the new phase in Quantity Adjustment Factors. All bonus & penalty payments associated with provision will be forthcoming to the vendor and billed at the Prime Contractors Bid Price times the adjustment factor in English or metric tons.

*A 3.5% processing fee will be charged on all credit card payments.*

Terms: Net 60 Days

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

**PRICES ARE VALID IF THE QUOTE IS SIGNED AND RETURNED TO THE SALES DEPARTMENT.**

Due to marketplace fluctuations for cement and petroleum products, all pricing on items quoted will be subject to review at the time of pick up/delivery. Acceptance of this quote confirms agreement with pricing, conditions, and terms as specified herein.

**A service charge of 2.00% per month will apply to unpaid balances over term. In addition, if terms are not met as specified above, all purchases may be changed to COD, and prices on future purchases increased.**

Prices do not include tax. Prices are subject to applicable sales tax unless a valid tax-exempt certificate is on file prior to the first order.



Job Description: WC 19-510 Main Street Bridge/Bronx River Pky.

\*\*\* PRICING IS ONLY VALID FOR 30 DAYS FROM QUOTE DATE \*\*\*

Quote Date: OCT. 24, 2022

Job Completion Date: DEC. 31, 2022

Quote Expiration: NOV. 23, 2022

Project Location: White Plains

Asphalt Base Price: \$769.000

**Salesman Information**

Name: Rocco Circosta

Phone:

Mobile:

Fax:

Email: rcirc@peckham.com

Quote ID: 10000129577 - 3

Customer: McNamee Construction Corp.

PO BOX 182

LINCOLNDALE, NY 10540

Project Contact Name: Shirley Correia

Project Phone No: 914-243-5910

Project Fax No: 914-243-5912

Project Contact Email: sferreira@mcnameeconstruction.net

Job No: WC 19-510

P.O. No:

Property Owner

Name:

Street:

City, State Zip:

Quantity	Unit of Measure	Product Description / DOT Item Code	Conv Factor	QC Index	Unit Price		Extended Total	
					FOB	Delivered	FOB	Delivered
860	Tons	<b>79 - Patterson Quarry (79)</b>						
		304.12 SUBBASE COURSE TYPE 2			15.10		12,986.00	
1	Tons	Transport Stone Trailer (ton)			12.00		12.00	
420	Tons	<b>75 - Wingdale Materials (#75)</b>						
		Fine Stone Fill			26.75		11,235.00	
88	Tons	UNDRDRN FLTR STN-TYPE 1			24.50		2,156.00	
115	Tons	Crushed Stone (3/4" - 1 1/4")			20.05		2,305.75	
1	Tons	Transport Stone Trailer (ton)			14.50		14.50	
102	Gallons	<b>64 - New Windsor Emul Mill (64)</b>						
		EMULSION RS-1H			3.20		326.40	
148	Tons	<b>22 - Bronx Drum Mix</b>						
		Superpave HMA 12.5 (WMA)			102.05		15,103.40	
211	Tons	Superpave 19.0(WMA)			100.00		21,100.00	
26	Tons	Superpave HMA 9.5(WMA)			107.50		2,795.00	
1	Tons	TIPPING FEE MILLINGS			20.00		20.00	

(C) EQUIPMENT

ITEM 950.09

CO-07 NE CURB PONDING

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation

www.equipmentwatch.com

All prices shown in US dollars (\$)

**Rental Rate Blue Book®**

April 4, 2022

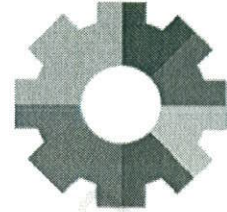
**GM/CHEVY C1500 Silverado LS 4x2 Gas (disc. 2009)**
**Crew Cab Pickups**

Size Class:

2

Weight:

N/A


**Configuration for C1500 Silverado LS 4x2 Gas (disc. 2009)**

Power Mode	Gasoline	Wheelbase	119 Inches
Axle Configuration	4x2	Complete / Incomplete	C
Gross Vehicle Weight	6800 Pounds		

**Blue Book Rates**

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$1,805.00	USD \$505.00	USD \$125.00	USD \$19.00	USD \$37.72	USD \$47.98
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2009: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$1,805.00</b>	<b>USD \$505.00</b>	<b>USD \$125.00</b>	<b>USD \$19.00</b>	<b>USD \$37.72</b>	<b>USD \$47.98</b>

**Non-Active Use Rates**

Standby Rate	Hourly
Idling Rate	USD \$6.67
	USD \$39.25

**Rate Element Allocation**

Element	Percentage	Value
Depreciation (ownership)	40%	USD \$722.00/mo
Overhaul (ownership)	35%	USD \$631.75/mo
CFC (ownership)	5%	USD \$90.25/mo
Indirect (ownership)	20%	USD \$361.00/mo
Fuel (operating) @ USD 4.24	77%	USD \$28.99/hr

Revised Date: 2nd quarter 2022

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

The equipment represented in this report has been exclusively prepared for MARCO PARISI  
(mguadagnolo@mcnameeconstruction.net)



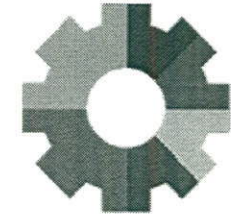
www.equipmentwatch.com  
All prices shown in US dollars (\$)

## Rental Rate Blue Book®

May 12, 2023

**Miscellaneous 3 AXLE 8 TIRE 30'**  
Lowboy Trailers

Size Class:  
All  
Weight:  
N/A



### Configuration for 3 AXLE 8 TIRE 30'

Power Mode **Manual**

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$5,865.00	USD \$1,645.00	USD \$410.00	USD \$62.00	USD \$8.81	USD \$42.13
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2023: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$5,865.00</b>	<b>USD \$1,645.00</b>	<b>USD \$410.00</b>	<b>USD \$62.00</b>	<b>USD \$8.81</b>	<b>USD \$42.13</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$27.33
Idling Rate	USD \$33.32

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	65%	USD \$3,812.25/mo
Overhaul (ownership)	18%	USD \$1,055.70/mo
CFC (ownership)	10%	USD \$586.50/mo
Indirect (ownership)	7%	USD \$410.55/mo

Fuel cost data is not available for these rates.

Revised Date: 2nd quarter 2023

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

The equipment represented in this report has been exclusively prepared for MARCO PARISI (marco@mcnameeconstruction.net)

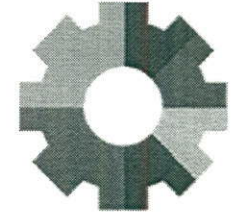
www.equipmentwatch.com  
All prices shown in US dollars (\$)

## Rental Rate Blue Book®

May 30, 2023

**Five Star BROOM BEAR**  
Single Engine Pavement Sweepers

Size Class:  
All  
Weight:  
N/A



### Configuration for BROOM BEAR

Horsepower **230.0** Power Mode **Diesel**

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$21,320.00	USD \$5,970.00	USD \$1,495.00	USD \$225.00	USD \$121.03	USD \$242.17
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2023: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$21,320.00</b>	<b>USD \$5,970.00</b>	<b>USD \$1,495.00</b>	<b>USD \$225.00</b>	<b>USD \$121.03</b>	<b>USD \$242.17</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$38.76
Idling Rate	USD \$157.28

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	13%	USD \$2,771.60/mo
Overhaul (ownership)	68%	USD \$14,497.60/mo
CFC (ownership)	9%	USD \$1,918.80/mo
Indirect (ownership)	10%	USD \$2,132.00/mo
Fuel (operating) @ USD 4.25	30%	USD \$36.14/hr

Revised Date: 2nd quarter 2023

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

The equipment represented in this report has been exclusively prepared for MARCO PARISI (marco@mcnameeconstruction.net)

www.equipmentwatch.com

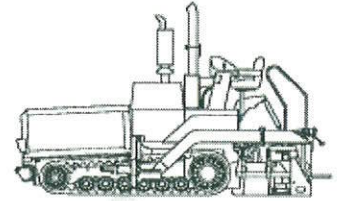
All prices shown in US dollars (\$)

## Adjustments for 281 in PAVERS

July 3, 2023

### Caterpillar AP-655C (disc. 2007) Crawler Mounted Asphalt Pavers

Size Class:  
35,000 lbs & Over  
Weight:  
40800 lbs



### Configuration for AP-655C (disc. 2007)

Power Mode Diesel Screed Model 8-16B Extend-A-Mat

#### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs Hourly	FHWA Rate** Hourly
	Monthly	Weekly	Daily	Hourly		
Published Rates	USD \$40,000.00	USD \$11,200.00	USD \$2,800.00	USD \$420.00	USD \$156.84	USD \$384.11
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2007: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$40,000.00</b>	<b>USD \$11,200.00</b>	<b>USD \$2,800.00</b>	<b>USD \$420.00</b>	<b>USD \$156.84</b>	<b>USD \$384.11</b>

#### Non-Active Use Rates

	Hourly
Standby Rate	USD \$79.55
Idling Rate	USD \$252.42

#### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	17%	USD \$6,800.00/mo
Overhaul (ownership)	66%	USD \$26,400.00/mo
CFC (ownership)	9%	USD \$3,600.00/mo
Indirect (ownership)	9%	USD \$3,600.00/mo
Fuel (operating) @ USD 3.88	16%	USD \$25.15/hr

Revised Date: 3rd quarter 2023

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

The equipment represented in this report has been exclusively prepared for MARCO PARISI  
(marco@mcnameeconstruction.net)

www.equipmentwatch.com

All prices shown in US dollars (\$)

## Adjustments for 222 in EXCAVATORS

July 3, 2023

**Caterpillar M322C** (disc. 2008)  
Wheel Mounted Hydraulic Excavators

Size Class:  
**20.5 mt & Over**  
Weight:  
**45200 lbs**



### Configuration for M322C (disc. 2008)

Operating Weight **20.5 mt** Power Mode **Diesel**

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$15,925.00	USD \$4,460.00	USD \$1,115.00	USD \$170.00	USD \$65.53	USD \$156.01
<b>Adjustments</b>						
Region ( Connecticut: 105.2%)	USD \$828.10	USD \$231.92	USD \$57.98	USD \$8.84		
Model Year (2008: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$16,753.10</b>	<b>USD \$4,691.92</b>	<b>USD \$1,172.98</b>	<b>USD \$178.84</b>	<b>USD \$65.53</b>	<b>USD \$160.72</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$47.59
Idling Rate	USD \$109.12

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	33%	USD \$5,255.25/mo
Overhaul (ownership)	42%	USD \$6,688.50/mo
CFC (ownership)	15%	USD \$2,388.75/mo
Indirect (ownership)	10%	USD \$1,592.50/mo
Fuel (operating) @ USD 3.88	21%	USD \$13.93/hr

Revised Date: 3rd quarter 2023

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

The equipment represented in this report has been exclusively prepared for MARCO PARISI  
(marco@mcnameeconstruction.net)



www.equipmentwatch.com

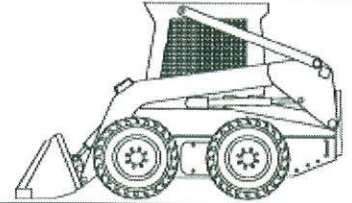
All prices shown in US dollars (\$)

## Adjustments for 273 in SKIDSTEERS

July 3, 2023

**Kubota SSV65**  
**Skid Steer Loaders**

Size Class:  
1,751 - 2,200 lbs  
Weight:  
N/A



### Configuration for SSV65

Operator Protection      ROPS/FOPS      Power Mode      Diesel

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$5,230.00	USD \$1,465.00	USD \$365.00	USD \$55.00	USD \$23.51	USD \$53.23
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2023: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$5,230.00</b>	<b>USD \$1,465.00</b>	<b>USD \$365.00</b>	<b>USD \$55.00</b>	<b>USD \$23.51</b>	<b>USD \$53.23</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$10.10
Idling Rate	USD \$38.77

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	12%	USD \$627.60/mo
Overhaul (ownership)	66%	USD \$3,451.80/mo
CFC (ownership)	10%	USD \$523.00/mo
Indirect (ownership)	12%	USD \$627.60/mo
Fuel (operating) @ USD 3.88	38%	USD \$9.05/hr

Revised Date: 3rd quarter 2023

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(marco@mcnameeconstruction.net)

www.equipmentwatch.com

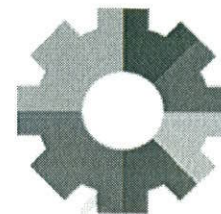
All prices shown in US dollars (\$)

## Rental Rate Blue Book®

April 12, 2022

**Miscellaneous BB2 GAS 6X4 3000**  
**On-Highway Water Tankers**

Size Class:  
**200 HP & Over**  
 Weight:  
**11000 lbs**



### Configuration for BB2 GAS 6X4 3000

Horsepower	<b>210.0</b>	Power Mode	<b>Gasoline</b>
Tank Capacity	<b>3000.0 gal</b>		

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$1,425.00	USD \$400.00	USD \$100.00	USD \$15.00	USD \$43.73	USD \$51.83
<b>Adjustments</b>						
Region ( Connecticut: 107.1%)	USD \$101.18	USD \$28.40	USD \$7.10	USD \$1.07		
Model Year (2022: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$1,526.18</b>	<b>USD \$428.40</b>	<b>USD \$107.10</b>	<b>USD \$16.07</b>	<b>USD \$43.73</b>	<b>USD \$52.40</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$4.34
Idling Rate	USD \$42.85

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	57%	USD \$812.25/mo
Overhaul (ownership)	24%	USD \$342.00/mo
CFC (ownership)	5%	USD \$71.25/mo
Indirect (ownership)	14%	USD \$199.50/mo
Fuel (operating) @ USD 4.24	78%	USD \$34.18/hr

Revised Date: 2nd quarter 2022

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The equipment represented in this report has been exclusively prepared for MARCO PARISI  
 (mguadagnolo@mcnameeconstruction.net)

www.equipmentwatch.com

All prices shown in US dollars (\$)

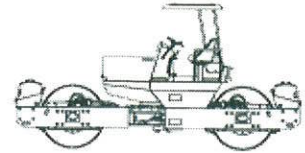
## Adjustments for 115, 116 in ROLLERS

July 3, 2023

### BOMAG BW120SL-5

Tandem Vibratory Compactors

Size Class:  
1.5 - 3.4 mt  
Weight:  
N/A



### Configuration for BW120SL-5

Drum Width **50 in** Horsepower **24.8 hp**  
Power Mode **Diesel**

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$7,190.00	USD \$2,015.00	USD \$505.00	USD \$76.00	USD \$17.98	USD \$58.83
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2023: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$7,190.00</b>	<b>USD \$2,015.00</b>	<b>USD \$505.00</b>	<b>USD \$76.00</b>	<b>USD \$17.98</b>	<b>USD \$58.83</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$18.79
Idling Rate	USD \$43.11

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	24%	USD \$1,725.60/mo
Overhaul (ownership)	53%	USD \$3,810.70/mo
CFC (ownership)	11%	USD \$790.90/mo
Indirect (ownership)	11%	USD \$790.90/mo
Fuel (operating) @ USD 3.88	13%	USD \$2.26/hr

Revised Date: 3rd quarter 2023

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(marco@mcnameeconstruction.net)

www.equipmentwatch.com

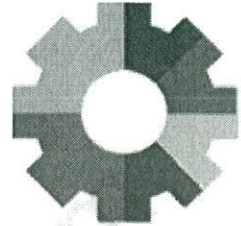
All prices shown in US\$

**Rental Rate Blue Book®**

August 7, 2019

**Miscellaneous 8X4 18YD 85KGWV**
**On-Highway Rear Dumps**

Size Class:  
60,001 GVW & Over  
Weight:  
21021 lbs


**Configuration for 8X4 18YD 85KGWV**

Axle Configuration	<b>8X4</b>	Horsepower	<b>450.0</b>
Maximum Gross Vehicle Weight	<b>85000.0 lbs</b>	Power Mode	<b>Diesel</b>
Struck Capacity	<b>15.0 - 18.0 cu yd</b>		

**Blue Book Rates**

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	\$5,710.00	\$1,600.00	\$400.00	\$60.00	\$60.21	\$92.65
<b>Adjustments</b>						
Region ( Connecticut: 104.7%)	\$268.37	\$75.20	\$18.80	\$2.82		
Model Year (2019: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>\$5,978.37</b>	<b>\$1,675.20</b>	<b>\$418.80</b>	<b>\$62.82</b>	<b>\$60.21</b>	<b>\$94.18</b>

**Non-Active Use Rates**

Hourly

Standby Rate	\$16.98
Idling Rate	\$72.65

**Rate Element Allocation**

Element	Percentage	Value
Depreciation (ownership)	50%	\$2,855.00/mo
Overhaul (ownership)	31%	\$1,770.10/mo
CFC (ownership)	8%	\$456.80/mo
Indirect (ownership)	11%	\$628.10/mo
Fuel (operating) @ 3.07	64%	\$38.68/hr

Revised Date: 2nd half 2019

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The equipment represented in this report has been exclusively prepared for MIKE GUADAGNOLO (mguadagnolo@mcnameeconstruction.net)



www.equipmentwatch.com

All prices shown in US dollars (\$)

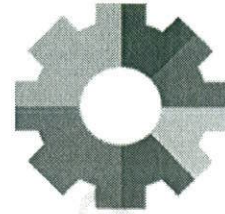
## Adjustments for 633 in Miscellaneous

July 3, 2023

### Miscellaneous 10-26SPC

#### Concrete Saws

Size Class:  
11 - 18 hp  
Weight:  
N/A



### Configuration for 10-26SPC

Horsepower **25.0** Maximum Cutting Depth **10.625**  
Power Mode **Gasoline** Type **Concrete**

### Blue Book Rates

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

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD \$1,640.00	USD \$460.00	USD \$115.00	USD \$17.00	USD \$14.23	USD \$23.55
<b>Adjustments</b>						
Region ( 100%)	-	-	-	-		
Model Year (2023: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$1,640.00</b>	<b>USD \$460.00</b>	<b>USD \$115.00</b>	<b>USD \$17.00</b>	<b>USD \$14.23</b>	<b>USD \$23.55</b>

### Non-Active Use Rates

	Hourly
Standby Rate	USD \$4.19
Idling Rate	USD \$16.22

### Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	19%	USD \$311.60/mo
Overhaul (ownership)	55%	USD \$902.00/mo
CFC (ownership)	11%	USD \$180.40/mo
Indirect (ownership)	15%	USD \$246.00/mo
Fuel (operating) @ USD 3.54	48%	USD \$6.90/hr

Revised Date: 3rd quarter 2023

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(marco@mcnameeconstruction.net)

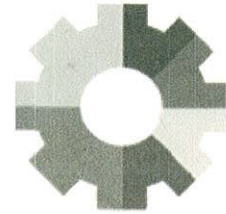
www.equipmentwatch.com

All prices shown in US Dollars (\$)

**Rental Rate Blue Book®**

August 15, 2023

**Mack PINNACLE CHU613**  
On-Highway Truck Tractors

Size Class:  
**45,001 - 60,000 lbs**  
Weight:  
N/A

**Configuration for PINNACLE CHU613**

Horsepower **425.0 hp** Power Mode **Diesel**
**Blue Book Rates**

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

	Ownership Costs				Estimated Operating Costs Hourly USD \$53.52	FHWA Rate** Hourly USD \$70.59
	Monthly	Weekly	Daily	Hourly		
Published Rates	USD \$3,005.00	USD \$840.00	USD \$210.00	USD \$32.00		
<b>Adjustments</b>						
Region ( Connecticut: 104.7%)	USD \$141.24	USD \$39.48	USD \$9.87	USD \$1.50		
Model Year (2023: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
<b>Total:</b>	<b>USD \$3,146.24</b>	<b>USD \$879.48</b>	<b>USD \$219.87</b>	<b>USD \$33.50</b>	<b>USD \$53.52</b>	<b>USD \$71.40</b>

**Non-Active Use Rates**

	Hourly
Standby Rate	USD \$8.94
Idling Rate	USD \$58.31

**Rate Element Allocation**

Element	Percentage	Value
Depreciation (ownership)	46%	USD \$1,382.30/mo
Overhaul (ownership)	32%	USD \$961.60/mo
CFC (ownership)	10%	USD \$300.50/mo
Indirect (ownership)	12%	USD \$360.60/mo
Fuel (operating) @ USD 3.88	75.54%	USD \$40.43/hr

Revised Date: 3rd quarter 2023

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The equipment represented in this report has been exclusively prepared for MARCO PARISI  
(marco@mcnameeconstruction.net)

**Daily Equipment Reimbursement Rates for Traffic Control Devices** (06/23)

The following Traffic Control Devices will be considered as equipment for all Price Analysis and Force Account work. The tabulated Daily Ownership Costs for these devices were established by the Office of Construction as fair and reasonable, based on purchase cost, estimated number of uses, and an estimated replacement rate. These rates should be used to reimburse the Traffic Control Devices (TCD) for short duration periods of work. However, when severe job conditions result in damage and/or destruction of TCDs at an extraordinarily high rate, higher daily ownership costs may be justified. In that case, it would be necessary to support the higher rate with a workup showing the invoiced purchase price and life expectancy of the WZTC device.

