



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

January 8, 2024  
7:00 PM

Mayor/Alcaldesa

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

City Clerk:/Secretaria de la Ciudad

3. Roll Call / Lista de Asistencia

Communications/Comunicaciones

4. Approval of the minutes from the City Council meeting of December 18, 2023  
/ Aprobacion del Acta de la Reunion General del Consejal del 18 de  
diciembre de 2023

Presentations/Presentaciones

5. Swearing-in Ceremony for Mayor Torrance Harvey, Councilmember At-large  
Omari Shakur, and Councilmember At-large Robert D. McLymore, Sr.  
*Ceremonia de toma de posesión del alcalde Torrance Harvey y del*  
*concejal general Omari Shakur y del concejal general Robert D.*  
*McLymore, Sr.*
6. City Manager Update  
*Gerente de la Ciudad Pone al Dia a la Audiencia de los Planes de Cada*  
*Departamento*
7. Public Hearing - Local Law Enacting Chapter 240, Rental Properties, Articles  
I and II  
*Audiencia pública - Ley local por la que se aprueba el Capítulo 240,*  
*Propiedades de alquiler, Artículos I y II*

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

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

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

8. Resolution No. 1 - 2024 - Change Order No. 4G Kubricky Construction North Interceptor Sewer

Resolution authorizing Change Order No. 4G to the construction contract with Kubricky Construction Corp. increasing the contract amount by \$600,000.00 and increasing the total contract amount from \$28,151,184.80 to \$28,751,184.80 in the North Interceptor Sewer Main Improvements Project

*Resolución autorizando la Orden de Cambio No. 4G al contrato de construcción con Kubricky Construction Corp. incrementando el monto del contrato por \$600,000.00 e incrementando el monto total del contrato de \$28,151,184.80 a \$28,751,184.80 en el Proyecto de Mejoramiento del Alcantarillado principal del Interceptor Norte.*

9. Resolution No. 2 - 2024 - Change Order No. 2G METRA Industries North Water Street Sewer Separation Project

Resolution authorizing Change Order No. 2G to the construction contract with Metra Industries in the North Water Street Sewer Separation Project

*Resolución por la que se autoriza la Orden de Cambio nº 2G al contrato de construcción con Metra Industries en el Proyecto de Separación de Alcantarillado de North Water Street.*

10. Resolution No. 3 - 2024 - Award of Bid No. 23.23 Delano-Hitch Recreation Park Aquatic Center Improvements - Electrical Contract

Resolution authorizing the award of a bid and the execution of a contract with J & J Sass Electric, Inc. for the electrical construction of the Delano-Hitch Recreation Park Aquatic Center Improvements Project in an amount not to exceed \$835,000.00

*Resolución que autoriza la adjudicación de un vínculo y la ejecución de un contrato con J & J Sass Electric, Inc. para la construcción eléctrica del Proyecto de Mejoras del Centro Acuático del Parque Recreativo Delano-Hitch por un monto que no exceda los \$835,000.00*

11. Resolution No. 4 - 2024 - Delano-Hitch Recreation Park Aquatic Center Improvements - Contract with CPL Construction Administration

Resolution authorizing the City Manager to accept a proposal and execute a contract with Clark Patterson Lee for construction administration professional engineering services for the Delano-Hitch Recreation Park Aquatic Center Improvements Project in the amount of \$178,000.00

*Resolución autorizando al Administrador de la Ciudad a aceptar una propuesta y ejecutar un contrato con Clark Patterson Lee para la administración de la construcción de servicios profesionales de ingeniería para el Proyecto de Mejoras al Centro Acuático del Parque Recreativo Delano-Hitch por la cantidad de \$178,000.00*

12. Resolution No. 5 - 2024 - City of Newburgh Fiscal Recovery Act Banking Services Agreement with OSC

Resolution authorizing the City Manager to execute Banking Services Contract No. T00294A with the New York State Office of the State Comptroller

*Resolución por la que se autoriza al Administrador Municipal a suscribir el Contrato de Servicios Bancarios nº T00294A con la Oficina del Contralor del Estado de Nueva York.*

13. Resolution No. 6 - 2024 - 257 Liberty Street - Release of Restrictive Covenants

Resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-Entry from a deed issued to 257 Liberty, LLC to the premises known as 257 Liberty Street (Section 18, Block 8, Lot 1.1)

*Resolución que autoriza la ejecución de una Liberación de Convenios Restrictivos y Derecho de Reingreso de una escritura emitida a 257 Liberty, LLC a las instalaciones conocidas como 257 Liberty Calle (Sección 18, Manzana 8, Lote 1.1)*

14. Resolution No. 7 - 2024 - Police Department Bicycle Surplus

Resolution declaring 26 bicycles as surplus

*Excedente de bicicletas del Departamento de Policía*

15. Resolution No. 8 - 2024 - ETPA - Rent Guidelines Board Member Recommendations

*ETPA - Recomendaciones de los miembros de la Junta Directiva sobre alquileres*

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

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

Adjournment/ Aplazamiento:

Agenda Item 5.

**Swearing-in Ceremony for Mayor Torrance Harvey, Councilmember At-large Omari Shakur, and Councilmember At-large Robert D. McLymore, Sr.**

*Ceremonia de toma de posesión del alcalde Torrance Harvey y del concejal general Omari Shakur y del concejal general Robert D. McLymore, Sr.*



Agenda Item 7.

**Public Hearing - Local Law Enacting Chapter 240, Rental Properties, Articles I and II**

*Audiencia pública - Ley local por la que se aprueba el Capítulo 240, Propiedades de alquiler, Artículos I y II*

**Background:**

Re-adoption of Chapter as a local law necessary to be consistent with NYS RPTL Section 741(7) amendment enacted by the NYS legislature.

**Additional Information:**

Ordinance repealing Articles 1 & 2 of Chapter 240 will also be on agenda for 1 22 24 meeting.

**ATTACHMENTS:**

Description	Upload Date	Type
Backup, PH for LL Amending Chapter 240	12/21/2023	Backup Material

RESOLUTION NO.: 257 - 2023

OF

DECEMBER 11, 2023

RESOLUTION SCHEDULING A PUBLIC HEARING FOR JANUARY 8, 2024  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING  
CHAPTER 240 ENTITLED "RENTAL PROPERTIES" OF THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH TO ADD ARTICLE I, RENTAL LICENSES, AND  
ARTICLE II, TENANT RESPONSIBILITY FOR MAINTENANCE

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law amending Chapter 240 entitled 'Rental Properties' of the Code of Ordinances of the City of Newburgh to add Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance; and that such public hearing be and hereby is duly set for a regular meeting of the Council to be held at 7:00 p.m. on the 8th day of January, 2024, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

I, Lorene Vitak, City Clerk of the City of Newburgh,  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 12/11/23  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 12 day of Dec. 2023

  
City Clerk

LOCAL LAW NO.: \_\_\_\_\_ - 2024

OF

\_\_\_\_\_, 2024

**A LOCAL LAW AMENDING CHAPTER 240 ENTITLED “RENTAL PROPERTIES”  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH  
TO ADD ARTICLE I, RENTAL LICENSES, AND ARTICLE II,  
TENANT RESPONSIBILITY FOR MAINTENANCE**

**BE IT ENACTED** by the City Council of the City of Newburgh that the Code of Ordinances is hereby amended to add Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance, of Chapter 240 entitled “Rental Properties”.

**SECTION 1. Title**

This Local Law shall be referred to as “A Local Law amending Chapter 240 entitled ‘Rental Properties’ of the Code of Ordinances of the City of Newburgh to add Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance”.

**SECTION 2. Purpose and Intent**

On October 25, 2023, Governor Hochul signed into law, and codified in Chapter 579 of the Laws of New York 2023, an amendment to Real Property Actions and Proceedings Law Section 741 adding new subsection (7) providing that in the City of Newburgh where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law. The primary purpose of this local law is to give effect to that amendment by requiring registration of rental properties and making such registration subject to a local law.

**SECTION 3. Amendment**

Chapter 240 of the Code of Ordinances of the City of Newburgh is hereby amended to add the following Article I, Rental Properties, and Article II, Tenant Responsibility for Maintenance, to read as follows:

**Article I      Rental Licenses**

**§ 240-1 Findings and purpose.**

The City Council has determined that there exists in the City of Newburgh a significant number of non-owner-occupied rental units. Non-owner occupants are less able to maintain daily oversight of

their properties to ensure compliance with applicable laws, rules, and regulations. The City Council finds that the registration of rental properties is intended to and will ensure the protection of persons and property in all existing rental structures and on all premises required to be registered under this chapter. Further, the registration of rental properties will ensure that rental property owners adhere to applicable code provisions governing the use and maintenance of rental properties, including provisions limiting the maximum occupancy for which a rental property can be certified. It is the purpose of this chapter to protect the health, safety, and welfare of the residents of the City of Newburgh, as well as to protect the City's housing stock from deterioration by establishing a program for registering and identifying residential rental properties and for determining the responsibilities of owners of residential rental properties.

#### **§ 240-2 Definitions.**

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

##### **AGENT**

Any person who has charge, care, or control of a building, or part thereof, in which rental dwelling units or rooming units are let.

##### **BUILDING**

A combination of materials, whether portable or fixed, having a roof to form a structure affording shelter for persons, animals, or property.

##### **CODE**

The City of Newburgh Code of Ordinances and the New York State Uniform Fire Prevention and Building Code.

##### **DWELLING**

A building used in whole or part for residential uses.

##### **DWELLING UNIT**

A single unit providing complete, independent, law-compliant living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

##### **MUNICIPAL OFFICER**

The Fire Chief, Code Compliance Supervisor, Building Inspector, or other such official within the Fire Department or the Bureau of Code Compliance as may be designated in writing.

## OWNER

Any individual or individuals, limited liability company, partnership, or corporation or any similar type of business organization, whether for profit or otherwise, in whose name title to a building stands, including a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm, or corporation directly or indirectly in control of the property. Each, any, and all such persons shall have a joint and severable obligation for compliance with the provisions of this chapter.

## OWNER-OCCUPIED DWELLING

A dwelling occupied by an individual owner or by members of his or her family on a nonrental basis. For the purposes of this chapter, "owner-occupied" shall not include any building owned by a limited liability company, partnership, corporation, or any similar type of business organization, including, but not limited to, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or agent.

## RENTAL PROPERTY

All buildings that contain a dwelling unit or a rooming unit that is rented, leased, let, or hired out to be occupied for residential or mixed use (commercial-residential) and are not owner-occupied.

## ROOMING UNIT

Any furnished room for rent within a building and forming a single sleeping space.

## TENANT

A person, not the legal owner of record, occupying or in possession or control of a dwelling, dwelling unit or a rooming unit.

### **§ 240-3 Rental license process.**

- A. The owner of any rental property as defined herein shall within 30 days after assuming ownership of a rental property submit a rental license application for such rental property with the municipal officer on forms provided for that purpose by the municipal officer along with any fees required by Chapter 163. Failure to receive notice from the municipality shall not constitute grounds for failing to register the property.
- B. Each rental property having a separate section block and lot number shall be registered separately.
- C. The license rental application shall include the information required under § 240-4, as well as any additional information that the Municipal Officer may reasonably require.

- D. It shall be unlawful for any owner to offer any unit for rent or to rent any dwelling unit or to allow any dwelling unit to be occupied without having first received a rental license pursuant to this chapter as required herein within the time prescribed for such registration. Failure to receive notice of the rental license deadline will not excuse failure to receive a rental license for a rental property. It is the responsibility of the owner to fulfill the requirements of this article.
- E. No initial rental license or a rental license renewal shall be issued until the Municipal Officer has determined that the property is in compliance with the Code. Such determination shall be based on an inspection as described in § 240-6, provided that if the owner does not consent to such inspection and no inspection has been performed pursuant to search warrant, the owner shall, in the alternative, submit a certification by a licensed professional engineer that the subject property is in compliance with said the Codes, and in which case such certification shall be made on a form prescribed by the City of Newburgh Bureau of Code Compliance and reviewed by a Municipal Officer to determine compliance.
- F. If the rental license application is incomplete or the applicant does not meet the requirements of the licensing process within 120 days of the submittal date, the application will be deemed canceled and an owner shall be required to file a new application and pay a new application fee
- G. Except as provided in § 240-13, the rental license shall remain valid for one year from the date of issue. The owner shall be required to renew the rental license annually and shall pay a fee in the amount prescribed in Chapter 163.
- H. The Municipal Officer may establish for purposes of efficient administration that all rental licenses shall be renewed by a single date in each year. The Municipal Officer shall establish this date in which case the initial rental license fee shall be prorated for applications received less than 10 months prior to that date.
- I. The completed rental license application shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City against the owner or owners of the building.

#### **§ 240-4 Rental license application.**

- A. A rental license application shall be made by the owner of rental units or the owner's legally constituted agent on a form approved and supplied by the City of Newburgh Office of Code Compliance. This form shall be known as a "rental property statement" and shall be signed by the owner under oath. The statement shall include:
  - (1) The name(s), residence and business addresses, e-mail addresses, telephone numbers, and birth date(s) of the principal officers if the applicant is an individual, or the business names, business addresses, e-mail addresses, telephone numbers, and name(s), residential addresses, and birth date(s) of all principal officer(s) and/or member(s) if the applicant is any business entity recognized by New York State law. Where more than one natural

person has an ownership interest, the required information shall be included for each owner.

- (2) If the owner is not a natural person, the employer identification number of the owner.
  - (3) The name, street address, e-mail address, and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner or owners in connection with the enforcement of any applicable code. The agent for service of process must maintain offices or reside in the State of New York.
  - (4) The name, street address, e-mail address, and telephone numbers of the firm or individual responsible for maintaining the property. The individual or a representative of the firm responsible for maintaining the property must maintain offices within 45 miles of the City and shall be available by telephone or in person on a twenty-four-hour-per-day, seven-day-per-week basis.
  - (5) Name, address, and telephone number of vendee, if the dwelling is being sold through a contract for deed.
  - (6) A description of the premises, including street address, section block and lot, and type of building.
  - (7) Number of dwelling units within the dwelling.
  - (8) Description of procedure through which tenant inquiries and complaints are to be processed.
  - (9) Status of utility fees, property taxes, and other assessments on the dwelling and other rental real property in the City owned by the applicant.
  - (10) The number of tenants that reside in each dwelling unit within the building.
  - (11) Whether the owner consents to a municipal inspection pursuant to § 240-6 or whether the owner will provide a certification by a licensed professional engineer that the property is in compliance with the Code.
  - (12) The City of Newburgh Bureau of Code Compliance may, in its discretion, request additional information from time to time. The owner or authorized agent must reply with such requested information within 14 days of such request.
- B. The owner shall notify the Municipal Officer within 10 days of any change in the rental license information by filing an amended rental property statement on a form provided by the

Municipal Officer for such purpose. Depending on the nature of changes, the City may require consent to a new property inspection. Notice of transfer of ownership shall be as described in § 240-8.

**§ 240-5 License fees; exemptions.**

- A. License fees as set forth in Chapter 163 of this Code shall be due 90 days prior to the license expiration date; in the cases of a new unlicensed dwelling, a change in a previously filed rental license application, or a new license that is required due to a change in ownership as set forth in § 240-8 below, rental license fees shall be due at the time of application.
- B. Owner-occupied dwellings containing not more than two rental units are exempt from the filing fees set forth in Chapter 163 of this Code but still must submit a rental license application as described in § 240-3 and § 240-4 above.
- C. A delinquency penalty of 5% of the rental license fee for each day of operation without a valid rental license shall be charged operators of rental properties. Once issued, a rental license is nontransferable, and the rental licensee shall not be entitled to a refund of any license fee. Upon revocation or suspension, application withdrawal, an incomplete application or process, or application cancellation, the fee is nonrefundable.
- D. All inspection fees are set in Chapter 163. If the inspection is being performed as part of the rental licensing process, fees must be paid prior to the time of rental license issuance or renewal for the property.
- E. If any fee or any portion is not paid within 60 days after billing, the Comptroller may certify the unpaid cost against the property, and the unpaid cost shall be added to and collected with the subsequent City tax levy and shall bear interest and be enforced as provided by law for City taxes.
- F. All funds collected from rental license fees under this section shall be deposited in a dedicated trust fund to be used exclusively for municipal activities with respect to vacant and problem properties in the municipality, including, but not limited to, inspection, nuisance abatement, securing and boarding, maintaining property information systems, general code enforcement activities, and reasonable administrative and legal costs associated with any of the foregoing.

**§ 240-6 Inspection.**

- A. During regular business hours or in an emergency, the municipal officer or his representative or any duly authorized City representative, upon the showing of proper credentials and in the discharge of his duties, may enter any building or rental unit within a building upon consent of the owner or with a duly executed search warrant, to make an inspection to determine whether there is any violation of the Code.



- B. At the request of the municipal officer, the Corporation Counsel is authorized to make application to the City Court of the City of Newburgh or any other court of competent jurisdiction for the issuance of a search warrant to be executed by a police officer in order to conduct an inspection of any premises believed to be subject to this chapter. The municipal officer may seek a search warrant whenever the owner, managing agent, or occupant fails to allow inspections of any dwelling unit contained in the rental property where there is a reasonable cause to believe that there is a violation of the Code .
- C. The presence or existence of any of the following shall create a rebuttable presumption that a dwelling unit is rented:
- (1) The property is occupied by someone other than the owner, and the owner of the property represents, in writing or otherwise, to any person or establishment, business, institution or government agency, that he resides at an address other than the rental property.
  - (2) Persons occupying the premises represent that they pay rent to the owner of the premises.
  - (3) Utilities, cable, phone or other services are in place or requested to be installed or used at the premises in the name of someone other than the record owner.
  - (4) Testimony by a witness that it is common knowledge in the community that a person other than the record owner resides in the premises.
  - (5) There is more than one mailbox at the premises.
  - (6) There is more than one gas meter at the premises.
  - (7) There is more than one electric meter at the premises.
  - (8) There are separate entrances for segregated parts of the dwelling.
  - (9) There are partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including, but not limited to, bedrooms.
  - (10) There exists a separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof.
  - (11) Any occupant or person in possession thereof does not have unimpeded and/or lawful access to all or part of the dwelling unit.
  - (12) There exists two or more kitchens each containing one or more of the following: a range, oven, hotplate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator.

- D. Nothing in this section, except for provisions containing emergency inspections, shall be deemed to authorize the municipal officer or representative to conduct an inspection of any premises subject to this chapter without the consent of the owner or without a warrant duly issued by a court of competent jurisdiction.
- E. Nothing in this section shall prevent the entry into a building or dwelling unit by the municipal officer without the consent of the owner or a search warrant in response to an emergency.

**§ 240-7 Conformance to other laws.**

No rental license shall be issued or renewed unless the rental property and its premises conform to the Code of Ordinances of Newburgh and the laws of the State of New York.

**§ 240-8 License not transferable.**

No rental license shall be transferable to another person or to another rental property. Every person holding a rental license shall give notice, in writing, to the municipal officer within 10 business days after having legally transferred or otherwise disposed of the legal control of any licensed rental property. Such notice shall include the name and address of the person succeeding to the ownership or control of such rental property.

