



City of Newburgh Council Work Session  
*Sesion de trabajo del Concejal de la  
Ciudad de Newburgh*  
April 18, 2024  
6:00 PM

Council Meeting Presentations/ Presentaciones de la Reunion General

Engineering/Ingeniería

1. Proposal with QUEST Asbestos Testing at 47 Lutheran Street

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for professional services related to a pre-demolition asbestos survey at 47 Lutheran Street in the amount of \$1,302.00

*Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. (QUES&T) para servicios profesionales relacionados con un estudio de amianto antes de la demolición del 47 Lutheran Street por el monto de \$1.,302.00*

2. Silver Stream Reservoir Dam Spillway Rehabilitation Project

Resolution of the City Council of the City of Newburgh assuming Lead Agency status under State Environmental Quality Review Act for the Silver Stream Dam Spillway Improvements Project, declaring the Project to be a Type II Action, finding no significant adverse impact on the environment and authorizing the City Manager to execute all SEQRA documents

*Resolución del Concejo Municipal de la Ciudad de Newburgh asumiendo el estatus como agencia principal bajo la Ley Estatal de Revisión de Calidad Ambiental para el Proyecto de Mejoramiento de Desagüe de la Represa del Silver Stream, declarando el Proyecto como una acción Tipo II, encontrando ningún impacto adverso significativo en el medio ambiente y autorizando al Gerente de la Ciudad para ejecutar todos los documentos SEQRA*

3. BlueBeam Software Agreement

Resolution authorizing the City Manager to enter into a software license and service agreement with Bluebeam, Inc. in the amount of \$600.00 for construction and engineering document management

*Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de licencia de software y servicio con Bluebeam, Inc. por el monto de \$600,00 para la administración de documentos de construcción e ingeniería*

#### Water Department/ Departamento de Agua

4. Amending Res#178-2023 for \$1M ARPA Funding

Resolution amending Resolution No. 178-2023 to authorize the reallocation \$1,000,000.00 of American Rescue Plan Act of 2021 funding between the City of Newburgh Lead Service Line Replacement Program and Water Meter Replacement Project

*Resolución que enmienda la Resolución No. 178-2023 para autorizar la reasignación de \$1,000,000.00 de fondos de la Ley del Plan de Rescate Americano de 2021 entre el Programa de Reemplazo de Líneas de Servicio de Plomo de la Ciudad de Newburgh y el Proyecto de Reemplazo de Medidores de Agua*

#### Planning and Economic Development/Planificación y Desarrollo Económico

5. Purchase of 54 Wilkin Street

Resolution to authorize the conveyance of real property known as 54 Wilkin Street (Section 26, Block 3, Lot 31) at private sale to Dominique Wallace-Mills for the amount of \$75,000.00

*Resolución que autoriza la transmisión de bienes raíces conocidos como 54 Wilkin Street (Sección 26, Bloque 3, Lote 31) en venta privada a Dominique Wallace-Mills por el monto de \$75,000.00*

6. A License Agreement with Mountain Valley Guides LLC for Access to and the Use of the Washington Street Boat Launch and Unico Park to Provide Kayak Rentals and Tours

Resolution authorizing the City Manager to execute a license agreement with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park to provide Kayak Rentals and Tours

*Resolución que autoriza al Gerente de la Ciudad a ejecutar un acuerdo de licencia con Mountain Valley Guides LLC para el acceso y el uso del lanzamiento de botes de Washington Street y el parque Unico para proporcionar alquileres y excursiones de kayak*

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

7. A Resolution Scheduling a Public Hearing for May 13, 2024 to Receive Public Comment on the City of Newburgh's Round 8 NY Restore Communities Initiative Grant Application for the Demolition of Five Properties

Resolution scheduling a public hearing for May 13, 2024 to receive public comment on the City of Newburgh's Round 8 NY Restore Communities Initiative grant application for the demolition of 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street and 47 Lutheran Street

*Resolución que programa una audiencia pública para el 13 de mayo de 2024 para recibir comentarios públicos sobre la solicitud de subvención de la Ronda 8 de la Iniciativa para la Restauración de las Comunidades de Nueva York de la Ciudad de Newburgh para la demolición de 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street y 47 Lutheran Street*