	Traffic Control Device	Daily Ownership Cost
	Cones	\$0.35 Each
	Drums	\$1.10 Each
	Drums w/ Lights	\$1.45 Each
	Type II Construction Barricade	\$0.70 Each
	Type II Construction Barricade w/ Lights	\$1.00 Each
E-13	Type III Construction Barricade $30 \times 10 \text{ days} = 300 \text{ days}$	\$2.50 Each
	Type III Construction Barricade w/ Lights	\$2.85 Each
E-14	Construction Signs $6 \text{ signs} \times 9 \text{ SF/Sign} = 54 \text{ SF}$	\$0.15 per Sq Foot
E-12	Sign Stand – (FHWA Approved) $6 \text{ stands} \times 10 \text{ days} = 60 \text{ days}$	\$2.10 Each
	Sign Stand – Tripod w/ Flag Holder	\$0.90 Each
	Temporary Concrete Barrier	\$0.10 per Foot
	Steel Road Plates	\$0.10 per Sq Foot
	Vertical Panels	\$1.10 Each
	Tubular Markers	\$0.35 Each

NOTE: Sand bags used as ballast for sign stands will be considered as overhead and will not be reimbursed separately.

(D) SERVICES

ITEM 950.09

CO-07 NE CURB PONDING

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation





PAVING / MILLING / RECLAIMING

ALCAIDE, INC. D/B/A A&J CONSTRUCTION

Certified: CTDOT & NYDOT

150 Laurel Hill Rd • Brookfield, CT 06804

Phone: 203-775-1385 • Fax: 203-775-5816

Contact: Miguel Baptista

# PROPOSAL

DATE: 3/23/2023

QUOTE Dan McNamee  
TO McNamee Construction

JOB NAME:

JOB NO:

BIDITEM CODE	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	EXT PRICE
10	MILL RENTAL - OPERATOR AND GROUNDMAN ONLY (at 1" DEPTH)	1.000	EA	\$5,850.00	\$5,850.00
20	MOBILIZATION FOR MILLING MACHINE	1.000	EA	\$1,800.00	\$1,800.00

## Notes:

### GENERAL NOTES

- Work to be done in 2023 Monday - Friday between the hours of 7:00am & 4:00pm.
- Areas with less than 2% pitch - A&J will not be responsible for standing water.
- A&J will not be held responsible for soft and yielding subgrade, which may result in any damage to our work.
- Schedule is subject to A&J's crew availability.
- Any jurisdictional union requirements will be resolved by the G.C. at no additional cost to A & J Construction.
- A&J Construction will request utility mark outs from Call Before You Dig.
- Property owner will be responsible for all private utilities or those not marked by Call Before You Dig.

### EXCLUSIONS

- All taxes, if a tax exempt certificate is not received the applicable taxes will be billed on the invoice
- Maintenance and traffic protection, traffic signs, cones, and Police in accordance with MUTCD
- Permits, bonds, licenses, and inspections
- Water Truck
- Saw cutting pavement
- Engineering, surveying, and layout
- Pavement markings, and signage
- Sweeping, unless otherwise noted
- Night work, or shift work
- Excavation or removal of excess material
- Temporary pavement
- Trench patching
- Installation and removal of temporary transitions
- Night & weekend plant opening charges
- Weekend / premium time
- Vacuum sweeper
- Removal of curbing
- Sweeping prior to paving operations

\$ 5,850.00 + \$ 1,800.00 = \$7,650.00

### MILLING NOTES

- Milling Includes: Trimmer Machine, Hand Trimming, Skid Steer & Sweeper
- G.C. to provide water truck on location for milling operation.
- Staking & outlining of work areas and marking of hidden structures is the responsibility of the customer, and is excluded from this proposal.

(F) INSURANCE

ITEM 950.09

OOC-007 NE CURB PONDING

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation



INSURANCE SINCE 1886

EMERY & WEBB INC

August 15<sup>th</sup>, 2023

Attn: Dan McNamee  
McNamee Construction Corp.  
154 Rte 202, PO Box 182  
Lincolndale, NY 10540

RE: Worker's Compensation Policy # 13145800  
Effective April 1, 2023 to April 1, 2024  
Carrier: State Insurance Fund Safety group

To Whom it May Concern,

The current rate for Street or Rd Construction (class code 5506) for Workers Compensation for the limits that McNamee Construction Corp. carries is \$16.29 per \$100 of payroll based on an Experience Modification Rate (EMR) of 1.00

Please let us know if any other information is needed.

Sincerely,

**Beth Metzler**

**Account Manager**

bmetzler@emerywebb.com

(845)855-1112 Ext. 1301



Wesco Insurance Company  
800 Superior Avenue East, 21st Floor  
Cleveland, OH 44114

Policy Number:  
WPP1516772 06  
Named Insured:  
McNamee Construction Corp.

### COMMERCIAL GENERAL LIABILITY COVERAGE DECLARATIONS EXTENSION OF DECLARATIONS

PREMIUM								
Location	Classification	Code No.	Exposure	Basis	Rate		Advanced Premium	
					Premises Ops	Prod/Comp Ops.	Premises Ops.	Prod/Comp Ops.
		99946					\$5.00	
		Medical Expense - Water Mains or Connections Construction						
1		91589	4,500,000	c	8.073	1.704		
		Contractors-subcontracted work-in connection with street or highway construction, or repair, not elevated						
		91589						
		Medical Expense - Contractors-subcontracted work-in connection with street or highway construction, or repair, not elevated						
1		94007	100,000	p	126.727	7.467		
		Excavation						
		94007						
		Medical Expense - Excavation						
1		91266	700,000	p	199.999	4.854		
		Bridge or Elevated Highway Construction - concrete						
		91266						
		Medical Expense - Bridge or Elevated Highway Construction - concrete						
1		99315	600,000	p	118.436	5.281		
		Street or Road Construction or Reconstruction						
		99315						
		Medical Expense - Street or Road Construction or Reconstruction						

2023 GL Insurance  
Code 91266 199.999  
4.854  
204.853  
20.485%

Issued Date: 12/28/2022

GLDECB 0414

# THE STATE INSURANCE FUND

199 Church St, New York, NY, 10007-1100  
(888) 875-5790

Document Type: <b>INFORMATION PAGE</b>	Group No: <b>469</b>	Period Covered: <b>04/01/2023 TO 04/01/2024</b>	R.B. File No: <b>000568976R</b>
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INSURED:           Z 1314 580-0

GROUP MANAGER:           469

MCNAMEE CONSTRUCTION CORP  
154 ROUTE 202  
PO BOX 182  
LINCOLNDALE NY 10540

LOVELL SAFETY MGMT CO., LLC  
110 WILLIAM STREET 12TH FLR  
NEW YORK NY 10038

Policy No: <b>Z 1314 580-0</b>
Date: <b>02/22/2023</b>
Document Number: <b>E10001753200</b>

MP 2000

\* PERIOD OF COVERAGE BEGINS AND ENDS AT TWELVE AND ONE MINUTE O'CLOCK A.M. EASTERN STANDARD TIME

TYPE OF BUSINESS: CORPORATION

## INFORMATION PAGE RENEWAL POLICY

THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUALS OF RULES, CLASSIFICATIONS, RATES AND RATING PLANS. ALL INFORMATION REQUIRED BELOW IS SUBJECT TO VERIFICATION AND CHANGE BY AUDIT.

THIS POLICY IS NOW OPEN TO RENEW OR CREATE WORKERS' COMPENSATION CERTIFICATES OF INSURANCE FOR THE UPCOMING POLICY PERIOD. LOG IN TO YOUR NYSIF CUSTOMER ACCOUNT AT [WWW.NYSIF.COM](http://WWW.NYSIF.COM) AND SELECT THE "CREATE/RENEW CERTIFICATES" OPTION UNDER THE ECERT MENU TO ACCESS THIS FEATURE.

ITEM#	CODE	CLASSIFICATION	DESCRIPTION	ESTIMATED PAYROLL	X RATE PER \$100	= SIF MANUAL RATE PREMIUM
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The payroll for your policy renewal is based on prior audited/reported payroll. If your payroll has decreased due to the COVID-19 crisis, please contact your policy representative so your payroll can be adjusted accordingly.

1.	5506	STREET OR RD CONSTR	PAVE&DRVRS-U	216,000	16.29	35,186.40
2.	9127	TERRITORY 2	DIFFERENTIAL 0.0%			
3.	5606	CONTRACT CONST OR	EREC-EXEC SUPER-U	50,000	4.39	2,195.00
4.	9127	TERRITORY 2	DIFFERENTIAL 0.0%			
5.	8810	CLERICAL OFFICE	EMPLOYEES NOC-U	550,000	0.13	715.00
6.	8742	SALESPERSONS,	COLLECTORS OR MESSENGER	100	0.30	0.30
7.	MANUAL PREMIUM					38,096.70
8.	EXPERIENCE RATING CHARGE 8% OF (ITEM 7)					3,047.74
9.	TOTAL MODIFIED PREMIUM					41,144.44
10.	NYSIF DISCOUNT 30% OF (ITEM 9)					12,343.33CR
11.	EXPENSE CONSTANT					250.00
12.	TERRORISM PREMIUM					310.12
13.	NATURAL DISASTER AND CATASTROPHE PREMIUM					48.97
14.	TOTAL ESTIMATED ANNUAL PREMIUM					29,410.20
15.	ASSESSMENT CHARGE 9.8% OF (ITEM 14 LESS ITEM 11)					2,857.70
16.	TOTAL ESTIMATED POLICY COST					32,267.90

PAGE 3 CONT.



## **Additional Instructions for Form DB-120.1**

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in Box 1a for disability and/or Paid Family Leave benefits under the NYS Disability and Paid Family Leave Benefits Law. The insurance carrier or its licensed agent will send this Certificate of Insurance Coverage (Certificate) to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This Certificate may be used as evidence of a NYS disability and/or Paid Family Leave benefits contract of insurance only while the underlying policy is in effect.

**Please Note: Upon the cancellation of the disability and/or Paid Family Leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Insurance Coverage for NYS disability and/or Paid Family Leave Benefits or other authorized proof that the business is complying with the mandatory coverage requirements of the NYS Disability and Paid Family Leave Benefits Law.**

### **NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW**

#### **§220. Subd. 8**

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.



MCNACON-01

BMETZLER

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/29/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Emery &amp; Webb, Inc. - Pawling Office</b> <b>33 East Main Street</b> <b>Suite 2</b> <b>Pawling, NY 12564</b>	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext): (845) 855-1112</b>		<b>FAX (A/C, No): (845) 855-1115</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> <b>McNamee Construction Corp.</b> <b>154 Rte 202,</b> <b>PO Box 182</b> <b>Lincolndale, NY 10540</b>	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A : Wesco Insurance Company</b>		<b>25011</b>
	<b>INSURER B : Travelers Indemnity Company of America</b>		<b>25666</b>
	<b>INSURER C : Navigators Insurance Group</b>		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
<b>INSURER F :</b>			

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

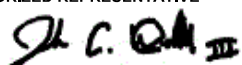
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X		WPP1516772-06	12/31/2022	12/31/2023	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>500,000</b> MED EXP (Any one person) \$ <b>10,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X		WPP1628314-04	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ <b>10,000</b>	X		WUM1891814-02	12/31/2022	12/31/2023	EACH OCCURRENCE \$ <b>5,000,000</b> AGGREGATE \$ <b>5,000,000</b> \$ PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Commercial Articles			6606084C201TIL23	12/31/2022	12/31/2023	Rented/Leased \$ <b>515,000</b>
C	Pollution Liability			NY22ECPZ0C8VMIV	9/29/2022	9/29/2023	each condition/agg \$ <b>2,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) when required by written contract or agreement, the City of Newburgh its boards, officers and employees, People of the State of New York, New York Commissioner of Transportation, and M.G. McLaren Engineering and Land Surveying, P.C., are included as additional insureds on a primary and non contributory basis per attached form#s CG2037 01 3, CG2038 04 13, CG2001 04 13, CA990187NY 10 13. Umbrella follows forms.

## CERTIFICATE HOLDER

## CANCELLATION

<b>City of Newburgh</b> <b>83 Broadway</b> <b>Newburgh, NY 12550</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
BLANKET AS REQUIRED BY WRITTEN CONTRACT.	
Metro-north Railroad & Metropolitan Transportation Authority (MTA), Attn: Risk and Insurance Management, 2 Broadway, 21st Floor, New York, NY 10004.	Contract#D262530 Road and bridge maintenance work at various locations per written contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS FOR OTHER  
PARTIES WHEN REQUIRED IN WRITTEN  
CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
  - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

2. Available under the applicable Limits of Insurance shown in the Declarations;  
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**This Endorsement Changes The Policy. Please Read It Carefully**

## **BUSINESS AUTO COVERAGE EXPANSION ENDORSEMENT – NEW YORK**

This endorsement modifies insurance provided by the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the COVERAGE FORM apply unless modified by the endorsement.

**A. Newly Acquired or Formed Organizations, Employee Hired Car Liability and Blanket Additional Named Insured Status for Certain Entities.**

Item 1. **Who is an Insured** of Paragraph A. **Coverage** under **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to add:

- d. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability com-any, and over which you maintain ownership of a majority interest (greater than 50%), will qualify as a Named Insured; however,
  - (1) coverage under this provision is afforded only until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - (2) coverage does not apply to "bodily injury", "property damage" or "covered pollution cost or expense" that results from an "accident" which occurred before you acquired or formed the organization; and
  - (3) coverage does not apply if there is other similar insurance available to that organization, or if similar insurance would have been available but for its termination or the exhaustion of its limits of insurance.

This insurance does not apply if coverage for the newly acquired or formed organization is excluded either by the provisions of this coverage form or by endorsement.

- e. An "employee" of yours is an "insured" while operating an "auto" hired or rented

under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

- f. Any person or organization you are required by written contract or agreement to name as an additional "insured", but only with respects to liability created in whole or in part by such agreement.

**B. Increase Of Loss Earnings Payment**

Subpart (4) of a. **Supplementary Payments** of Item 2. **Coverage Extensions** of Paragraph A. **Coverage** under **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to read:

- (4) We will pay reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$1,000 per day because of time off from work.

**C. Limited Automatic Towing Coverage**

Item 2. **Towing**, of Paragraph A. **Coverage**, under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to read:

**2. Towing**

We will pay for towing and labor costs each time that a covered "auto" is disabled. All labor must be performed at the place of disablement of the covered "auto".

- a. The limit for "autos" other than private passenger types is \$250;
- b. The limit for "autos" of the private passenger type is as shown in the Declarations;
- c. No deductible applies to this coverage.

- D. Item 3. **Glass Breakage – Hitting A Bird Or Animal – Falling Objects or Missiles** of Paragraph A. **Coverage** under **SECTION III – PHYSICAL DAMAGE COVERAGE**, is amended to add:

**Glass Repair Coverage**

We will waive the Comprehensive deductible for Glass, if one is indicated on your covered "auto", for glass repairs. We will repair at no cost to you, any glass that can be repaired without replacement, provided the "loss" arises from a covered Comprehensive "loss" to your "auto".

- E. **Increase Of Transportation Expense Coverage**

Subpart a. **Transportation Expenses** of Item 4. **Coverage Extensions** of Paragraph A. **Coverage** under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to read:

a. **Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage or Theft Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

- F. **"Personal Effects" Coverage**

Item 4. **Coverage Extensions** of Paragraph A. **Coverage**, under **SECTION III – PHYSICAL DAMAGE COVERAGE**, is amended to add:

**"Personal Effects" Coverage**

We will pay actual cash value for "loss" to "personal effects" of the "insured" while in a covered "auto" subject to a maximum limit of \$2,500 per "loss", for that covered "auto" caused by the same "accident". No deductible will apply to this coverage.

- G. **"Downtime Loss" and Rental Reimbursement Coverage**

Item 4. **Coverage Extensions**, of Paragraph A. **Coverage**, under **SECTION III. PHYSICAL DAMAGE COVERAGE**, is amended to add:

**"Downtime Loss" and Rental Reimbursement Coverage**

We will pay any resulting "downtime loss" and rental reimbursement expenses you sustain as a result of a covered physical damage "loss" to a covered "auto" up to a combined maximum of \$100 per day, for a maximum of 30 days for the same physical damage "loss", subject to the following conditions:

- a. We will provide "downtime loss" and rental reimbursement beginning on the 6<sup>th</sup> day after:
  - (1) We have given you our agreement to pay for repairs to a covered "auto" and you have given the repair facility your authorization to make repairs; or
  - (2) Coverage for "downtime loss" and rental reimbursement expenses will end when any of the following occur:
    - (a) You have a spare or reserve "auto" available to you to continue our operations.
    - (b) You purchase a replacement "auto".
    - (c) Repairs to your covered "auto" have been completed by the repair facility and they determine the covered "auto" is road-worthy.
    - (d) You reach the 30 day maximum coverage.

- H. **"Personal Effects" Exclusion**

Paragraph B. **Exclusions** under **SECTION III – PHYSICAL DAMAGE COVERAGE**, is amended to add:

**"Personal Effects" Exclusion**

We will not pay for "loss" to "personal effects" of any of the following:

- a. Accounts, bills, currency, deeds, evidence of debt, money, notes, securities or commercial paper or other documents of value.
- b. Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry; watches; precious or semi-precious stones.
- c. Paintings, statuary and other works of art.
- d. Contraband or property in the course of illegal transportation or trade.

- e. "Loss" caused by theft, unless there is evidence of forced entry into the covered "auto" and a police report is filed.

**I. Accidental Airbag Discharge Coverage**

Item 3.a. of Paragraph B. Exclusions under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to read:

- a. Wear and tear, freezing, mechanical or electrical breakdown. The exclusion relating to mechanical break-down does not apply to the accidental discharge of an air bag.

**J. Aggregate Deductible**

Paragraph D. Deductible under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to add:

Regardless of the number of covered "autos" involved in the same "loss", only one deductible will apply to that "loss". If the deductible amounts vary by "autos", then only the highest applicable deductible will apply to that "loss".

**K. Diminishing Deductible**

Paragraph D. Deductible under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to add:

Any deductible will be reduced by the percentage indicated below on the first "loss" reported during the corresponding policy period:

Loss Free Policy Periods With the Expansion Endorsement	Deductible Reduction on the first "loss"
1	0%
2	25%
3	50%
4	75%

If we pay a Physical Damage "loss" during the policy period under any BUSINESS AUTO COVERAGE FORM you have with us, your deductible stated in the Declaration's page of each such COVERAGE FORM will not be reduced on any subsequent claims during the remainder of your policy period and your deductible reduction will revert back to 0% for each such COVERAGE FORM if coverage is renewed. However at no time shall the deductible be less than \$50 on Comprehensive and \$100 on Collision, if these coverages are provided.

**L. Knowledge of Loss and Notice To Us**

Subsection a. of Item 2. Duties In the Event of Accident, Claim, Suit or Loss of Paragraph A. Loss Conditions under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to add:

However, as soon as reasonably possible notice of the "accident", claim, "suit" or "loss" to us or our authorized representative only applies after the "accident", claim, "suit" or "loss" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partner-ship;
- (3) An "executive officer" or director, if you are a corporation;
- (4) A manager or member, if you are a limited liability company;
- (5) Your insurance manager; or
- (6) Your legal representative.