**§ 240-9 Required postings.**

- A. The rental license issued under this article shall contain the following information:
  - (1) The address, type of structure, and structure classification;
  - (2) The date of inspection;
  - (3) The date of issuance;
  - (4) The expiration date;
  - (5) Number of dwelling units;
  - (6) A statement indicating whether the structure is equipped with a fire alarm system;
  - (7) A statement indicating whether the structure is equipped with a sprinkler system;
  - (8) Local contact information, including name, address, and phone number for the owner or owner's designated representative;
  - (9) The maximum number of permanent and/or temporary occupants permitted.
- B. Every licensee of a rental property with more than four units shall conspicuously post the current rental license certificate in the main entryway or other conspicuous location. For rental properties of four or fewer units, the licensee must provide a copy of the rental license certificate to each tenant by attaching a copy to the tenant's copy of the executed lease agreement.
- C. The City's trash and refuse policies and procedures and alternate-side street parking regulations shall be conspicuously posted in the main entryway or other conspicuous location. For rental

properties with only one dwelling unit or with no common entryway, the owner must provide a copy of these policies, procedures, and regulations with the tenant's copy of the executed lease agreement.

**§ 240-10 Occupancy register required.**

- A. Every owner of a licensed rental property shall keep, or cause to be kept, a current register of occupancy for each dwelling unit that provides the following information:
  - (1) Dwelling unit address.
  - (2) Number of bedrooms in dwelling unit and the maximum number of occupants.
  - (3) Legal names and date of birth of adult occupants and number of adults and children (under 18 years of age) currently occupying the dwelling units.
  - (4) Dates renters occupied and vacated dwelling units.
  - (5) A chronological list of complaints and requests for repair by dwelling unit occupants, which complaints and requests are related to the provisions of this Code of Ordinances.
  - (6) A similar chronological list of all corrections made in response to such requests and complaints.
- B. Such register shall be made available for viewing or copying by the municipal officer at all reasonable times.
- C. The property owner may request a pre-rental inspection of a unit prior to placing tenants and obtain a certificate of compliance stating that the apartment is in compliance with the Code. The cost of this inspection shall be included with license fee.

**§ 240-11 Retaliatory actions.**

- A. No person shall institute or maintain an action for eviction because the occupant has reported a violation of this law or any related provision of the Code to the Code Compliance Bureau or other City employee.
- B. No person shall cause any service, facility, equipment or utility required under this local law to be removed, shut off or discontinued in retaliation for a complaint.

**§ 240-12 Rules and regulations.**

The municipal officer may issue rules and regulations for the administration of the provisions of this article.

**§ 240-13 "Compliant landlord" designation.**

- A. An owner who has fully met the requirements set forth in § 240-13B shall be designated as a "compliant landlord". The designation of "compliant landlord" shall be at the discretion of the

municipal officer and is not a right that will vest at any time and may be subject to termination at the discretion of the City, municipal officer and in accordance with any changes in local, state or federal law.

B. Qualifications to be a “compliant landlord”:

- (1) Owner must satisfy the requirements of §§ 240-3, 240-4, 240-5, 240-6, 240-9 and 240-10; and
- (2) Owner must have been issued a rental license for all non-owner-occupied dwellings owned and rented in the City of Newburgh; and
- (3) Owner must have no open cases with the Code Compliance Bureau or Fire Prevention Bureau and no outstanding violations of the Code; and
- (4) Owner must be current on all real property taxes, water, sewer and sanitation bills on all properties owned in the City of Newburgh; and
- (5) Owner must have no open abatement proceedings on any properties owned in the City of Newburgh.

C. An owner who is designated as a “compliant landlord” shall have his rental license remain valid for a period of two years and shall be permitted to renew the rental license every two years and the fee prescribed in Chapter 163 shall be paid every two years with the renewal application.

**§ 240-14 Enforcement.**

- A. The City of Newburgh shall have a choice of enforcing this chapter as provided in § 1-12 of the Code of Ordinances of the City of Newburgh by seeking civil penalties or by instituting a criminal proceeding or may choose to do both.
- B. A designated managing agent of an owner may be served with a notice of violation, order to remedy, an appearance ticket, or other service of process, whether criminal or civil, pursuant to and subject to the provisions of law as if actually served upon the owner.
- C. No owner who designates a managing agent pursuant to the provisions of this chapter may assert the defense of lack of notice or lack of in personam jurisdiction based solely upon the service of process on his designated agent.
- D. Any owner who fails to register a rental property under the provisions of this chapter shall be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

- E. The municipal official may revoke a rental license or approval issued under the provisions of this chapter for any of the following reasons:
- (1) Any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based;
  - (2) The rental license was issued in error and should not have been issued in accordance with applicable law;
  - (3) Failure to maintain the necessary requirements as outlined in this chapter, or occurrence of unlawful activities at or about the premises;
  - (4) Fighting or violent, tumultuous or threatening behavior by any occupant of the premises;
  - (5) Unreasonable noise from the premises on a regular basis;
  - (6) Repeated calls to the police for disturbances and/or disputes at the premises;
  - (7) Obstruction of vehicular or pedestrian traffic due to vehicles from or at the premises;
  - (8) Hazardous or physically offensive conditions created by an act of an occupant or owner of the premises; or
  - (9) Existing violations on the premises of the Code ; or
  - (10) Condemnation of the building or after a fire resulting in structural damage.
- F. Such revocation shall take place after notice to the applicant and opportunity for the applicant to be heard by the municipal officer.
- G. No rental license shall be revoked where there is reasonable grounds that the conduct for revocation as set forth in this subsection is the result of domestic abuse, sexual assault, stalking and/or harassment.
- H. No fees, as provided in Chapter 163, shall be refunded after the revocation of a rental license.

#### **§ 240-15 Penalties for offenses.**

- A. If the City of Newburgh chooses to enforce this chapter through a criminal proceeding, any person who violates or fails to comply with any provisions of this chapter or of the rules and regulations issued hereunder or who violates or fails to comply with any order made thereunder shall be fined up to \$500 per day for each day the violation exists and/or 30 days in jail.
- B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects. Each day that prohibited conditions exist shall constitute a separate offense and so subject the owner to an additional fine of up to \$500 per day for each day the violation exists and/or additional jail sentences of up to 30 days in jail.
- C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

- D. For purposes of this section, failure to file a rental property statement within 60 days of the effective date of this chapter or within 30 days after assuming ownership of the rental property, whichever is later, or within 10 days of receipt of notice by the municipality; failure to provide correct information on the rental property statement; and failure to comply with the provisions of §§ 240-3, 240-4, 240-5, 240-9 and 240-10 of this article or such matters as may be established by the rules and regulations of the municipal officer shall be deemed to be violations of this article.

## **Article II      Tenant Responsibility for Maintenance**

### **§ 240-18 General requirements.**

Tenants of rental property shall maintain the rented premises in conformance with the following standards. Tenants shall only be responsible for conditions that he or she actually caused. The requirements of this article are not intended to conflict with or supersede New York State Real Property Law § 235-b.

### **§ 240-19 Common, public or open areas.**

- A. Steps, walks, driveways, parking spaces and similar paved areas shall be kept free of obstacles to afford safe and convenient passage. Structural repairs are the responsibility of the property owner.
- B. Yards, courts and vacant lots shall be kept clean and free of hazards.
- C. Open fires shall not be permitted, unless authorized and approved pursuant to the Code and in conformity with state air pollution control regulations.

### **§ 240-20 Buildings and structures.**

- A. Floors, walls, including windows and doors, ceilings and other interior surfaces within the rental property, shall be maintained in clean and sanitary condition in accordance with the Code and shall not be broken, damaged or destroyed and/or permitted to attract insect, vermin and rodent harborage and infestation.
- B. Extension cords. Electrical extension cords shall be used only in conformance with the Code. If extension cords must be used, they must be used on a temporary basis only, properly sized for the use; must not cross any pathways, or be placed under carpets or rugs. They also should not be a tripping hazard.
- C. Utilities.
  - (1) Tenants may not perform electrical or plumbing work. Tampering with electrical or plumbing infrastructure in any way is prohibited.

- (2) Tenants or third parties who are licensed electricians or licensed plumbers must obtain proper permits before commencing and completing any work.
- D. External decorative lighting, including, but not limited to, holiday lighting, shall not be hung by tacks or nails in such a manner as to create a fire hazard. Electrical light fixtures and other heat-generating appliances shall not be covered with fabric or other combustible material.
- E. Excessive amounts of loose fabric when used as a wall or ceiling covering is a fire hazard and is not permitted.
- F. Tenants may not store or place anything in such a way that it might block or prevent the use of a means of exiting from a room, rooming unit, dwelling unit or building. Items should not be stored by tenants in unfinished areas of buildings (cellars, attics, etc.), which could contribute to combustion in a fire or block access by emergency personnel, (i.e., mattresses, old boxes, lumber, clothes, etc.).
- G. Fire escapes shall not be used for storage and shall be kept clear to allow for immediate egress from a room, rooming unit, dwelling unit or building.
- H. Tenants shall not store combustible or flammable liquids and/or flammable gases in their dwelling unit or rooming unit, or in accessory buildings, except in sealed, approved containers.
- I. Flammable and combustible liquids and/or gases shall not be stored in hallways, exits, stairways or areas normally used for the safe passage of people.
- J. Unfinished areas of buildings, such as cellars or attics, shall not be used for any activities whatsoever other than for utility purposes.
- K. Rugs or carpet shall not be installed in such a way as to obstruct the smooth opening or closing of any doors.
- L. Cooking and refrigeration appliances, kitchens, and bathrooms must be kept in a clean and sanitary condition so as not to attract insect, vermin and rodent harborage and infestation.
- M. Food garbage shall not be stored on premises in such a way or for such a period of time so as to become a health hazard.

#### **§ 240-21 Infestation and harborages.**

Grounds, buildings and structures shall be maintained free of insect, vermin and rodent harborage and infestation. The accumulation and/or storage of materials that may provide harborage or serve as food for rodents or other vermin in a site accessible to such rodents or vermin is prohibited.

#### **§ 240-22 Garbage and refuse.**

- A. Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse within rental property. Storage containers within rental property shall be of an approved flame-resistant material.
- B. The accumulation or storage of garbage or refuse in public halls or stairways shall be prohibited.
- C. Tenants shall not place loose bags of garbage and/or recyclables outside the building or in a garage area and shall comply with the waste collection regulations as prescribed by Chapter 183 of the City Code of Ordinances.
- D. Tenants shall not store or leave interior furniture outdoors except for disposal in accordance with Chapter 183 of the City Code of Ordinances and applicable rules and regulations of the Department of Public Works.

#### **§ 240-23 Junk.**

- A. Refrigerators, and similar equipment with locking mechanisms, shall not be discarded, abandoned or stored on premises accessible to children, without first removing the locking devices or the hinges of the doors.
- B. Junked vehicles, unregistered vehicles, equipment and materials shall not be stored in common, shared and/or open areas of premises.

#### **§ 240-24 Domestic animals and pets.**

Domestic animals and pets shall be kept in an appropriate manner in accordance with Chapter 150 of the City Code of Ordinances. Any tenant having ownership, custody or control of a dog or other domesticated companion or working animal shall be responsible for promptly picking up, collecting and disposing of any and all waste products of such animal in a sanitary manner.

#### **§ 240-25 Smoke detectors, carbon monoxide detectors, fire extinguishers and sprinkler systems.**

- A. Smoke detectors and carbon monoxide detectors shall not be removed, damaged or disabled in any way. Smoke and carbon monoxide detectors shall not be disabled by the tenant(s).
- B. The detectors shall not be disconnected from a power source or rendered inoperable in any way. Tenants shall not remove batteries in smoke detectors or carbon monoxide detectors located in a rental property.
- C. It shall be the duty of the tenant(s) of any rental property to keep and maintain such detectors located within their dwelling unit, or sleeping room, in good repair and operable condition and to notify the property owner to replace any and all devices which are stolen, removed, missing



or rendered inoperable during their tenancy of such dwelling unit with an identical device or an equivalent device, as approved by the owner.

- D. Fire extinguishers shall not be used for any purpose other than that for which they were designed. Tenant shall notify the Fire Department upon discharging a fire extinguisher to extinguish a fire.
- E. Tampering with sprinkler systems in any way and hanging items from sprinkler systems and sprinkler equipment is prohibited.

#### **§ 240-26 Exits: hardware for doors.**

- A. Prohibited locking devices. No hasp, lock, padlock, bar, chain or other device, which is openable only from the exterior, shall be installed by a tenant(s) on any door, which is used or intended to be used, as a means of egress.
- B. Locking devices required.
  - (1) It is the responsibility of all property owners to ensure that exit doors from dwelling units, and doors from bedrooms, sleeping rooms or lodging units which are located within dwelling units, rooming houses or boardinghouses, in which three or more unrelated individuals reside, shall be equipped with a locking device which is securable by means of a key from the outside and which is provided, on the inside, with a simple type of releasing device, such as a knob, handle or panic bar, the method of operation of which is obvious, even in darkness. No tenant shall remove and/or disable said locking devices.
  - (2) It is the responsibility of all property owners to ensure that all openable windows located within 10 feet, measured vertically, or within six feet, measured horizontally, of ground level, or of exterior balconies, porches, stairs, fire escapes, railings, roof surfaces or any other accessible structure, shall be equipped with sash locks designed to be openable from the inside only. Sash locks shall be easily openable without the use of keys and be maintained in good repair. No tenant shall remove and/or disable said sash locks.
- C. Self-closing doors shall not be blocked in the open position, and automatic doors shall not be removed.
- D. Tampering with exit lights and exit signs is prohibited. If exit lights are out or malfunctioning, the property owner must be notified.

#### **§ 240-27 Violations and enforcement.**

- A. Whenever the municipal officer finds that there has been a violation of these standards, the municipal officer shall first issue a notice of violation to the person or persons responsible, so long as the property owner has provided such responsible party information to the Bureau of Code Compliance. The order shall:

- (1) Be in writing.
- (2) Identify the premises.
- (3) Specify the violation and remedial action to be taken.
- (4) Provide a reasonable time limit for compliance.
- (5) State the time within which an appeal may be taken.
- (6) If the violation constitutes a public nuisance or renders the premises dangerous or unsafe, include, in the order, a statement that if the violation is not remedied within the time limit specified in the order, the City may remedy the violation in accordance with Chapter 126 and Chapter 226 of the City Code of Ordinances.

B. A notice of violation and order may be served as follows:

- (1) By personal service upon the tenant(s); or
- (2) By posting a copy thereof on the door of the tenant(s) premises, or if access thereto is denied, by posting a copy thereof on the outside door of the building and mailing a copy to the tenant(s) in a postpaid wrapper addressed to the tenant(s).

C. In case the tenant(s) shall fail, neglect or refuse to remove, eliminate or abate the violation, or in the case that the owner, lessor or agent fails to cause the tenant(s) to remove the violation within the time specified, the municipal officer shall forward the notice of violation to the Corporation Counsel who shall prosecute same as provided herein.

D. If the violation constitutes a public nuisance or renders the premises dangerous or unsafe, and the violation order has been served, but the violation has not been remedied within the time limit specified in such violation order, the City may remedy the violation in accordance with Chapter 126 and Chapter 226 of the City Code of Ordinances.

#### **§ 240-28 Penalties for offenses.**

Failure to comply with a violation order, within the time limit stated therein, shall constitute an offense. A person convicted of an offense shall be punished by a fine not to exceed \$500, or in the court's discretion, a sentence of community service in accordance with the New York State Penal Law. Each day that a violation continues shall be deemed a separate offense and shall subject the occupant to an additional penalty as provided above.

#### **§ 240-29 Violations constitute substantial obligation of tenancy.**

Unless otherwise provided for by state or federal law or the provisions of a lease, the compliance with the provisions of this chapter shall constitute a substantial obligation of every residential tenancy and the violation thereof shall be grounds for termination of the tenancy.

#### **SECTION 4. Severability.**

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

#### **SECTION 5. Codification**

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Local Law shall be included in the Code of Ordinances 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 "Chapter", "Article", "Section", or other appropriate word as required for codification; and that any such rearranging of the numbering and/or lettering and editing shall not affect the validity of this Local Law or the provisions of the Code of Ordinances affected thereby.

#### **SECTION 6. Validity**

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

#### **SECTION 7. Effective Date**

This Local Law shall be effective 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.

2023 New York Assembly Bill No. 7265, New York Two Hundred Forty-Sixth Legislative Session

NEW YORK BILL TEXT

**TITLE: Relates to the contents of a petition in a summary proceeding  
to recover possession of real property in the city of Newburgh.**

VERSION: Adopted

October 25, 2023

Jacobson, Jonathan



Image 1 within document in PDF format.

SUMMARY: ROLISON JACOBSON Amd i741, RPAP L Requires a petition in a summary proceeding to recover possession of real property in the city of Newburgh to allege proof of compliance with local laws requiring rental residential property registration and licensure.

**TEXT:**

LAWS OF NEW YORK, 2023

CHAPTER 579

AN ACT to amend the real property actions and proceedings law, in relation to requiring a petition in a summary proceeding to recover possession of real property in the city of Newburgh to allege proof of compliance with local laws requiring rental residential prop- erty registration and licensure

Became a law October 25, 2023, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the

Constitution by a majority vote, three-fifths being present.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. **Section 741 of the real property actions and proceedings law** is amended by adding a new subdivision 7 to read as follows:

**7. In the city of Newburgh, where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law.**

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS CARL E. HEASTIE Temporary President of the Senate Speaker of the Assembly

Agenda Item 8.

**Resolution No. 1 - 2024 - Change Order No. 4G Kubricky Construction North Interceptor Sewer**

Resolution authorizing Change Order No. 4G to the construction contract with Kubricky Construction Corp. increasing the contract amount by \$600,000.00 and increasing the total contract amount from \$28,151,184.80 to \$28,751,184.80 in the North Interceptor Sewer Main Improvements Project

*Resolución autorizando la Orden de Cambio No. 4G al contrato de construcción con Kubricky Construction Corp. incrementando el monto del contrato por \$600,000.00 e incrementando el monto total del contrato de \$28,151,184.80 a \$28,751,184.80 en el Proyecto de Mejoramiento del Alcantarillado principal del Interceptor Norte.*

**Background:**

A resolution authorizing the City Manager to execute Change Order No. 4G with Kubricky Construction on the North Interceptor Sewer Improvements Project in an amount of \$600,000 to allocate additional funds to Contingency Allowance on the project. The additional funds shall be derived from a combination of funding sources including a NYSDEC Water Quality Improvement Grant; a Water Infrastructure Improvement Act Grant; a US EPA Community Grant program grant and NYSEFC Zero Interest Hardship Financing.

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution approving Kubricky Change Order #4G N Interceptor Sewer	12/27/2023	Resolution Letter
Change Order No. 4G Kubricky Construction North Interceptor Sewer Improvements	12/22/2023	Backup Material

RESOLUTION NO.: \_\_\_\_\_<sup>1</sup> - 2024

OF

JANUARY 8, 2024

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 4G TO  
THE CONSTRUCTION CONTRACT WITH KUBRICKY CONSTRUCTION CORP.  
INCREASING THE CONTRACT AMOUNT BY \$600,000.00 AND INCREASING  
THE TOTAL CONTRACT AMOUNT FROM \$28,151,184.80 TO \$28,751,184.80  
IN THE NORTH INTERCEPTOR SEWER MAIN IMPROVEMENTS PROJECT**

**WHEREAS**, by Resolution No. 48-2022 of March 14, 2022, the City Council of the City of Newburgh, New York awarded a bid to Kubricky Construction Corp. in the amount of \$27,044,650.00 for the construction of the North Interceptor Sewer Main Improvements Project; and

**WHEREAS**, Kubricky Construction Corp. has submitted Change Order No. 4G contract adding \$600,000.00 to the Contingency Allowance to cover unanticipated costs authorized by the City and deemed eligible costs by the funding agency; and

**WHEREAS**, the funding for Change Order No. 4G shall be derived from a combination of funding sources, including a New York State Department of Environmental Conservation Water Quality Improvement Grant; a Water Infrastructure Improvement Act Grant; a United States Environmental Protection Agency Community Program Grant; and New York State Environmental Facilities Corporation Zero Interest Hardship Financing;

**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. 4G with Kubricky Construction Corp. increasing the total contract amount by \$600,000.00 from \$28,151,184.80 to \$28,751,184.80 in the North Interceptor Sewer Main Improvements Project.