#### Boards and Commissions/Juntas y Comisiones

8. Arts & Cultural Commission - Public Art Works Program - Artists agreements

Resolution authorizing the City Manager to enter into agreements with Chapman Steamer Arts, Inc., Jean-Marc Superville Sovak and Kim Turner, and Steve Gerberich to provide Public Art projects and related services for the City of Newburgh's Public Art Works Program for 2024

*Resolución que autoriza al Gerente de la Ciudad a entrar en acuerdos con Chapman Steamer Arts, Inc., Jean-Marc Superville Sovak y Kim Turner, y Steve Gerberich para proporcionar proyectos de Arte Público y servicios relacionados para el Programa de Obras de Arte Público de la Ciudad de Newburgh para 2024*

9. Arts & Cultural Commission - Public Art Works Program - Project Manager Agreement

Resolution authorizing an agreement between the City of Newburgh and Lisa Bauso for project management services related to the Public Art Works program

*Resolución que autoriza un acuerdo entre la Ciudad de Newburgh y Lisa Bauso para servicios de administración de proyectos relacionados con el programa de Obras de Arte Público*

10. Appointments - Human Rights Commission

Appointments to the Human Rights Commission

*Nombramientos para la Comisión de Derechos Humanos*

#### Executive Session/ Sesión Ejecutiva

11. Proposed, Pending or Current Litigation

*Litigio propuesto, pendiente o actual*

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

*El historial médico, financiero, crediticio o laboral de una persona o empresa en particular, o asuntos que conduzcan al nombramiento, empleo, ascenso, descenso de categoría, disciplina, suspensión, despido o destitución de una persona o empresa en particular*

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

OF

APRIL 22, 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH  
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)  
FOR PROFESSIONAL SERVICES RELATED TO A PRE-DEMOLITION  
ASBESTOS SURVEY AT 47 LUTHERAN STREET IN THE AMOUNT OF \$1,302.00**

**WHEREAS**, the City of Newburgh wishes to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for a pre-demolition asbestos survey at 47 Lutheran Street; and

**WHEREAS**, the proposal provides for the collection, testing and sampling of suspected asbestos containing materials and the preparation of one Final Asbestos Report identifying asbestos containing material, estimated quantities, locations, types and/or conditions; and

**WHEREAS**, the cost for these services will be \$1,302.00 which shall be derived from A.1440.0455 Consultants Services; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for professional services for a pre-renovation asbestos survey at 47 Lutheran Street in the amount of \$1,302.00.

# QuES&T

Quality Environmental Solutions & Technologies, Inc.

April 1, 2024

City of Newburgh  
83 Broadway  
4<sup>th</sup> Floor  
Newburgh, NY 12550

**ATTN: Jason Morris**

Via E-Mail: [jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)

Re.: 47 Lutheran Street, Newburgh, NY 12550 (Garage Building)  
Request for Proposal – Pre-Demolition Asbestos Survey

Dear Mr. Morris,

Quality Environmental Solutions & Technologies, Inc. (**QuES&T**) is pleased to submit the attached proposal to perform a Pre-Demolition Asbestos Survey in support of the demolition of the garage building, located at 47 Lutheran Street, Newburgh, NY 12550.

**QuES&T** is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. **QuES&T**'s extensive Nuclear Power Industry experience makes us uniquely qualified to provide technical support in state-of-the-art techniques for engineering and contamination control. Additionally, this experience enables us to integrate the essential concepts of "critical path" schedules and minimizing personnel exposures while maintaining a high level of attention to the specific details of each project. **QuES&T** personnel satisfy numerous ANSI and NUREG experience requirements of the Nuclear Regulatory Commission. Our staff has served in various capacities in the Health Physics and Nuclear Engineering disciplines in operational power reactors, nuclear powered vessels, radio-pharmaceuticals and government prototypes.