**M. Waiver Of Subrogation For Auto Liability Losses Assumed Under Insured Contract**

Item 5. Transfer Of Rights Of Recovery Against Others To Us of Paragraph A. Loss Conditions under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to read:

**5. Transfer of Rights of Recovery Against Others To Us**

If any person or organization to or for whom we make payments under this Coverage From has rights to recover damages from another, those right are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after an "accident" or "loss" to impair them. However, if the insured has waived those rights to recover through a written contract, we will waive any right to recovery we may have under this Coverage Form.

**N. Insurance is Primary and Noncontributory**

Subpart a. of Item 5. Other Insurance of Paragraph B. General Conditions under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to read:

- a. This insurance is primary and noncontributory, as respects any other insurance.

**O. Other Insurance – Hired Auto Physical Damage**

Subpart **b.** of Item **5.** **Other Insurance** of Paragraph **B. General Conditions** under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to read:

- b.** For **Hired Auto Physical Damage Coverage**, the following are deemed to be covered "autos" you own:
- (1)** Any covered "auto" you lease, hire, rent or borrow; and
  - (2)** Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**P. Unintentional Failure To Disclose Hazards**

Paragraph **B. General Conditions** under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to add:

- 9.** Your failure to disclose all hazards existing as of the inception date of this policy shall not prejudice the coverage afforded by this policy, provided that such failure to disclose all hazards is not intentional. However, you must report such previously undisclosed hazards to us as soon as practicable after its discovery.

**Q. Additional Definition**

**SECTION V – DEFINITIONS** is amended to add:

"Personal effects" means personal property owned by the "insured".

"Downtime loss" means actual loss of "business income" for the period of time that a covered "auto":

- 1.** Is out of service for repair or replacement as a result of a covered physical damage "loss" and
- 2.** Is in the custody of a repair facility if not a total "loss".

"Business Income" means:

- 1.** Net income (Net profit of loss before income taxes that would have been earned or incurred; and

- 2.** Continuing normal operating expenses incurred, including payroll.

**R. Fellow Employee Injured By Covered Auto You Own Or Hire**

Item **A.4.b. Fellow Employee** Exclusion of **New York In Business Auto, Business Auto Physical Damage, Motor Carrier and Trucker Coverage Forms, CA 01 12** is amended to add:

This exclusion does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire. Such coverage as is afforded by this provision is excess over any other collectible insurance.

**In this endorsement, Headings and Titles are inserted solely for the convenience and ease of reference. They do not affect the coverage provided by this endorsement, nor do they constitute any part of the terms and conditions of this endorsement. All other policy wording not specifically changed, modified, or replaced by this endorsement wording remains in effect.**



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **FOLLOWING FORM ENDORSEMENT – NEW YORK**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL LIABILITY UMBRELLA COVERAGE PART**

The insurance provided under this policy will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this policy. To the extent provisions of "underlying insurance" conflict with the provisions of this policy, the provisions of this policy will apply. However, the coverage provided under this policy will not be broader than that provided by the applicable "underlying insurance".

There may be more than one "underlying insurance" listed in the Declarations. When provisions in those policies conflict, and are not superseded by the provisions of this policy, the provisions, exclusions and limitations of the "underlying insurance" applicable to the particular "occurrence" or offense which results in a claim or "suit" will apply.

Notwithstanding anything to the contrary in this policy, the insurance coverage afforded by this policy as respects operations in New York State shall conform to the requirements of the applicable New York State Insurance Laws and the applicable New York State Department of Financial Services Regulation; provided, however, that the limits of liability as stated in this policy shall be excess of the limits of liability of any "underlying insurance" as stated in the Declarations or in any endorsement attached hereto.

This provision still applies when the "underlying insurance" is issued by an unlicensed company.

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^ ^ ^ ^ ^ ^ 133392991

LOVELL SAFETY MGMT CO., LLC  
110 WILLIAM STREET 12TH FLR  
NEW YORK NY 10038



SCAN TO VALIDATE  
AND SUBSCRIBE

<b>POLICYHOLDER</b> MCNAMEE CONSTRUCTION CORP 154 ROUTE 202 PO BOX 182 LINCOLNDALE NY 10540	<b>CERTIFICATE HOLDER</b> CITY OF NEWBURGH 83 BROADWAY NEWBURGH NY 12550
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<b>POLICY NUMBER</b> Z 1314 580-0	<b>CERTIFICATE NUMBER</b> 962499	<b>POLICY PERIOD</b> 04/01/2023 TO 04/01/2024	<b>DATE</b> 03/13/2023
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THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 1314 580-0, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

**IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT [HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP](https://www.nysif.com/cert/certval.asp). THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.**

THIS CERTIFICATE DOES NOT APPLY TO THOSE JOB SITES WHICH ARE COVERED BY OTHER INSURANCE AND ARE SPECIFICALLY EXCLUDED BY ENDORSEMENT.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 835382380



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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
CHANGE ORDER NO. 8 WITH MCNAMEE CONSTRUCTION CORPORATION  
FOR A TIME EXTENSION TO THE CONSTRUCTION CONTRACT IN  
THE ROUTE 32/ METAL ARCH CULVERT BRIDGE (LAKE STREET BRIDGE)  
REHABILITATION PROJECT (PIN# 8761.57/BIN# 2022260)**

**WHEREAS**, by Resolution No. 162-2021 of July 12, 2021, the City Council of the City of Newburgh awarded a bid for the construction of the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260) to McNamee Construction Corporation in an amount not to exceed \$1,678,560.00; and

**WHEREAS**, additional drainage work, submitted as Change Order No. 7, along with punch list items and contract close out will need more time to complete, and requires a change order for an extension of time to December 31, 2023; the same being in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to execute Change Order No. 8 with McNamee Construction Corporation for contract completion extension December 31, 2023 in the Route32/Metal Arch Culvert Bridge (Lake Street Bridge) Rehabilitation Project (PIN# 8761.57/BIN# 2022260).



# HVEA Engineers

## Change Order Details

PIN 8761.57 Route 32 Lake Street Bridge Rehabilitation

<b>Description</b>	Lake Street/Route 32 over Quassaick Creek bridge rehabilitation. Project will rehabilitate the existing bridge that carries Lake Street (Route 32) over the Quassaick Creek located in the City of Newburgh, Orange County, BIN 2022260.
<b>Prime Contractor</b>	McNamee Construction Corp 154 Route 202, PO Box 182 Lincolndale, NY 10540
<b>Change Order</b>	8
<b>Status</b>	Pending
<b>Date Created</b>	08/17/2023
<b>Type</b>	Time Extension
<b>Summary</b>	Extend Completion Date to 12/31/2023
<b>Change Order Description</b>	Contract work has been completed, but there is a significant water ponding issue in the northbound right lane that needs to be addressed. No work has been done while waiting for the project designer to develop a solution to install additional drainage. The drainage design has been completed with DOT review and approval. The new agreed price item for the drainage work has been submitted in change order #07. The work to install the new drainage is expected to take two weeks. The contractor will schedule the work after the approval of change order #07. This time extension will allow for the approval of change order #07, for the contractor to complete the drainage work, and allow time to complete punchlist work and to final out the contract.
<b>Awarded Project Amount</b>	\$1,678,560.00
<b>Authorized Project Amount</b>	\$1,840,761.51
<b>Change Order Amount</b>	\$0.00
<b>Revised Project Amount</b>	\$1,840,761.51

## Time Limit Changes

Type	Original Deadline	Current Deadline	Pending Extension	Pending Deadline
Completion Date	08/01/2022	09/30/2023	92.0 Days	12/31/2023
Contract Completion Date				
1 time limit				

## Attachments

Document	Name	Description	Submission Date
PIN_8761.57_CO-08_CONR_250.pdf	PIN 8761.57 CO-08 CONR_250.pdf	CONR-250 Signed	08/22/2023 03:41 PM EDT
1 attachment			

(Sponsor) Certificate of Recommended Order on Contract

PIN 8761.57

LD040218

City of Newburgh Purchase Order No.: 29815

Contractor Name: **McNamee Construction Corporation**

Change Order No. 8

I, Peter Teliska, PE, hereby certify that I am the officially designated project manager of the subject project, that the adjustments here within and the material incorporated under the subject contract as stated in this Change Order No. 8 are necessary, and to the best of my knowledge and belief, the said information is correct and in strict compliance with the terms of the said contract.

I further certify that the records from which this order on contract was developed and any other record required by statute, rule or regulation of the New York State Department of Transportation or the Federal Government or prescribed in the contract have been established and will be filed in the Consultant's Office, in accordance with the terms of the contract.



Peter Teliska, PE, HVEA Engineers, Resident Engineer



Date

Todd Venning

Date

City Manager/CEO

City of Newburgh, Sponsor



August 22, 2023

Peter Teliska  
HVEA  
560 Route 52  
Suite 201  
Beacon, NY 12508

RE: 8761.57; Route 32 Lake Street Bridge Rehab – CONR250 Time Extension Request

Mr. Teliska,

McNamee Construction Corp. is requesting a time extension on this project to December 31, 2023 to allow adequate time to complete the additional work added to the contract, as well as project closeout.

Please see attached for our CONR250 request form for review and approval.

Sincerely,

A handwritten signature in blue ink, appearing to be "D MacNamee", written over a horizontal line.

Dan MacNamee  
President

**APPLICATION FOR EXTENSION OF COMPLETION DATE**

Contract No.: LD040218 Contract Description: Route 32 TAP: Lake St. Bridge Rehab  
Contractor Name: McNamee Construction Corp.

The contract identified above provides for completion of the work by the contract completion date. In accordance with the provisions of Article 4 of said contract, the undersigned Contractor hereby makes application for an extension of the date of completion of said contract to 12/31/2023.

Pursuant to Article 4 of said contract - "No extension beyond the date of completion fixed by the terms of this contract shall be effective until approved in writing by the State. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the work, ..."

In consideration for granting an extension of the contract completion date as requested herein, the undersigned Contractor hereby acknowledges and agrees to the following terms and conditions:

1. As set forth in the Standard Specifications; for each calendar day, or any portion thereof, that any work remains uncompleted after the contract completion date specified in the contract agreement, Liquidated Damages and/or Engineering Charges from the contract completion date to the final date of completion of the work will be assessed against the Contractor. Engineering Charges include all appropriate engineering and inspection expenses incurred by the State, its consultants and inspection agencies, and by railroad companies. Engineering Charges will be assessed in cases where the work has been unduly delayed by the Contractor because of unwarranted reasons, inefficient operation, or for any other reason for which the Department determines the Contractor to be responsible.
2. Approval of this Application for Extension of Completion Date, without a charge for engineering and inspection service, shall not obligate the State, in any manner whatsoever, to liability in any claim for damages for delay which may be made against the State in connection with the aforesaid contract, and such approval is granted solely for the purpose of completing the work and expediting contract payments.

It is understood that, if this extension of completion date is approved, the Commissioner of Transportation does not waive or release any claim the Department may have against the Contractor whether it be for actual or liquidated damages for any reason whatsoever.

Work Remaining:

additional work to install new drainage and administrative  
contract closeout.

Reason for Request:

design changes and additional work as directed by  
project owner.

By:



Signature

8/22/2023

Date

President

Title





# CERTIFICATE OF INSURANCE COVERAGE

## NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

### PART 1. To be completed by NYS disability and Paid Family Leave benefits carrier or licensed insurance agent of that carrier

<p>1a. Legal Name <input type="checkbox"/> Address of Insured (use street address only)</p> <p>MCNAMEE CONSTRUCTION CORP PO Box 182 154 ROUTE 202 LINCOLNDALE, NY 10540</p> <p><input type="checkbox"/> Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)</p>	<p>1b. Business Telephone Number of Insured</p> <p>914-243-5910</p> <p>1 <input type="checkbox"/> Federal <input type="checkbox"/> Social Security Identification Number of Insured or Social Security Number</p> <p>133392991</p>
<p>2. Name and Address of Entity Requesting Proof of Coverage</p> <p><input type="checkbox"/> Entity Being Listed as the Certificate Holder</p> <p>City of Newburgh 83 Broadway Newburgh, NY 12550</p>	<p>3a. Name of Insurance Carrier</p> <p>ShelterPoint Life Insurance Company</p> <p>3b. Policy Number of Entity Listed in Block 1a</p> <p>DBL396796</p> <p>3c. Policy effective period</p> <p>12/15/2022 to 12/14/2023</p>

☐ Policy provides the following benefits:

☒ A. Both disability and paid family leave benefits.

☐ B. Disability benefits only.

☐ C. Paid family leave benefits only.


5. Policy covers:

☒ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.

☐ B. Only the following class or classes of employer's employees:

\_\_\_\_\_

I, undersigned, do hereby certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 1/4/2023 By 

(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 516-829-8100 Name and Title Richard White, Chief Executive Officer

**IMPORTANT:** If Boxes 4A and 5A are checked and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220 Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be emailed to PAU@wcb.ny.gov or it can be mailed for collection to the Workers' Compensation Board, Plans Administration Unit, PO Box 5200, Binghamton, NY 13902-5200.

### PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4B, 4C or 5B have been checked)

**State of New York  
Workers' Compensation Board**

According to information maintained by the NYS Workers' Compensation Board, the above named employer has complied with the NYS Disability and Paid Family Leave Benefits Law (Article 9 of the Workers' Compensation Law) with respect to all of their employees.

Date Signed \_\_\_\_\_ By \_\_\_\_\_

(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number \_\_\_\_\_ Name and Title \_\_\_\_\_

**Please Note:** Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. **Insurance brokers are NOT authorized to issue this form.**



## **Additional Instructions for Form DB-120.1**

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in Box 1a for disability and/or Paid Family Leave benefits under the NYS Disability and Paid Family Leave Benefits Law. The insurance carrier or its licensed agent will send this Certificate of Insurance Coverage (Certificate) to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This Certificate may be used as evidence of a NYS disability and/or Paid Family Leave benefits contract of insurance only while the underlying policy is in effect.

**Please Note: Upon the cancellation of the disability and/or Paid Family Leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Insurance Coverage for NYS disability and/or Paid Family Leave Benefits or other authorized proof that the business is complying with the mandatory coverage requirements of the NYS Disability and Paid Family Leave Benefits Law.**

### **NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW**

#### **§220. Subd. 8**

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.



MCNACON-01

BMETZLER

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/29/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Emery &amp; Webb, Inc. - Pawling Office</b> <b>33 East Main Street</b> <b>Suite 2</b> <b>Pawling, NY 12564</b>	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext): (845) 855-1112</b>		<b>FAX (A/C, No): (845) 855-1115</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> <b>McNamee Construction Corp.</b> <b>154 Rte 202,</b> <b>PO Box 182</b> <b>Lincolndale, NY 10540</b>	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A : Wesco Insurance Company</b>		<b>25011</b>
	<b>INSURER B : Travelers Indemnity Company of America</b>		<b>25666</b>
	<b>INSURER C : Navigators Insurance Group</b>		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
<b>INSURER F :</b>			

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

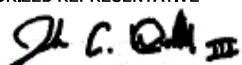
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X		WPP1516772-06	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X		WPP1628314-04	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X		WUM1891814-02	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Commercial Articles			6606084C201TIL23	12/31/2022	12/31/2023	Rented/Leased 515,000
C	Pollution Liability			NY22ECPZ0C8VMIV	9/29/2022	9/29/2023	each condition/agg 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) when required by written contract or agreement, the City of Newburgh its boards, officers and employees, People of the State of New York, New York Commissioner of Transportation, and M.G. McLaren Engineering and Land Surveying, P.C., are included as additional insureds on a primary and non contributory basis per attached form#s CG2037 01 3, CG2038 04 13, CG2001 04 13, CA990187NY 10 13. Umbrella follows forms.

## CERTIFICATE HOLDER

## CANCELLATION

<b>City of Newburgh</b> <b>83 Broadway</b> <b>Newburgh, NY 12550</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
BLANKET AS REQUIRED BY WRITTEN CONTRACT.	
Metro-north Railroad & Metropolitan Transportation Authority (MTA), Attn: Risk and Insurance Management, 2 Broadway, 21st Floor, New York, NY 10004.	Contract#D262530 Road and bridge maintenance work at various locations per written contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS FOR OTHER  
PARTIES WHEN REQUIRED IN WRITTEN  
CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
  - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

2. Available under the applicable Limits of Insurance shown in the Declarations;  
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**This Endorsement Changes The Policy. Please Read It Carefully**

## **BUSINESS AUTO COVERAGE EXPANSION ENDORSEMENT – NEW YORK**

This endorsement modifies insurance provided by the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the COVERAGE FORM apply unless modified by the endorsement.

**A. Newly Acquired or Formed Organizations, Employee Hired Car Liability and Blanket Additional Named Insured Status for Certain Entities.**

Item 1. **Who is an Insured** of Paragraph A. **Coverage** under **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to add:

- d. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability com-any, and over which you maintain ownership of a majority interest (greater than 50%), will qualify as a Named Insured; however,
  - (1) coverage under this provision is afforded only until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - (2) coverage does not apply to "bodily injury", "property damage" or "covered pollution cost or expense" that results from an "accident" which occurred before you acquired or formed the organization; and
  - (3) coverage does not apply if there is other similar insurance available to that organization, or if similar insurance would have been available but for its termination or the exhaustion of its limits of insurance.

This insurance does not apply if coverage for the newly acquired or formed organization is excluded either by the provisions of this coverage form or by endorsement.

- e. An "employee" of yours is an "insured" while operating an "auto" hired or rented

under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

- f. Any person or organization you are required by written contract or agreement to name as an additional "insured", but only with respects to liability created in whole or in part by such agreement.

**B. Increase Of Loss Earnings Payment**

Subpart (4) of a. **Supplementary Payments** of Item 2. **Coverage Extensions** of Paragraph A. **Coverage** under **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to read:

- (4) We will pay reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$1,000 per day because of time off from work.

**C. Limited Automatic Towing Coverage**

Item 2. **Towing**, of Paragraph A. **Coverage**, under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to read:

**2. Towing**

We will pay for towing and labor costs each time that a covered "auto" is disabled. All labor must be performed at the place of disablement of the covered "auto".

- a. The limit for "autos" other than private passenger types is \$250;
- b. The limit for "autos" of the private passenger type is as shown in the Declarations;
- c. No deductible applies to this coverage.



- D. Item 3. **Glass Breakage – Hitting A Bird Or Animal – Falling Objects or Missiles** of Paragraph A. **Coverage** under **SECTION III – PHYSICAL DAMAGE COVERAGE**, is amended to add:

**Glass Repair Coverage**

We will waive the Comprehensive deductible for Glass, if one is indicated on your covered "auto", for glass repairs. We will repair at no cost to you, any glass that can be repaired without replacement, provided the "loss" arises from a covered Comprehensive "loss" to your "auto".

- E. **Increase Of Transportation Expense Coverage**

Subpart a. **Transportation Expenses** of Item 4. **Coverage Extensions** of Paragraph A. **Coverage** under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to read:

a. **Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage or Theft Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

- F. **"Personal Effects" Coverage**

Item 4. **Coverage Extensions** of Paragraph A. **Coverage**, under **SECTION III – PHYSICAL DAMAGE COVERAGE**, is amended to add:

**"Personal Effects" Coverage**

We will pay actual cash value for "loss" to "personal effects" of the "insured" while in a covered "auto" subject to a maximum limit of \$2,500 per "loss", for that covered "auto" caused by the same "accident". No deductible will apply to this coverage.

- G. **"Downtime Loss" and Rental Reimbursement Coverage**

Item 4. **Coverage Extensions**, of Paragraph A. **Coverage**, under **SECTION III. PHYSICAL DAMAGE COVERAGE**, is amended to add:

**"Downtime Loss" and Rental Reimbursement Coverage**

We will pay any resulting "downtime loss" and rental reimbursement expenses you sustain as a result of a covered physical damage "loss" to a covered "auto" up to a combined maximum of \$100 per day, for a maximum of 30 days for the same physical damage "loss", subject to the following conditions:

- a. We will provide "downtime loss" and rental reimbursement beginning on the 6<sup>th</sup> day after:
  - (1) We have given you our agreement to pay for repairs to a covered "auto" and you have given the repair facility your authorization to make repairs; or
  - (2) Coverage for "downtime loss" and rental reimbursement expenses will end when any of the following occur:
    - (a) You have a spare or reserve "auto" available to you to continue our operations.
    - (b) You purchase a replacement "auto".
    - (c) Repairs to your covered "auto" have been completed by the repair facility and they determine the covered "auto" is road-worthy.
    - (d) You reach the 30 day maximum coverage.