**CHANGE ORDER NO.: 4G**

Owner: City of Newburgh Owner's Project No.: 1.22  
Engineer: Arcadis of New York, Inc. Engineer's Project No.: 30141834  
Contractor: Kubricky Construction Corp. Contractor's Project No.: 2022006  
Project: North Interceptor Sewer Replacement  
Contract Name: General Construction  
Date Issued: 12/20/2023 Effective Date of Change Order:

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

**Description:**

1. Add \$600,000.00 to Bid Item No. 4, Contingency Allowance to cover unanticipated costs that have been authorized by Owner and have been deemed as eligible costs by Funding Agency.

Attachments: **None**

<b>Change in Contract Price</b>	<b>Change in Contract Times</b>
Original Contract Price: \$ 27,044,650.00	Original Contract Times: Substantial Completion: 540 Ready for final payment: 570
Increase from previously approved Change Orders No. 1 to No. 3: \$ 1,106,534.80	Increase from previously approved Change Orders No.1 to No. 3: Substantial Completion: 66 Ready for final payment: 71
Contract Price prior to this Change Order: \$ 28,151,184.80	Contract Times prior to this Change Order: Substantial Completion: 606 Ready for final payment: 641
<b>Increase</b> this Change Order: \$ 600,000.00	<b>Increase</b> this Change Order: Substantial Completion: 0 Ready for final payment: 0
Contract Price incorporating this Change Order: \$ 28,751,184.80	Contract Times with all approved Change Orders: Substantial Completion: 606 Ready for final payment: 641

**Recommended by Engineer (if required)**

By: A.J. Brooks, P.E.

Title: Senior Engineer

Date:

Authorized by Owner

By:

Title:

Date:

**Accepted by Contractor**

Approved by Funding Agency (if applicable)

Agenda Item 9.

**Resolution No. 2 - 2024 - Change Order No. 2G METRA Industries North Water Street Sewer Separation Project**

Resolution authorizing Change Order No. 2G to the construction contract with Metra Industries in the North Water Street Sewer Separation Project

*Resolución por la que se autoriza la Orden de Cambio n° 2G al contrato de construcción con Metra Industries en el Proyecto de Separación de Alcantarillado de North Water Street.*

**Background:**

A resolution authorizing the City Manager to execute Change Order No. 2G with METRA Industries, Inc. to reallocate several unused contract contract bid items to Contingency Allowance. No additional funding is associated with this change order.

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution approving Metra Change Order #2G N Water St. Sewer Separation	12/27/2023	Resolution Letter
METRA Industries Change Order No. 2G	12/22/2023	Backup Material



RESOLUTION NO.: \_\_\_\_\_<sup>2</sup> - 2024

OF

JANUARY 8, 2024

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 2G TO  
THE CONSTRUCTION CONTRACT WITH METRA INDUSTRIES  
IN THE NORTH WATER STREET SEWER SEPARATION PROJECT**

**WHEREAS**, by Resolution No. 61-2022 of March 28, 2022, the City Council of the City of Newburgh, New York awarded a bid to Metra Industries in the amount of \$3,498,600.00 for the construction of the North Water Street Sewer Separation Project; and

**WHEREAS**, Metra Industries has submitted Change Order No. 2G to reallocate contract items to the Contingency Allowance, including additional sewer lining, existing waterline relocation, additional removal and disposal of abandoned utilities, and removal of trees and contaminated soil; and

**WHEREAS**, the reallocation will not increase the total contract price; the same being in the best interest of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to execute Change Order No. 2G with Metra Industries in the North Water Street Sewer Separation Project.

Change Order No. 2G

Date of Issuance: January ____, 2024	Effective Date: January ____, 2024
Owner: City of Newburgh	Owner's Contract No.: 3.22
Contractor: Metra Industries Inc	Contractor's Project No.: NY-GS-0353
Engineer: Arcadis of New York, Inc	Engineer's Project No.: 30142406
Project: North / Water Street Sewer Separation	Contract Name: General Construction

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

**Description:**

1. Subtract \$135,000.00 from Bid Item No. 4 Additional Sewer Lining and add \$135,000.00 to Bid Item No. 3 Contingency Allowance.
2. Subtract \$80,000.00 from Bid Item No. 7 Existing Waterline Relocation and add \$80,000.00 to Bid Item No. 3 Contingency Allowance.
3. Subtract \$7,500.00 from Bid Item No. 9 Additional Removal and Disposal of Abandoned Utilities and add \$7,500.00 to Bid Item No. 3 Contingency Allowance.
4. Subtract \$2,000.00 from Bid Item No. 10 Contaminated Soil and add \$2,000.00 to Bid Item No. 3 Contingency Allowance.
5. Subtract \$15,000.00 from Bid Item No. 13 Tree Removal and add \$15,000.00 to Bid Item No. 3 Contingency Allowance.

Attachments: *None*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>3,498,600.00</u>	Original Contract Times: Substantial Completion: <u>300</u> Ready for Final Payment: <u>330</u> days
Increase from previously approved Change Order No. <u>1G</u> : \$ <u>200,000.00</u>	Increase from previously approved Change Order No. <u>1G</u> : Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price prior to this Change Order: \$ <u>3,698,600.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>300</u> Ready for Final Payment: <u>330</u> days
Increase of this Change Order: \$ <u>0.00</u>	Increase of this Change Order: Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price incorporating this Change Order: \$ <u>3,698,600.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>300</u> Ready for Final Payment: <u>330</u> days

<b>RECOMMENDED:</b>		<b>ACCEPTED:</b>		<b>ACCEPTED:</b>	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)			
Title: _____	Title: _____	Title: _____			
Date: _____	Date: _____	Date: _____			

Approved by Funding Agency (if applicable)

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

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

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

Agenda Item 10.

**Resolution No. 3 - 2024 - Award of Bid No. 23.23 Delano-Hitch Recreation Park Aquatic Center Improvements - Electrical Contract**

Resolution authorizing the award of a bid and the execution of a contract with J & J Sass Electric, Inc. for the electrical construction of the Delano-Hitch Recreation Park Aquatic Center Improvements Project in an amount not to exceed \$835,000.00

*Resolución que autoriza la adjudicación de un vínculo y la ejecución de un contrato con J & J Sass Electric, Inc. para la construcción eléctrica del Proyecto de Mejoras del Centro Acuático del Parque Recreativo Delano-Hitch por un monto que no exceda los \$835,000.00*

**Background:**

A resolution awarding the Electrical Contract for Bid No. 23.23 Delano-Hitch Recreation Park Aquatic Center Improvements to J&J Sass Electric, Inc. in an amount of \$835,000. Funding shall be derived from the City's allocation of ARPA funds and the 2024 Bond.

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution awarding DH Aquatic Center electrical bid to J & J Sass Electric Inc.	12/27/2023	Resolution Letter
Bid No. 23.23 Delano-Hitch Recreation Park Aquatic Center Improvements - Electrical Bid Tabulation	12/22/2023	Backup Material
Bid No. 23.23 Delano-Hitch Aquatics Center CPL Recommendation of Award Electric Bid (December 22, 2023)	12/22/2023	Backup Material
Bid No. 23.23 Delano-Hitch Recreation Park Aquatic Center Electric Bid - J&J Sass Electric (December 22, 2023)	12/22/2023	Backup Material

RESOLUTION NO.: 3 - 2024

OF

JANUARY 8, 2024

**A RESOLUTION AUTHORIZING THE AWARD OF A BID AND THE EXECUTION OF  
A CONTRACT WITH J & J SASS ELECTRIC, INC. FOR  
THE ELECTRICAL CONSTRUCTION OF THE DELANO-HITCH RECREATION PARK  
AQUATIC CENTER IMPROVEMENTS PROJECT  
IN AN AMOUNT NOT TO EXCEED \$835,000.00**

**WHEREAS**, the City of Newburgh has duly advertised for bids for the plumbing construction of the Delano-Hitch Recreation Park Aquatic Center Improvements Project; and

**WHEREAS**, bids have been duly received and opened and J & J Sass Electric, Inc. is the low bidder with a bid amount of \$835,000.00; and

**WHEREAS**, funding for such project shall be derived from American Rescue Plan Act and bond funding;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the bid for plumbing construction of the Delano-Hitch Recreation Park Aquatic Center Improvements Project be and it hereby is awarded to J & J Sass Electric, Inc. in an amount not to exceed \$835,000.00, and that the City Manager be and he is hereby authorized to enter into a contract for such work in this amount.

# UNOFFICIAL LOW-BID TABULATION

CITY OF NEWBURGH, NY

23.23 - Electrical Contract for Delano-Hitch

**PROJECT NAME:** Recreation Park Aquatic Center Improvements

**SUBMISSION DEADLINE AND BID OPENING:** Friday, December 22, 2023 at 11:00 a.m., (local time)

**Public Opening:** Began at 11:00 a.m. and closed at 11:23 a.m.

**Opened and read aloud Bids received:** Jonathan DiRocco, CPL Architects & Engineers

**Witnessed Opening/Recording of Bids:** Elizabeth Garrison, Admin. to the Comm. of PW/Engineer

**Contractors Present:** Jason - E-J Electric

**Recorded Bids Opened at Bid Opening:** Kiely Irwin, CPL Architects & Engineers

	Bidder Name	Time Stamped	Sealed and Clearly Marked (EC)	Original and Copy	Bid Form (Signed in <u>blue</u> ink & Notarized)	Add. No. 1E (Acknowledged by Bidder)	Resolution of Board of Directors (Signed/sealed)	Form of Security (Bond on City Form or Cert. Check)	Bidder's Qualification Questionnaire	Affidavit of WC (Signed and Notarized)	Non-Coll. Bidding Affidavit (Signed and Notarized)	Iranian Energy Sector Div. Act Affidavit (Signed and Notarized)	Total Lump Sum Bid Price
1	Foremost Electric Corporation	✓ Dec. 22 8:47am	✓	original	✓ signed in black ink	✓	✓ signed in black ink	Bond on city Form	✓	✓	✓	✓ signed in black ink	\$857,300.00
2	J&J SASS Electric Inc.	✓ Dec. 22 9:22am	✓	original	✓	✓	✓	Bond but not on city form	✓	✓	✓	✓	\$835,000.00
3	E-J Electric Installation Co.	✓ Dec. 22 10:45am	✓	✓	✓ Copy but original is attached	✓	Sealed but not signed	bond on city Form	✓	✓	✓	✓	\$976,824.00
4													
5													



December 22, 2023

Jason C. Morris, PE  
Commissioner of Public Works and City Engineer  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

**Re: Delano- Hitch Recreation Aquatic Center Improvements – Recommendation For Bid Award For Electrical (EC) Contract**

Dear Mr. Morris:

We have reviewed all three (3) Electrical (EC) bids and had communication with the bidders. Based on all the bids we received, J&J Sass Electric Inc. would be considered the apparent lowest bidder. We have contacted J&J Sass Electric Inc. and have confirmed that they are confident they can complete the work for the lump sum price of **\$835,000.00** they provided. We do want to point out that they did provide a bid bond as a form of security, but the bond was not on a city form. They only provided one (1) original of their bid (no copies provided), and this does not affect their submitted lump sum bid price. They did complete all other required documents (signed in blue ink and notarized where required). It is our recommendation that you award the Electrical (EC) Contract to J&J Sass Electric Inc.

Very truly yours,

Jonathan DiRocco, AIA  
Senior Architectural Project Manager



12/22/23  
9:27 AM  
Dropped  
J. Sasso  
H

**J & J SASS ELECTRIC, INC.**  
30 GRAND STREET  
P.O. BOX 1910  
KINGSTON, NY 12402

Delano Hitch Aquatic Center Improvements  
83 Broadway 4th Floor, Newburgh NY 12550  
Attn: City Comptroller Janice Gaston

Sealed Electrical Bid

Bid Date: 12/22/23

Bid Time: 11:00 am



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SECTION 00 41 13

BID FORM

**Project Identification:** Delano-Hitch Recreation Park Aquatic Center Improvements

**Contract Identification And Number:** Bid No. 23.23

**Submitted To:** City of Newburgh  
83 Broadway - 4th Floor , Newburgh, NY 12550  
Attn: City Comptroller

**Bid For:** Delano-Hitch Recreation Park Aquatic Center Improvements (check one below)

☒ General Trades (GC)

☒ Plumbing Work (PC)

☒ Mechanical (HVAC) Work (MC)

☐ Electrical Work (EC)

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for forty-five (45) days after the day of the submission deadline. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents as more fully set forth in the Agreement, that:
  - a. BIDDER has examined and carefully studied the Invitation for Bids, Bid Documents, and the following Addenda, receipt of all which is hereby acknowledged:

List Addenda by Addendum Number and Date:

1E 12/14/23

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- b. BIDDER has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Work. Alternatively, in lieu of such, do solely and completely accept all risks inherent in not doing so.
    - c. BIDDER is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
    - d. BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) which have been provided in paragraph 4.2 of the General Conditions. BIDDER accepts the determination set forth in paragraph 4.2 of the General Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in paragraph 4.2 of the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER's purposes. BIDDER acknowledges that OWNER and ENGINEER do not assume

responsibility for the accuracy or completeness of information and data shown or indicated in the Bid Documents with respect to underground facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price, and other terms and conditions of the Contract Documents.

- e. BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- f. BIDDER acknowledges that all allowances, pursuant to their Contract, have been included in the Base Bid. Should the following allowance(s) exceed, or be less than, the cost of selected items, the difference in cost shall be added to, or credited to, the Owner's Contract. Refer to Specification Section 012100 "Allowances" for description of each allowance.

General Trades (GC)	Allowance Amount: 5% of base bid.
Plumbing Work (PC)	Allowance Amount: 5% of base bid.
Mechanical (HVAC) Work (MC)	Allowance Amount: 5% of base bid.
Electrical Work (EC)	Allowance Amount: 5% of base bid.

- g. BIDDER has correlated the information known to BIDDER, information and observation obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- h. BIDDER has given OWNER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- i. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and, BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
- j. Any other representation required by Laws and Regulations.

4. BIDDER will complete the Work in accordance with the Contract Documents for the following price(s). The Lump Sum Bid Price shall be the cost of the Work for the Project outlined and described in all of the Contract. The City shall make the determination post bid as to how to proceed based upon the bid proposals.

LUMP SUM BID PRICE (INCLUDING ALLOWANCE):

<u>Eight Hundred Thirty Five Thousand Dollars</u>	<u>\$ 835,000</u>
<i>Written or Typed in Text</i>	<i>Numerical</i>

ALTERNATE #1:

<u>N/A</u>	<u>\$ N/A</u>
<i>Written or Typed in Text</i>	<i>Numerical</i>

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

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6. The following documents are attached to and made a condition of this Bid:

- a. Resolution of Board of Directors
- b. Non-Collusion Bidding Affidavit
- c. Required BIDDER's Qualification Statement with supporting data
- d. Affidavit of Workers' Compensation
- e. Iranian Energy Sector Divestment

7. Communications concerning this Bid shall be addressed to, the address of BIDDER indicated below:

PO Box 1910

Kingston, NY 12402

8. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.

SUBMITTED on: December 22 2023  
Month Day Year

State Contractor License No.: Orange County #201



If BIDDER is:

**An Individual**

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

*Individual's Name*

*Seal*

Doing business as \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**A Partnership**

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

*Firm Name*

*Seal*

General Partner \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**A Corporation**

By: JTS S99S Electric Inc. \_\_\_\_\_

*Corporation Name*

*Seal*

State of Incorporation: New York \_\_\_\_\_

Authorized Signatory: [Signature] \_\_\_\_\_ Title: President \_\_\_\_\_

Attestation: [Signature] \_\_\_\_\_

*Secretary*

*Seal*

Business Address: 30 Grand St, Kingston NY 12401 \_\_\_\_\_

Phone Number: 845-331-8666 \_\_\_\_\_

Date qualified to do business: Dec 1973 \_\_\_\_\_

**A Joint Venture**

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

*Individual's Name*

*Seal*

Address: \_\_\_\_\_

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

*Individual's Name*

*Seal*

Address: \_\_\_\_\_

Official Communications Address: \_\_\_\_\_

Official Communications Phone Number: \_\_\_\_\_

Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.

SECTION 00 43 13.135

CERTIFIED COPY OF RESOLUTION  
OF

BOARD OF DIRECTORS

Delano-Hitch Recreation Park Aquatic Center Improvements

Bid No. 23.23

City of Newburgh, New York

J+J Sgss Electric Inc.

*Name of Corporation*

Resolved that James Sgss Jr, President  
*Authorized Signatory* *Title*

of J+J Sgss Electric Inc. Authorized to sign and submit the Bid of the Corporation for  
*Name of Corporation*

the following project: Delano-Hitch Recreation Park Aquatic Center Improvements  
and to include in such Bid the Certificate as to Non-Collusion, and for any inaccuracies or misstatements in such Certificate this Corporate Bidder shall be liable under the penalties of perjury.

The foregoing is a true and correct copy of the Resolution adopted by:

J+J Sgss Electric Inc.

*Name of Corporation*

At a meeting of its Board of Directors held on the 18<sup>th</sup> day of December 20 23

By: [Signature] Title: President

*Seal*

This form must be completed if the Bidder is a Corporation

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SECTION 00 43 13.14

BIDDER'S QUALIFICATION QUESTIONNAIRE

Delano-Hitch Recreation Park Aquatic Center Improvements

Bid No. 23.23

City of Newburgh, Orange County, New York

The undersigned guarantees the accuracy of all statements and answers herein contained. (Please print in ink).

1. How many years has your firm been in business as a Contractor?  
in years: 50 years
2. List projects of this nature that you have completed in the last three (3) years, and give the name, address and telephone number of a reference from each. Also give the completion date, the original contract bid price and the completed cost of each project listed (use additional sheet, if necessary).  
See attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. List projects presently under construction by your firm, the dollar volume of the contract and the percentage completion of the contract.  
See attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Work awarded to you; if so, state where and why.  
See attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. What equipment do you own that is available for this work?  
- Bucket truck  
- Scissor lift  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. What equipment do you plan to rent or purchase for this work?  
\_\_\_\_\_  
\_\_\_\_\_

7. Have you ever performed work under the direction of a Professional Engineer or Registered Architect? If so, list up to three (3) such firms giving the name of the firm, its address, telephone number and the name of the project. (List most recent projects).

Scott Dutton Architect  
Delaware Engineering

8. Give the name, address and telephone number of an individual who represents each of the following and whom the OWNER may contact to investigate your financial responsibility: a surety, a bank, and a major material supplier.