We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of future liability to the City of Newburgh.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

**QuES&T** offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet the specific needs of the City of Newburgh.

**QuES&T** provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T**'s facility or yours.

For additional information concerning this submittal, please contact us at (845) 298-6031. We look forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,



**Rudy Lipinski - LEED® AP**  
Director of Field Operations  
NYS/AHERA Inspector/Project Designer  
Cert. #AH 05-09049

**PRE-DEMOLITION ASBESTOS SURVEY**  
for  
**CITY OF NEWBURGH**  
83 Broadway  
4<sup>th</sup> Floor  
Newburgh, NY 12550  
at  
**GARAGE BUILDING**  
47 Lutheran Street  
Newburgh, NY 12550

***QuES&T** agrees to provide the following services:*

**Pre-Demolition Asbestos Survey**

**A. Asbestos-Containing Materials (ACM) Survey**

All work performed will comply with applicable federal and state regulations.

1. **QuES&T** will provide NYSDOL Inspector(s), who will be responsible for the identification and assessment of the condition, location and quantity of suspect asbestos-containing materials (ACM) associated with demolition of the Garage Building.
2. The inspector(s) will record and collect bulk samples of identified suspect asbestos-containing material following the protocols referenced in 40 CFR Part 763.86 Subpart E (AHERA) and transmit the samples under proper chain of custody protocols, to an ELAP-licensed laboratory for analysis.
3. Assumed 4 PLM Friable, 2 NOB PLM and 2 NOB TEM samples.

**B. Pre-Demolition Hazardous Materials Survey Report**

1. **QuES&T** will prepare a Pre-Demolition Asbestos Survey Report that will include a summary of findings regarding ACMs, sample location plans, material quantities, analytical reports, and recommendations.



**PRE-DEMOLITION ASBESTOS SURVEY**

for  
**CITY OF NEWBURGH**  
83 Broadway  
4<sup>th</sup> Floor  
Newburgh, NY 12550  
at  
**GARAGE BUILDING**  
47 Lutheran Street  
Newburgh, NY 12550

**COST ESTIMATE**

➤ **PRE-DEMOLITION ASBESTOS SURVEY**

Inspection Labor	\$ 585.00
PLM Bulk Sample Analysis (4 samples @ \$19/layer)	\$ 76.00 <sup>A</sup>
PLM-NOB/QTEM Bulk Sample Analysis (2 @ \$49/layer)	\$ 98.00
Pre-Demolition Environmental Testing Report	\$ 250.00
Travel & Misc. Materials	\$ 20.00
<b>Estimated Inspection Total \$ 1,302.00</b>	

**\*NOTES:**

1. Estimated number of samples to be collected/analyzed. Client shall be charged for actual services rendered and samples analyzed.
2. Sample analysis turnaround (TAT) commences upon laboratory receipt of samples and excludes Weekends & Holidays.

*This proposal is based on the following assumptions:*

- **QuES&T** shall perform all inspections visually; using reasonable care and judgment. Localized demolition will be performed to access representative concealed surfaces, as practicable. **Client/ Representatives** recognize & agree that ACM concealed within structural components & accessible only through extensive mechanical or structural demolition may not be identified as part of this survey.
- **QuES&T** shall perform “temporary” patching of roof sampling locations/materials (i.e. roofing tar, etc.). **QuES&T** does not guarantee patches and bears no responsibility for the failing of patching performed and/or damages caused to Buildings/Building Interiors/Building Finishes.
- **QuES&T** shall not be responsible for damage caused to building finishes, surfaces or equipment by sampling. Responsibility and cost for repair of damaged building finishes, surfaces and equipment shall be by **Client / Representatives**.
- **QuES&T** will exercise reasonable caution to minimize disturbance of ACM during the inspection process. However, clean-up of ACM disturbed or dislodged during the inspection process shall be the responsibility of **Client / Representatives**.
- **Client / Representatives** shall be responsible for providing immediate access into all inspection areas and securing same upon completion of inspection activities.
- Inspection work to be conducted upon receipt of written Notice to Proceed and/or associated Purchase Order Number.
- Inspection work to be conducted during normal weekday business hours (Mon–Fri, 8am–5pm). **Client / Representatives** will provide access to the building.

**ACCEPTANCE OF PROPOSAL**  
**Proposal No. P24-8898**

Please provide the below information for invoicing/billing remittance.