- H. **"Personal Effects" Exclusion**

Paragraph B. **Exclusions** under **SECTION III – PHYSICAL DAMAGE COVERAGE**, is amended to add:

**"Personal Effects" Exclusion**

We will not pay for "loss" to "personal effects" of any of the following:

- a. Accounts, bills, currency, deeds, evidence of debt, money, notes, securities or commercial paper or other documents of value.
- b. Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry; watches; precious or semi-precious stones.
- c. Paintings, statuary and other works of art.
- d. Contraband or property in the course of illegal transportation or trade.

- e. "Loss" caused by theft, unless there is evidence of forced entry into the covered "auto" and a police report is filed.

**I. Accidental Airbag Discharge Coverage**

Item 3.a. of Paragraph B. Exclusions under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to read:

- a. Wear and tear, freezing, mechanical or electrical breakdown. The exclusion relating to mechanical break-down does not apply to the accidental discharge of an air bag.

**J. Aggregate Deductible**

Paragraph D. Deductible under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to add:

Regardless of the number of covered "autos" involved in the same "loss", only one deductible will apply to that "loss". If the deductible amounts vary by "autos", then only the highest applicable deductible will apply to that "loss".

**K. Diminishing Deductible**

Paragraph D. Deductible under **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to add:

Any deductible will be reduced by the percentage indicated below on the first "loss" reported during the corresponding policy period:

Loss Free Policy Periods With the Expansion Endorsement	Deductible Reduction on the first "loss"
1	0%
2	25%
3	50%
4	75%

If we pay a Physical Damage "loss" during the policy period under any BUSINESS AUTO COVERAGE FORM you have with us, your deductible stated in the Declaration's page of each such COVERAGE FORM will not be reduced on any subsequent claims during the remainder of your policy period and your deductible reduction will revert back to 0% for each such COVERAGE FORM if coverage is renewed. However at no time shall the deductible be less than \$50 on Comprehensive and \$100 on Collision, if these coverages are provided.

**L. Knowledge of Loss and Notice To Us**

Subsection a. of Item 2. Duties In the Event of Accident, Claim, Suit or Loss of Paragraph A. Loss Conditions under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to add:

However, as soon as reasonably possible notice of the "accident", claim, "suit" or "loss" to us or our authorized representative only applies after the "accident", claim, "suit" or "loss" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partner-ship;
- (3) An "executive officer" or director, if you are a corporation;
- (4) A manager or member, if you are a limited liability company;
- (5) Your insurance manager; or
- (6) Your legal representative.

**M. Waiver Of Subrogation For Auto Liability Losses Assumed Under Insured Contract**

Item 5. Transfer Of Rights Of Recovery Against Others To Us of Paragraph A. Loss Conditions under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to read:

**5. Transfer of Rights of Recovery Against Others To Us**

If any person or organization to or for whom we make payments under this Coverage From has rights to recover damages from another, those right are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after an "accident" or "loss" to impair them. However, if the insured has waived those rights to recover through a written contract, we will waive any right to recovery we may have under this Coverage Form.

**N. Insurance is Primary and Noncontributory**

Subpart a. of Item 5. Other Insurance of Paragraph B. General Conditions under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to read:

- a. This insurance is primary and noncontributory, as respects any other insurance.

**O. Other Insurance – Hired Auto Physical Damage**

Subpart **b.** of Item **5.** **Other Insurance** of Paragraph **B. General Conditions** under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to read:

- b.** For **Hired Auto Physical Damage Coverage**, the following are deemed to be covered "autos" you own:
- (1)** Any covered "auto" you lease, hire, rent or borrow; and
  - (2)** Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**P. Unintentional Failure To Disclose Hazards**

Paragraph **B. General Conditions** under **SECTION IV – BUSINESS AUTO CONDITIONS** is amended to add:

- 9.** Your failure to disclose all hazards existing as of the inception date of this policy shall not prejudice the coverage afforded by this policy, provided that such failure to disclose all hazards is not intentional. However, you must report such previously undisclosed hazards to us as soon as practicable after its discovery.

**Q. Additional Definition**

**SECTION V – DEFINITIONS** is amended to add:

"Personal effects" means personal property owned by the "insured".

"Downtime loss" means actual loss of "business income" for the period of time that a covered "auto":

- 1.** Is out of service for repair or replacement as a result of a covered physical damage "loss" and
- 2.** Is in the custody of a repair facility if not a total "loss".

"Business Income" means:

- 1.** Net income (Net profit of loss before income taxes that would have been earned or incurred; and

- 2.** Continuing normal operating expenses incurred, including payroll.

**R. Fellow Employee Injured By Covered Auto You Own Or Hire**

Item **A.4.b. Fellow Employee** Exclusion of **New York In Business Auto, Business Auto Physical Damage, Motor Carrier and Trucker Coverage Forms, CA 01 12** is amended to add:

This exclusion does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire. Such coverage as is afforded by this provision is excess over any other collectible insurance.

**In this endorsement, Headings and Titles are inserted solely for the convenience and ease of reference. They do not affect the coverage provided by this endorsement, nor do they constitute any part of the terms and conditions of this endorsement. All other policy wording not specifically changed, modified, or replaced by this endorsement wording remains in effect.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **FOLLOWING FORM ENDORSEMENT – NEW YORK**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL LIABILITY UMBRELLA COVERAGE PART**

The insurance provided under this policy will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this policy. To the extent provisions of "underlying insurance" conflict with the provisions of this policy, the provisions of this policy will apply. However, the coverage provided under this policy will not be broader than that provided by the applicable "underlying insurance".

There may be more than one "underlying insurance" listed in the Declarations. When provisions in those policies conflict, and are not superseded by the provisions of this policy, the provisions, exclusions and limitations of the "underlying insurance" applicable to the particular "occurrence" or offense which results in a claim or "suit" will apply.

Notwithstanding anything to the contrary in this policy, the insurance coverage afforded by this policy as respects operations in New York State shall conform to the requirements of the applicable New York State Insurance Laws and the applicable New York State Department of Financial Services Regulation; provided, however, that the limits of liability as stated in this policy shall be excess of the limits of liability of any "underlying insurance" as stated in the Declarations or in any endorsement attached hereto.

This provision still applies when the "underlying insurance" is issued by an unlicensed company.

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^ ^ ^ ^ ^ ^ 133392991

LOVELL SAFETY MGMT CO., LLC  
110 WILLIAM STREET 12TH FLR  
NEW YORK NY 10038



SCAN TO VALIDATE  
AND SUBSCRIBE

<b>POLICYHOLDER</b> MCNAMEE CONSTRUCTION CORP 154 ROUTE 202 PO BOX 182 LINCOLNDALE NY 10540	<b>CERTIFICATE HOLDER</b> CITY OF NEWBURGH 83 BROADWAY NEWBURGH NY 12550
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<b>POLICY NUMBER</b> Z 1314 580-0	<b>CERTIFICATE NUMBER</b> 962499	<b>POLICY PERIOD</b> 04/01/2023 TO 04/01/2024	<b>DATE</b> 03/13/2023
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THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 1314 580-0, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

**IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT [HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP](https://www.nysif.com/cert/certval.asp). THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.**

THIS CERTIFICATE DOES NOT APPLY TO THOSE JOB SITES WHICH ARE COVERED BY OTHER INSURANCE AND ARE SPECIFICALLY EXCLUDED BY ENDORSEMENT.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 835382380



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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A LETTER AGREEMENT BETWEEN THE CITY OF NEWBURGH  
AND THE FIRM OF PKF O'CONNOR DAVIES, LLP FOR AUDITING SERVICES FOR  
FISCAL YEAR ENDING DECEMBER 31, 2023 FOR THE PRICE OF \$94,500.00**

**WHEREAS**, the firm of PKF O'Connor Davies, LLP has worked diligently in connection with the preparation of the City of Newburgh auditing for fiscal years ending December 31, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022; and

**WHEREAS**, based on experience and work history the Comptroller has recommended that the firm of PKF O'Connor Davies, LLP be retained for fiscal year ending December 31, 2023; and

**WHEREAS**, this Council has reviewed the letter agreement attached hereto and has determined it to be in the best interests of the City to enter into the same;

**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 a letter agreement with the firm of PKF O'Connor Davies, LLP for auditing services for the fiscal year ending December 31, 2023 for the price of \$94,500.00.



July 21, 2023

Members of the City Council  
City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550

Dear Members of the City Council:

This letter sets forth our understanding of the terms and objectives of our engagement, and the nature and scope of the services we will provide to City of Newburgh, New York ("Entity").

Prior to the commencement of our audit(s) we may not know if an audit performed in accordance with the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards ("Uniform Guidance") is required. Consequently, this letter includes the words "if applicable" next to relevant single audit communication requirements.

### **Audit Scope and Objectives**

We will audit the Entity's statements of the governmental activities, the discretely presented component unit, each major fund and the aggregate remaining fund information and the disclosures, which collectively comprise the basic financial statements of the Entity as of and for the year ended December 31, 2023 and issue our report thereon as soon as reasonably possible after completion of our work.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information ("RSI"), such as management's discussion and analysis ("MD&A"), to supplement the Entity's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Entity's RSI in accordance with auditing standards generally accepted in the United States of America, ("US GAAS"). These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by US GAAP and will be subjected to certain limited procedures, but will not be audited:

- Management's Discussion and Analysis
- Schedule of Changes in the Total OPEB Liability and Related Ratios
- Schedules of Contributions and Proportionate Share of the Net Pension Liability

PKF O'CONNOR DAVIES, LLP

500 Mamaroneck Avenue, Harrison, NY 10528 | Tel: 914.381.8900 | Fax: 914.381.8910 | [www.pkfod.com](http://www.pkfod.com)

PKF O'Connor Davies, LLP is a member firm of the PKF International Limited network of legally independent firms and does not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.



We have also been engaged to report on supplementary information other than the RSI that accompanies the Entity's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with US GAAS, *Government Auditing Standards* issued by the Comptroller General of the United States ("GAGAS") (if applicable), and the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") (if applicable), and we will provide an opinion on it in relation to the financial statements as a whole in a report combined with our auditor's report on the financial statements:

- Combining and Individual Fund Financial Statements and Schedules
- Schedule of Expenditures of Federal Awards (if applicable)

In connection with our audit of the basic financial statements, we will read the following other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

- Introductory section of the Annual Comprehensive Financial Report
- Statistical section of the Annual Comprehensive Financial Report

The objectives of our audit are to obtain reasonable assurance as to whether the financial statements as a whole are free from material misstatement, whether due to fraud, error, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the Entity or to acts by management or employees acting on behalf of the Entity; and issue an auditor's report that includes our opinion about whether your financial statements are fairly presented, in all material respects, in conformity with GAAP; and report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Because the determination of abuse is subjective, GAGAS do not expect auditors to provide reasonable assurance of detecting abuse. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, GAGAS (if applicable), and Uniform Guidance (if applicable) will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

We will conduct the audit in accordance with US GAAS, GAGAS (if applicable), and Uniform Guidance (if applicable), and will include tests of accounting records, a determination of major programs in accordance with Uniform Guidance (if applicable), and other procedures we consider necessary to enable us to express such opinions. As part of an audit in accordance with US GAAS, GAGAS (if applicable), and Uniform Guidance, we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of



assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements may exist and not be detected by us even though the audit is properly planned and performed in accordance with US GAAS, GAGAS (if applicable), and Uniform Guidance (if applicable). In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements and on those programs we have determined to be major programs (if applicable). However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting or misappropriation of assets and any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit (if applicable). We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential.

The objective for our audit also includes reporting on:

- Internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with GAGAS (if applicable).
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with Uniform Guidance, Audits of States, Local Governments and Non-Profit Organizations (if applicable).

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Entity's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to GAGAS (if applicable).

Uniform Guidance (if applicable) requires that we also plan and perform the audit to obtain reasonable assurance about whether the Entity has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the "Uniform Guidance Compliance Supplement" for the types of compliance requirements that could have a direct and material effect on each of the Entity's major programs. The purpose of these procedures will be to express an opinion on the Entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to Uniform Guidance. As required by Uniform Guidance, we will also perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to prevent or detect material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to Uniform Guidance.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will also include, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the government's/Entity's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of



receivables and certain assets and liabilities by correspondence with selected customers, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement when required based on our professional judgement.

After our planning is complete, we will communicate to management and those charged with governance, the significant risk(s) of material misstatement identified in our audit planning.

### **Audit Procedures – Internal Control**

We will obtain an understanding of the Entity and its environment, including internal control relevant to the audit, sufficient to identify and assess the risks of material misstatement of the financial statements and the supplementary information, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standard.

Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to prevent and detect misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to GAGAS. An audit is also not designed to identify significant deficiencies or material weaknesses. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

### **Audit Procedures – Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Entity's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report.

### **Reporting**

We will issue a written report(s) upon completion of our audit of the Entity's financial statements and written reports required with audits performed in accordance with GAGAS and the Uniform Guidance (if applicable). Our reports will be addressed to management and those charged with governance. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add a separate section, or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or withdraw from this engagement.

We will also provide a report (which does not include an opinion) on internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements as required by GAGAS (if applicable).



The reports on internal control and compliance (if applicable) will each include a paragraph that states that the purpose of the report is solely to describe (1) the scope of testing of internal control over financial reporting and compliance and the result of that testing and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance, (2) the scope of testing internal control over compliance for major programs and major program compliance and the result of that testing and to provide an opinion on compliance but not to provide an opinion on the effectiveness of internal control over compliance, and (3) that the report is an integral part of an audit performed in accordance with GAGAS in considering internal control over financial reporting and compliance and Uniform Guidance in considering internal control over compliance and major program compliance. The paragraph will also state that the report is not suitable for any other purpose.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form (if applicable) that summarize our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit.

We will also communicate with those charged with governance any (a) fraud involving senior management and other fraud that causes a material misstatement of the financial statements; (b) violations of laws or governmental regulations that come to our attention (unless they are clearly inconsequential); (c) disagreements with management and other serious difficulties encountered in performing the audit; and, (d) various matters related to the Entity's accounting policies and financial statements.

### **Other Services**

PKF O'Connor Davies will also prepare the financial statements and the Annual Update Document (AUD) of the Entity in conformity with accounting principles generally accepted in the United States of America based on information provided by you.

PKF O'Connor Davies will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. PKF O'Connor Davies, using professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

### **Responsibilities of Management for the Financial Statements**

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements, including all disclosures, RSI and supplementary information, in conformity with accounting principles generally accepted in the United States of America.

Management is responsible for making drafts of financial statements, all financial records, and related information available to us and for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers). You are also responsible for providing



us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Your responsibilities include adjusting the financial statements and supplementary information to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the preparation of the supplementary information in conformity with accounting principles generally accepted in the United States of America. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon.

Management's responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the RSI and supplementary information in accordance with US GAAP; (2) you believe the RSI and supplementary information, including its form and content, is fairly presented in accordance with US GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the RSI and supplementary information.

Management is responsible for management decisions and assuming all management responsibilities; for designating an individual with suitable skill, knowledge, and/or experience to oversee the financial statement preparation or other non-attest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is also responsible for identifying government award programs and understanding and complying with the compliance requirements, and for preparation of the schedule of expenditures of federal awards in accordance with the requirements of Uniform Guidance (if applicable). As part of the audit, we will assist with preparation of your financial statements, schedule of expenditures of federal awards (if applicable), and related notes. You agree to include our report on the schedule of expenditures of federal awards in any document that contains, and indicates that we have reported on, the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. You are responsible for making all management decisions and assuming all management responsibilities relating to the financial statements, schedule of expenditures of federal awards and related notes, and for accepting full responsibility for such decisions.

Management is also responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the Entity involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Entity received in communications from employees, former employees, grantors, regulators or others. In addition, you are responsible for identifying and ensuring that the Entity complies with applicable laws, regulations, contracts, agreements and grants and for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may



report. Additionally, as required by Uniform Guidance (if applicable), it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

In order to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance requirements, management is responsible for establishing and maintaining effective internal control, including internal control over compliance, and for evaluating and monitoring ongoing activities.

Management's responsibilities also include identifying any significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the audit objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other engagements or studies. The Entity is also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions for the report, and for the timing and format for providing that information.

At the conclusion of the engagement, we will request from management written confirmation concerning representations made to us in connection with the audit. The representation letter, among other things, will confirm management's responsibility for: (1) the preparation of the financial statements in conformity with US GAAP, (2) the availability of financial records and related data, and (3) the completeness and availability of all minutes of board meetings. Management's representation letter will further confirm that: (1) the effects of any uncorrected misstatements aggregated by us during the engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole, and (2) we have been informed of, or that there were no incidences of, fraud involving management or those employees who have significant roles in the Entity's internal control. You will also be required to acknowledge in the management representation letter, when applicable, our assistance with preparation of the financial statements and related schedules, RSI and the schedule of expenditures of federal awards (if applicable) and that you have reviewed and approved the financial statements, aforementioned schedules and RSI, and related notes prior to their issuance and have accepted responsibility for them. We will place reliance on these representations in issuing our report.

In the event that we become obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any third party, as a direct or indirect result of an intentional, knowing or reckless misrepresentation or provision to us of inaccurate or incomplete information by the Entity or, any elected official, member of management or employee thereof in connection with this engagement, and not any failure on our part to comply with professional standards, you agree to indemnify us against such obligations.

To the best of your knowledge, you are unaware of any facts which might impair our independence with respect to this engagement.

The financial statements are the property of the Entity and can be reproduced and distributed as management desires. However, you must notify us in advance and obtain our approval if you intend to make reference to our firm in a document that includes our auditors' report on the financial statements. Because our engagement does not contemplate the foregoing, there may be an additional fee in connection with our review of any such documents. In the event our auditor/client relationship has been terminated when the Entity seeks such consent, we will be under no obligation to grant such consent or approval.



With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We understand that your accounting department personnel will assist us to the extent practicable in completing the audit. They will provide us with detailed trial balances, supporting schedules, and other information we deem necessary. A list of these schedules and other items of information will be furnished to you before we begin the audit. The timely and accurate completion of this information is an essential condition to our completion of the audit and the issuance of the audit report.

We keep documents related to this engagement in accordance with our records retention policy and applicable regulations or for any additional period requested by the applicable cognizant agency. If we are aware that a federal awarding agency or the Entity is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation. We do not keep any original client records, so we will return those to you at the completion of the services rendered under this engagement. When records are returned to you, it is your responsibility to retain and protect your records for possible future use, including potential examination by any government or regulatory agencies.

As part of our engagement, we may propose standard, adjusting, or correcting journal entries to your financial statements. Management, however, has final responsibility for reviewing the proposed entries and understanding the nature and impact of the proposed entries to the financial statements. It is our understanding that management has designated qualified individuals with the necessary expertise to be responsible and accountable for overseeing the acceptance and processing of such journal entries.

#### **Non-reliance on oral advice**

It is our policy to put all advice on which a client intends to rely in writing. We believe that is necessary to avoid confusion and to make clear the specific nature and limitations of our advice. You should not rely on any advice that has not been put in writing by our firm after a full supervisory review.

#### **Electronic and other communication**

During the course of the engagement, we may communicate with you or with Entity personnel via e-mail or other electronic means. You should be aware that communication in those media may be unsafe to use and present a risk of misdirection and/or interception by unintended third parties, or failed delivery or receipt. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of e-mail or other electronic transmissions, including any consequential, incidental, direct, indirect or special damages.