See attached

9. Provide a financial statement for your company. This should include a balance and income statement for your most recent fiscal year. A certified audit is preferred but not required. Use an insert sheet, if needed. Only three (3) lowest bidders shall submit this information (if requested by OWNER) to the OWNER within forty-eight (48) hours of the opening of the Bids.

10. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business, and the address of the place of business. (If a corporation, state the name of all partners. If a trade name, state the names of the individuals who do business under the trade name.) It is absolutely necessary that information be furnished.

The business is a Corporation

Type of Legal Entity

The address of principal place of business is:

30 Grand Street, Kingston NY 12401

The names of the corporate officers, or partners, or individual doing business under a trade:

James Sess Jr. - President

Salvatore Incalvisio - VP

Coleen Sess - Secretary

Jessica Mackey - Treasury





# **J & J Sass Electric, Inc.**

**30 Grand Street  
PO Box 1910  
Kingston, NY 12402  
(845) 331-8666**

## **List of construction experience and present commitments of the key individuals of our organization.**

James J. Sass Jr.	Over 45 Years - Owner/President
Sal Incorvaia	Over 20 Years - VP/Project Manager
Steve Kondor	Over 35 Years - General Foreman
Anthony Dispensa	Over 30 Years - General Foreman
John Bodo	Over 20 Years - General Foreman
William Smith	Over 20 Years - General Foreman

## **OFFICERS**

James J. Sass Jr., President  
Salvatore A. Incorvaia, Vice President  
Jessica L. Mackey, Treasurer  
Coleen E. Sass, Secretary

**Date of Incorporation**      **12/1/1973**      **Kingston, New York**

## **MAJOR PROJECTS COMPLETED - PRIME CONTRACTOR Attachment #1**

14-1555922

NAME	OWNER	ARCHITECT	AMOUNT	COMPLETION DATE	FORCES
GAP East MHE Fit-UP J2341	Gap, Inc.	Gap, Inc.	\$ 3,413,673.00	February-19	99%
Ulster Co. Justice Center J2393	County of Ulster	Lothrop Associates	\$ 333,541.00	May-19	100%
Port Jervis CSD Media Ctrs J2389	Port Jervis CSD	Mosaic Associates Architects	\$ 503,460.00	May-19	98%
Whiting Turner Themis Pwr J2412	IBM Corporation	Whiting Turner	\$ 477,484.00	May-19	100%
GAP 2019 ODC ASRS J2435	GAP, Inc.	Gap, Inc.	\$ 847,223.00	August-19	99%
Dutchess Co. Dept Public Wk J2387	County of Dutchess	Lothrop Associates	\$ 580,440.00	August-19	99%
MidHudson Reg. Medical Ctr. J2265	Westchester Medical Center	MHMRC	\$ 2,300,212.00	October-19	69%
Port Jervis Pkg. #2 J2442	Port Jervis CSD	Savin Engineers, P.C.	\$ 752,504.00	November-19	76%
Whiting Turner B052 J2469	IBM Corporation	SSM Group	\$ 588,607.00	November-19	99%
Whiting Turner B007 J2472	IBM Corporation	SSM Group	\$ 1,421,610.00	November-19	100%
Bank of America J15	Bank of America	CBRE-Bank of America	\$ 414,470.00	December-19	80%
IBM Poughkeepsie- Various Projects	Jones Lang LaSalle	Jones Lang LaSalle	\$ 949,945.00	December-19	98%
DEP- Various Projects	DEP of New York City	Dept of Environmental Protection	\$ 924,542.00	December-19	80%
Pine Bush Technology Project J2464	Pine Bush CSD	Bernier, Carr & Assoc.	\$ 807,733.00	January-20	76%
Beacon CSD Capital Project J2439	Beacon CSD	Rhinebeck Architects	\$ 619,593.00	February-20	100%
Crickett Valley Power Station J2424	Crickett Valley	Minimax Fire Solutions	\$ 428,278.00	March-20	100%
Goshen CSD Contract #1 J2391	Goshen CSD	LAN Associates	\$ 3,638,132.00	June-20	93%
Goshen CSD Contract #2 IT Mods J2394	Goshen CSD	LAN Associates	\$ 1,887,375.00	June-20	91%
Pawling WWTP J2375	Village of Pawling	Chazen Companies	\$ 1,910,305.00	July-20	85%
Spackenkill UFSD Phase 2 J2447	Spackenkill UFSD	CPL Architecture	\$ 462,235.00	August-20	85%
Dutchess Co. Standby Generators J2485	County of Dutchess	M/E Engineering, P.C.	\$ 710,839.00	August-20	72%
Whiting Turner B008 Quantum J2526	IBM Corporation		\$ 317,878.00	November-20	97%
City of Beacon Headworks J2474	City of Beacon	Lanc & Tully Eng.	\$ 283,273.00	December-20	100%
IBM Poughkeepsie- Various Projects	Jones Lang LaSalle	Jones Lang LaSalle	\$ 888,365.00	December-20	98%
DEP- Various Projects	DEP of New York City	Dept of Environmental Protection	\$ 1,054,816.00	December-20	80%
Whiting Turner B002 Trinity Clean J2557	IBM Corporation		\$ 276,989.00	January-21	100%
Dutchess Co. Airport Edu. Ctr. J2477	County of Dutchess	C&S Companies	\$ 1,260,720.00	May-21	83%
Rondout Valley CSD Phase 1 J2528	Rondout Valley CSD	CPL Architects	\$ 505,061.00	June-21	94%
Dutchess Co. 22 Mkt. St. 4th Fl Ren.	County of Dutchess	Liscum McCormack VanVoorhis LLP	\$ 347,758.00	June-21	88%
WT B002 Trinity Clean Rm Demo J2557	IBM Corporation		\$ 323,853.00	June-21	99%
Day Automation- Beacon CSD J2577	Beacon CSD		\$ 883,100.00	November-21	93%
Hyde Park Havilland MS J2527	Hyde Park CSD	Collins + Scoville Architecture	\$ 516,254.00	November-21	95%
WT B002 Trinity Clean Rm Install J256	IBM Corporation		\$ 2,401,559.00	November-21	100%
Henkels & McCoy Amtrak J2550	National Railroad Passenger Corp.	Henkels & McCoy	\$ 1,570,401.00	December-21	100%
EV Connect-UCAT J2581	Ulster Co. Area Transit		\$ 460,587.00	March-22	81%
D.O. Connells & Sons SUNY NP J2522	SUNY New Paltz	Brien & Gere Engineers, Inc.	\$ 1,211,461.00	March-22	96%
Kingston CSD Phase 2 J2444	Kingston CSD	KSQ Design	\$ 3,386,712.00	May-22	83%
GAP 2021/2022 Jobs J2560	Gap Inc.		\$ 4,724,710.00	December-22	99%
Ben Nesin Facility J2253	Dept. of Environmental Protection	Dept of Environmental Protection	\$ 2,414,239.00	January-23	93%
NYS OGS- Fishkill Correction J2214	NYS Office of General Services	NYS OGS	\$ 2,088,582.00	February-23	85%





# **J & J Sass Electric, Inc.**

30 Grand Street  
PO Box 1910  
Kingston, NY 12402  
(845) 331-8666

## Current Uncompleted Contracts - Attachment # 2

14-1555922

Name (Agency)	Owner	Contract No.	Prime or Sub	Design Architect	Amount	Amount Sublet	Award Date	Uncompleted Amount
ORDA/Belleayre Pump Station J2537	Olympic Regional Dev. Authority	BEL.19.008	Prime	Bergmann Associates	\$ 773,000.00	\$ 5,850.00	June-20	\$ 21,226.00
Pine Bush CSD-19 Cap. Improv. J2573	Pine Bush CSD	3	Prime	CPL Architects	\$ 3,038,683.00	\$ 61,824.00	April-21	\$ 7,629.00
WMC-3 Spellman Pediatric Ctr J2586	Westchester Medical Center	WMC-01218	Prime	Westchester Med Ctr	\$ 1,717,062.00	\$ 22,048.00	July-21	\$ 564,137.00
MGI Pine St. Family Health Ctr J2592	MGI Construction & Consulting	21-056-01	Sub		\$ 1,003,299.00	\$ 35,975.00	February-22	\$ 97,423.00
UC Jail CCTV Upgrades J2623	County of Ulster	RFB-UC21-152C	Prime		\$ 521,000.00	\$ -	August-21	\$ 338,800.00
Whiting Turner B008 Watson RF Exp. J2625	IBM Corporation	019601-26C	Sub		\$ 836,727.00	\$ -	March-22	\$ 35,550.00
Village of Liberty WWTP J2627	Village of Liberty	VL1-E-21	Prime	Delaware Engineering	\$ 1,889,306.00	\$ 130,916.00	February-22	\$ 1,015,972.00
Pine Bush Capital Imp. Phase 2 J2628	Pine Bush CSD	EC#3	Prime	CPL Architects	\$ 590,503.00	\$ 33,065.00	March-22	\$ 176,766.00
Our Lady of Lourdes High School J2639	Archbishopric of NY		Prime		\$ 514,864.00	\$ 94,466.00	May-22	\$ 1,700.00
Newburgh CSD Heritage MS J2644	Newburgh CSD	44-16-00-01-0-039-011	Prime	CPL Architects	\$ 1,263,085.00	\$ 64,055.00	June-22	\$ 632,500.00
Newburgh CSD Vailgate ES J2645	Newburgh CSD	44-16-00-01-0-018-009	Prime	CPL Architects	\$ 1,143,960.00	\$ -	June-22	\$ 853,403.00
Whiting Turner B008 Quantum PH3 J2647	IBM Corporation	019809-26C	Sub		\$ 870,758.00	\$ -	July-22	\$ 343,941.00
Whiting Turner Family Services J2651	Family Services	019909-26A	Sub		\$ 423,087.00	\$ 9,517.00	August-22	\$ 5,000.00
Whiting Turner B706 Dallas Data Ctr. J2658	IBM Corporation	019659-26C	Sub		\$ 631,089.00	\$ -	September-22	\$ 153,482.00
Whiting Turner GTI Warwick Corp. J2660	Fiorelo Pharmaceuticals, Inc.	019295-01E-26B	Sub		\$ 7,873,560.00	\$ 63,024.00	September-22	\$ 3,115,031.00
1670 Ulster LLC Romeo Kia J2664	1670 Ulster LLC		Prime	SRA Architects	\$ 983,250.00	\$ -	October-22	\$ 217,203.00
Rombout Fire Dist. Station #2 J2678	Rombout Fire District		Prime	Liscum McCormack VanVoorhis	\$ 548,000.00	\$ -	February-23	\$ 548,000.00
Saugerties CSD Reconstruction Project J2677	Saugerties CSD	306617-21002	Prime	Tetra Tech Architects	\$ 2,559,800.00	\$ -	February-23	\$ 2,559,800.00
Town of Wawarsing- Hwy Garage J2684	Town of Wawarsing		Prime	Delaware Engineering	\$ 885,000.00	\$ -	April-23	\$ 885,000.00
								\$11,572,563.00

**NEW YORK STATE**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name: J&amp;J Sass Electric, Inc.

NYS Vendor ID:1000001678

**Question 3.1: List all current uncompleted construction contracts:**

1.	Agency/Owner <b>Pine Bush CSD</b>			Percent Complete= <b>97%</b>		Award Date <b>4/9/2021</b>	Completion Date
	Contact Person <b>Christopher Thomas</b>		Telephone No. <b>518-337-0346</b>	Designer Architect and /or Design Engineer <b>CPL Architects</b>			
	Contract No. <b>3</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount <b>\$2,902,805.00</b>	Amount Sublet to others <b>\$35,796.00</b>	Uncompleted Amount <b>\$68,448.00</b>		
2.	Agency/Owner <b>Westchester Medical Center- Spellman Pediatric</b>			Percent Complete= <b>58%</b>		Award Date <b>7/21/2021</b>	Completion Date
	Contact Person <b>Leonard Venechanos</b>		Telephone No. <b>914-493-5984</b>	Designer Architect and /or Design Engineer <b>Westchester Medical Center</b>			
	Contract No. <b>WMC-01218</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount <b>\$1,717,062.00</b>	Amount Sublet to others <b>\$22,048.00</b>	Uncompleted Amount <b>\$717,609.00</b>		
3.	Agency/Owner <b>MGI Construction &amp; Consulting- Pine St. Family Health</b>			Percent Complete= <b>65%</b>		Award Date <b>2/28/2022</b>	Completion Date
	Contact Person <b>George Salinovich</b>		Telephone No. <b>212-645-2000</b>	Designer Architect and /or Design Engineer			
	Contract No. <b>21-056-01</b>	Prime or Sub <b>Sub</b>	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount <b>\$997,856.00</b>	Amount Sublet to others <b>\$16,215.00</b>	Uncompleted Amount <b>\$346,278.00</b>		
4.	Agency/Owner <b>Ulster County Jail-CCTV Upgrades</b>			Percent Complete= <b>20%</b>		Award Date <b>8/26/2021</b>	Completion Date
	Contact Person <b>Warren Whitaker</b>		Telephone No. <b>845-334-5731</b>	Designer Architect and /or Design Engineer			
	Contract No. <b>RFB-UC21-152C</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount <b>\$521,000.00</b>	Amount Sublet to others <b>\$0.00</b>	Uncompleted Amount <b>\$416,000.00</b>		



**NEW YORK STATE**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name: J&amp;J Sass Electric, Inc.

NYS Vendor ID:1000001678

**Question 3.1: List all current uncompleted construction contracts:**

5.	Agency/Owner <b>Village of Liberty WWTP</b>		Percent Complete= <b>29%</b>		Award Date <b>2/3/2022</b>	Completion Date
	Contact Person <b>Daniel Fagnani</b>		Telephone No. <b>607-432-8073</b>	Designer Architect and /or Design Engineer <b>Delaware Engineering</b>		
	Contract No. <b>VL1-E-21</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
			Total Contract Amount <b>\$1,889,306.00</b>	Amount Sublet to others <b>\$130,916.00</b>	Uncompleted Amount <b>\$1,339,805.00</b>	
6.	Agency/Owner <b>Pine Bush CSD</b>		Percent Complete= <b>45%</b>		Award Date <b>3/15/2022</b>	Completion Date
	Contact Person <b>Christopher Thomas</b>		Telephone No. <b>518-337-0346</b>	Designer Architect and /or Design Engineer <b>CPL Architects</b>		
	Contract No. <b>EC#3</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
			Total Contract Amount <b>\$587,181.00</b>	Amount Sublet to others <b>\$0.00</b>	Uncompleted Amount <b>\$321,405.00</b>	
7.	Agency/Owner <b>Newburgh CSD-Heritage MS</b>		Percent Complete= <b>50%</b>		Award Date <b>6/27/2022</b>	Completion Date
	Contact Person <b>Dawn Ryan</b>		Telephone No. <b>845-594-5328</b>	Designer Architect and /or Design Engineer <b>CPL Architects</b>		
	Contract No. <b>44-16-00-01-0-039-011</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
			Total Contract Amount <b>\$1,261,040.00</b>	Amount Sublet to others <b>\$64,055.00</b>	Uncompleted Amount <b>\$635,500.00</b>	
8.	Agency/Owner <b>Newburgh CSD-Vailsgate ES</b>		Percent Complete= <b>25%</b>		Award Date <b>6/27/2022</b>	Completion Date
	Contact Person <b>Dawn Ryan</b>		Telephone No. <b>845-594-5328</b>	Designer Architect and /or Design Engineer <b>CPL Architects</b>		
	Contract No. <b>44-16-00-01-0-018-009</b>	Prime or Sub <b>Prime</b>	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
			Total Contract Amount <b>\$1,143,960.00</b>	Amount Sublet to others <b>\$0.00</b>	Uncompleted Amount <b>\$861,861.00</b>	

**NEW YORK STATE**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name: J&amp;J Sass Electric, Inc.

NYS Vendor ID:1000001678

**Question 3.1: List all current uncompleted construction contracts:**

9.	Agency/Owner <b>Whiting Turner Contracting Company</b>			Percent Complete= <b>18%</b>		Award Date <b>9/14/2022</b>	Completion Date
	Contact Person <b>Mike Minutolo</b>		Telephone No. <b>845-433-2033</b>	Designer Architect and /or Design Engineer			
	Contract No. <b>019295-01E-26B</b>	Prime or Sub Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
			Total Contract Amount <b>\$7,873,560.00</b>	Amount Sublet to others <b>\$54,926.00</b>	Uncompleted Amount <b>\$6,462,916.00</b>		
10.	Agency/Owner <b>1670 Ulster LLC- Romeo Kia</b>			Percent Complete= <b>35%</b>		Award Date <b>10/10/2022</b>	Completion Date
	Contact Person <b>Mike Schatzel</b>		Telephone No. <b>914-388-4532</b>	Designer Architect and /or Design Engineer <b>SRA Architects</b>			
	Contract No.	Prime or Sub Prime	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
			Total Contract Amount <b>\$983,250.00</b>	Amount Sublet to others <b>\$0</b>	Uncompleted Amount <b>\$635,250.00</b>		

<b>Grand Total All Uncompleted Contracts</b>	<b>\$2,663,517.00</b>
--	-----------------------

SECTION 00 43 13.15

AFFIDAVIT - WORKERS' COMPENSATION

Delano-Hitch Recreation Park Aquatic Center Improvements

Bid No. 23.23

City of Newburgh, Orange County, New York

STATE OF: New York

)

) SS:

County of: Orange

)

I, James Sess Jr of the Town, Village, City of Kingston  
in the County of Ulster and the State of New York

of full age, being duly sworn according to law on my oath depose and say that:

I am President, an officer of the firm of J+J Sess Electric Inc.

being duly sworn, deposes and says that he now carries or that he has applied for a Workers' Compensation Policy to cover the operations, as set forth in the preceding contract, and to comply with the provisions thereof.

J+J Sess Electric Inc.

Contractor Name

Subscribed and sworn to

James Sess Jr

Name of Affiant

President

Title of Affiant

[Signature]  
Signature of Affiant (in blue ink)

before me this 18<sup>TH</sup> day of DECEMBER, 20 23

Affix Notary Seal or Stamp below

Notary Public of ULSTER COUNTY, NEW YORK

My commission expires: 8/4/2024

Notary Signature: Alicia M. Jocelyn

ALICIA M JOCELYN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01JO6191159  
Qualified in Ulster County  
My Commission Expires 08-04-2024

This Affidavit must be completed by all Bidders



SECTION 00 43 15

NON-COLLUSION BIDDING AFFIDAVIT

Delano-Hitch Recreation Park Aquatic Center Improvements

Bid No. 23.23

City of Newburgh, Orange County, New York

STATE OF: New York )  
 ) SS:  
County of: Orange )

I, James Sess Jr of the Town, Village, City of Kingston  
in the County of Ulster and the State of New York  
of full age, being duly sworn according to law on my oath depose and say that:

I am President, an officer of the firm of J+J Sess Electric Inc.  
the Bidder making the Proposal for the above named Work, and that I executed the said Proposal with full authority to do so; that  
said Bidder has not, directly or independently, entered into any agreement, participated in any collusion, or otherwise in connection  
with the above named work; and that all statements contained in said Proposal and in this affidavit are true and correct, and made  
with the full knowledge that the City of Newburgh, NY as OWNER relies upon the truth of the statements contained in said Proposal  
and in the statements contained in this affidavit in awarding the contract for said work.