Company Name:

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Billing Contact Name:

---

Billing Contact email:

---

Billing Contact Phone Number:

---

Invoice Bill to Address:

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Preferred Method for Invoice Submittal:

**Payment Terms:** *Payment Shall paid on receipt; Pryor to Delivery of Report. To Execute This Agreement, Please Review, Sign, Date & Return with a PO if you require. Late Payments Shall Be Assessed with a Penalty of 1.5% per Month.*

**City of Newburgh. – Authorized Representative:**

By \_\_\_\_\_

Signature                      Print Name & Title                      Date

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

OF

APRIL 22, 2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH ASSUMING  
LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT  
FOR THE SILVER STREAM DAM SPILLWAY IMPROVEMENTS PROJECT,  
DECLARING THE PROJECT TO BE A TYPE II ACTION,  
FINDING NO SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT AND  
AUTHORIZING THE CITY MANAGER TO EXECUTE ALL SEQRA DOCUMENTS**

**WHEREAS**, O'Brien & Gere Engineers, Inc. previously designed improvements to Silver Stream Dam and provided construction phase services for the improvements; and

**WHEREAS**, by Resolution No. 321-2018 of November 13, 2018 and Resolution No. 85-2020 of April 13, 2020, the City Council authorized a professional engineering services agreement with O'Brien & Gere Engineers, Inc., now known as Ramboll Americas Engineering Solutions, Inc., for additional evaluation, rehabilitation investigation, and design of the Silver Stream Dam spillway improvements; and

**WHEREAS**, the City of Newburgh proposes to undertake the Silver Stream Dam Spillway Improvements Project (the "Project") which will include the replacement of remaining sections of the original spillway discharge channel and bridge abutments and with ne retaining walls and replacement of the existing bridge superstructure; and

**WHEREAS**, the City desires to comply with the New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations") with respect to the Project; and

**WHEREAS**, under Section 617.5(c)(1) and Section 617.5(c)(2) of the SEQRA Regulations, the Project involves the maintenance or repair involving no substantial changes in an existing structure or facility and the replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4, and the proposed repair, replacement and improvements to the Silver Stream Dam spillway is considered within the type of activities defined as a Type II Action, and therefore, the Project is classified as a categorical exclusion to SEQRA;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York the Project constitutes a "Type II", as the quoted term is defined in the SEQRA Regulations and that no further review for SEQRA purposes is required; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary in connection with this SEQRA classification for the Project.

RESOLUTION NO.: 35 - 2019

OF

FEBRUARY 25, 2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH ASSUMING  
LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT  
FOR THE WASHINGTON LAKE DAM SPILLWAY IMPROVEMENTS PROJECT,  
DECLARING THE PROJECT TO BE A TYPE II ACTION,  
FINDING NO SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT AND  
AUTHORIZING THE INTERIM CITY MANAGER  
TO EXECUTE ALL SEQRA DOCUMENTS

WHEREAS, by Resolution No. 57-2018 of March 12, 2018, the City Council of the City of Newburgh authorized the City Manager to enter into an agreement with C.T. Male Associates, D.P.C. for professional engineering design services for the preparation of a rehabilitation plan and related services for the Washington Lake Dam; and

WHEREAS, the City of Newburgh proposes to undertake the Washington Lake Dam Spillway Improvements Project (the "Project") which will include the demolition and replacement of the Washington Lake spillway channel with a new concrete spillway section and shallow concrete repairs to the existing spillway apron, along with drainage improvements adjacent to the toe of the Washington Lake earthen embankment; and

WHEREAS, the City desires to comply with the New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations") with respect to the Project; and

WHEREAS, under Section 617.5(c)(1), maintenance or repair involving no substantial changes in an existing facility and under Section 617.5(c)(2), the replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including the proposed repair, replacement and improvements to the Washington Lake Dam spillway and drainage discharge channel is considered within the type of activities defined as a Type II Action, and therefore, the Project is classified as a categorical exclusion to SEQRA;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York the Project constitutes a "Type II", as the quoted term is defined in the SEQRA Regulations and that no further review for SEQRA purposes is required; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and hereby is authorized to sign and file any and all other documents that may be necessary in connection with this SEQRA classification for the Project.