#### **Access to working papers**

During the course of this engagement, we will develop files of various documents, schedules and other related engagement information known as our working papers. As we are sure you can appreciate, these working papers may contain confidential information and our firm's proprietary data. You understand and agree that these working papers are, and will remain, our exclusive property. Except as discussed below, any requests for access to our working papers will be discussed with you before making them available to requesting parties:

- (1) Our firm, as well as other accounting firms, participates in a peer review program covering our audit and accounting practices. This program requires that once every three years we subject our system of quality control to an examination by another accounting firm. As part of this process,

the other firm will review a sample of our work. It is possible that the work we perform for you may be selected for review. If it is, the other firm is bound by professional standards to keep all information confidential.

- (2) We may be requested to make certain working papers available to regulators pursuant to authority given to them by law, regulation or subpoena. Such regulators may include (i) a federal agency providing direct or indirect funding or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities; (ii) the American Institute of Certified Public Accountants; and (iii) the State Board of Accountancy. If requested, access to such working papers will be provided under the supervision of our personnel. Furthermore, upon request, we may provide photocopies of selected working papers to them. The regulator may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.

## Fees and billing

The components of our fees for each of the fiscal years ending December 31, 2023 are detailed below:

Basic Audit Fee	\$ 71,500
Federal Single Audit	12,500
NYS DOT Audit (if necessary)	2,000
NYS AUD Preparation	4,500
ACFR Preparation	4,000
	<hr/>
	\$ 94,500
	<hr/>

The above quoted fee includes the compliance audit of one major program in accordance with Uniform Grant Guidance. If the City requires more than one major program to be audited, it will be an additional cost estimated to range from \$4,000 and \$6,000.

The fee is based on anticipated cooperation from your personnel, audit condition of the books and records and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

In accordance with our firm policies, work may be suspended if your account becomes overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not issued our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

Our fees for these services are due and payable under the payment schedule which follows. Invoices for additional amounts that may be incurred for these and other services will be rendered as such work progresses and are payable upon presentation.

<u>Payments will be due</u>	<u>Percentage</u>
Upon completion of our audit field work	75%
Upon submission of the final report and management letter	25%
	<hr/>
	100%
	<hr/>



Our average standard hourly billing rates are shown below. Actual rates may vary by staff experience levels.

Level	2023
Sr. Partner/Partner	\$325-315
Sr. Manager/Manager	\$250-220
Supervisor	\$195
Senior Accountant	\$175
Associate	\$150

### **Liability**

Any and all claims by the Entity arising under this engagement must be commenced by the Entity within one year following the date on which our firm delivered our report on the financial statements associated with this engagement, or the date the Entity is informed of the engagement's termination in the event our report is not delivered, for any reason.

Our firm's maximum liability to the Entity for any reason relating to the services under this letter shall be limited to three times the fees paid to the firm for the services or work product giving rise to liability, except to the extent it is finally determined that such liability resulted from the willful or intentional misconduct or fraudulent behavior of the firm. In no event shall the firm be liable to the Entity, whether a claim be in tort, contract or otherwise, for any consequential, special, indirect, lost profit or similar damages.

### **Reimbursement**

You agree to reimburse our firm, its partners, principals and employees, to the fullest extent permitted by law for any expense, including compensation for our time at our standard billing rates and reimbursement for our out-of-pocket expenses and reasonable attorneys' fees, incurred in complying with or responding to any request (by subpoena or otherwise) for testimony, documents or other information concerning the Entity by any governmental agency or investigative body or by a party in any litigation or dispute other than litigation or disputes involving claims by the Entity against the firm. This agreement will survive termination of this engagement.

### **Dispute resolution**

Any claim or controversy ("dispute") arising out of or relating to this engagement, the services provided thereunder, or any other services provided by or on behalf of the firm or any of its subcontractors or agents to the Entity or at its request (including any dispute involving any person or entity for whose benefit the services in question are or were provided). This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue shall be in either Orange or Westchester County. Each party waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Any proceedings arising out of and/or relating to this engagement shall be resolved by a judge trial without a jury and the right to a jury trial is waived, to the fullest extent permitted by applicable law.

Any claim by our firm seeking payment of our fees and disbursements related to this engagement and the services provided hereunder shall be brought in a federal or state court of appropriate jurisdiction sitting without a jury. YOU AND OUR FIRM IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING RELATED TO NON-PAYMENT OF ANY OF OUR FEES AND DISBURSEMENTS.



## **Hosting services**

In order to maintain our independence in accordance with the AICPA's Code of Professional Conduct, we cannot host or maintain any client information. You are expected to retain all financial and non-financial information including anything you upload to a portal and are responsible for downloading and retaining anything we upload in a timely manner. Portals are only meant as a method of transferring data, are not intended for the storage of client information, and may be deleted at any time. You are expected to maintain control over your accounting systems to include the licensing of applications and the hosting of said applications and data. We do not provide electronic security or back-up services for any of your data or records. Giving us access to your accounting system does not make us hosts of information contained within.

## **Employment of firm partner or professional employee**

The Entity acknowledges that hiring current or former PKF O'Connor Davies personnel participating in the engagement may be perceived as compromising our objectivity, and depending on the applicable professional standards, impairing our independence in certain circumstances. Accordingly, prior to entering into any employment discussions, with such known individuals, you agree to discuss the potential employment, including any applicable independence ramifications, with the engagement partner responsible for the services.

In addition, during the term of this Engagement Letter and for a period of one (1) year after the services are completed, we both agree not to solicit, directly or indirectly, or hire the other's personnel participating in the engagement without express written consent. If this provision is violated, the violating party will pay the other party a fee equal to the hired person's annual salary in effect at the time of the violation to reimburse the estimated costs of hiring and training replacement personnel.

## **Confirmation and other**

Jeffrey Shaver is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

GAGAS require that we provide you with a copy of our most recent external peer review report, and any subsequent peer review reports received during the period of the contract. Our latest peer review report accompanies this letter.

We will provide copies of our reports to the Entity; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

Our audit engagement for each year ends on delivery of our audit report covering that year. Requests for services other than those included in this engagement letter will be agreed upon separately.

PKF O'Connor Davies LLP ("LLP") and PKF O'Connor Davies Advisory LLC ("Advisory") practice in an alternative practice structure in accordance with applicable law, regulations and professional standards. LLP provides attest services to its clients. Advisory is not a registered CPA firm and does not provide audit or attest services. LLP has a contractual arrangement with Advisory, whereby Advisory provides LLP with professional and support personnel to perform professional services on behalf of LLP. In connection with our services, we may share information that we currently have and/or receive in the future between LLP and Advisory. Unless you indicate otherwise, your acceptance of the terms of this engagement shall be understood by us as your consent for LLP, Advisory and its employees to share confidential information between LLP and Advisory. LLP and Advisory have policies in place that require their employees to maintain as confidential all client information that is not otherwise publicly available.

All rights and obligations set forth herein shall become the rights and obligations of any successor firm to PKF O'Connor Davies, LLP by way of merger, acquisition or otherwise.

If this letter correctly expresses your understanding of the terms of our engagement, including our respective responsibilities, please sign the enclosed copy where indicated and return it to us.

We are pleased to have this opportunity to serve you.

Very truly yours,

*PKF O'Connor Davies, LLP*  
PKF O'Connor Davies, LLP

/Enc.

The services and terms described in the foregoing letter are in accordance with our requirements and are acceptable to us.

**CITY OF NEWBURGH, NEW YORK**

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

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

PKF O'Connor Davies, LLP is a member firm of the PKF International Limited network of legally independent firms and does not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.

\* \* \*





## **REPORT ON THE FIRM'S SYSTEM OF QUALITY CONTROL**

June 16, 2020

To the Partners of PKF O'Connor Davies, LLP  
and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of PKF O'Connor Davies, LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended December 31, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary). The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

### ***Firm's Responsibility***

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

### ***Peer Reviewer's Responsibility***

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

### ***Required Selections and Considerations***

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act, audits of employee benefit plans, audits of broker-dealers, and examinations of service organizations SOC 1 and SOC 2 engagements.

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

***Opinion***

In our opinion, the system of quality control for the accounting and auditing practice of PKF O'Connor Davies, LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended December 31, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. PKF O'Connor Davies, LLP has received a peer review rating of *pass*.

*Davie Kaplan, CPA, P.C.*

DAVIE KAPLAN, CPA, P.C.

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL  
AND EXECUTE A CONTRACT WITH JULY 4 EVER FIREWORKS, INC.  
& ROCCO POLIFRONE TO PROVIDE A FIREWORKS DISPLAY  
AT THE CITY OF NEWBURGH ANNUAL INTERNATIONAL FESTIVAL  
FOR THE AMOUNT OF \$18,500.00**

**WHEREAS**, the City of Newburgh has received a proposal from July 4 Ever Fireworks, Inc. & Rocco Polifrone to provide a fireworks display on September 3, 2023 with a rain date of September 4, 2023 for the 2023 International Festival at a cost of \$18,5000.00; and

**WHEREAS**, funding for the International Festival fireworks display shall be derived from the 2023 Budget – A.7550.0754.0000.0000; and

**WHEREAS**, this Council has determined that accepting the proposal of July 4 Ever Fireworks, Inc. & Rocco Polifrone 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 hereby is authorized to accept a proposal and execute a contract, in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, with July 4 Ever Fireworks, Inc. & Rocco Polifrone for a fireworks display for the 2023 City of Newburgh International Festival on September 3, 2023 with a rain date of September 4, 2023, at a cost of \$18,500.00.



## JULY 4 EVER FIREWORKS INC

THIS CONTRACT AND AGREEMENT for the display of Fireworks made and concluded this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **JULY 4 EVER FIREWORKS INC**, of Walden, NY (hereinafter referred to as “July 4 Ever”),

AND

(hereinafter referred to as “Client”)

**WITNESSETH:** For and in consideration of the sum of One Dollar, each to the other in hand paid, receipt of which is hereby acknowledged, and of the terms and conditions hereinafter mentioned, July 4 Ever and Client do mutually and severally agree to perform their several and respective covenants and to comply with all terms, conditions and payments of this contract:

**July 4 Ever agrees:**

1. To furnish and deliver to Client, Fireworks to be exhibited on the following dates set forth and agreed upon at the time of signing this contract and Client agrees to pay July 4 Ever for the Fireworks as follows:

**Display Date:**

**Postponement Date:**

**Contract amount:** \$ \_\_\_\_\_; **10% due upon signing the Contract and balance due at Noon three days prior to the scheduled display date;** all payments shall be made by Draft, Certified Check or Wire Transfer. Checks shall be made payable to July 4 Ever, unless otherwise authorized in writing; NO CASH shall be paid to any agent or employee of July 4 Ever without written authority.

Payment in full  
30 days after  
event

2. JULY 4 EVER further agrees to furnish, sufficient trained personnel to present a display.

**CLIENT further agrees:**

3. To procure and furnish a suitable place to display the said Fireworks; to furnish the necessary police and fire protection; to secure all, Police, Local, and State Permits, and to arrange for any security bonds or insurance as required by law in their community

**The PARTIES mutually agree:**

4. It is agreed and understood by the parties hereto that in the event Fireworks have been taken out and set up before inclement weather and with adequate weather prevailing, such exhibition of fireworks will be carried out in the best possible manner without any deductions from the before named compensations. Should inclement weather prevent firing of said display on the aforementioned Display Date, then it will be understood that program is postponed and will be fired on the aforementioned Postponement Date, and **there will be a charge to cover the cost of Postponement of 15%.** If there is no alternate date and the program is not fired on the aforementioned Display Date, then it will be understood the program is canceled and there will be a charge to cover the costs of cancellation of 50%.
5. July 4 Ever reserves the exclusive right to make modifications and substitutions provided that such changes are reasonable and necessary and do not adversely affect price, time of delivery, functional character or display performance. July 4 Ever reserves the right to use multiple subcontractors in the setup and licensing of the display
6. If the location of the firing site, spectator's location, parking areas of structures is deemed unsuitable or unsafe, in the discretion of July 4 Ever or its agents or personnel, July 4 Ever may refuse to fire the display until conditions are corrected. If such conditions are not corrected, July 4 Ever may cancel the display without further liability to the Client for such cancellation.

No 15%  
charge



7. This contract shall be deemed made in the State of New York and shall be constructed in accordance with the laws of New York. The parties agree and consent to the jurisdiction of New York to determine conflicts regarding the language and payments to be made under this Contract.
8. If Client becomes bankrupt or insolvent, or if a petition in bankruptcy is filed by or against the Client or if a receiver is appointed for the Client, July 4 Ever may refuse to make further delivery and may terminate this contract without prejudice to the rights of July 4 Ever. If the Client's financial conditions become unsatisfactory to July 4 Ever, July 4 Ever, may require the balance of the purchase price to be deposited in escrow or the Client to provide sufficient proof of its ability to pay the balance of the contract price. Client is not entitled to recover incidental or consequential damages in connection with any breach of this Contract.
9. If Client fails to pay the monies due under this contract, July 4 Ever is entitled to recover the balance due plus interest at 1-1/2% per month on amounts past due 60 days or more. Further, on balance outstanding of 120 days or more, July 4 Ever is entitled to recover the balance due, plus accrued interest, plus attorneys fees of 10% of the amount past due, plus court costs.
10. This Contract shall not be construed to create a partnership between the parties or persons mentioned herein.
11. In the event of fire, accident, strikes, delay, flood, act of God or other causes beyond the control of July 4 Ever, which prevent delivery of said materials, the parties hereto release each other from any and all performance of the covenants herein contained and from damages resulting from the breach thereof.
12. Client agrees to hold harmless July 4 Ever for any and all actions, claims, and legal fees incurred outside the operations or control of July 4 Ever. July 4 Ever agrees to hold harmless client for any and all actions, claims, and legal fees incurred outside the operations of the client.
13. \_\_\_\_\_

IN WITNESS WHEREOF, we set our hands and seals to the agreement in duplicate the day and year first above-written.

**For CLIENT:**

**For JULY 4 EVER FIREWORKS INC:**

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Please sign contract where indicated for Client and return all copies for final acceptance to:

**July 4 Ever**  
**382 Rock Cut Road**  
**Walden, NY 12586**  
**845/564-0184 FAX 845/566-3715**

July 4 Ever  
382 Rock Cut Rd, Walden, NY 12586  
Tel: 845-564-0184 Fax: 845-566-3715

## Communication Sheet

PLEASE COMPLETE THIS FORM AND RETURN IT WITH YOUR SIGNED CONTRACT

### **CUSTOMER INFORMATION**

NAME: City of Newburgh, NY

ADDRESS: 83 Broadway  
Newburgh, NY 12550

### **FIRING SITE INFORMATION**

LOCATION: Recreation Park

ADDRESS: 401 Washington St.  
Newburgh, NY 12550

CONTACT: George Garrison  
(ONE)

PHONE: 845-656-2967

### **CONTACT PERSON**

NAME: Maritza Wilson

ADDRESS: Recreation Dept.

PHONE: 845-569-7373

FAX: \_\_\_\_\_

CELL: \_\_\_\_\_

E-MAIL: mwilson@cityofnewburgh-ny.gov

### **SHOW INFORMATION**

DATE: Sunday, 9/3/2023

RAIN DATE: Monday, 9/4/2023

TIME: \_\_\_\_\_

### **STORAGE SITE INFO**

LOCATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SECURITY YES OR NO (CIRCLE

### **ALTERNATE CONTACT**

NAME: Matt Nordt

ADDRESS: Recreation Dept.

PHONE: 845-569-7372

FAX: \_\_\_\_\_

CELL: \_\_\_\_\_

E-MAIL: mnordt@cityofnewburgh-ny.gov



# ***JULY 4 EVER FIREWORKS INC.***

WALDEN, NY 12586

PHONE (845) 564-0184

FAX (845) 566-3715

E-mail: [sales@july4ever.net](mailto:sales@july4ever.net)

***NO LIMITS***



Dear

Sincerely,

*Anthony Esposito*

Anthony Esposito

---

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING AND ALLOCATING AN ADDITIONAL \$1,000,000.00  
OF AMERICAN RESCUE PLAN ACT OF 2021 FUNDING TO  
THE CITY OF NEWBURGH LEAD SERVICE LINE REPLACEMENT PROGRAM**

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

**WHEREAS**, by Resolution No. 52-2022 of March 14, 2023, the City of Newburgh allocated \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

**WHEREAS**, the City of Newburgh proposes to allocate an additional \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

**WHEREAS**, the City Council finds that authorizing and allocating an additional \$1,000,000.00 of ARPA funds to support the replacement of lead water service lines is in the best interests of the health, safety and welfare of the residents of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to allocate and additional \$1,000,000.00 of American Rescue Plan Act of 2021 funds to the City of Newburgh Lead Service Line Replacement Program; and that the City Manager is authorized to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary administer the Lead Service Line Replacement Programs funded thereby.

Count	Business Name	Business Address	Ward
1	Blacc Vanilla Cafe	197 South Street	1
2	Crow District	197 South Street	1
3	Siginuk Studios	84 Clinton Street	1
4	Mama Roux	96 Broadway	1
5	Ms Fairfax	105 Liberty Street	2
6	The Wherehouse	119 Liberty	2
7	Newburgh Coffee	125 Broadway	2
8	Orchard Valley Fitness	1 S Colden	2
9	APG Pilates	87 Liberty Street	2
10	Newburgh Brewing	88 S Colden	2
11	Allyse Pulliam Photography	70 Johnes Street	2
12	Newburgh Mercantile	75 Broadway	2
13	M. Lewis Boutique	110 Liberty Street	2
14	Heart and Soil LLC	4 Clark Street	2
15	FXDED	126 Liberty	2
16	Annas	591 Broadway	3
17	Economy Cleaners	567 Broadway	3
18	Roeshawn Strong	109 Liberty/ 436 Robison/ 45 Kenney	3
19	Gavion	778 Broadway	3
20	Don Fernando	362 Broadway	4

Eligible Businesses by	
1	4
2	11
3	4
4	1
Total	20

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION OPENING A SECOND 30-DAY PUBLIC COMMENT PERIOD AND  
SCHEDULING A SECOND PUBLIC HEARING FOR SEPTEMBER 25, 2023  
TO RECEIVE PUBLIC COMMENT ON THE CITY OF NEWBURGH'S  
PROPOSED ACTIONS WITH RESPECT TO  
THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR THE  
ANNUAL ACTION PLAN FOR FISCAL YEAR 2024**

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

**WHEREAS**, the City is now preparing a one-year Annual Action Plan for FY 2024 in order to implement various elements of the strategies identified in its Consolidated Plan and must satisfy all statutory requirements, including those related to citizen participation;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the time for citizen participation is commenced by opening a second 30-day period beginning on September 26, 2023 and closing on October 26, 2023 to receive public comment on the City of Newburgh's proposed actions with respect to the Community Development Block Grant Program for the FY 2024 Annual Action Plan; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York that there is scheduled a second public hearing to receive public comment on the City of Newburgh's proposed actions with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2024; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 25th day of September, 2023 in the City Council Chambers, 83 Broadway, City Hall, 3rd Floor, Newburgh, New York.