I further warrant that no person or selling agency has been employed or retained to solicit or secure contract upon an agreement or  
understanding for a commission, percentage, brokerage or contingent fee, except bonafide employees or bonafide established  
commercial or selling agencies maintained by J+J Sess Electric Inc.  
Contractor Name

Subscribed and sworn to James Sess Jr President  
Name of Affiant Title of Affiant

[Signature]  
Signature of Affiant (in blue ink)

before me this 18<sup>TH</sup> day of DECEMBER, 20 23  
Notary Public of ULSTER COUNTY, NEW YORK  
My commission expires: 8/4/2024

Notary Signature: Alicia M. Jocelyn

Affix Notary Seal or Stamp below

ALICIA M JOCELYN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01JO6191159  
Qualified in Ulster County  
My Commission Expires 08-04-2024

This Affidavit must be completed by all Bidders

SECTION 00 43 20

Certification Pursuant to Section 103-g of the New York State General Municipal Law

IRANIAN ENERGY SECTOR DIVESTMENT ACT AFFIDAVIT

Delano-Hitch Recreation Park Aquatic Center Improvements

Bid No. 23.23

- 1 By submission of this Bid/Proposal, each Bidder/Proposer and each person signing on behalf of any Bidder/Proposer 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 its knowledge and belief that each Bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.
- 2 A Bid/Proposal shall not be considered for award, nor shall any award be made where the condition set forth in Paragraph 1 above has not been complied with; provided, however, that in any case the Bidder/Proposer cannot make the foregoing certification set forth in Paragraph 1 above, the Bidder/Proposer shall so state and shall furnish with the Bid a signed statement which sets forth in detail the reasons therefor. Where Paragraph 1 above cannot be complied with, the Purchasing Unit to the political subdivision, public department, agency or official thereof to which the Bid/Proposal is made, or his/her designee, may award a Bid/Proposal, on a case by case business under the following circumstances:
  - i. The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
  - ii. The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

3 Name: James Sess Jr Title: President

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

Date: 12/17/23

Company  
Name: JTS Sess Electric Inc.

STATE OF: New York

)

) SS:

County of: Orange

)

Subscribed and sworn to

James Sess Jr

Name of Affiant

President

Title of Affiant

before me this 17<sup>TH</sup> day of DECEMBER, 20 23

Notary Public of ULSTER COUNTY, NEW YORK

My commission expires: 8/4/2024

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

Alicia M. Jocelyn

Affix Notary Seal or Stamp below

ALICIA M JOCELYN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01JO6191159  
Qualified in Ulster County  
My Commission Expires 08-04-2024

This Affidavit must be completed by all Bidders



# Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

## Bid Bond

Bond No. JJSA12-11-23-1

### CONTRACTOR:

(Name, legal status and address)

J & J Sass Electric, Inc.  
PO Box 1910  
Kingston, NY 12402

### SURETY:

(Name, legal status and principal place of business)

Western Surety Company  
151 N. Franklin Street  
Chicago, IL 60606  
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

City of Newburgh  
83 Broadway  
Newburgh, NY 12550

### BOND AMOUNT:

5%

Five Percent of Amount Bid

### PROJECT:

(Name, location or address, and Project number, if any)

Delano Hitch Recreation Park Aquatic Center Improvements - Electrical

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 11th day of December, 2023.

(Witness)

J & J Sass Electric, Inc.

(Principal)

(Seal)

By:

(Title)

Western Surety Company

(Surety)

(Seal)

By:

(Title) Renee A. Manny

Attorney-in-Fact



### Acknowledgment by Corporation

STATE OF

COUNTY OF

On this 18<sup>TH</sup> day of DECEMBER, 2023, before me personally appeared JAMES J. SASS, to me known, who being by me duly sworn, did acknowledge and say that (s)he is the PRESIDENT of J & J Sass Electric, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the above County, the day and year written above.

Alicia M. Jocelyn  
Notary Public

State of NY  
County of ULSTER  
My Commission Expires: 8/4/2024

ALICIA M JOCELYN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01JO6191159  
Qualified in Ulster County  
My Commission Expires 08-04-2024

### Acknowledgment by Surety

STATE OF New York

COUNTY OF Albany

On this 11th day of December, 2023, before me personally appeared Renee A. Manny, to me known, who being by me duly sworn, did acknowledge and say that she is the Attorney-in-Fact of Western Surety Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the above County, the day and year written above.

Jennifer S. Vanat  
Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

JENNIFER S. VANAT  
Notary Public, State of New York  
Qualified in Columbia County  
Reg # 01VA6135808  
Commission Expires Oct. 24, 2025

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

**Know All Men By These Presents**, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Arnold E Finaldi Jr, David W Cooper, Mark C Nickel, Charles R Daniels III, Christopher Terzian, Audrey J Danielson, Kevin J Garrity, Vikki L LaVean, Lori A Francett, Renee A Manny, Jennifer Susan Vanat, Tanya M Volk, John F Murray Jr, Maddalena Bucciero, Casey W LaChapelle, Thomas R Tyrrell, Derek P Hannon, Individually**

of Albany, NY, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

**In Witness Whereof**, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 29th day of October, 2023.



WESTERN SURETY COMPANY

Larry Kasten, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 29th day of October, 2023, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 11th day of December, 2023.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

### Authorizing By-Laws and Resolutions

#### ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27<sup>th</sup> day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.



**WESTERN SURETY COMPANY**  
**Sioux Falls, South Dakota**  
**Statement of Net Admitted Assets and Liabilities**  
**December 31, 2022**

ASSETS

Bonds	\$ 1,963,735,416
Stocks	16,356,743
Cash, cash equivalents, and short-term investments	842,484
Receivables for securities	50,000
Investment income due and accrued	18,288,449
Premiums and considerations	58,660,094
Amounts recoverable from reinsurers	31,089,427
Current federal and foreign income tax recoverable and interest thereon	-
Net deferred tax asset	16,569,622
Receivable from parent, subsidiaries, and affiliates	-
Other assets	1,385
Total Assets	<u>\$ 2,105,593,621</u>

LIABILITIES AND SURPLUS

Losses	\$ 191,034,021
Loss adjustment expense	52,287,429
Commissions payable, contingent commissions and other similar charges	12,200,032
Other expenses (excluding taxes, license and fees)	-
Taxes, License and fees (excluding federal and foreign income taxes)	3,809,360
Federal and foreign income taxes payable	6,216,918
Unearned premiums	288,685,277
Advance premiums	7,968,584
Ceded reinsurance premiums payable (net of ceding commissions)	6,756,776
Amounts withheld or retained by company for account of others	9,359,697
Provision for reinsurance	280,055
Payable to parent, subsidiaries and affiliates	10,262,438
Payable on security transactions	-
Other liabilities	149,612
Total Liabilities	<u>\$ 589,010,150</u>

Surplus Account:

Common stock	\$ 4,000,000
Gross paid in and contributed surplus	286,896,195
Unassigned funds	1,225,687,276
Surplus as regards policyholders	<u>\$ 1,516,583,471</u>
Total Liabilities and Capital	<u>\$ 2,105,593,621</u>

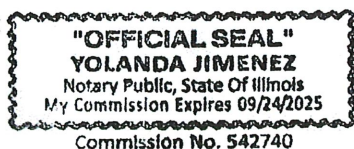
I, Julie Lee, Assistant Vice President of Western Surety Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2022, as filed with the various Insurance Departments and is a true and correct statement of the condition of Western Surety Company as of that date.

WESTERN SURETY COMPANY

By Julie Lee  
Assistant Vice President, External Reporting

Subscribed and sworn to me this 14th day of March, 2023.

My commission expires:



By Yolanda Jimenez  
Notary Public

Agenda Item 11.

**Resolution No. 4 - 2024 - Delano-Hitch Recreation Park Aquatic Center Improvements - Contract with CPL Construction Administration**

Resolution authorizing the City Manager to accept a proposal and execute a contract with Clark Patterson Lee for construction administration professional engineering services for the Delano-Hitch Recreation Park Aquatic Center Improvements Project in the amount of \$178,000.00

*Resolución autorizando al Administrador de la Ciudad a aceptar una propuesta y ejecutar un contrato con Clark Patterson Lee para la administración de la construcción de servicios profesionales de ingeniería para el Proyecto de Mejoras al Centro Acuático del Parque Recreativo Delano-Hitch por la cantidad de \$178,000.00*

**Background:**

A resolution authorizing the City Manager to execute a contract with CPL for professional services in connection with the Delano-Hitch Recreation Park Aquatic Center Improvements Project. Funding in an amount not to exceed \$178,000 shall be derived from the City's allocation of ARPA funds and the 2024 Bond.

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution approving CPL new pool construction admin services	12/22/2023	Resolution Letter
Delano-Hitch Recreation Park Aquatics Center Improvements - CPL Construction Administration (December 20, 2023)	12/21/2023	Backup Material

RESOLUTION NO.: \_\_\_\_\_4\_\_\_\_\_ - 2024

OF

JANUARY 8, 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL  
AND EXECUTE A CONTRACT WITH CLARK PATTERSON LEE  
FOR CONSTRUCTION ADMINISTRATION PROFESSIONAL ENGINEERING SERVICES  
FOR THE DELANO-HITCH RECREATION PARK  
AQUATIC CENTER IMPROVEMENTS PROJECT IN THE AMOUNT OF \$178,000.00**

**WHEREAS**, by Resolution No. 250-2022, the City Council of Newburgh authorized a contract with Clark Patterson Lee in the amount of \$804,000.00 for professional design and bid preparation and management services in the Delano-Hitch Recreation Park Aquatic Center Improvements Project (the “Project”); and

**WHEREAS**, Clark Patterson Lee has submitted a letter proposal for professional construction administration engineering services for the new construction phase of the Project; and

**WHEREAS** the cost of the services an amount not to exceed \$178,000.00 shall be derived from an allocation of funding received under the American Rescue Plan Act of 2021 and a 2024 bond; and

**WHEREAS**, this Council determines that accepting the proposal and executing a contract with Clark Patterson Lee in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute a professional construction administration engineering services agreement with Clark Patterson Lee for the new construction phase of the Delano-Hitch Recreation Park Aquatic Center Improvements Project in an amount not to exceed \$178,000.00.



December 20, 2023

Jason Morris, PE  
Commissioner of Public Works & City Engineer  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

**Re: Delano-Hitch Recreation Park Aquatic Center Improvements CA services**

Dear Mr. Morris:

CPL has been working with the city on the Delano-Hitch Recreation Park Aquatic Center Demolition and Construction projects. We have completed Design and CA for the demolition portion and Design for the improvements package portion of the project. This proposal is to provide the City with CA (Construction Administration) services related to the improvements portion of the project.

**THE APPROACH:**

**SCOPE OF WORK:**

Our scope of work will include one general phase which will last for the duration of the Project (approximately 17 months). This phase is the Construction Administration Phase - Improvements. Below is an itemized list of work expected during this phase.

**CONSTRUCTION ADMINISTRATION PHASE:**

- CPL will provide Construction Administration for the duration of the improvements project.
- Project duration is expected to last 17 months (through May 2025), which CPL will be attending bi-weekly (2 hour) on-site progress meetings (34 total).
- Attend an on-site pre-construction conference with the City, Construction Manager and Contractors.
- Meetings (2 hour) on site with owner once-a-month for a duration of 17 months (17 total).
- Review all submittals and shop drawings for conformance with the contract documents; review, verify and approve contractor submittals; maintain records of accepted and rejected submittals.
- Six site visits by various trades as needed.
- Respond to contractor requests-for-information (RFIs).
- Review any potential change order requests and make a recommendation to the City.



- Review, verify and approve requests for payment from the contractors, check progress against milestones.
- Prepare a punch list and verify when items are complete.
- Close out Department of Health inspection and certification.
- Review and approve closeout documents at project completion.

**SITE VISIT SCHEDULE:**

We anticipate the following on-site visits and meetings:

- Pre-construction conference.
- bi-weekly on-site progress meetings (34 total).
- Meetings on site with owner once-a-month for a duration of 17 months (17 total).
- Six site visits by various trades as needed.
- Punch list/substantial completion.
- Final inspection.

**FEE FOR BASIC CA PROFESSIONAL SERVICES**

Our fee for Basic CA Services shall be a Lump Sum plus reimbursable expenses based on our understanding of the project. Based on the above, a break down in fees and assumed distribution of compensation is as follows:

Construction Administration Phase	\$ 175,000.00
*Reimbursables:	\$ 3,000.00
<b>Total CA Fee and Reimbursables Budget Estimate:</b>	<b>\$ 178,000.00</b>

Very truly yours,

Timothy J. Moot, PG  
Vice President





## AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 The City hereby designates the Engineer as the “ARCHITECT/ENGINEER” for the Project and all references to the “ARCHITECT/ENGINEER” in the Contract Documents shall be understood to mean the Engineer. The Engineer shall assume all of the duties and responsibilities and have all of the rights and authority assigned to the “ARCHITECT/ENGINEER” in the Contract Documents.

§ 1.2 The Engineer’s fee: Construction Administration - Improvements component of the Project shall not exceed the amount of **ONE HUNDRED SEVENTY-EIGHT THOUSAND AND 00/100 (\$178,000.00) DOLLARS** for the term of this Agreement. The expenses of document reproduction, postage and delivery shall be reimbursed at cost. Mileage shall be reimbursed at the IRS business standard mileage rate then in effect at the time such mileage is incurred.

### ARTICLE 2 ARCHITECT’S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

### ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES

§ 3.1 The Architect’s Basic Services consist of those described in this Article 3 and include usual and customary architectural, civil, plumbing, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect’s services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.





§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

§ 3.1.3 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.4 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.5 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 Construction Phase Services**

#### **§ 3.2.1 General**

§ 3.2.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.2.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for acts or omissions of the Construction Manager, or acts or omissions of the Contractors or of any other persons or entities performing portions of the Work.

§ 3.2.1.3 Subject to Section 4.2, and except as provided in Section 3.2.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### **§ 3.2.2 Evaluations of the Work**

§ 3.2.2.1 The Architect shall visit the site bi-weekly to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.





§ 3.2.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractors, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.2.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractors through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.2.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.2.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232-2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

**§ 3.2.3 Certificates for Payment to Contractor**

§ 3.2.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 The Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.

§ 3.2.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.2.3.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.2.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.





**§ 3.2.4 Submittals**

**§ 3.2.4.1** The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.2.4.2** The Architect shall review and approve, or take other appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.2.4.3** If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.2.4.4** After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.2.4.5** The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 3.2.5 Changes in the Work**

**§ 3.2.5.1** The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

**§ 3.2.5.2** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

**§ 3.2.5.3** The Architect shall maintain records relative to changes in the Work.



**§ 3.2.6 Project Completion**

**§ 3.2.6.1** The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

**§ 3.2.6.2** The Architect's inspections shall be conducted with the Owner and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected.

**§ 3.2.6.3** When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.2.6.4** The Architect shall forward to the Owner the following information received from the Contractors, through the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractors under the Contract Documents.

**§ 3.2.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager to review the facility operations and performance.

**ARTICLE 4 CLAIMS AND DISPUTES**

**§ 4.1 General**

**§ 4.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 4.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.





§ 4.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 4.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

#### § 4.2 Mediation

§ 4.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

☒ [ X ] Arbitration pursuant to Section 8.3 of this Agreement

☐ [ ] Litigation in a court of competent jurisdiction

☐ [ ] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

#### § 4.3 Arbitration

§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered



by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 4.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 4.3.4 Consolidation or Joinder

§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 4.4 The provisions of this Article 8 shall survive the termination of this Agreement.

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
ARCHITECT/ENGINEER (Signature)

\_\_\_\_\_  
Timothy J. Moot, PG – Vice President  
(Printed name and title)

Agenda Item 12.

**Resolution No. 5 - 2024 - City of Newburgh Fiscal Recovery Act Banking Services Agreement with OSC**

Resolution authorizing the City Manager to execute Banking Services Contract No. T00294A with the New York State Office of the State Comptroller

*Resolución por la que se autoriza al Administrador Municipal a suscribir el Contrato de Servicios Bancarios n° T00294A con la Oficina del Contralor del Estado de Nueva York.*

**Background:**

This contract (T000294) is for reimbursement of Key Capture Services related to the City of Newburgh Fiscal Recovery Act Banking Services Agreement. This contract replaces T00079A for reimbursement of Key Capture services related to the City of Newburgh's special debt service fund that was established under section 15 of chapter 223 of the Laws of 2010. These services are required by law through December 31, 2025. Contract T000079 needed to be replaced due to significant changes to technology and security since 2010 in order to meet OSC and the City of Newburgh's needs. T000079 expired on October 31, 2023 and was replaced by Contract T000294.

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution approving T00294A OSC Banking Services Agreement	12/21/2023	Resolution Letter
T000294 contract between the City of Newburgh and OSC	12/18/2023	Backup Material

RESOLUTION NO.: \_\_\_\_5\_\_\_\_-2024

OF

JANUARY 8, 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
BANKING SERVICES CONTRACT NO. T00294A  
WITH THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**WHEREAS**, chapter 223 of the Laws of 2010 enacted the City of Newburgh Fiscal Recovery Act (the “Act”); and

**WHEREAS**, in connection with the continuing duties imposed upon the State Comptroller by the Act, the State Comptroller entered into Contract No. T000294 for banking services with KeyBank, N.A. on November 1, 2023 to replace Contract No. T000079 which expired on October 31, 2023; and

**WHEREAS**, in connection with the continue duties imposed upon the City by the Act, the City has requested that the State Comptroller continue to include check truncation and electronic item presentment services as part of the banking services and the City has agreed to continue to pay for all expenses related to such services; and

**WHEREAS**, continuing Key Capture<sup>®</sup> Services requires the City to enter Contract No. T00294A with the State Comptroller to replace Contract No. T000079A; the same being in the best interest of the City of Newburgh;

**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 Contract No. T00294A with the New York State Office of the State Comptroller for check truncation and electronic item presentment services as part of the banking services related to the duties and obligations under the Newburgh Fiscal Recovery Act.



**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**KEY CAPTURE® SERVICES IN CONNECTION WITH**

**THE CITY OF NEWBURGH FISCAL RECOVERY ACT**

**CONTRACT WITH THE CITY OF NEWBURGH**

**CONTRACT No. T00294A**

**THIS AGREEMENT** ("Agreement") is between the New York State (the "State") Office of the State Comptroller, by the Department of Audit and Control ("OSC"), whose main office and principal place of business is 110 State Street, Albany, New York 12236, and the City of Newburgh ("City"), whose office is located at 83 Broadway, Newburgh, New York 12550.

**WITNESSETH**

**WHEREAS**, chapter 223 of the Laws of 2010 enacted the City of Newburgh Fiscal Recovery Act ("Act"); and

**WHEREAS**, in connection with the continuing duties imposed upon the State Comptroller (defined below) by the Act, the State Comptroller has entered into Contract No. T000294 ("Banking Services Agreement") with KeyBank, N.A. ("Bank"), made as of November 1, 2023, to replace Contract T000079 which expired on October 31, 2023 for banking services; and

**WHEREAS**, the City has requested that the State Comptroller continue to include check truncation and electronic item presentment services ("Key Capture® Services") as part of the banking services; and

**WHEREAS**, the City has agreed to continue to pay for all expenses related to the Key Capture® Services; and, to meet this need, the State Comptroller and the City agree to enter into Contract No. T00294A to replace Contract T00079A to reimburse the State Comptroller for Key Capture® Services.