*Kathleen Cotton, 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 2/25/19  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 26<sup>th</sup> day of Feb. 2019

*Kathleen Cotton*  
Deputy City Clerk

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

OF

APRIL 22, 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO  
A SOFTWARE LICENSE AND SERVICE AGREEMENT  
WITH BLUEBEAM, INC. IN THE AMOUNT OF \$600.00  
FOR CONSTRUCTION AND ENGINEERING DOCUMENT MANAGEMENT**

**WHEREAS**, the City of Newburgh has determined to upgrade its technology related to municipal civil engineering, land planning and construction project document management; and

**WHEREAS**, the City has identified the Bluebeam, Inc. as a software provider that offers software technology customized for engineering and construction professionals to manage construction and infrastructure projects more efficiently; and

**WHEREAS**, the City received from Bluebeam, Inc. an agreement and price quote for two architecture, engineering, construction and operations software license packages for small and mid-sized projects; and

**WHEREAS**, the proposed Agreement is for a term of one year with funding in the amount of \$600.00 shall be derived from Budget Code A.1440.0448.0002 GIS & Engineering Software Maintenance; and

**WHEREAS**, this Council finds it to be in the best interest of the City of Newburgh to enter into this agreement;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into an agreement with Bluebeam, Inc. in the amount of \$600.00 for two architecture, engineering, construction and operations software license packages for small and mid-sized projects.



Bluebeam, Inc.  
443 S. Raymond Ave.  
Pasadena, California 91105-2630  
United States  
1-866-496-2140  
**Account Manager:** Americas SMB Other  
**Email:** jklotzle@bluebeam.com.invalid

# Quote

**Generated:** 8 Apr 2024  
**Quote #:** Q-511813  
**Expires:** 5 May 2024

**Bill To:**  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550  
US

**Ship To:**  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550  
US

**Currency:** USD  
**Payment Method:** Purchase Order (PO)  
**Payment Terms:** Net 30  
**Billing Contact Email:**  
apinvoices@cityofnewburgh-ny.gov

**Delivery/Subscription**  
**Start Date:** 5 Apr 2024  
  
**End Date:** 4 Apr 2025

Item	Description	Qty	Unit Price	Amount
Core	Complete AECO collaboration solution for managing your small and mid-sized projects.	2	\$300.00	\$600.00
				<b>Subtotal:</b> \$600.00 <b>Discount:</b> \$0.00 <b>*Total Tax:</b> \$0.00 <b>Total:</b> \$600.00


\* Taxes are estimated on Quote and will be adjusted, if needed, on Customer invoice.

**Terms of Use:**

- 1 This Bluebeam Quote ("Quote") together with Bluebeam's General Terms and Conditions of Use and Bluebeam's Products and Services Addendum found at <http://www.bluebeam.com/Legal/> (collectively the "Terms and Conditions") incorporated herein by this reference, form the contract governing Customer's access to and use of Bluebeam Software and Services described above unless a separate written agreement governing this purchase has been executed between the parties in which case the Quote and that separate written agreement shall govern (in either case, the "Agreement"). The Agreement contains, among other things, warranty disclaimers, liability limitations and use limitations.
- 2 There shall be no force or effect to any terms in a customer issued purchase order or similar form even if signed by the parties. Acknowledgement by Bluebeam of Customer's purchase order shall not constitute acceptance of any pre-printed and/or referenced provisions included therein. Capitalized terms not defined in this Quote have the meanings assigned in the Agreement. This Quote shall govern to the extent of any conflict with the Agreement.
- 3 Upon signature of the Quote by Customer and submission to Bluebeam, the parties hereby enter into the Agreement, which constitutes a binding contract between Customer and Bluebeam unless rejected by Bluebeam because the signatory does

not have authority to bind the Customer, changes have been made to the Quote (other than completion of included form fields and request for information), or the Quote information is incomplete according to Bluebeam's records. The undersigned representative of Customer represents they have read, understand, and accept on behalf of Customer, as a duly authorized representative, this Agreement in its entirety. The English language version of these terms governs.