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT  
A NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES  
LAW ENFORCEMENT EQUIPMENT  
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT  
IN THE AMOUNT OF \$175,000.00 FOR PORTABLE RADIOS  
FOR THE POLICE DEPARTMENT**

**WHEREAS**, the City of Newburgh has been awarded a New York State Division of Criminal Justice Services Law Enforcement Equipment Edward Byrne Memorial Justice Assistance Grant in the amount of \$175,000.00 with a City match in the amount of \$819.50; and

**WHEREAS**, such grant funding will be used to purchase portable radios to support the work of the City of Newburgh Police Department; and

**WHEREAS**, this Council has determined that accepting such grant would be in the best interests of the City of Newburgh and the City of Newburgh Police Department;

**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 New York State Division of Criminal Justice Services Law Enforcement Equipment Edward Byrne Memorial Justice Assistance Grant in the amount of \$175,000.00 with a City-match in the amount of \$819.50 to purchase portable radios for the Police Department; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT  
A UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF JUSTICE ASSISTANCE EDWARD BYRNE MEMORIAL  
JUSTICE ASSISTANCE GRANT IN THE AMOUNT OF \$30,580.00  
TO PURCHASE BULLET PROOF VESTS FOR THE POLICE DEPARTMENT**

**WHEREAS**, the City of Newburgh Police Department has been awarded a United States Department of Justice Bureau of Justice Assistance Equipment Edward Byrne Memorial Justice Assistance Grant in the amount of \$30,580.00 with no City match; and

**WHEREAS**, such grant funding will be used to purchase bullet proof vests for the City of Newburgh Police Department; and

**WHEREAS**, this Council has determined that accepting such grant would be in the best interests of the City of Newburgh and the City of Newburgh Police Department;

**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 United States Department of Justice Bureau of Justice Assistance Equipment Edward Byrne Memorial Justice Assistance Grant in the amount of \$30,580.00 with no City match to purchase bullet proof vests for the Police Department; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT  
WITH GREENPLAN INC. AND HUDSONIA LTD TO PROVIDE CONSULTANT  
SERVICES TO PERFORM A NATURAL RESOURCES INVENTORY**

**WHEREAS**, by Resolution No. 129-2022, the City Council authorized the City of Newburgh Conservation Advisory Council and the City Manager to apply for and accept if awarded a New York State Department of Environmental Conservation Round 36 Hudson River Estuary Grant Program (“NYSDEC Round 36 HREG Program”) to support a City of Newburgh Natural Resources Inventory; and

**WHEREAS**, the City of Newburgh was awarded funds from the NYSDEC Round 36 HREG Program; and

**WHEREAS**, the grant funding will support consultant to assist with technical writing, analyses of maps and data, community outreach planning, and assembling the Natural Resources Inventory Report and a Cultural Resource Specialist to assist with the interpretation of historical maps and the identification of other cultural resources; and

**WHEREAS**, the City of Newburgh solicited proposals to work with the City of Newburgh and its Conservation Advisory Council to provide consultant services in connection with the NYSDEC Round 36 HREG Program and GREENPLAN, Inc. and Hudsonia, Ltd, were determined to be the best qualified to provide the consultant services; and

**WHEREAS**, the costs of these services will not exceed \$47,500.00 and funding for this project is derived from budget line CG.8790.0400.3404.2024; and

**WHEREAS**, this Council has reviewed the contract with GREENPLAN Inc. and Hudsonia Ltd, annexed hereto, and finds that entering into said contract is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with GREENPLAN Inc. and Hudsonia Ltd at cost not to exceed \$47,500.00 for consultant services in connection with the New York State Department of Environmental Conservation Round 36 Hudson River Estuary Grant Program grant Newburgh Natural Resources Inventory project.



**SUBRECIPIENT AGREEMENT  
2022 HUDSON RIVER ESTUARY GRANT  
CITY OF NEWBURGH, WITH GREENPLAN INC. AND HUDSONIA LTD.**

This subrecipient agreement (“Agreement”), by and among the **CITY OF NEWBURGH, NEW YORK**, a New York municipal corporation, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the “City”) and **GREENPLAN Inc.**, a for-profit corporation having its principal place of business at 302 Pells Road, Rhinebeck, NY 12572-3354 and **HUDSONIA Ltd.**, a not-for-profit corporation, having its principal place of business at P.O. Box 5000, Annandale, NY 12504-5000 (“Subrecipients”), is made this dated as of August \_\_\_\_\_, 2023, as follows:

**RECITALS**

- A. The City was awarded funds under the 2022 Hudson River Estuary Grant program (“Grant”) from New York State Department of Environmental Conservation (referred to herein as “Grantor”).
- B. The City has been duly designated to carry out activities authorized by the terms of the Grant, specifically to prepare a City of Newburgh & Water Resources Natural Resources Inventory.
- C. Subrecipients have applied to work with the City in an effort to perform the services contained in paragraph B above, in a manner more specifically set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
- D. Subrecipients have also submitted a reasonable budget to perform the services contained in paragraph B above, also more specifically set forth in **Exhibit B**.
- E. In addition to the terms and conditions in this Agreement, Subrecipients have agreed to additional terms and conditions as required by the Grantor, more specifically set forth in **Exhibit C**, attached hereto and made a part of this Agreement. In the event of a conflict between the body of this Agreement and Schedule C, the provisions in Schedule C shall govern.
- F. The City has identified Subrecipients as competent, willing, and able to perform the services contained in their proposal, and now wishes to engage the Subrecipients to carry out the objectives of the NYSDEC Hudson River Estuary Grant program as stated in the Grant Master Contract with the Grantor.

NOW, THEREFORE, the City, and the Subrecipients, for the consideration and under the conditions hereinafter set forth, do agree as follows:

**ARTICLE I    SPECIFIC TERMS OF AGREEMENT**

- 1. The City hereby awards a cost reimbursable subaward, as described above, to Subrecipients. The statement of work and budget for this subaward are as shown in **Exhibit A**. In its performance of subaward work, Subrecipients shall be independent entities and not employees or agents of the City.

2. Subrecipients shall be solely responsible for securing goods, services, and any other accommodations necessary to provide the work product contemplated herein.
3. Subrecipients will perform all Services. Services shall not be performed by any other person, entity, agency, affiliate, subconsultant or subcontractor unless approved by the City in writing. Subrecipients shall remain responsible for the performance of all of their obligations under this Agreement, and for the performance by all third parties providing Services herein. Any Agreement between Subrecipients and a permitted subconsultant must contain terms and provisions consistent with those contained in this Agreement.
4. Prior to the start of work, Subrecipients shall submit for approval by the city the names of any and all third party subconsultant firms and key individuals proposed for the project team. The City shall have the exclusive discretion to accept or reject for cause any subconsultant or individual proposed. If a subconsultant is rejected, the Subrecipients shall propose an alternate subconsultant acceptable to the City. Nothing in this Agreement shall create any contractual relationship between the City and any subconsultant retained by the Subrecipient.
5. As consideration for the work product provided, and after the work product has been provided to the City, the City shall pay Subrecipients, jointly, a sum of **forty-seven thousand five hundred and 00/100 dollars (\$47,500.00)**, said sum being a part of grant award to the City by Grantor.

## ARTICLE II                      PAYMENT

1. Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this Agreement that the Agreement of the City to fund the subaward, shall be deemed executory to the extent that grant monies are available to it for the purpose of carrying out the terms of this subaward and that no liability shall be incurred by the City should the grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this Agreement.
2. Total payment under this Contract shall not exceed **forty-seven thousand five hundred and 00/100 dollars (\$47,500.00)** as payment for all eligible services incurred by Subrecipients.
3. The City may withhold any payment whenever the Subrecipients fail to achieve their program goals for the vouchered expenditure period.

## ARTICLE III                      METHOD OF PAYMENT

1. Within thirty (30) days of the execution of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, the City shall pay Subrecipients eligible reimbursable costs.
2. Payment for services shall cease upon termination of the Agreement or upon the payment of the amount stated in Article II(2), whichever occurs first. All payments for services are to be made from grant funds.
3. The City shall reimburse Subrecipients not more often than quarterly for allowable costs. All invoices and questions concerning invoices, receipts, or payments should be directed to the City of Newburgh Comptroller, 83 Broadway, 4<sup>th</sup> Floor, Newburgh, New York 12550.

4. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to the City's Comptroller NOT LATER THAN sixty (60) days after the subaward end date commensurate of the project period specifically set forth in Schedule C. The final statement of costs shall constitute Subrecipients' final financial report.
5. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of error, an audit finding, or other matter against the Subrecipients.

#### ARTICLE IV            TERMINATION

1. Either party may terminate this agreement with thirty days written notice to the parties listed below. Upon receipt of notice of termination, the Subrecipients agree to cancel, prior to the effective date of termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval.

If to City:

City of Newburgh  
Office of the Corporation Counsel  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

If to Subrecipients:

GREENPLAN Inc.  
Attn: J. Theodore Fink  
302 Pells Road  
Rhinebeck, NY 12572-3354

Hudsonia Ltd  
attn.: Erik Kiviat  
P.O. Box 5000  
Annandale, NY 12504-5000

2. In the event of termination as herein provided, any completed reports prepared by Subrecipients under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City, and such records shall be submitted to it.
3. In the event of termination, Subrecipients shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Subrecipients, the City may withhold from any payments due the Subrecipients for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by Subrecipients.

#### ARTICLE V            NO ASSIGNMENT

1. Subrecipients represents that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City.

#### ARTICLE VI BOOKS AND RECORDS; REPORTS

1. Subrecipients shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The City or the Grantor shall have access to the Records during normal business hours at an office within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
2. Subrecipients shall submit a report to the City identifying prescribed activities funded under this Agreement at the termination of this Agreement. Subrecipients shall also submit reports identifying prescribed activities funded under this Agreement upon request by the City while this Agreement is in effect.

#### ARTICLE VII CONFIDENTIAL INFORMATION

1. In the event that Subrecipients, in the course of performance hereunder, obtain access to information, data or records deemed confidential by the City, Subrecipients shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without the City's written permission. Subrecipients agrees for a period of six (6) years to hold in confidence all such information and not disclose or make it available to third parties without the City's written permission. This obligation will apply only to information the City has designated in writing as Confidential and will not apply to information which:
  - a. was known to Subrecipients prior to receipt from the City, as evidenced through written documentation;
  - b. was or becomes a matter of public information or publicly available through no fault on the part of Subrecipients;
  - c. is acquired from a third party entitled to disclose the information to Subrecipients;
  - d. is developed independently by Subrecipients;
  - e. is required to be disclosed pursuant to law, regulation or court order. However, in the event of a demand for disclosure under law or court order, Subrecipients shall not make such disclosure without prior written notice to the City and an adequate opportunity for the City to oppose such disclosure.

#### ARTICLE VIII INTEREST OF SUBRECIPIENTS, THEIR OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

1. Subrecipients agree that they presently have no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of their obligations under this Agreement.

2. Subrecipients further agree that they shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to them, any conflicting interest held by any of their directors or officers, or any of their paid employees, agents or sub-contractors or by any close relative of such persons.
3. The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

#### ARTICLE IX INTEREST OF MEMBERS, OFFICERS OR EMPLOYEE OF THE CITY; MEMBERS OF THE COMMON COUNCIL, OR OTHER PUBLIC OFFICIALS

1. No member, officer or employee of the City or its designees or agents, no member of the Common Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities with respect to the program, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.
2. Subrecipients shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

#### ARTICLE X INTEREST OF CERTAIN STATE OFFICIALS

1. No member of the New York State Assembly or Senate, or any other member of New York State government, shall be permitted to any share or part of this Agreement or to any benefit to arise from the same.

#### ARTICLE XI SOLICITATION OR PROCUREMENT OF AGREEMENT

1. Subrecipients represent that they have not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

#### ARTICLE XII REPRESENTATIONS OF SUBGRANTEE

1. Subrecipients acknowledge and agree that services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Subrecipients will not use funds under this Agreement to: (1) engage in activities that are other than for the purposes stated in the RFP; (2) attempt to influence legislation, by propaganda or otherwise; or (3) directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Subrecipients certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, or any state department or agency.

Subrecipients agree to comply with all applicable State and Federal regulations including, but not limited to, non-discrimination, rights of the handicapped and equal opportunity, during the performance of activities within this Agreement, including Title VI of the Civil Rights Act of 1964, and with Executive Order 11246, as amended by E.O. 11375 and 41 CFR, Part 60.

#### ARTICLE XIII            EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out the obligation of this Agreement, Subrecipients shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Subrecipients shall take affirmative action to ensure that applicants for employment and employees of Subrecipient are treated without regard to their race, color, religion, sex, national origin or handicap. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
2. Subrecipients shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Subrecipient shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.
3. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

#### ARTICLE XIV            FACILITIES AND PERSONNEL

1. Subrecipients represent that they have and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder.
2. Subrecipients further represents that they will terminate and dismiss from further performance of work and services under this Agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to Subrecipient by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for Subrecipient to replace to meet their obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve Subrecipient from meeting its obligations under the terms and conditions of this Agreement.

#### ARTICLE XV            INDEMNIFICATION

1. Subrecipients hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of Subrecipients or their agents, sub-contractors, servants or employees.

2. If any person shall make a claim for any damage or injury (including death resulting therefrom) as described above, Subrecipient hereby agrees to hold harmless the City from and against any and all loss, expense, damage or injury whatsoever and indemnify the City from the same.
3. Subrecipients shall procure and maintain at their own expense until final completion of this Agreement, insurance which must name the City of Newburgh, named insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, in an accredited insurance companies as may be approved by the City Manager.
  - a. Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.
  - b. Subrecipients shall carry Commercial General Liability and Property Damage Insurance with limits of not less than:
    - i. General Aggregate \$5,000,000
    - ii. Each occurrence \$2,000,000
4. The Agency, as Subrecipients shall provide Worker's Compensation Insurance, if they have employees, in accordance with the statutes of the State of New York.
5. The Agency, as Subrecipients shall provide Disability Benefits coverage, if they have employees, in accordance with the statutes of the State of New York.
6. Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident.
7. 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 Consultant and provide insurance for professional liability in the amount of \$1,000,000 each occurrence. At a minimum Consultant 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.

## ARTICLE XVI NOTICES

1. Notices of any nature referred to in this agreement shall be in writing by certified mail, hand delivery. Notices shall be effective on the date of receipt.

If to City:

City of Newburgh  
Office of the Corporation Counsel

83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

If to Subrecipients:

GREENPLAN Inc.  
Attn: J. Theodore Fink  
302 Pells Road  
Rhinebeck, NY 12572-3354

Hudsonia Ltd  
attn.: Gretchen Stevens  
P.O. Box 5000  
Annandale, NY 12504-5000

## ARTICLE XVII MISCELLANEOUS

1. No changes may be made to this Agreement without written consent/amendment by the City.
2. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors or agents, to the extent allowed by law.
3. This Subaward shall be governed by the laws of the State of New York without regard to its choice of law provisions.
4. Subrecipients have read, acknowledged, and agreed to the terms in this Agreement, and any exhibits annexed hereto, which are all incorporated by reference. Should any term(s) in the main body of this Agreement be inconsistent with any term(s) required by Grantor, the term(s) required by Grantor shall control and prevail.
5. GREENPLAN Inc. and Hudsonia Ltd. shall be jointly and severally responsible for the terms and conditions stated in this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

[Signature page to follow]



Signature Page

Subgrantee Agreement, NYSDEC, 2022 Hudson River Estuary Grant Program  
City of Newburgh / GREENPLAN Inc. and Hudsonia Ltd

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IN WITNESS WHEREOF, Subrecipient and the City have executed this Agreement the day and year herein mentioned.

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

CITY OF NEWBURGH

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

Name: Todd Venning

Title: City Manager

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

GREENPLAN INC..

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

Name: J. Theodore Fink

Title: President

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

HUDSONIA LTD.

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

Name: Erik Kiviat

Title: Executive Director

STATE OF NEW YORK )

) ss.:

COUNTY OF ORANGE )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared J. Theodore Fink personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally appeared Erik Kiviat personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A – SCOPE OF WORK**

**EXHIBIT B – BUDGET**

**EXHIBIT C – GRANTOR ADDITIONAL TERMS**

DRAFT

## EXHIBIT A

### SCOPE OF WORK

#### **Deliverables:**

- Kick-off meeting with the Newburgh CAC, Planning Department staff, and Hudson River Estuary Program staff
- Monthly meetings with CAC members, Planning Department staff, and other stakeholders
- Public survey about values, uses, and condition of natural resources, and accessibility of green spaces
- One public meeting during NRI preparation, and one public meeting upon completion
- Other public engagement as outlined in this proposal
- NRI website and social media notices and updates
- Up to four drafts of the NRI for review by the CAC, the Planning Department, and the Hudson River Estuary Program
- Twenty printed and bound copies of the final NRI
- Final NRI in digital format (pdf)
- Final presentation to the Planning Department
- Four large-format maps of wetlands/flood zones, water body classifications for river/streams, habitat, and cultural resources for the City of Newburgh Planning Board
- GIS data used to produce the NRI map figures (in a geodatabase), and the metadata for new GIS data created for the NRI

# TIMELINE

The estimate timeline below assumes that the project would begin in July 2023.

[illegible]

**EXHIBIT B****BUDGET****BUDGET**

<b>Labor</b>	<b>Personnel (rate/hr)</b>	<b>Stevens (\$62.60)</b>	<b>Graham (\$49.40)</b>	<b>Stickle (\$47.00)</b>	<b>Kiviat (\$68.90)</b>	<b>Fink (\$120)</b>	<b>Blackman (\$120)</b>	<b>TOTAL \$</b>
kick-off meeting		4				4		
monthly meetings + preparation, correspondence		34				34		
gathering info		44	28	12	3	10		
outreach (meetings/survey/website/ social media)		23				36		
design + layout							70	
NRI preparation		108	64	44	4	16		
prep + public presentations		28	4			8		
prep + Planning Board presentation		8				6		
<b>Total Labor (hrs)</b>		<b>249</b>	<b>96</b>	<b>56</b>	<b>7</b>	<b>114</b>	<b>70</b>	
<b>Non-Labor</b>								
travel @ \$0.655 per mile								
printing of large maps and printing/binding of NRI								
<b>Total Non-Labor (\$)</b>								
<b>TOTAL (\$)</b>		<b>15587</b>	<b>4742</b>	<b>2632</b>	<b>438</b>	<b>13680</b>	<b>8400</b>	<b>46565</b>

**STATE OF NEW YORK  
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

**I. GENERAL PROVISIONS**

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

### **C. Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>1</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

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<sup>1</sup> To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

<sup>2</sup> To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V). Contract Number: # DEC01-T01359GG-3350000



OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a) by certified or registered United States mail, return receipt requested;
  - b) by facsimile transmission;
  - c) by personal delivery;
  - d) by expedited delivery service; or
  - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the

Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

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

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

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from

any of the State of New York, the State Agency, or any county, or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor’s behalf.

**V. Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

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<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

## II. TERM, TERMINATION AND SUSPENSION

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

**B. Renewal:**

**1. General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

**2. Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

## **C. Termination:**

### **1. Grounds:**

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

### **2. Notice of Termination:**

- a) Service of notice: Written notice of termination shall be sent by:
  - (i) personal messenger service; or
  - (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

### ***3. Effect of Notice and Termination on State's Payment Obligations:***

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

### ***4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

### **III. PAYMENT AND REPORTING**

#### **A. Terms and Conditions:**

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

## **B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

## **C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).



The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

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<sup>4</sup> A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

<sup>5</sup> Fee for Service is a rate established by the Contractor for a service or services rendered.

<sup>6</sup> Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

<sup>7</sup> Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

- h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).
- i) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.
3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

#### **D. Identifying Information and Privacy Notification:**

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number,

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<sup>8</sup> Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

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

#### **E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

#### **G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
- (ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

(ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

#### **H. Notification of Significant Occurrences:**

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

### **IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

#### **A. Contractor as an Independent Contractor/Employees:**

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

**B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

**C. Use Of Material, Equipment, Or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

**D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
  - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
  - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
  - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
  - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
  - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
  - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any

Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

## **E. Records and Audits:**

### **1. General:**

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders,



detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

## **2. Cost Allocation:**

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

## **3. Federal Funds:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility

Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**K. Omnibus Procurement Act of 1992:** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
  - a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

**L. Workers' Compensation Benefits:**

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

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may

obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

- a) to require updates or clarifications to the Questionnaire upon written request;
- b) to inquire about information included in or required information omitted from the Questionnaire;
- c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
- d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
- e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
- b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**<sup>9</sup> If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**Q. Wage and Hours Provisions:** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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<sup>9</sup> Not applicable to not-for-profit entities.

## **ATTACHMENT A-1 PROGRAM SPECIFIC TERMS AND CONDITIONS**

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

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

#### **A) AGENCY SPECIFIC TERMS AND CONDITIONS**

**I. Postponement, suspension, abandonment or termination by the Department:** Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

#### **II. Conflict of Interest**

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

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

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

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

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

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

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



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

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

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

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

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

### **III. Dispute Resolution**

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

- (a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.
  - (1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.
  - (2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.
- (b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.
  - (1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
  - (2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
  - (3) Make a determination on the record as it exists.