**NOW, THEREFORE**, in consideration of the mutual covenants herein set forth, the parties do agree as follows:

**1. TERM**

This Agreement shall become effective upon execution hereof on behalf of the State Comptroller and shall continue in effect until the expiration or termination of the Banking Services Agreement, the expiration or termination of Attachment 4 (Key Capture® Service Agreement) of the Banking Services Agreement, or the termination of this Contract, whichever occurs first.

**2. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES**

This Agreement is inclusive of the following documents and appendices. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for New York State Contracts;
2. Agreement – (this document); and
3. Attachment 1 – Fee Schedule.

### **3. BILLING AND PAYMENT**

OSC will bill the City on an annual (or other basis as determined by OSC) for all charges billed to OSC by the Bank in connection with the City's use of the Key Capture® Services.

Invoices shall be submitted to:

**Janice Gaston  
Comptroller  
83 Broadway  
Newburgh, New York 12550**

The City shall pay the amount of such charges within 30 days following the receipt of such invoice. The amount of such charges shall be governed by the provisions of Attachment 1 (Fee Schedule), (which is aligned with Section 7 (Pricing) of Attachment 4 (Key Capture® Service Schedule) and Exhibit 7 (Fee Schedule) of the Banking Services Agreement.

Payments by the City under this Agreement shall be wired or sent by ACH to the New York State General Checking Account and shall include a reference to this Contract T00294A.

Notice of payment should be sent to [cashmanagement@osc.ny.gov](mailto:cashmanagement@osc.ny.gov) when payment is made. Any questions about this process should be directed to OSC's Cash Management Unit at the same email address.

### **4. DEFINITIONS**

Whenever used herein, the following terms shall have the following meanings:

- A. "Account" shall mean the "City of Newburgh Tax Allocation Account" established pursuant to the Banking Services Agreement.
- B. "Application" shall mean the Key Capture® product and related software for the creation and transmission of Electronic Files.
- C. "Authorized Person" shall mean any officer or employee of the City authorized in writing by the City's Collecting Officer to deposit checks into the Account using the Key Capture® Services.
- D. "Bank" shall mean KeyBank, N.A.
- E. "Banking Services Agreement" shall mean the agreement for banking services in connection with the City of Newburgh Fiscal Recovery Act entered into by the State Comptroller and the Bank as of December 7, 2010 (Contract No. T000079), as amended, and replaced by Contract T000294 as of November 1, 2023.
- F. "City" shall mean the City of Newburgh.
- G. "Collecting Officer" shall mean the officer empowered to collect and receive City taxes.
- H. "Documentation" shall mean all materials provided to the City by the Bank pursuant to the Banking Services Agreement, whether supplied in print form or on magnetic tape or other media, which explain or facilitate the use of the Application including, without limitation, user manuals, standard operational manuals or instructions, training materials, flow charts, logic diagrams, systems manuals, programming manuals, and modification manuals.
- I. "Electronic File" or "File" shall mean an electronic data file created by use of the Application which contains one or more Electronic Items.

- J. "Electronic Items" shall mean the electronic images of Original Checks created by the City for transmission to the Bank. For all purposes herein, including the Documentation, any other agreements with the Bank relating to the Account, and the application of applicable law to the Key Capture® Services, an Electronic Item shall be deemed a "check" and/or an "item" as such terms are used and defined in the Uniform Commercial Code, the Expedited Funds Availability Act, Regulation CC and Regulation J of the Federal Reserve Board, and other applicable check law and rules to the same extent that the Original Check is a check and/or an item.
- K. "Key Capture® Services" means the Bank's check Truncation and Electronic Item presentment services.
- L. "MICR Line" shall mean the numbers that are printed near the bottom of an Original Check in magnetic ink in accordance with generally applicable industry standards, which may include the bank routing number, account number, check number, check amount, and other information.
- M. "Original Check" shall mean the first paper check issued with respect to a particular payment transaction.
- N. "Substitute Check" shall mean a paper reproduction of the Original Check that (a) contains an image of the front and back of the Original Check, (b) bears a MICR Line containing all the information appearing on the MICR Line of the Original Check, except as provided under generally acceptable industry standards for substitute checks to facilitate the processing of substitute checks, (c) conforms, in paper stock, dimension and otherwise, with generally applicable industry standards for substitute checks, and (d) is suitable for automated processing in the same manner as the Original Check.
- O. "State Comptroller" means the Office of the Comptroller of the State of New York.
- P. "Truncate" shall mean removing an original paper check from the check collection or return process and sending to a recipient, in lieu of such Original Check, an electronic image of the Original Check.

## **5. USE OF KEY CAPTURE® SERVICES BY THE CITY**

Use of Key Capture® Services by the City shall be governed by the provisions of this Section.

- A. Only the City's Collecting Officer or an Authorized Person may use the Key Capture® Services to deposit a check into the Account. In order to use the Key Capture® Services for such purpose, the City's Collecting Officer or an Authorized Person shall (i) create an Electronic Item of the Original Check, (ii) include the Electronic Item in an Electronic File, and (iii) transmit the Electronic File to the Bank.
- B. Electronic Items shall be created by using one or more scanners, which may or may not be provided by the Bank to the City as part of the Key Capture® Services. If the Bank does not provide scanners to the City as part of the Key Capture® Services, the City shall acquire scanners from a third-party vendor, provided that scanners acquired from a third-party vendor shall be compatible with the Bank's systems as specified from time to time. The City shall be solely responsible for installing and connecting the scanners in accordance with instructions, if any, provided by the Bank. The City shall use scanners only at the City's authorized, designated location. The Bank shall be responsible for repairing or replacing scanners provided to the City as part of the Key Capture® Services which are either defective or not functioning properly under normal use, but the Bank shall not be responsible for repairing or replacing the scanners acquired from a third-party vendor. The Bank shall also not be responsible for any deficiency caused in whole or in part by inaccurate or deficient data, images, programs, or technology

provided or created by any party other than the Bank, including without limitation, any failure or consequence of a failure of the scanners to function as purported by such other party, or any loss arising from theft, damage, misuse, or destruction of the scanners. The Bank makes no warranties, express or implied, regarding any scanner, including any implied warranties of merchantability, non-infringement, or fitness for a particular purpose.

- C. Electronic Files shall be created and transmitted to the Bank using the Application. An Electronic File transmitted to the Bank shall not be deemed received by the Bank until the City has received an electronic deposit receipt from the Bank. The City shall print a paper copy of each such receipt and retain such copy as a City record.
- D. Upon receipt of an Electronic File by the Bank: (i) the Bank shall be the lawful owner of such Electronic File and of each Electronic Item in such Electronic File, and (ii) except as otherwise provided in this section, the Bank shall process such Electronic Items either as electronic image exchange items or as Substitute Checks, forward the same for collection and presentment for payment by the paying bank subject to applicable laws and regulations and clearinghouse rules, and deposit the amount of the Electronic Items into the Account. Electronic Items accepted by the Bank before the Bank's cut-off time and availability schedule in effect for Electronic Items shall be posted to the Account for settlement that banking day. Such availability schedule is set forth in Attachment 5.1 (Deposit Account Agreement and Funds Availability Policy) of the Banking Services Agreement, which shall remain in effect until amended by mutual agreement between the Bank and the State Comptroller.
- E. The Bank, in its sole discretion, may repair an Electronic Item, or the related MICR line information, prior to processing and collecting the Electronic Item. If the Bank detects an error in an Electronic Item or Electronic File transmitted by the City, and the Bank determines not to process such Electronic Item or Electronic File, the Bank shall promptly notify the City. The City shall thereafter transmit to the Bank a corrected Electronic Item or a corrected Electronic File, or deposit the related Original Check for check processing to the Account. The City shall be solely responsible for any loss if an Electronic Item or Electronic File cannot be processed for any reason and the Original Check is unavailable for collection.
- F. With respect to any return of an Electronic Item, or if the Bank fails to receive final settlement for an Electronic Item for whatever reason, the Bank may charge back the amount of the returned Electronic Item to the Account. If the Bank returns to the City an Original Check, a Truncated check, a Substitute Check, or an Electronic Item without cashing it or depositing the funds into the Account, the City may attempt to redeposit the Original Check, Truncated check, Substitute Check, or Electronic Item by including it as an Electronic Item in an Electronic File and transmitting the Electronic File to the Bank.
- G. If the Bank receives an Electronic File from the City and, prior to accepting an Electronic Item in the Electronic File for deposit, determines that the Electronic Item duplicates an Electronic Item that had been previously transmitted to the Bank and deposited into the Account, the Bank shall immediately notify the City of the duplicate Electronic Item and shall not include the amount of the duplicate for deposit. If the Bank accepts an Electronic Item or Electronic File for deposit and thereafter determines that the Electronic Item duplicates an Electronic Item that had been previously transmitted to the Bank and deposited into the Account, the Bank may charge back the duplicate Electronic Item to the Account.
- H. After Truncation of an Original Check, and receipt by the Bank of an Electronic File containing the Electronic Item of the Original Check, the City shall retain the Original Check for a minimum period of thirty (30) calendar days. Original Checks retained by the City shall be stored securely and safeguarded so as to prevent: (i) unauthorized submission or resubmission for deposit to the Bank or any other financial institution, and (ii) unauthorized transfer for value to any other person or entity.

- I. The City shall not maintain copies of Electronic Items or Electronic Files. For accounting, auditing and other legal purposes, however, the City may keep electronic records regarding its receipt and deposit of Original Checks, provided such internal electronic records cannot be used to generate duplicate Electronic Items and Electronic Files for purposes of depositing and presenting Original Checks for payment.
- J. The City shall not at any time Truncate or create an Electronic Item for:
  - i. Any foreign checks, drafts, or other items drawn on any financial institution that is not located in any State (as defined in Regulation CC) in the United States (including certain designated U.S. Territories that are included as States);
  - ii. Any automated clearing house entry subject to the rules of the National Automated Clearing House Association;
  - iii. Any Substitute Check created by the Bank or any other person or entity, except as provided in subdivision G of this Section 5 for the redeposit of a returned check or returned Electronic Item;
  - iv. U.S. savings bonds; and
  - v. Other items which are not eligible for check image collection and presentment.
- K. The City's Collecting Officer shall establish and may revoke the authority of Authorized Persons to deposit checks into the Account using the Key Capture® Services. The Collecting Officer shall establish and revoke such authority by providing written directions to the Bank. The authority of an Authorized Person set forth in such written directions shall remain in effect, and the Bank may rely on such authority, until the Bank receives another written direction expressly revoking such authority. Written directions either establishing or revoking such authority shall be effective immediately upon receipt thereof by the Bank. The Collecting Officer may hand deliver such written directions to the Bank.
- L. The Bank shall require the Collecting Officer to register a digital certificate which will enable the Collecting Officer to initiate deposits to the Account by personal computer through the Internet. Upon receiving written directions from the Collecting Officer establishing the authority of an Authorized Person to deposit checks into the Account using the Key Capture® Services, the Bank shall require such Authorized Person to register a digital certificate which will enable that Authorized Person to initiate deposits to the Account by personal computer through the Internet. The Bank shall also assign to the Collecting Officer and to each Authorized Person an identification number ("Login ID") and a temporary Password. Upon receiving written direction from the Collecting Officer revoking the authority of a City officer or employee to deposit checks into the Account using the Key Capture® Services, the Bank shall invalidate immediately the Login ID and Password of such officer or employee to prevent that person from continuing to use the Key Capture® Services for that purpose. Upon notification to the Bank's satisfaction that there has been a change in the person holding the position of Collecting Officer, the Bank shall invalidate immediately the Login ID and Password of the former Collecting Officer and shall assign the new Collecting Officer a Login ID and a temporary Password.
- M. Upon receipt of a temporary password from the Bank, the City's Collecting Officer and each Authorized Person shall immediately change the temporary password to a unique password. The Collecting Officer and each such Authorized Person shall ensure that their Login ID and changed password are not made known to any person.



- N. The City's Collecting Officer shall have an alternate plan for depositing checks into the Account if the Key Capture® Services are unavailable for any reason.

## **6. NOTICES**

Any legal notice or other legal communication given pursuant to this Agreement shall be in writing and addressed to such party at the address set forth in this Agreement, and shall be effective:

- (i) When delivered personally to the party for whom intended; or
- (ii) Upon actual receipt by the intended party if such notice or other communication is either sent by overnight mail service, or United State Postal Service mail (certified mail, return receipt requested, or first-class postage prepaid).

The following are the names and contact information for OSC and the Contractor. The parties shall notify each other, as soon as possible of any change.

### **OSC:**

Title: Director of Finance  
Address: Office of the State Comptroller  
110 State Street, Stop 13-2  
Albany, NY 12236-0001  
Email: [rfp@osc.ny.gov](mailto:rfp@osc.ny.gov)

### **OSC Regional Office:**

Name: Dara Disko-McCagg  
Address: Newburgh Regional Office  
33 Airport Center Drive, Suite 103  
New Windsor, NY 12553  
Email: [ddisko-mccagg@osc.ny.gov](mailto:ddisko-mccagg@osc.ny.gov)

### **City:**

Name: Janice Gaston  
City Comptroller  
City of Newburgh  
Address: 83 Broadway  
Newburgh, NY 12550  
Email: [jgaston@cityofnewburgh-ny.gov](mailto:jgaston@cityofnewburgh-ny.gov)

### **With a copy to:**

Name: Todd Venning  
City Manager/CEO & CAO  
Chief Fiscal Officer  
Address: City Hall  
83 Broadway  
Newburgh, NY 12550  
Email: [tvenning@cityofnewburgh-ny.gov](mailto:tvenning@cityofnewburgh-ny.gov)

## **7. TERMINATION**

The State Comptroller may terminate this Contract and the Key Capture® Services provided by the Bank

pursuant to Article XVIII (Termination) of the Banking Services Agreement, with or without cause, upon a minimum of thirty (30) days written notice. Termination by the State Comptroller of this Contract and the Key Capture® Services shall not impact the remaining services provided pursuant to the Banking Services Agreement.

## **8. LIABILITY AND INDEMNIFICATION**

The State Comptroller shall have no liability whatsoever to either the Bank or the City in connection with the City's use of the Key Capture® Services. The City shall fully indemnify, defend, and hold harmless the State Comptroller and the State of New York from all claims, suits, actions, judgments, liabilities, damages, and costs (including legal fees and expenses) caused by the intentional wrongful act, omission, or negligence, gross negligence, willful misconduct, fraud, or failure to comply with applicable laws of the City, its officers, employees, or agents in connection with the City's use of Key Capture® Services, without limitation.

The City shall be fully liable for any act or omission of the City and its Staff and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorneys' fees and expenses) arising from any act or omission of the City or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software, and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided, however, that the City shall not be obligated to indemnify OSC or the State for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of OSC or the State.

## **9. MISCELLANEOUS**

### **A. WAIVER**

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

### **B. SEVERABILITY**

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

### **C. SURVIVAL**

The provisions of Section 8. (Liability and Indemnification), shall survive the expiration or termination of this Agreement.

## **10. ENTIRE AGREEMENT/APPROVALS**

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an amendment executed by the parties.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Contract Number T00294A

In addition to the acceptance of this Agreement, the OSC signature on this page also certifies that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: T00294A

CITY OF NEWBURGH

OFFICE OF THE STATE COMPTROLLER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

JEREMY DISARE  
\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

DIRECTOR OF FINANCIAL ADMINISTRATION  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

**CORPORATE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

}

COUNTY OF \_\_\_\_\_

}

}

SS.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she/they maintain(s) an office at \_\_\_\_\_, and further that he/she/they is/are the \_\_\_\_\_ of \_\_\_\_\_, the municipality described in the foregoing instrument; that he/she/they is/are authorized to execute the foregoing instrument on behalf of the municipality for purposes set forth therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of the municipality as the act and deed of the municipality.

\_\_\_\_\_  
Notary Public  
Registration No.

## APPENDIX A

### STANDARD CLAUSES FOR OSC 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, licensor, 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 33<sup>rd</sup> Floor  
New York, NY 10017  
646-8467364  
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.

June 2023



# ATTACHMENT 1

## FEE SCHEDULE

FEE SCHEDULE DETAILS					
Service Codes	Services	Annual Estimated Quantity	Monthly Estimated Quantity	Unit Price	Total Service Charges
AFP10	<i>Depository Services</i>				
10 02 00	Deposits Key Capture® Tickets	240	20	\$0.55	\$11.00
10 99 99	RDC Monthly Fee	12	1	\$50.00	\$50.00
10 02 1B	RDC Scanned Items	7,200	600	\$0.12	\$72.00
Monthly Estimated Total:					\$133.00
Annual Estimated Total*:					\$1,596.00

Agenda Item 13.

**Resolution No. 6 - 2024 - 257 Liberty Street - Release of Restrictive Covenants**

Resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-Entry from a deed issued to 257 Liberty, LLC to the premises known as 257 Liberty Street (Section 18, Block 8, Lot 1.1)

*Resolución que autoriza la ejecución de una Liberación de Convenios Restrictivos y Derecho de Reingreso de una escritura emitida a 257 Liberty, LLC a las instalaciones conocidas como 257 Liberty Calle (Sección 18, Manzana 8, Lote 1.1)*

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution and Proposed Release	12/21/2023	Resolution Letter
Backup, 257 Liberty ROC	12/21/2023	Backup Material

RESOLUTION NO.: \_\_\_\_6\_\_\_\_-2024

OF

JANUARY 8, 2024

**A RESOLUTION AUTHORIZING THE EXECUTION OF A RELEASE OF  
RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY FROM A DEED ISSUED TO  
257 LIBERTY, LLC TO THE PREMISES KNOWN AS  
257 LIBERTY STREET (SECTION 18, BLOCK 8, LOT 1.1)**

**WHEREAS**, on March 23, 2017, the City of Newburgh conveyed property located at 257 Liberty Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 18, Block 8, Lot 11., to 257 Liberty, LLC; and

**WHEREAS**, the current owner, Newburgh Progress Housing Development Fund Company, Inc. (by Emily Hamilton, Managing Director of Real Estate Development for RUPCO, Inc.), has requested a release of the restrictive covenants contained in the deed from the City of Newburgh; and

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

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

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

**KNOWN ALL PERSONS BY THESE PRESENTS**, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 257 Liberty Street, Section 18, Block 8, Lot 1.1 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated March 23, 2017, from THE CITY OF NEWBURGH to 257 LIBERTY, LLC, recorded in the Orange County Clerk's Office on March 23, 2017, in Book 14204, Page 1677 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: \_\_\_\_\_, 2023

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
Todd Venning, City Manager  
Pursuant to Res. No.: \_\_\_\_-2024

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

On the \_\_\_\_ day of January in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared TODD VENNING, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

\_\_\_\_\_



# CITY OF NEWBURGH

## Department of Code Compliance

123 Grand Street, Newburgh, New York 12550

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

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TO: Todd Venning, City Manager

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

FROM: Francis J. Spinelli, Fire Chief/Interim Building Inspector

DATE: December 18, 2023

SUBJECT: 257 Liberty Street, Release of Restrictive Covenants Inspection

---

I conducted an inspection of 257 Liberty Street on November 21, 2023. I also reviewed the property file kept at the Department of Code Compliance. Below are my findings:

There are no open code violations on file in the building record.

I observed no violations both on the property and in the building during my most current inspection of the property.

There are no open permits or open permit applications.

The property contains a mercantile space on the first floor and offices on the second floor.