<b>Additional Notes:</b>
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<b>Bluebeam, Inc.</b>	<b>City of Newburgh</b>
Bluebeam Signature: 	Customer Signature:
Name: Roger Piskulick	Name:
Title: Chief Financial Officer	Title:
Date: 8 Apr 2024	Date
	PO Number:

To purchase off this quote, please return the signed quote to [billing@bluebeam.com](mailto:billing@bluebeam.com) to receive an invoice. Purchase orders that integrate this quote and its terms in its entirety are acceptable instead of a signed quote; the PO must accompany the quote on submission of the order. An invoice will be sent to the Billing/AP contact specified. For payment instructions, refer to banking details on invoice once received.



# Bluebeam's General Terms and Conditions of Use

As of February 22, 2024

## Archived Agreements

**IMPORTANT—READ CAREFULLY PRIOR TO PURCHASING BLUEBEAM'S SERVICES AND/OR SOFTWARE.**

THESE GENERAL TERMS AND CONDITIONS OF USE ("GENERAL TERMS"), ALL APPLICABLE ADDITIONAL TERMS, AND THE ORDER REGARDLESS OF FORM (COLLECTIVELY, "TERMS") CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND BLUEBEAM ("BLUEBEAM" OR "WE" OR "OUR"). THE "ORDER" IS ANY METHOD THROUGH WHICH YOU ORDER SERVICES AND SOFTWARE FROM BLUEBEAM AND INCLUDES, BUT IS NOT LIMITED TO A QUOTE, ORDER FORM, PROPOSAL, STATEMENT OF WORK, ONLINE TRANSACTION, OR VERBAL ORDER PLACED TELEPHONICALLY. YOU ALSO INCLUDES VARIATIONS OF THE TERM SUCH AS YOUR AND YOURS. BY ACCEPTING THESE TERMS, WHETHER BY CHECKING A BOX ONLINE, EXECUTING AN ORDER, OR USING THE SERVICES OR SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND ACCEPT THE TERMS ON BEHALF OF YOURSELF OR THE COMPANY OR OTHER LEGAL ENTITY FOR WHICH YOU ARE PURCHASING ("ENTITY"), WHICHEVER IS APPLICABLE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND SUCH ENTITY. IN THIS CASE THE TERM "YOU" OR YOUR SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT AGREE TO THESE TERMS DO NOT PURCHASE, DOWNLOAD, INSTALL, OR OTHERWISE USE THE SOFTWARE OR SERVICES.

The General Terms govern Your use of Bluebeam's websites, support services, training services, and consulting services (the "Services") and any Bluebeam software applications purchased by You, whether provided as part of the Services, made available for download, or software as a service accessed via the internet (the "Software"), and any other content or other materials that Bluebeam makes available to You or that You may license from Bluebeam. If You have entered into another negotiated agreement with Bluebeam for Services or Software that references the Terms, then that negotiated agreement will control where it conflicts with these Terms.

## Additional Terms





shall govern. If there is a conflict between the General Terms and the Additional Terms, the Additional Terms govern in regard to those particular Services and/or Software only. If there is conflict between the Terms and agreements published in the Software, these Terms govern and supersede the agreement in the Software in its entirety. All capitalized terms not otherwise defined herein shall have the meaning given in the below Additional Terms.

[Bluebeam Products and Services Addendum](#)

[Bluebeam Privacy Policy](#)

[Bluebeam Data Processing Addendum](#)

[Code of Conduct](#)

## 1. Intellectual Property Notice and Reservation of Rights

You acknowledge and agree that the Services and Software provide a right of use, right of access or are licensed, not sold. For clarity, all references in the terms to “sale”, “selling” or “purchase” of the Services and/or Software means the sale and/or purchase of a right of use, right of access, or a license to the Services and/or Software as further described in the Bluebeam Products and Services Addendum or other applicable document. Nothing in the Terms, nor Your use of the Services or Software, shall constitute a sale or transfer of any copyright, trademark, trade dress, trade secret rights, moral right, patent (whether pending or issued) or trade secret right in or to the Services or Software (collectively the “Intellectual Property Rights”).

1.1. Services and Software. All right, title and interest in and to the Intellectual Property Rights of the Services and Software not expressly granted in the Terms are reserved by Bluebeam. Documentation, training materials, and specifications for the Services provided or Software licensed or subscribed to by You (“Documentation”) are protected by patent, copyright and/or other intellectual property laws of the United States, other countries and by international treaty provisions. You agree to take no actions that would interfere with Bluebeam’s Intellectual Property Rights.