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

The designated individual to hear disputes is:

Frances Dunwell, Hudson River Estuary Coordinator  
NYSDEC – Hudson River Estuary Program  
21 South Putt Corners Road  
New Paltz, NY 12561  
(845) 256-3016

The designated appeal individual to review decisions is:

Nancy Beard, Assistant Public Information Officer  
NYSDEC – Hudson River Estuary Program  
21 South Putt Corners Road  
New Paltz, NY 12561  
(845) 256-3016

The Chair of the Contract Review Committee is:

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

- (d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.
- (1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or
  - (2) Adopt the decision of the DAI; or
  - (3) Consider the matter for review by the CRC in accordance with its procedures.
- (e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.
- (f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Deputy Commissioner for Administration who shall render the final DEC determination.
- (g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.
- (h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.
- (i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.
- (j)(1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the

Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

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

#### **IV. Tax Exemption**

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

#### **V. Litigation Support**

In the event the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Any compensation paid to the Contractor under this paragraph will be negotiated and based on the rates established in the contract, or as may otherwise be provided in the contract. No compensation for such support will be paid if the litigation is the result of the Contractor's misconduct, negligence or omissions.

#### **VI. Inventions or Discoveries**

The Scope of work of this agreement shall not include any inventions. If, however, an invention results from this project it shall be owned as follows:

Any invention or discovery first made or conceived and reduced to practice in the performance of this Contract solely by the Contractor shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract solely by Department or State shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

#### **VII. Intellectual Property and Copyright Materials**

- (a) Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Contractor in the performance of this work shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Department or State in the performance of this work shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

#### **VIII. Patent and Copyright Protection**

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

- (a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department

against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
- (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
- (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

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

- (b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:
  - (1) procure for the Department the right to continue using the same item or parts thereof;
  - (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
  - (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
  - (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.
- (c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.
- (d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of:
  - (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items;
  - (2) alterations of the items by the Department;
  - (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement;
  - (4) use of items in combination with apparatus or devices not delivered by the Contractor;
  - (5) use of items in a manner for which the same were neither designed nor contemplated; or
  - (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

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

**IX. Freedom of Information Requests**

In response to a Freedom of Information Law (FOIL) request received by the Department, the Contractor agrees to provide to the Department records generated by the Contractor as a result of this contract's scope of work that are responsive to the FOIL request. The contractor may request that the Department except from disclosure records on the basis that they contain trade secrets or confidential commercial information in accordance with FOIL (Public Officers Law Section 87 and 6 NYCRR Part 616).

**X. Article 15-Requirements**

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

**(a) General Provisions**

- (1) The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- (2) The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department"), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- (3) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

**(b) Contract Goals**

- (1) For purposes of this procurement, the Department hereby establishes an overall goal of **30%** for Minority and Women-Owned Business Enterprises ("MWBE") participation, (based on the current availability of qualified MBEs and WBEs).
- (2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address; <https://ny.newnycontracts.com>

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

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

**(c) MWBE Responsibilities & Requirements**

- (1) Contractors must read, sign, and submit the NYSDEC MWBE Responsibilities & Requirements document. This document describes the MWBE requirements and provides directions for completing the required MWBE Utilization Plan form and subsequent Quarterly Reports.

- (2) By signing and submitting this document, the Contractor acknowledges they understand the assigned MWBE goals, the MWBE Utilization Plan form requirements, the MWBE Quarterly Report requirements, and understand what Good Faith Efforts they must put forth to meet their assigned MWBE goals.

**(d) MWBE Utilization Plan**

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section X-B-1 of this Attachment.
- (3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**(e) Equal Employment Opportunity (EEO)**

- (1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the State of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:
  - (i) Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - (ii) The Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by Department to award the Contract to the Contractor.
  - (iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.
  - (iv) The Contractor's EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - c. The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
    - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

- (2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing Plan as part of the MWBE Utilization Plan and submit at the time of award of the contract.

(3) Workforce Employment Utilization Report Form (“Workforce Report”)

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  - (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
  - (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- (4) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**(f) Quarterly MWBE Contractor Compliance Report**

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

**(g) Waivers**

- (1) For Waiver Requests Contractor should use Waiver Request Form.
- (2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- (3) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

**(h) Liquidated Damages - MWBE Participation**

- (1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- (2) Such liquidated damages shall be calculated as an amount equaling the difference between:
  - (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

**(i) Forms**

Forms referenced in this Article can be found at <http://www.dec.ny.gov/about/48854.html>

## **XI. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Department contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

**(a) Contract Goals**

The Department hereby establishes an overall goal of **6%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the Department's Designated Contacts.

Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause (XI)(d) below).

**(b) SDVOB Utilization Plan**

1. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
2. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Department.
3. The Department will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Department acceptance or issue a notice of deficiency within 20 days of receipt.
4. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, The Department shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Department, a request for a partial or total waiver of SDVOB



participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

5. The Department may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (i) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (ii) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (iii) If a Bidder fails to submit a request for waiver; or
  - (iv) If the Department determines that the Bidder has failed to document good faith efforts.
6. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
7. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, The Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

**(c) Request for Waiver**

1. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at the Department for guidance.
2. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause (XI)(d) below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Department at that time, the provisions of clauses (XI)(b) 3., 4., & 5. will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
3. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Department but must be made no later than prior to the submission of a request for final payment on the Contract.
4. If the Department, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Department.

**(d) Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Department with certified SDVOBs whom the Department determined were capable of fulfilling the SDVOB goals set in the

Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

(e) **Quarterly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Quarterly SDVOB Contractor Compliance within the first month of each quarter to the Department during the term of the Contract for the preceding quarters' activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the Contractor and submitted to the Department, by the 10th day of the first month of each quarter during the term of the Contract, for the preceding quarters' activity to: [sdvob@dec.ny.gov](mailto:sdvob@dec.ny.gov)

(f) **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

**XII. Iran Divestment Act Requirements**

By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

**XIII. Americans With Disabilities Act**

In the event the monies defined herein are to be used for the development of facilities, outdoor recreation areas, transportation or written or spoken communication with the public, the Contractor shall comply with all requirements for providing access for individuals with disabilities as established by Article 4A of the New York State Public Buildings Law, Americans with Disabilities Act, and relevant sections of the New York State Uniform Fire Prevention and Building Code. Standards for certain Recreation Facilities are found in the 2010 ADA Standards for Accessible Design while others are found in the Architectural Barriers Act Accessibility Guidelines for Outdoor Recreation Areas, <https://www.access-board.gov/guidelines-and-standards>

**XIV. Public Access to Facilities**

If applicable to the project, the Contractor agrees to allow public access to any facilities developed with monies defined herein on the same basis to all residents of New York State for a period not less than five (5) years after the date of final payment under this Contract or five (5) years after the date that the final payment was due. Failure to comply with the provisions of this clause shall be considered an abandonment of the Project.

**XV. Project Insurance Considerations**

Refer to project insurance requirements as set forth in A-1 (B) Program Specific Terms and Conditions.

**XVI. Amendment/Extensions**

The Contract may be amended and/or extended by mutual written consent of all parties. Amendment forms will be incorporated into this Contract and will not take effect until approved by all applicable State agencies and final approval by the Office of the State Comptroller, if applicable. Contract amendments may be conditioned upon funds being re-appropriated in the State Budget each state fiscal year to the Department.

**XVII. Environmental Protection Fund Acknowledgement**

If applicable, in recognition of a portion of the Department funds utilized for any work completed under this Contract, the Contractor agrees to acknowledge in any communication to the public, that such funding was provided from the Environmental Protection Fund as administered by the New York State Department of Environmental Conservation.

**XVIII. Vendor Responsibility**

- a) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- b) The Department recommends that vendors file a required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.
- c) Vendors must provide their New York State Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us). Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of the Office of the State Comptroller's Help Desk for a copy of the paper form.
- d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

**XVIII. Permits**

- a) If applicable, the Contractor agrees to obtain all required permits, including but not limited to, local, state and federal permits prior to the commencement of any project related work. The Contractor agrees that all work performed in relation to the project by the Contractor or its agents, representatives, or contractors will comply with all relevant federal, state and local laws, rules, regulations and standards, zoning and building codes, ordinances, operating certificates for facilities, or licenses for an activity.
- b) With respect to the project, the contractor certifies that is has complied, and shall continue to comply with all requirements of the State Environmental Quality Review Act (SEQRA). The Contractor agrees to provide all environmental documents as may be required by the Department. The Contractor has notified, and shall continue to notify, the Department of all actions proposed for complying with the environmental review requirements imposed by SEQRA.

**XIX. Approvals**

The Contractor agrees that the project will be performed in accordance with the condition of any applicable administrative, judicial or governmental orders or approvals.

**XX. Site Access**

If applicable, the Contractor represents it has or will obtain title to or sufficient interest in the project site, including rights-of-way and necessary easements, before the start of the project to ensure undisturbed use and possession for purposes of construction and completion of the project, as well as operation of the project throughout its useful life.

**XXI. Cost Overruns**

If applicable, any cost overruns will not be paid by the Department and the Department is not committed to seeking additional appropriations or re-appropriation of funds and will not be responsible for the maintenance and operation of any facility which may be developed or equipment which may be purchased with the funds herein identified.

**XXII. Construction Plans**

It is the Contractor's responsibility (if applicable to the Project) to have all construction contract plans, specifications and cost estimates certified by a professional engineer licensed to practice in the State of New York. All certified plans and specifications shall become part of this Contract and shall be kept on the project site at all times.

**XXIII. Payment and Reporting**

- a) The Contractor agrees to fully fund the Project and then seek reimbursement from the Department for eligible project costs. The Department will not process final payment for this Contract, until the Department determines that the project was completed satisfactorily and upon receipt of all required final close-out payment documentation in accordance with the direction and requirements described in Attachment D.
- b) The Contractor will be entitled to receive reimbursement payments for work, projects, and/or services rendered as detailed and described in Attachment C and Attachment D of this Contract. Claims for reimbursement must be accompanied by such receipts and documents verifying expenditures as may be required by the Department and by the Comptroller. Satisfactory documentation shall include, but is not limited to, signed copies of payment vouchers or invoices, canceled checks/or the latest cumulative work-in-place estimate for each construction Contract, and any further documentation as may be required by the Department and/or the Comptroller. The Department reserves the right, in its sole discretion, to determine if the reimbursement request and accompanying documentation submitted by the Contractor is in satisfactory form and substance. A final payment determination will be based upon the Department's review of the Contractor's final voucher submission and reporting as described in Attachment D.

**XXIV. On-Site Inspections**

The State, Department or authorized representatives will conduct a review of the Project funded from this Contract, which may include on-site inspections, at a time that is satisfactory to the Department.

**XXV. Prohibition on Purchase of Tropical Hardwoods**

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State of any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**B) PROGRAM SPECIFIC TERMS AND CONDITIONS**

**I. Notices:**

The Department's authorized representative for the implementation of this Contract and for approval, direction and receipt of all Project reports called for in this Contract is listed below. Whenever it is provided in this Contract that notice must be given or other communications sent to the Department, the notices or communications must be in writing and delivered or sent to the Department's authorized representative at:

Address: Susan Pepe, Grants Coordinator  
Hudson River Estuary Program  
New York State Department of Environmental Conservation  
625 Broadway – 4<sup>th</sup> Floor  
Albany, NY 12233-3506  
518-402-8270

A copy of all legal notices shall be sent to:

General Counsel  
New York State Department of Environmental Conservation  
625 Broadway - 14<sup>th</sup> Floor  
Albany, New York 12233-1500

The Contractor's authorized representative for the implementation of this Contract is the person authorized in the Resolution of Support for the contract. Notices or communications regarding this Contract should be in writing and delivered or sent to the Contractor's authorized representative at the address identified on the Face Page, with copies sent to the Contractor's contract administrator as identified in the contract application.

Notices delivered or sent shall be deemed for all purposes as notice to all persons who are Parties to this Contract as Department or Contractor.

## **II. Match Requirement**

The State share will not exceed up to eighty-five percent (85%) of the approved project costs incurred, up to the Contract funding amount identified on the Face Page. The Contractor must provide fifteen (15%) of required eligible share with eligible costs not paid with state or federal grant funds. The match percentage will be specified in Attachment B-1 (Expenditure Budget) and shall be consistent with the sources of match identified in the Request for Application.

## **III. Quality Assurance Requirements**

Quality assurance applies to all programs/projects that involve the collection, generation or use of environmental data associated with the mapping, modeling, monitoring, and assessment of water quality data intended for use by the New York State Department of Environmental Conservation (DEC) for its regulatory purposes. This includes the design or use of water quality focused environmental technology. Guidance and resources for DEC's quality assurance can be found on DEC's quality assurance webpage (<https://www.dec.ny.gov/chemical/23850.html>). Activities associated with these types of programs/projects, conducted in the field or laboratory, shall be:

- (1) Performed in accordance with an effective quality system for planning and assessing environmental measurements and tests, and for conducting required quality assurance and quality control procedures to promote and maintain the accuracy and reliability of environmental measurements and test results. An effective Quality System includes a Quality Assurance Project Plan (QAPP) based on guidance provided by the USEPA Guidance for Quality Assurance Project Plans (QA/G-5 May 2006), or American National Standard ASQ/ANSI E4:2014: Quality management systems for environmental information and technology programs—Requirements with guidance for use, approved February 4, 2014;
- (2) The fulfillment of the data verification, validation, and usability component of QAPP is to be documented in a Data Usability Assessment Report (DUAR);
- (3) Performed by a laboratory certified by the New York State Department of Health (NYSDOH) under the Environmental Laboratory Approval Program (ELAP) pursuant to Section 502 of the Public Health Law. This requirement shall not apply to specific parameters where NYS DOH ELAP has not issued a certificate for the specific parameter;
- (4) Performed in a manner that ensures all requisite quality control and calibration requirements are met, including field testing, sample collection, preservation, and record-keeping. Basic quality assurance and quality control requirements defined in 40 CFR Part 136.7 shall be followed as well as any specific method requirements;
- (5) Required to submit environmental monitoring data electronically to US EPA Water Quality Exchange (WQX) following the guidance as set by US EPA's WQX Submission Instructions;
- (6) Covered under the Publicity clause (article IV.G.) of the Master Contract for Grants – Standard Terms and Conditions. Specifically, the Contractor agrees that any work products, including but not limited to, water quality data or environmental information; measured, generated, or developed under this contract shall not be released, published, cited, or shared in draft or final form without prior written authorization from the Department; and
- (7) At a minimum, performed in accordance with water quality standards in 6 NYCRR Part 703 and/or guidance values in Technical and Operational Guidance Series (TOGS) 1.1.1. Projects designed to assess water quality or inform regulatory decisions must measure parameters with applicable water quality standards and/or guidance values.

The QAPP may be submitted at time of application. If the QAPP is not submitted as part of the application, QAPP development must be included as the first Objective/Task in the Work Plan. The QAPP will need to be approved by the DEC's Quality Assurance Officer before the project may proceed under the grant contract.

#### **IV. Geographic Information System (GIS) Data Requirements**

To the extent that any of the deliverables include a map or maps, the deliverable will be accompanied by a digital file containing map components in GIS format such that the Department can reconstruct the map using ESRI's ArcGIS. These map components should be accompanied by appropriate metadata.

GIS data produced under this project must adhere to the requirements of EPA's National Geospatial Data Policy (see <https://www.epa.gov/geospatial/epa-geospatial-data>). Specifically, Contractor must provide documentation for all produced data, including source information for each digital data layer (i.e., scale and accuracy, map projection, coordinate system, etc.), and specific information about the data layer itself (i.e., method used, geographic extent of data layer, file format, date of creation, staff contact, description and definition of data fields and their contents, related files, if any, and description of data quality and quality assurance methods used). Any data files assembled under this Contract must be delivered in a standard digital database format. Acceptable formats include formats readable by Microsoft Excel and/or Microsoft Access and/or ESRI ArcView.

The EPA Metadata Editor (EME) was developed to simplify and standardize metadata development and is a recommended tool for streamlining production of required metadata. The EME and related training materials can be downloaded from <https://edg.epa.gov/EME/>. Specific technical guidance on geospatial deliverables and acceptable formats can be found at <https://www.epa.gov/geospatial/epa-region-2-gis-deliverables-guidance>. GIS data produced under this project will be submitted to the Department as a deliverable.

#### **V. Project Insurance Considerations**

The Contractor agrees to procure and maintain at its own expense and without expense to the Department until final acceptance by the Department of the services covered by this Contract, insurance of the kinds and amounts as determined by the Department and based upon the project work plan. The insurance policies should be provided by insurance companies licensed to do business in the State of New York. Any delay or time lost as a result of the Contractor not having insurance required by the Contract shall not give rise to a delay claim or any other claim against the Department.

Upon execution of this Contract, the Contractor shall furnish to the Department a certificate or certificates, satisfactory to the Department, showing that it has complied with this Article. The insurance documentation shall provide that:

- Liability and protective liability insurance policies shall provide primary and non-contributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Contractor's Work under this contract, or as a result of Contractor's activities.
- The State of New York, NYS Department of Environmental Conservation, its officers, agents and employees, 625 Broadway, Albany, New York 12233-3506, shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsements(s) and on additional supporting documentation.
- The policies shall include a waiver of subrogation endorsement in favor of the Department as an additional insured. The endorsement shall be on ISO Form Number CG 24 04 or a similar form with same modification to the policy.
- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.
- Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department within a reasonable amount of time.
- Applicable insurance policy number(s) reference on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g. endorsement page, declarations page, etc.).
- This Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until completion of the work or acceptance by the Department, whichever event is later.

The kinds and amounts of insurance required are as follows:

- a) Workers' Compensation coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

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

<b><u>FORM #</u></b>	<b><u>FORM TITLE</u></b>
C-105.2	Certificate of Workers' Compensation Insurance
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

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

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

<b><u>FORM #</u></b>	<b><u>FORM TITLE</u></b>
DB-120.1	Certificate of Disability Benefit Insurance
DB-155	Certificate of Disability Benefit Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

An ACORD form is **NOT** an acceptable proof of Workers' Compensation coverage. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME** The State of New York and The New York State Department of Environmental Conservation, Hudson River Estuary Program, 625 Broadway, Albany, NY 12233-3506, as the Entity Requesting Proof of Coverage.

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

Upon review of the scope of work outlined in the Grant Application by the Department, the following types of liability insurance may be required:

- c) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence, and \$5,000,000 General aggregate. Such insurance shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability assumed in a contract (including tort liability of another assumed in a contract). Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.
- d) Business Automobile Liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any registered motor vehicle including owned, leased, hired and non-owned vehicles. If the Contractor does not own, rent or lease any registered vehicles and will not be using any vehicles on State Land proof of Business Automobile Liability Insurance shall not be required for this Contract. The Contractor shall assume full responsibility and liability that owners and operators of any registered vehicles entering State Land to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.



- e) Environmental Liability with a limit of not less than \$1,000,000 providing primary coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department of Environmental Conservation arising from the Contractor's Work.
- f) Professional Liability Insurance includes coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. The Contractor, any subcontractor or supplier retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of this contract, Professional Liability Insurance in the amount of \$1,000,000. The professional liability insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.
- g) Marine Protection & Indemnity: Anytime the activity involves work on navigable water or the work is connected to water related activities, the Contractor shall procure Marine Protection & Indemnity and Hull and Machinery coverage, if available. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract, with a minimum \$2,000,000 limit.

Should the Contractor engage a subcontractor, the Contractor shall impose the insurance requirements of this document on the subcontractor. Contractor shall determine the required insurance types and limits, commensurate with the work of the Subcontractor. The Contractor will maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Contractor's records.