There is a valid Certificate of Occupancy in the property file dated July 7, 2022, for offices and a maximum occupancy of 15 persons. Both observed uses comply with this C of O.

Thank you,

---

Francis J. Spinelli  
Fire Chief/Interim Building Inspector















Agenda Item 14.

## **Resolution No. 7 - 2024 - Police Department Bicycle Surplus**

Resolution declaring 26 bicycles as surplus

*Excedente de bicicletas del Departamento de Policía*

### **Background:**

The City of Newburgh Police Department has a surplus of 26 bicycles for disposal. The surplus property will be disposed of under the City's surplus property disposition policy which is derived from Chapter 97 of the City Code.

### **ATTACHMENTS:**

Description	Upload Date	Type
Resolution declaring 26 bicycles surplus	12/22/2023	Resolution Letter
Surplus Inventory	12/19/2023	Backup Material

RESOLUTION NO.: \_\_\_\_\_7\_\_\_\_\_ - 2024

OF

JANUARY 8, 2024

**A RESOLUTION DECLARING 26 BICYCLES AS SURPLUS**

**WHEREAS**, the City of Newburgh Police Department has reported that it is in possession of 26 bicycles which are of no use by the City of Newburgh; and

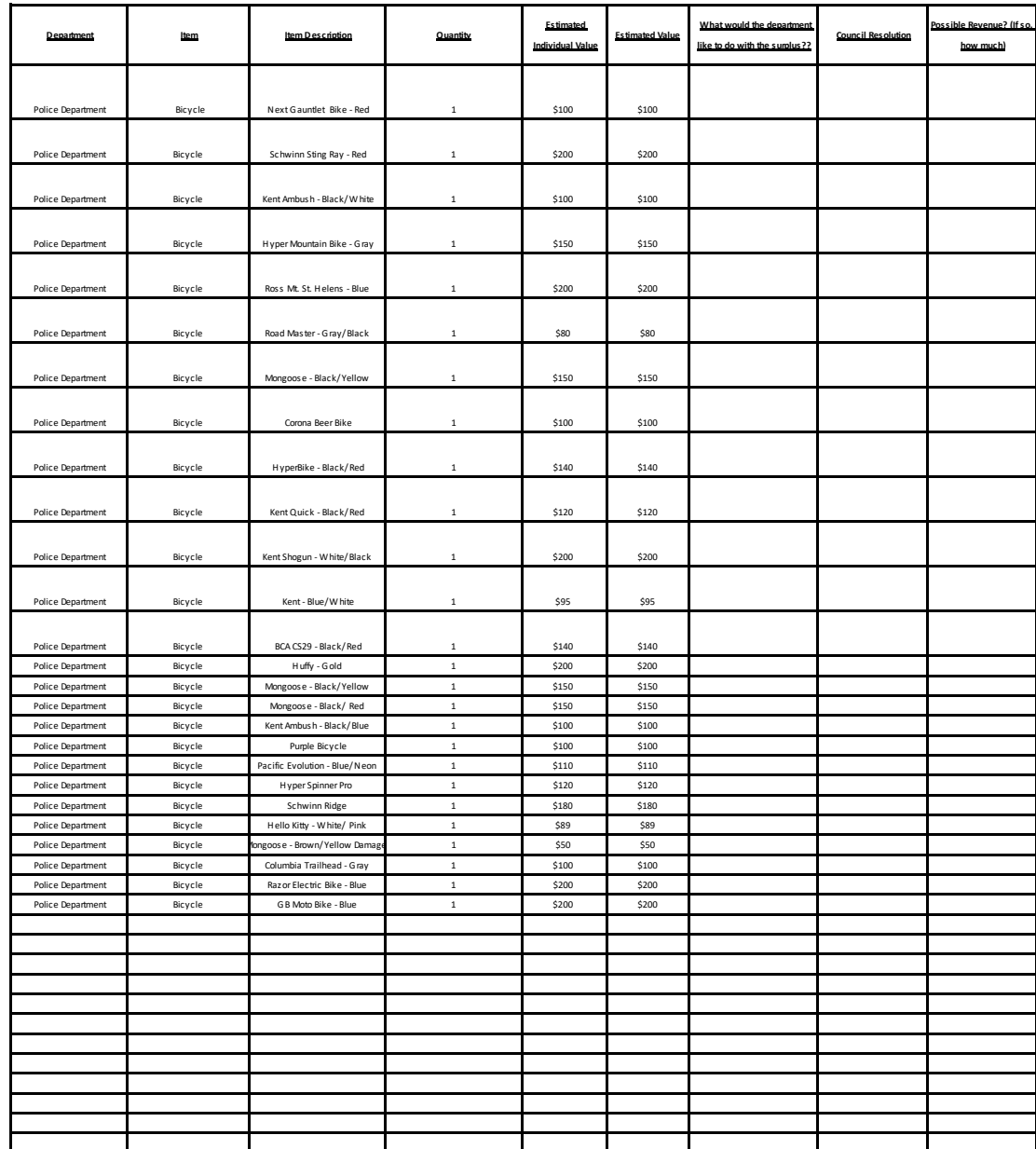
**WHEREAS**, the City Departments have requested that the bicycles be designated as surplus and sold; and

**WHEREAS**, the City Council has determined that declaring the 26 bicycles as surplus 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 26 bicycles listed on the surplus inventory list annexed here to and made part hereof are hereby declared to be surplus and of no further use or value to the City of Newburgh; and

**BE IT FURTHER RESOLVED**, that the City Manager and/or City Comptroller be and they are hereby authorized to execute any required documents and conduct all necessary transactions to dispose of said surplus bicycles in accordance with the City of Newburgh's Surplus Property Disposition Policy and Procedure adopted by Resolution No. 174-2014 of July 14, 2014.





Agenda Item 15.

**Resolution No. 8 - 2024 - ETPA - Rent Guidelines Board Member Recommendations**

*ETPA - Recomendaciones de los miembros de la Junta Directiva sobre alquileres*

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution No. 8 - 2024 - RGB Recommendations	1/8/2024	Resolution Letter
ETPA relevant regulations	1/3/2024	Backup Material
RGB Application - blank	1/3/2024	Backup Material
Res No 264-2023 declaring housing emergency	1/3/2024	Backup Material

RESOLUTION NO.: 8 - 2024

OF

JANUARY 8, 2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
RECOMMENDING NINE CITY RESIDENTS TO SERVE ON  
A RENT GUIDELINES BOARD**

**WHEREAS**, by Resolution No. 264-2023 of December 18, 2023, the City Council of the City of Newburgh declared that a public emergency exists for the entire class of housing accommodations subject to regulation in New York State Unconsolidated Laws §8625; and

**WHEREAS**, following the declaration of a housing emergency, pursuant to New York State Unconsolidated Laws §8624(a), a rent guidelines board created subsequent to the effective date of the chapter of the laws of two thousand nineteen that amended §8624(a) shall consist of nine members, of which two such members shall be representative of tenants, two shall be representative of owners of property and five shall be public members with at least five years' experience in finance, economics or housing, appointed by the commissioner of housing and community renewal upon recommendations of the local legislative body of each city having a population of less than one million which has determined the existence of an emergency; and

**WHEREAS**, the City Council of the City of Newburgh solicited applications from City residents interested in serving on a rent guidelines board; and

**WHEREAS**, after review and due deliberation of the applications received, the City Council has identified nine qualified City residents to recommend to the Commissioner of Housing and Community Renewal for appointment to a rent guidelines board, the same being in the best interests of the City of Newburgh;

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of Newburgh hereby recommends to the New York State Commissioner of Housing and Community Renewal for appointment to a rent guidelines board, the following qualified City residents:

Tenant Representative: Valarie E. Larry  
Bridget McMillan

Property Owner Representative: Debra R. Lamb  
Karen Mejia

Public Member: Corey Allen  
Peter Frase  
John Kasinki  
Sarah Mazzetti  
Dino Nguyen



McKinney's Consolidated Laws of New York Annotated

Unconsolidated Laws (Refs & Annos)

Title 23. Rent Control

Chapter 5. Emergency Tenant Protection Act of Nineteen Seventy-Four (Refs & Annos)

McK.Unconsol.Laws § 8623

§ 8623. Local determination of emergency; end of emergency

Currentness

a. The existence of public emergency requiring the regulation of residential rents for all or any class or classes of housing accommodations, including any plot or parcel of land which had been rented prior to May first, nineteen hundred fifty, for the purpose of permitting the tenant thereof to construct or place his own dwelling thereon and on which plot or parcel of land there exists a dwelling owned and occupied by a tenant of such plot or parcel, heretofore destabilized; heretofore or hereafter decontrolled, exempt, not subject to control, or exempted from regulation and control under the provisions of the emergency housing rent control law,<sup>1</sup> the local emergency housing rent control act<sup>2</sup> or the New York city rent stabilization law of nineteen hundred sixty-nine;<sup>3</sup> or subject to stabilization or control under such rent stabilization law, shall be a matter for local determination within each city, town or village. **Any such determination shall be made by the local legislative body of such city, town or village on the basis of the supply of housing accommodations within such city, town or village, the condition of such accommodations and the need for regulating and controlling residential rents within such city, town or village. A declaration of emergency may be made as to any class of housing accommodations if the vacancy rate for the housing accommodations in such class within such municipality is not in excess of five percent and a declaration of emergency may be made as to all housing accommodations if the vacancy rate for the housing accommodations within such municipality is not in excess of five percent.**

b. The local governing body of a city, town or village having declared an emergency pursuant to subdivision a of this section may at any time, on the basis of the supply of housing accommodations within such city, town or village, the condition of such accommodations and the need for continued regulation and control of residential rents within such municipality, declare that the emergency is either wholly or partially abated or that the regulation of rents pursuant to this act<sup>4</sup> does not serve to abate such emergency and thereby remove one or more classes of accommodations from regulation under this act. The emergency must be declared at an end once the vacancy rate described in subdivision a of this section exceeds five percent.

**c. No resolution declaring the existence or end of an emergency, as authorized by subdivisions a and b of this section, may be adopted except after public hearing held on not less than ten days public notice, as the local legislative body may reasonably provide.**

#### Credits

(L.1974, c. 576, § 4 [§ 3]. Amended L.1980, c. 69, § 4.)

### Footnotes

- 1     McK. Unconsol. Laws § 8581 et seq.
- 2     McK. Unconsol. Laws § 8601 et seq.
- 3     McK. Unconsol. Laws § 26-501 et seq. of the Administrative Code of the City of New York, set out following McK. Unconsol. Laws § 8617.
- 4     L.1974, c. 576, § 4.

McKinney's Unconsolidated Laws § 8623, NY UNCON LAWS § 8623

Current through L.2023, chapters 1 to 538. Some statute sections may be more current, see credits for details.

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End of Document

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McKinney's Consolidated Laws of New York Annotated

Unconsolidated Laws (Refs & Annos)

Title 23. Rent Control

Chapter 5. Emergency Tenant Protection Act of Nineteen Seventy-Four (Refs & Annos)

McK.Unconsol.Laws § 8624

§ 8624. Establishment of rent guidelines boards; duties

Effective: June 14, 2019

Currentness

a. In each county wherein any city having a population of less than one million or any town or village has determined the existence of an emergency pursuant to [section three](#) of this act <sup>1</sup>, there shall be created a rent guidelines board to consist of nine members appointed by the commissioner of housing and community renewal upon recommendation of the county legislature, except that ~~a rent guidelines board created subsequent to the effective date of the chapter of the laws of two thousand nineteen that amended this section shall consist of nine members appointed by the commissioner of housing and community renewal upon recommendations of the local legislative body of each city having a population of less than one million or town or village which has determined the existence of an emergency pursuant to [section three](#) of this act. Such recommendation shall be made within thirty days after the first local declaration of an emergency in such county; two such members shall be representative of tenants, two shall be representative of owners of property, and five shall be public members each of whom shall have had at least five years experience in either finance, economics or housing. One public member shall be designated by the commissioner to serve as chairman and shall hold no other public office. No member, officer or employee of any municipal rent regulation agency or the state division of housing and community renewal and no person who owns or manages real estate covered by this law or who is an officer of any owner or tenant organization shall serve on a rent guidelines board. One public member, one member representative of tenants and one member representative of owners shall serve for a term ending two years from January first next succeeding the date of their appointment; one public member, one member representative of tenants and one member representative of owners shall serve for terms ending three years from the January first next succeeding the date of their appointment and three public members shall serve for terms ending four years from January first next succeeding the dates of their appointment. Thereafter, all members shall serve for terms of four years each. Members shall continue in office until their successors have been appointed and qualified. The commissioner shall fill any vacancy which may occur by reason of death, resignation or otherwise in a manner consistent with the original appointment. A member may be removed by the commissioner for cause, but not without an opportunity to be heard in person or by counsel, in his defense, upon not less than ten days notice. Compensation for the members of the board shall be at the rate of one hundred dollars per day, for no more than twenty days a year, except that the chairman shall be compensated at the rate of one hundred twenty-five dollars a day for no more than thirty days a year. The board shall be provided staff assistance by the division of housing and community renewal. The compensation of such members and the costs of staff assistance shall be paid by the division of housing and community renewal which shall be reimbursed in the manner prescribed in [section four](#) of this act.~~ The local legislative body of each city having a population of less than one million and each town and village in which an emergency has been determined to exist as herein provided shall be authorized to designate one person who shall be representative of tenants and one person who shall be representative of owners of property to serve at its pleasure and without compensation to advise and assist the county rent guidelines board in matters affecting the adjustment of rents for housing accommodations in such city, town or village as the case may be.

a-1. Notwithstanding the provisions of subdivision a of this section to the contrary, in each county that became subject to this act pursuant to the chapter of the laws of two thousand nineteen that amended this section, the commissioner shall reconstitute the existing rent guidelines board subsequent to any initial local declaration of emergency within such county for the purpose of



ensuring representation of all cities having a population of less than one million and all towns and villages within such county having determined the existence of an emergency in accordance with this act are represented, pursuant to rules and regulations promulgated by the division of housing and community renewal.

b. A county rent guidelines board shall establish annual guidelines for rent adjustments which, at its sole discretion may be varied and different for and within the several zones and jurisdictions of the board, and in determining whether rents for housing accommodations as to which an emergency has been declared pursuant to this act<sup>3</sup> shall be adjusted, shall consider among other things (1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, (3) such other data as may be made available to it. As soon as practicable after its creation and thereafter not later than July first of each year, a rent guidelines board shall file with the state division of housing and community renewal its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodation subject to this act, authorized for leases or other rental agreements commencing during the next succeeding twelve months. The standards for rent adjustments may be applicable for the entire county or may be varied according to such zones or jurisdictions within such county as the board finds necessary to achieve the purposes of this subdivision. A rent guidelines board shall not establish annual guidelines for rent adjustments based on the current rental cost of a unit or on the amount of time that has elapsed since another rent increase was authorized pursuant to this chapter.

The standards for rent adjustments established annually shall be effective for leases commencing on October first of each year and during the next succeeding twelve months whether or not the board has filed its findings and statement of the maximum rate or rates of rent adjustment by July first of each year. If such lease is entered into before such filing by the board, it may provide for the rent to be adjusted by the rates then in effect, subject to change by the applicable rates of rent adjustment when filed, such change to be effective as of the date of the commencement of the lease. Said lease must provide that, if the new rates of rent adjustment differ for leases of different terms, the tenant has the option of changing the original lease term to any other term for which a rate of rent adjustment is set by the board, with the rental to be adjusted accordingly.

Where a city, town or village shall act to determine the existence of public emergency pursuant to [section three](#) of this act<sup>1</sup> subsequent to the establishment of annual guidelines for rent adjustments of the accommodations subject to this act,<sup>3</sup> the rent guidelines board as soon as practicable thereafter shall file its findings and rates of rent adjustment for leases or other rental agreements for the housing accommodations in such a city, town or village, which rates shall be effective for leases or other rental agreements commencing on or after the effective date of the determination.

A county rent guidelines board shall establish annual guidelines for rent adjustments which, at its sole discretion may be varied and different for and within the several zones and jurisdictions of the board, and in determining whether rents for housing accommodations as to which an emergency has been declared pursuant to this act shall be adjusted, shall consider among other things (1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, (3) such other data as may be made available to it. As soon as practicable after its creation and thereafter not later than July first of each year, a rent guidelines board shall file with the state division of housing and community renewal its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodation subject to this act, authorized for leases or other rental agreements commencing during the next succeeding twelve months. The standards for rent adjustments may be applicable for the entire county or may be varied according to such zones or jurisdictions within



such county as the board finds necessary to achieve the purposes of this subdivision. A rent guidelines board shall not establish annual guidelines for rent adjustments based on the current rental cost of a unit or on the amount of time that has elapsed since another rent increase was authorized pursuant to this chapter.

c. In a city having a population of one million or more, the rent guidelines board shall be the rent guidelines board established pursuant to the New York city rent stabilization law of nineteen hundred sixty-nine<sup>4</sup> as amended, and such board shall have the powers granted pursuant to the New York city rent stabilization law of nineteen hundred sixty-nine<sup>4</sup> as amended.

d. Maximum rates of rent adjustment shall not be established more than once annually for any housing accommodation within a board's jurisdiction. Once established, no such rate shall, within the one-year period, be adjusted by any surcharge, supplementary adjustment or other modification.

e. Notwithstanding any other provision of this act, the adjustment for vacancy leases covered by the provisions of this act shall be determined exclusively pursuant to [section ten](#) of this act. Rent guidelines boards shall no longer promulgate adjustments for vacancy leases.

#### Credits

(L.1974, c. 576, § 4 [§ 4]. Amended L.1976, c. 486, § 1; L.1979, c. 348, § 1; L.1979, c. 349, § 1; L.1980, c. 330, § 1; L.1983, c. 403, §§ 53, 54; L.2019, c. 36, pt. C, §§ 2, 3, pt. G, § 5, eff. June 14, 2019; L.2019, c. 39, pt. Q, §§ 2, 3, eff. June 24, 2019, deemed eff. June 14, 2019.)

#### Footnotes

1 McK. Unconsol. Laws § 8623.

2 See McK. Unconsol. Laws § 8628.

3 L.1974, c. 576, § 4.

4 McK. Unconsol. Laws § 26-501 et seq. of the Administrative Code of the City of New York, set out following McK. Unconsol. Laws § 8617.