1.2. Open Source. The Services and Software may contain open source software or other third-party software or content. The license terms for open source software and information on obtaining access to the source code to which You may be entitled under the applicable open source licenses will be provided upon request.

1.3. Your Content. All right, title, and interest in and to the Intellectual Property Rights of electronic data or information submitted to Bluebeam by You while using a Service or Software (“Your Content”) shall be retained by You and may be protected by applicable copyright or other intellectual property laws. Bluebeam will not access, view, or download Your Content, except as reasonably necessary to perform, maintain, or improve the Services or the Software, including without limitation: (a) to identify, investigate, respond to or resolve technical support inquiries and problems with the Services; (b) to conform to any legal requirements; (c) to maintain any software or hardware required to perform the Services or deliver



confidential and handled according to applicable laws and regulations. You acknowledge that Bluebeam's technical and support teams are located throughout the world and that certain Services may require access of Your Content from Bluebeam's personnel located outside of your country of residence. You provide Bluebeam a limited license to access, use, transmit and store Your Content only for the purpose of maintaining, supporting, and improving the Services and Software or removing Your content due to a breach of these Terms. Subject to the limited licenses granted herein, Bluebeam acquires no right, title or interest from You under these Terms in Your Content.

1.4. Suggestions. If You provide Bluebeam with any suggested improvements to the Services or Software, then that suggestion is provided "as is" and unrestricted. No suggestion will be deemed the Confidential Information of You. You grant Bluebeam a nonexclusive, perpetual, irrevocable, royalty free, worldwide license, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of such suggestions.

1.5. Restrictions. Except where Bluebeam is required to permit such activity under the terms of an applicable open source license or applicable law or as provided in the Terms, ***You may not and are restricted from the following in regard to Bluebeam's Intellectual Property Rights, Services, and Software:***

1.5.1. Use any software, hardware or other services (i) to bypass any of the terms, conditions or restrictions set forth herein or any application technology restrictions; or (ii) to modify the number of devices, users or seats that access or utilize the Services or Software outside of the validly licensed number of each, including for purposes of "multiplexing," "pooling," or "virtualization" (i.e., the validly licensed devices, users or seats must equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end");

1.5.2. Modify or create any derivative works based on Bluebeam's Intellectual Property Rights, including customization, translation, or localization of Software; (ii) Bluebeam training or consulting materials; or (iii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Services or Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Services or Software, or the underlying ideas or algorithms (e.g., in an effort to develop other applications or services that provide similar or substitute or complimentary functionality to the Services or Software), except where such activity is permitted by applicable law;

1.5.3. Redistribute, encumber, sell, resell, rent, lease, sublicense, loan, assign, commercialize or otherwise transfer rights to the Services or Software or make any similar commercial use of the Services or Software, except where such activity is permitted by applicable law. Each license or right of access is unique to You and may not be resold in any manner to third parties unless expressly authorized by Bluebeam;

1.5.4. Benefit from the Services or Software via a facility management, timesharing, services bureau or other arrangement or allow a third party (including, without limitation, parent, affiliates, subsidiaries, employees or agents) to so benefit;



1.5.6. Use the Software in an attempt to or in conjunction with, any device, program or services designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction.

## 2. The Basics

### 2.1. User ID.

To use Bluebeam's Software, You will be required to sign up for an account and select a password and user-name ("User ID"). A User ID may also be created by Your administrator. If You are using a User ID assigned by an administrator, different or additional terms may apply and the administrator may be able to access or disable Your User ID. You promise to provide Bluebeam with accurate, complete, and updated registration information about Yourself. You may not select as Your User ID a name that You don't have the right to use, or another person's name with the intent to impersonate that person, or create a generic User ID not assigned to an Authorized User as further described in the Product and Services Addendum. Some Software may require additional accounts to access and are governed by these Terms. Each will have a User ID.

You are solely responsible for any and all activity that occurs under Your User ID. Bluebeam shall have no responsibility with regard to the use, disclosure, or management of Your User ID, information or any content accessed, uploaded, processed or exchanged through Your User ID. You are responsible for (a) keeping Your User ID information confidential; (b) promptly notifying Bluebeam of any suspected or unauthorized use of Your User ID; (c) disclosure of Your password to any third person/party; and (d) protecting the security of Your account.