**ATTACHMENT B-1 EXPENDITURE BASED BUDGET*****SUMMARY***PROJECT NAME: City of Newburgh & Water Resources Natural Resource InventoryCONTRACTOR SFS PAYEE NAME: NEWBURGH CITY OFCONTRACT PERIOD: From: 11/01/2022To: 10/31/2024

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Personal Services					
a) Salary	\$0.00	\$38,800.00	0 %	\$0.00	\$38,800.00
b) Fringe	\$0.00	\$0.00	0 %	\$0.00	\$0.00
Subtotal	\$0.00	\$38,800.00	0 %	\$0.00	\$38,800.00
2. Non Personal Services					
a) Contractual Services	\$47,500.00	\$0.00	0 %	\$0.00	\$47,500.00
b) Travel	\$0.00	\$0.00	0 %	\$0.00	\$0.00
c) Equipment	\$0.00	\$0.00	0 %	\$0.00	\$0.00
d) Space/Property & Utilities	\$0.00	\$0.00	0 %	\$0.00	\$0.00
e) Operating Expenses	\$0.00	\$0.00	0 %	\$0.00	\$0.00
f) Other	\$2,500.00	\$250.00	10 %	\$0.00	\$2,750.00
Subtotal	\$50,000.00	\$250.00	0 %	\$0.00	\$50,250.00
TOTAL	\$50,000.00	\$39,050.00	78 %	\$0.00	\$89,050.00

Contract Number: # DEC01-T01359GG-3350000

**ATTACHMENT B-1 EXPENDITURE BASED BUDGET**

***PERSONAL SERVICES DETAIL***

<b>SALARY</b>					
<b>POSITION TITLE</b>	<b>ANNUALIZED SALARY PER POSITION</b>	<b>STANDARD WORK WEEK (HOURS)</b>	<b>PERCENT OF EFFORT FUNDED</b>	<b>NUMBER OF MONTHS FUNDED</b>	<b>TOTAL</b>
Grants Administrator	\$76,681.00	35	0.35	24	\$550.00
Engineering Department	\$54,000.00	35	11	24	\$12,000.00
City of Newburgh Planning Department	\$60,924.00	10	10	24	\$12,000.00
Orange County Planning Department	\$6,450.00				\$6,450.00
Volunteer Hours	\$4,000.00				\$4,000.00
Quassaick Creek Watershed Alliance	\$1,500.00				\$1,500.00
Outdoor Promise	\$1,000.00				\$1,000.00
RiverKeeper	\$1,300.00				\$1,300.00
Subtotal					\$38,800.00
<b>TOTAL FRINGE</b>					
PERSONAL SERVICES TOTAL					\$38,800.00

**ATTACHMENT B-1 - EXPENDITURE BASED BUDGET**  
***NON-PERSONAL SERVICES DETAIL***

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
Consulting Services	\$47,500.00
TOTAL	\$47,500.00

**ATTACHMENT B-1 - EXPENDITURE BASED BUDGET**  
***NON-PERSONAL SERVICES DETAIL***

TRAVEL - TYPE/DESCRIPTION	TOTAL
TOTAL	

EQUIPMENT - TYPE/DESCRIPTION	TOTAL
TOTAL	

OTHER - TYPE/DESCRIPTION	TOTAL
Printing	\$2,500.00
Printing Costs & Miscellaneous	\$250.00
TOTAL	\$2,750.00

## ATTACHMENT C - WORK PLAN

### *SUMMARY*

PROJECT NAME: City of Newburgh & Water Resources Natural Resource Inventory

CONTRACTOR SFS PAYEE NAME: NEWBURGH CITY OF

CONTRACT PERIOD: From: 11/01/2022  
To: 10/31/2024

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

The overall goal of this proposal is to prepare a Natural Resource Inventory/Index of the City of Newburgh and City-owned and adjacent properties that constitute the boundaries and watersheds of the City-owned Washington Lake and Brown's Pond/ Silver Stream drinking reservoirs. The target populations are diverse and include city, town, and county decision-makers as well as community organizations and NGOs that will assist in the distribution of the resulting information. The overall number of people served are in the City of Newburgh with a population of about 28,282; Ancillary populations of 30,975 in the Town of Newburgh and 9,029 in the Town of New Windsor who is affected by the water resources; and the County of Orange with a population of 382,077 will benefit by the inclusion of this data in the in-process County NRI and the upcoming Climate Resiliency Plan. The service delivery methods will be diverse and include distribution of print documents and maps to City and Town agencies and libraries; web-based publication through the City of Newburgh's and other websites; community presentations at the conclusion of the process that will include in-person and web-based applications.

The objective of this proposal is to produce a natural resources inventory (NRI) for the City of Newburgh that will identify areas to protect, including water resources, habitats, viewsheds, wildlife, and natural areas important for climate resilience as well as the culturally historic and built environment. The completion of the NRI will provide the identification and understanding of our existing natural and cultural resources that will allow Newburgh to determine how to best protect the identified resources. This will be accomplished through a review of the existing zoning ordinances that will result in strategies and directives to help conserve green space, reduce stormwater, promote green (nature-based) infrastructure strategies, protect open space and historic resources, and develop vacant lots and brownfield areas. The NRI will be an element of the upcoming revision of the outdated City Master Plan to guide land-use decisions. The NRI will be used to inform the Local Waterfront Revitalization Plan (LWRP) final iteration. The initiation of a Climate Resiliency Plan for the City of Newburgh will be informed by the NRI. The resulting updates to the Zoning, Master Plan, and the LWRP will set the stage for future land-use decisions that will have a positive impact on the conservation of our natural and built resources. The NRI will have a regional impact by including the all-important City of Newburgh Water supply resources and watersheds located in the adjoining Towns of Newburgh and New Windsor. The recent crisis in the water supplies due to PFOS exposure of the City and Towns highlights the need for cooperative regional land use planning and implementation of conservation land-use measures. Community stakeholder meetings will be held to help identify other resources for inventory, such as historic and recreational resources, community gardens, and bee hives. Regionally the NRI will also help inform the Orange County Open Space Plan at the county level. Orange County is currently working on a Climate Resilience Plan that will benefit greatly from having an NRI completed for a waterfront community that will be directly impacted by rising sea levels.

## ATTACHMENT C - WORK PLAN

### DETAIL

Objective	
1	Project Administration - Project Administration
Tasks	
1.1	Consultation and engagement with DEC/Estuary Program staff - Consultation with staff
	<u>Performance Measures</u>
1.1.1	Project kick-off meeting - Project kick-off meeting held with DEC/Estuary Program staff to review grant contract and requirements, work plan and timeline.
1.1.2	Project meetings - DEC/Estuary Program staff invited to attend project meetings and to provide input on draft deliverables
1.1.3	Press - Press events and releases coordinated with DEC/Estuary Program staff, including funding acknowledgment
Tasks	
1.2	Reports - Related reports to project contract administration, including quarterly progress reports; final reimbursement request to DEC; final project report
	<u>Performance Measures</u>
1.2.1	Quarterly reports - Quarterly Reports are submitted to HREP Grants Coordinator by deadline
1.2.2	Final report - Final report submitted within 60 days following the end of the contract end date
Tasks	
1.3	Consultant procurement - .
	<u>Performance Measures</u>
1.3.1	RFP - Develop and release RFP for Planning/GIS consultant
1.3.2	Consultant selection - City selects consultant and executes subcontract
Tasks	
1.4	Steering Committee Coordination - .
	<u>Performance Measures</u>
1.4.1	Project Steering Committee formed - .
1.4.2	NRI Steering Committee Meetings held - .



## ATTACHMENT C - WORK PLAN

### DETAIL

Objective	
2	Community Engagement -
Tasks	
2.1	Create a public outreach and engagement plan, schedule public workshops - Create a public outreach and engagement plan, schedule public workshops
<u>Performance Measures</u>	
2.1.1	Community Engagement Plan completed - .
2.1.2	Schedule of public workshops and other outreach activities - .
2.1.3	Summary notes and attendance data from public outreach activities - .
2.1.4	Social media posts and video engagement metrics - .

## ATTACHMENT C - WORK PLAN

### DETAIL

#### Objective

3 Develop the Natural Resources Inventory - .

#### Tasks

3.1 Compile - Compile existing data, following checklist provided in the Creating an NRI Guide

##### Performance Measures

3.1.1 Complete data inventory summary or outline - .

3.1.2 Compile GIS data and any associated reports - .

#### Tasks

3.2 Prepare draft NRI maps - .

##### Performance Measures

3.2.1 Draft - Draft NRI maps completed and submitted to Project Committee and DEC/Estuary Program staff for review

3.2.2 Revised NRI maps published for public review - .

3.2.3 Final NRI maps completed, incorporating public input - .

#### Tasks

3.3 Prepare draft NRI report - .

##### Performance Measures

3.3.1 Draft - Draft NRI report completed and submitted to Project Committee and DEC/Estuary Program staff for review

3.3.2 Revised NRI report published for public review - .

3.3.3 Final NRI report completed, incorporating public input - .

#### Tasks

3.4 Dissemination of final NRI - .

##### Performance Measures

3.4.1 Final NRI is presented to City Council for adoption - .

3.4.2 Print - Print NRI and maps distributed to local agencies and libraries and digital files published to City website

3.4.3 Presentation of final NRI to community groups - .

**ATTACHMENT D**  
**PAYMENT AND REPORTING SCHEDULE**

**I. PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Advance Payment, Initial Payment and Recoupment Language (if applicable):**

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of 25 percent (25%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. The State Agency will make an initial payment to the Contractor in the amount of \_\_\_\_ percent (\_\_\_\_%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than \_\_\_\_ days from the beginning of the budget period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period	Amount	Due Date

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (100%) of subsequent claims and such claims will be reduced until the advance or initial payment is fully recovered within the contract period.

**B. Interim and/or Final Claims for Reimbursement**

Claiming Frequency: Quarterly Reimbursement

Number of Days/Claims: 1

For Quarterly, Monthly and Biannual Reimbursement Claim Frequency, the above field represents the number of days after the claim period that the claim is due to the State from the Grantee.

For Interim Reimbursement as Requested by Contractor the Number of Days/Claims is not applicable.

For all other selected Claim Frequency, the Number of Days/Claims represents the number of claims due under the contract and listed in the table below.

Expenditure Period Dates		Due Date
From	To	

## II. REPORTING PROVISIONS

### A. Expenditure-Based Reports (select the applicable report type):

☒ Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

☐ Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

☒ Expenditure Report

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

☒ Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

☐ Consolidated Fiscal Report (CFR)

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

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1

The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Contract Number: # DEC01-T01359GG-3350000

## **B. Progress-Based Reports**

### 1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

### 2. Final Progress Report

Final scheduled payment will not be due until \_\_\_\_ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is \_\_\_\_\_. The agency shall complete its audit and notify vendor of the results no later than \_\_\_\_\_. The Contractor shall submit the report not later than \_\_\_\_ days from the end of the contract.

## **C. Other Reports**

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

**TABLE 1 - REPORTING SCHEDULE**

<b>PROGRESS REPORT #</b>	<b>PERIOD COVERED</b>		<b>Due Date</b>
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

**III. SPECIAL PAYMENT AND REPORTING PROVISIONS**

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

OF

SEPTEMBER 11, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES  
TO PROVIDE CREATIVE ARTS CLASSES AND RELATED SERVICES  
IN CONNECTION WITH THE CITY OF NEWBURGH'S  
ART-BIZ FALL SERIES FOR 2023**

**WHEREAS**, the City Council of the City of Newburgh adopted Ordinance No. 10 of 2005 which added new Chapter 14 of the City Code of Ordinances entitled Arts Programs and created the City of Newburgh Arts and Cultural Commission; and

**WHEREAS**, it is a goal of the Arts and Cultural Commission to create expanded educational opportunities to all persons, and to young persons in particular, to learn about the arts; and

**WHEREAS**, the Arts and Cultural Commission created the Art-Biz program to engage youth and their families in activities that can lead to viable creative career paths by providing a series of free classes for youth focusing on providing exposure to career paths and career opportunities in arts and culture; and

**WHEREAS**, spanning a variety of artistic media, including visual art, performance, and hand-crafts, as well as other forms of cultural production such as writing, gardening, and culinary arts, Art-Biz will be taught by artists, makers, and other creative professionals; and

**WHEREAS**, it is appropriate and necessary to authorize the City Manager to enter into agreements by which teaching artists, and necessary supplies, equipment and facilities shall be provided; and

**WHEREAS**, the costs for these activities will not exceed \$5,600.00 and will derive from budget line A.8043.0455; and

**WHEREAS**, this Council has determined that entering into agreements in connection with this ArtBiz program is in the best interests of the City of Newburgh and its residents;

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into agreements with terms and conditions as Corporation Counsel may require, with the teaching artists and providers of related necessary services in connection with the Art-Biz program, at cost not to exceed \$5,600.00.



## AGREEMENT FOR VENDOR SERVICES

**THIS AGREEMENT** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and \_\_\_\_\_, an individual with principal offices at \_\_\_\_\_ hereinafter referred to as “**VENDOR**.”

### ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”). In the event of a conflict between the body of this Agreement and Schedule A, the provisions in the body of this Agreement shall govern.

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall remain the property of VENDOR, except that CITY shall have VENDOR’s permission to make full use for the completion and implementation of the Project for which the material was prepared without compensation in addition to the amounts set forth in Article 3 and Schedule B of this Agreement. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such

intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY’s rights regarding same for any purpose outside the scope of the Project and its implementation.

### ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning September 23, 2023, and ending November 30, 2023.

### ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the CITY an itemized invoice for SERVICES rendered, as set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within 30 days after the CITY receives Claimant’s Certification form. If the Claimant’s Certification form is objectionable, the CITY will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of **\$3,750.00** has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization

of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than six (6) months after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

#### **ARTICLE 4. EXECUTORY CLAUSE**

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

#### **ARTICLE 5. PROCUREMENT OF AGREEMENT**

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This

remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 6. CONFLICT OF INTEREST**

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

## ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

## ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means

and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

## ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

#### **ARTICLE 10. BOOKS AND RECORDS**

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### **ARTICLE 11. RETENTION OF RECORDS**

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic

inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

#### **ARTICLE 13. INSURANCE**

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

When applicable, VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with the following requirements:

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall

not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

#### **ARTICLE 14. INDEMNIFICATION**

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of

the SERVICES performed pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 15. PROTECTION OF CITY PROPERTY**

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation,

reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

#### **ARTICLE 16. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

#### **ARTICLE 17. TERMINATION**

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any

unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 18. GENERAL RELEASE**

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

#### **ARTICLE 19. SET-OFF RIGHTS**

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

#### **ARTICLE 20. DISPUTE RESOLUTION**

All disputes shall be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

#### **ARTICLE 21. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

#### **ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES**

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an

actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 23. ENTIRE AGREEMENT**

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

#### **ARTICLE 24. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum to this Agreement, which Addendum shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
TODD VENNING  
CITY MANAGER

BY: \_\_\_\_\_  
TITLE: ArtBiz Teaching Artist

Per Resolution No.:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Kelson  
Corporation Counsel

\_\_\_\_\_  
Janice Gaston  
City Comptroller



## SCHEDULE A

### SCOPE OF SERVICES

#### Deliverables:

- Oversee a group of children for a single, 1-2 hour workshop occurring September-November.
- Prepare a lesson plan to be approved by the Art-Biz project management team
- Prepare a materials list to be approved by the Art-Biz project management team
- Meet with the Art Biz project manager to communicate progress and prepare for class
- Participate in a short 5 minute demonstration for a live marketing experience
- Prepare class evaluation

#### Timeline:

Prepare lesson plan and materials list on or before 2 weeks prior to Art-Biz Class session

Submit close out report no later than 10 days after Art-Biz Class session

## **SCHEDULE B**

### **FEES AND EXPENSES**

The Vendor will be compensated at \$400 for one class plus reimbursement for materials total cost not to exceed \$300.

# **Art-Biz**

## **at Common Grounds Farm - Safe Harbors Green**

A proposal by the Newburgh Arts & Cultural Commission

### **OVERVIEW**

#### **Description**

Art-Biz is a series of free classes for youth focusing on providing exposure to career paths and career opportunities in arts and culture. Spanning a variety of artistic media, including visual art, performance, and hand-crafts, as well as other forms of cultural production such as writing, gardening, and culinary arts, Art-Biz will be taught by Newburgh artists, makers, and other creative professionals. The goal of Art-Biz is to engage youth and their families in activities that can lead to viable creative career paths and to provide paid opportunities for our artistic community in line with the City of Newburgh, NY Code S14-1 (B) (6) To create expanded educational opportunities to all persons, and to young persons in particular, to offer learning about the arts, and to expand the use of the arts and artists in providing education to all persons and (7) To inspire youth to become aware of and involved with the arts and the role of art in their lives and in the life of the City of Newburgh; and to provide youth with opportunities to learn about and participate in the arts and arts-related projects, thereby enriching their own experience and enhancing their ability to contribute to the enrichment of their community.

#### **Principle Organizer**

This program is being organized and offered by the Newburgh Arts & Cultural Commission (NACC) in furtherance of our Mission statement to advise and make recommendations to the City government and its agencies on issues related to the development of art and culture and to insure public funding for the arts and arts education; to promote arts and culture as an integral part of community life; to foster a creative environment reflective of the multicultural nature of the City of Newburgh and to guarantee equal access to the arts; to enhance access to, appreciation of and participation in the arts for all persons, including youth in particular; to provide more educational opportunities for all persons to learn about the arts, and to increase the role played by the arts in education in all its forms.

#### **Timeline**

Eight Saturdays, Summer-Fall of 2023

#### **Goals for Newburgh Community**

Art-Biz is designed to serve the community in a two-fold capacity:

First: To provide art and cultural classes to Newburgh youth in order to engage their creativity, develop tactile skills and expose them to working artists and makers and the art and culture as a viable and fulfilling career path.

Second:

To develop an environment that enables arts and cultural groups to flourish with adequate work, performance, and exhibition space and economic opportunities for artists of all disciplines; to encourage artists to become more involved in community and public-based institutions and projects; and to engage artists representing a wide range of the arts, including but not limited to visual arts (painting, drawing, and design); handcrafted arts (pottery, sewing, weaving); auditory arts (songwriting, instrument making, singing, and spoken word); performance and movement arts (dance, yoga, martial arts); written arts (poetry, short story writing); culinary arts (cooking, foraging, and gardening); and more.

## **PROJECT DETAILS**

Public arts and cultural classes for youth will be held at the Common Grounds Farmers Market at Safe Harbors Green for 8 consecutive Saturdays during the Summer/Fall of 2023. Classes will be tailored to youth ages 14-18 depending on the skill level required for the specific class.

A project manager will be selected in the month of May/June. The Project Manager will be employed from June through October to oversee the project, coordinate with artist-instructors and oversee each class.

Class curriculum will be developed by individual artists. We will invite proposals from local artists and hold a selection process to determine viable classes. Classes will be advertised to the local community through social media outlets, flyering, posters, and sign-up sheets at the Common Grounds Market.

### **Classes**

- 1 class per Saturday from 11am-1pm
- Each class will be 2 hours in duration
- Each class will have a max of 14 students with a waiting list for any additional students. Students will be contacted by the Project Manager via email to confirm their enrollment.
- All art supplies will be provided by NACC
- Registration for classes will be available on the NACC website or in person at the market. Drop-ins are welcome if classes are not full.
- All parents/guardians must sign a release and provide contact information
- Classes will be shaped by instructors' proposals; instructors' specialties will drive the programming and all work must be completed during the session.
- The Project Manager and a commission member will be present at each class for support, which includes logistics, ensuring safety protocols are followed, registering drop-ins or for future classes, fielding questions, and any other support needed.
- Students will take home their creations when they're finished.

### **Instructor + Class Selection**

- An open call for proposals will be held during the month of May-June
- The open call is open to all residents of Newburgh and the greater Newburgh community
- We encourage applicants of different backgrounds, experiences, and disciplines to apply including artists, teachers, students, writers, scientists, gardeners, chefs, makers, musicians, and more.
- Applicants will be ranked by the Art Biz Task Force and presented to NACC for approval at the June NACC meeting. Selected artists will be contacted by the end of June.
- Artist will be paid \$400 total for the day and up to \$300 in materials will be provided by the Newburgh Arts & Cultural Commission

### **Budget breakdown**

Common Ground Farm fee = **\$400 (\$25 per date)**

\$400 x 8 artist fee = **\$3200**

Materials stipends: **\$2400 (\$300 x 8 artists)**

Signage (banner,sandwich board): **\$200**

Water / Sanitizer and wipes: **\$50**

Advertising *Hudson Valley Parent*/ *radio spots* / *social media boosting* /Hudson Valley Parent magazine:  
digital banners/flyers/postcard **\$500**

Project Manager **\$3750**

**TOTAL: \$10,500**