McKinney's Unconsolidated Laws § 8624, NY UNCON LAWS § 8624

Current through L.2023, chapters 1 to 538. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated

Unconsolidated Laws (Refs & Annos)

Title 23. Rent Control

Chapter 5. Emergency Tenant Protection Act of Nineteen Seventy-Four (Refs & Annos)

McK.Unconsol.Laws § 8625

§ 8625. Housing accommodations subject to regulation

Effective: June 14, 2019

Currentness

a. A declaration of emergency may be made pursuant to [section three](#)<sup>1</sup> as to all or any class or classes of housing accommodations in a municipality, except:

(1) housing accommodations subject to the emergency housing rent control law,<sup>2</sup> or the local emergency housing rent control act,<sup>3</sup> other than housing accommodations subject to the New York city rent stabilization law of nineteen hundred sixty-nine;<sup>4</sup>

(2) housing accommodations owned or operated by the United States, the state of New York, any political subdivision, agency or instrumentality thereof, any municipality or any public housing authority;

(3) housing accommodations in buildings in which rentals are fixed by or subject to the supervision of the state division of housing and community renewal under other provisions of law or the New York city department of housing preservation and development or the New York state urban development corporation, or, to the extent that regulation under this act is inconsistent therewith aided by government insurance under any provision of the National Housing Act;<sup>5</sup>

(4)(a) housing accommodations in a building containing fewer than six dwelling units, other than any plot or parcel of land in cities having a population of one million or more which had been rented prior to May first, nineteen hundred fifty, for the purpose of permitting the tenant thereof to construct or place his own dwelling thereon and heretofore or hereafter decontrolled, exempt, not subject to control or exempted from regulation and control under the provisions of the emergency housing rent control law<sup>2</sup> or the local emergency housing rent control act<sup>3</sup> and on which plot or parcel of land there exists a dwelling owned and occupied by a tenant of such plot or parcel;

(b) for purposes of this paragraph four, a building shall be deemed to contain six or more dwelling units if it is part of a multiple family garden-type maisonette dwelling complex containing six or more dwelling units having common facilities such as a sewer line, water main or heating plant and operated as a unit under common ownership, notwithstanding that certificates of occupancy were issued for portions thereof as one- or two-family dwellings.

(5) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January first, nineteen hundred seventy-four;



(5-a) housing accommodations located outside of a city with a population of one million or more in any such buildings that were vacant and unoccupied on June first, two thousand nineteen and had been vacant and unoccupied for at least the one-year period immediately preceding such date;

(6) housing accommodations owned or operated by a hospital, convent, monastery, asylum, public institution, or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a non-profit basis other than (i) those accommodations occupied by a tenant on the date such housing accommodation is acquired by any such institution, or which are occupied subsequently by a tenant who is not affiliated with such institution at the time of his initial occupancy or (ii) permanent housing accommodations with government contracted services, as of and after June fourteenth, two thousand nineteen, to vulnerable individuals or individuals with disabilities who are or were homeless or at risk of homelessness; provided, however, that the terms of leases in existence as of June fourteenth, two thousand nineteen, shall only be affected upon lease renewal, and further provided that upon the vacancy of such housing accommodations, the legal regulated rent for such housing accommodations shall be the legal regulated rent paid for such housing accommodations by the prior tenant, subject only to any adjustment adopted by the applicable rent guidelines board;

(7) rooms or other housing accommodations in hotels, other than hotel accommodations in cities having a population of one million or more not occupied on a transient basis and heretofore subject to the emergency housing rent control law,<sup>2</sup> the local emergency housing rent control act<sup>3</sup> or to the New York city rent stabilization law of nineteen hundred sixty-nine;<sup>4</sup>

(8) any motor court, or any part thereof, any trailer, or trailer space used exclusively for transient occupancy or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof;

The term “motor court” shall mean an establishment renting rooms, cottages or cabins, supplying parking or storage facilities for motor vehicles in connection with such renting and other services and facilities customarily supplied by such establishments, and commonly known as motor, auto or tourist court in the community.

The term “tourist home” shall mean a rooming house which caters primarily to transient guests and is known as a tourist home in the community.

(9) non-housekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:

(a) no more than two tenants for whom rent is paid (husband and wife being considered one tenant for this purpose), not members of the landlord's immediate family, live in such dwelling unit, and

(b) the remaining portion of such dwelling unit is occupied by the landlord or his immediate family.

(10) housing accommodations in buildings operated exclusively for charitable purposes on a non-profit basis except for permanent housing accommodations with government contracted services, as of and after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, to vulnerable individuals or individuals with disabilities who are or were homeless or at risk of homelessness; provided, however, that the terms of leases in existence as of the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, shall only be affected upon lease renewal, and further provided that upon the vacancy of such housing accommodations, the legal regulated rent for such housing accommodations



shall be the legal regulated rent paid for such housing accommodations by the prior tenant, subject only to any adjustment adopted by the applicable rent guidelines board;

(11) housing accommodations which are not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in [section four hundred fifty-nine-a of the social services law](#), who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. For the purposes of this paragraph, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants. For the purposes of this paragraph, where a housing accommodation is rented to a not-for-profit for providing, as of and after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, permanent housing to individuals who are or were homeless or at risk of homelessness, affiliated subtenants authorized to use such accommodations by such not-for-profit shall be deemed to be tenants. No action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds.

*(12) Repealed by L.2019, c. 36, pt. D, § 6, eff. June 14, 2019; L.2019, c. 39, pt. Q, § 5, eff. June 24, deemed eff. June 14, 2019.*

*(13) Repealed by L.2019, c. 36, pt. D, § 3, eff. June 14, 2019.*

(14) (i) housing accommodations owned as a cooperative or condominium unit which are or become vacant on or after the effective date of this paragraph, except that this subparagraph shall not apply to units occupied by non-purchasing tenants under [section three hundred fifty-two-eee of the general business law](#) until the occurrence of a vacancy. (ii) This paragraph shall not apply, however, to or become effective with respect to housing accommodations which the commissioner determines or finds the landlord or any person acting on his or her behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the housing accommodations. In connection with such course of conduct any other general enforcement provision of this act shall also apply;

b. Notwithstanding any other provision of this section, nothing shall prevent the declaration of an emergency pursuant to [section three](#) of this act<sup>1</sup> for rental housing accommodations located in buildings or structures which are subject to the provisions of article eighteen of the private housing finance law.

#### Credits

(L.1974, c. 576, § 4 [§ 5]. Amended L.1978, c. 655, § 137; L.1980, c. 69, § 5; L.1983, c. 403, § 55; L.1984, c. 940, § 3; L.1985, c. 67, § 5; L.1993, c. 253, §§ 8, 17; L.1997, c. 116, § 7-a, eff. June 19, 1997, § 9, eff. Jan. 1, 1998; L.2003, c. 82, § 2, eff. June 20, 2003; L.2010, c. 422, § 3, eff. Aug. 30, 2010; L.2011, c. 97, pt. B, §§ 10, 29, eff. June 24, 2011; L.2015, c. 20, pt. A, § 8, eff. June 26, 2015, deemed eff. June 15, 2015; L.2019, c. 36, pt. D, §§ 3, 6, pt. G, § 4, pt. J, § 1, eff. June 14, 2019; L.2019, c. 39, pt. Q, §§ 5, 17, eff. June 24, 2019, deemed eff. June 14, 2019.)



### Footnotes

- 1      McK. Unconsol. Laws § 8623.
- 2      McK. Unconsol. Laws § 8581 et seq.
- 3      McK. Unconsol. Laws § 8601 et seq.
- 4      McK. Unconsol. Laws § 26-501 et seq. of the Administrative Code of the City of New York, set out following McK. Unconsol. Laws § 8617.
- 5      12 USCA § 1701 et seq.

McKinney's Unconsolidated Laws § 8625, NY UNCON LAWS § 8625

Current through L.2023, chapters 1 to 538. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated

Unconsolidated Laws (Refs & Annos)

Title 23. Rent Control

Chapter 5. Emergency Tenant Protection Act of Nineteen Seventy-Four (Refs & Annos)

McK.Unconsol.Laws § 8626

§ 8626. Regulation of rents

Effective: November 21, 2022

[Currentness](#)

a. Notwithstanding the provisions of any lease or other rental agreement, no owner shall, on or after the first day of the first month or other rental period following a declaration of emergency pursuant to [section three](#),<sup>1</sup> which date shall be referred to in this act<sup>2</sup> as the local effective date, charge or collect any rent in excess of the initial legal regulated rent or adjusted initial legal regulated rent until such time as a different legal regulated rent shall be authorized pursuant to guidelines adopted by a rent guidelines board pursuant to [section four](#).<sup>3</sup>

b. The initial legal regulated rents for housing accommodations in a city having a population of less than one million or a town or village as to which a declaration of emergency has been made pursuant to this act shall be:

(1) For housing accommodations subject to the emergency housing rent control law<sup>4</sup> which become vacant on or after the local effective date of this act, the rent agreed to by the landlord and the tenant and reserved in a lease or provided for in a rental agreement; provided that such initial legal regulated rent may be adjusted on application of the owner or tenant pursuant to [subdivision a of section nine](#) of this act;<sup>5</sup> and provided further that no increase of such initial regulated rent pursuant to annual guidelines adopted by the rent guidelines board shall become effective until the expiration of the first lease or rental agreement taking effect after the local effective date, but in no event before one year from the commencement of such rental agreement.

(2) For all other housing accommodations, the rent reserved in the last effective lease or other rental agreement; provided that an initial rent based upon the rent reserved in a lease or other rental agreement which became effective on or after January first, nineteen hundred seventy-four may be adjusted on application of the tenant pursuant to [subdivision b of section nine](#) of this act or on application of either the owner or tenant pursuant to subdivision a of such section; and further provided that if a lease is entered into for such housing accommodations after the local effective date, but before the effective date of the first guidelines applicable to such accommodations, the lease may provide for an adjustment of rent pursuant to such guidelines, to be effective on the first day of the month next succeeding the effective date of such guidelines.

c. The initial legal regulated rents for housing accommodations in a city having a population of one million or more shall be the initial rent established pursuant to the New York city rent stabilization law of nineteen hundred sixty-nine as amended.<sup>6</sup>

d. Provision shall be made pursuant to regulations under this act for individual adjustment of rents where:



(1) there has been a substantial modification or increase of dwelling space, or installation of new equipment or improvements or new furniture or furnishings, provided in or to a tenant's housing accommodation, on written informed tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The temporary increase in the legal regulated rent for the affected housing accommodation shall be one-one hundred sixty-eighth, in the case of a building with thirty-five or fewer housing accommodations or one-one hundred eightieth in the case of a building with more than thirty-five housing accommodations where such increase takes effect on or after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, of the total actual cost incurred by the landlord up to fifteen thousand dollars in providing such reasonable and verifiable modification or increase in dwelling space, furniture, furnishings, or equipment, including the cost of installation but excluding finance charges and any costs that exceed reasonable costs established by rules and regulations promulgated by the division of housing and community renewal. Such rules and regulations shall include: (i) requirements for work to be done by licensed contractors and a prohibition on common ownership between the landlord and the contractor or vendor; and (ii) a requirement that the owner resolve within the dwelling space all outstanding hazardous or immediately hazardous violations of the Uniform Fire Prevention and Building Code (Uniform Code), New York City Fire Code, or New York City Building and Housing Maintenance Codes, if applicable. Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. Provided further that the recoverable costs incurred by the landlord, pursuant to this paragraph, shall be limited to an aggregate cost of fifteen thousand dollars that may be expended on no more than three separate individual apartment improvements in a fifteen year period beginning with the first individual apartment improvement on or after June fourteenth, two thousand nineteen. Provided further that increases to the legal regulated rent pursuant to this paragraph shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board.

(2) there has been since January first, nineteen hundred seventy-four an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or the housing accommodation therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance, and replacements, or

(3) there has been since January first, nineteen hundred seventy-four a major capital improvement essential for the preservation, energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing, but shall not be for operation costs or unnecessary cosmetic improvements. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half period for a building with more than thirty-five housing accommodations and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board, for any determination issued by the division of housing and community renewal after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph. Temporary major capital improvement increases shall be collectable prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, the collection of any rent increases for any renewal lease commencing on or after June 14, 2019, due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved, or



(3-a) an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application; or

(4) an owner by application to the state division of housing and community renewal for increases in the rents in excess of the rent adjustment authorized by the rent guidelines board under this act establishes a hardship, and the state division finds that the rate of rent adjustment is not sufficient to enable the owner to maintain approximately the same ratio between operating expenses, including taxes and labor costs but excluding debt service, financing costs, and management fees, and gross rents which prevailed on the average over the immediate preceding five year period, or for the entire life of the building if less than five years, or

(5) as an alternative to the hardship application provided under paragraph four of this subdivision, owners of buildings acquired by the same owner or a related entity owned by the same principals three years prior to the date of application may apply to the division for increases in excess of the level of applicable guideline increases established under this law based on a finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent. For the purposes of this paragraph, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this paragraph, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include; condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. The commissioner shall set a rental value for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than one month at the last regulated rent plus the minimum number of guidelines increases or, if no such regulated rent existed or is known, the commissioner shall impute a rent consistent with other rents in the building. The amount of hardship increase shall be such as may be required to maintain the annual gross rent income as provided by this paragraph. The division shall not grant a hardship application under this paragraph or paragraph four of this subdivision for a period of three years subsequent to granting a hardship application under the provisions of this paragraph. The collection of any increase in the rent for any housing accommodation pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. No application shall be approved unless the owner's equity in such building exceeds five percent of: (i) the arms length purchase price of the property; (ii) the cost of any capital improvements for which the owner has not collected a surcharge; (iii) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not collected a surcharge; and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner. For the purposes of this paragraph, owner's equity shall mean the sum of (i) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property, (ii) the cost of any capital improvement for which the owner has not collected a surcharge less the principal of any mortgage or loan used to finance said improvement, (iii) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected a surcharge, and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

This subdivision shall apply to accommodations outside a city of one million or more.



e. Notwithstanding any contrary provisions of this act, on and after July first, nineteen hundred eighty-four the legal regulated rent shall be the rent registered pursuant to section twelve-a of this act<sup>7</sup> subject to any modification imposed pursuant to this act.

f. Notwithstanding any inconsistent provision of law, rule, regulation, contract, agreement, lease or other obligation, no owner, in addition to the authorized collection of rent, shall demand, receive or retain a security deposit or advance payment which exceeds the rent of one month for or in connection with the use or occupancy of a housing accommodation by (i) any tenant who is sixty-five years of age or older for any lease or lease renewal entered into after July 1, 1996 or (ii) any tenant who is receiving disability retirement benefits or supplemental security income pursuant to the federal social security act<sup>8</sup> for any lease or lease renewal entered into after July 1, 2002.

f-1. An owner, lessor or agent thereof shall be prohibited from assessing a lessee any fee, surcharge or other charges for legal services in connection with the operation or rental of a residential unit unless the owner, lessor or agent has the legal authority to do so pursuant to a court order. Legal services include, but are not limited to, court fees, legal representation, attorney fees, notary public charges, and administrative fees incurred by the owner, lessor or agent in connection with management of the building, including actions and proceedings in a court of law. Any agreement or assessment to the contrary shall be void as contrary to public policy.

g. No owner of a housing accommodation subject to the provisions of this section shall impose any surcharge for the installation and use of a tenant-installed air conditioner unit where the tenant pays for electric utility service.

#### Credits

(L.1974, c. 576, § 4 [§ 6]. Amended L.1983, c. 403, §§ 2, 55-a; L.1984, c. 102, § 1; L.1990, c. 749, § 4; L.1993, c. 253, § 20; L.1996, c. 256, § 1; L.1997, c. 116, § 23, eff. June 19, 1997; L.2002, c. 532, § 1, eff. Sept. 17, 2002; L.2011, c. 97, pt. B, § 18, eff. June 24, 2011; L.2015, c. 20, pt. A, § 30, eff. June 26, 2015, deemed eff. June 15, 2015; L.2019, c. 36, pt. B, § 4, pt. K, §§ 1, 9, 13, eff. June 14, 2019; L.2019, c. 39, pt. Q, §§ 18, 26, eff. June 24, 2019, deemed eff. June 14, 2019; L.2021, c. 695, § 2, eff. Dec. 21, 2021; L.2022, c. 619, § 2, eff. Nov. 21, 2022.)

#### Footnotes

1 McK. Unconsol. Laws § 8623.

2 L.1974, c. 576, § 4.

3 McK. Unconsol. Laws § 8624.

4 McK. Unconsol. Laws § 8581 et seq.

5 McK. Unconsol. Laws § 8629.

6 McK. Unconsol. Laws § 26-501 et seq. of the Administrative Code of the City of New York, set out following McK. Unconsol. Laws § 8617.

7      McK. Unconsol. Laws § 8632-a.

8      42 USCA § 301 et seq.

McKinney's Unconsolidated Laws § 8626, NY UNCON LAWS § 8626

Current through L.2023, chapters 1 to 538. Some statute sections may be more current, see credits for details.

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**CITY OF NEWBURGH**  
**Office of the City Manager**  
83 Broadway, Newburgh, New York 12550  
(845) 569-7301/Fax (845) 569-7370  
[www.cityofnewburgh-ny.gov](http://www.cityofnewburgh-ny.gov)

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## **Application for City of Newburgh Rent Guidelines Board**

Applicant name: \_\_\_\_\_ Date of application: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone (home): \_\_\_\_\_ (work): \_\_\_\_\_

Age: \_\_\_\_\_

Length of residence in City: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Occupation(s)/place of business: \_\_\_\_\_

Occupation(s)/place of business: \_\_\_\_\_

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I am applying as (choose one)\*\*\*:

\_\_\_\_\_ Property owner representative

\_\_\_\_\_ Tenant representative

\_\_\_\_\_ Member of the public

\*\*\* If you are applying as a property owner representative, please describe your experience as a property owner and which buildings you currently own or manage in City of Newburgh.

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\*\*\* If you are applying as a member of the public, please describe your experience in finance, economics, or housing and state the number of years of experience you've had in at least one of these three fields.

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Education: *(schools/degrees/specialties)*

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Why are you interested in this position?

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Please attach any other information you believe would be relevant.

Forms should be returned to:

City of Newburgh Executive Office  
attn: City Manager  
83 Broadway  
Newburgh, NY 12550

or e-mail to [Boards@cityofnewburgh-ny.gov](mailto:Boards@cityofnewburgh-ny.gov)



RESOLUTION NO.: 264 - 2023

OF

DECEMBER 18, 2023

A RESOLUTION DECLARING A PUBLIC EMERGENCY REQUIRING THE  
REGULATION OF CERTAIN RESIDENTIAL RENTS IN THE CITY OF NEWBURGH

WHEREAS, the City Council of the City of Newburgh has considered and reviewed a Housing Needs Assessment prepared for the City of Newburgh, dated June 4, 2021; a Housing Policy Framework prepared for the City of Newburgh, dated June 4, 2021; and a Vacancy Study prepared by the City of Newburgh Department of Planning and Development dated November 6, 2023; and

WHEREAS, the City Council of the City of Newburgh duly convened and completed a public hearing at its regular meeting on December 11, 2023 concerning the existence of a public emergency requiring the regulation of certain residential rents in the City of Newburgh in accordance with New York State Unconsolidated Laws §8623(c); and

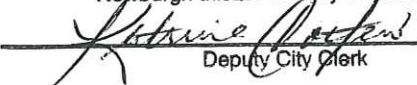
WHEREAS, after due deliberation of documents reviewed and public comments received, the City Council of the City of Newburgh hereby finds that significant and substantial problems exist regarding the housing of a considerable number of persons within the City of Newburgh; that said problems necessitate the intervention of state and local government; that unless residential rents are regulated and controlled, current market conditions will continue produce serious threats to the public health, safety and general welfare by making housing units unaffordable and unattainable; that to prevent such perils to health, safety and welfare, preventive action by this Council is imperative; and that such action is necessary in order to calm or outright eliminate threats to the public health, safety and general welfare posed by an unregulated housing market;

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Newburgh based upon documents reviewed and public comments received, declaring that a public emergency exists for the entire class of housing accommodations subject to regulation in New York State Unconsolidated Laws §8625; and

BE IT FURTHER RESOLVED, that the emergency shall remain in effect for three (3) years from the date of this declaration.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 12/18/23  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 19<sup>th</sup> day of DEC. 2023

  
Deputy City Clerk