All users (including, without limitation, customers, potential customers, end-users, and visitors to Bluebeam's websites and events) are required to comply with the following Acceptable Use Policy to protect Bluebeam and its customers from illegal, irresponsible, or disruptive activities.

### 2.2. Acceptable Use Policy.

All users of Bluebeam's Services and Software must abide by Bluebeam's Acceptable Use Policy. When using Bluebeam's Services and Software, You agree that neither You nor any of Your users will not (and You will not encourage, create or facilitate the ability of other users or third parties to):

2.2.1. upload, post, store or otherwise transmit any documents (regardless of format, pdf, Word, Excel, text, etc.), images (regardless of format, jpeg, tiff, gif, etc.), files or personal information that violates, misappropriates, or infringes, in any way, upon the rights of others, which is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, obscene, profane, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, or which encourages conduct that would constitute a criminal offense, or otherwise violate any law;



- 2.2.3. abuse, stalk, defraud or otherwise harass or disparage any person or entity, including Bluebeam or any Bluebeam employee, or advocate prejudice or hatred against any person or entity based on their race, religion, ethnicity, sex, gender identify, sexual preference, disability or impairment;
- 2.2.4. upload, post, store or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, chain letters, pyramid schemes or other forms of solicitation;
- 2.2.5. send altered, deceptive or false source-identifying information, including spoofing and phishing;
- 2.2.6. upload, post, store or otherwise transmit any content of any kind that contain software viruses, malicious code, harmful materials, or any other computer code or programs designed to interrupt, destroy or limit the functionality of any software or hardware, including without limitation the Services and Software;
- 2.2.7. interfere or attempt to interfere in any manner with the proper working of Bluebeam's Services or Software, including without limitation, breach or otherwise circumvent any security or authentication measures;
- 2.2.8. probe, scan or test the vulnerability of Bluebeam's products or services;
- 2.2.9. violate any applicable local, state, national or international law, including without limitation all applicable export laws and regulations or intellectual property laws;
- 2.2.10. circumvent or render ineffective any geographical restrictions, including IP address-based restrictions;
- 2.2.11. sell, lease, rent, redistribute, or sublicense access to or use Bluebeam's Services or Software unless authorized in writing by Bluebeam to do so; or
- 2.2.12. permit any person or entity to use Bluebeam's Services or Software to access, upload, generate, or maintain files, metadata or personal information of any kind in violation of any of Bluebeam's Terms or any applicable law.

Notwithstanding Bluebeam's Acceptable Use Policy, as a user of the internet (including Bluebeam's Software and Services), You undertake such activities at Your own risk while acknowledging that there are known and unanticipated risks associated with the internet. Bluebeam assumes no liability for the actions of its users or the content they may post or communicate.

### **3. Does Bluebeam Offer Trials and Beta Test of its Services and Software**

Yes, Bluebeam does offer trials for some Services and Software and may also offer You an opportunity to participate in beta tests for new products or releases in the future. Such trials and beta tests will be

[Try It Free](#)

#### 4. Privacy, Non-personal data, and Security

Your privacy is important to us. For more information about how we collect, use, share or otherwise process Personal Data as a “controller”, please see Our [Privacy Policy](#). When acting as a “processor” for Your Personal Data, the Data Processing Addendum found [here](#) will apply and is integrated into these Terms by this reference.

To provide the Services and Software, Bluebeam collects, transmits, stores, and uses Personal Data and Non-personal data to deliver, improve, and administer the Services and Software. “Personal Data” means any information relating to an identified or identifiable natural person which may be used to identify such person and includes information referred to as “personally identifiable information” or “personal information” under applicable data privacy laws, rules or regulations. It does not include categories of sensitive personal information. Non-personal information excludes Personal Data but includes information and data that by itself does not identify You or another individual and can be generated by use of the Services and Software, use of Our website, or other online activity. Together, Personal Data and Non-personal Information comprise “Your Data”. Since Bluebeam Services and Software are not designed for sensitive personal data such as social security numbers, Personal Data of minors, or credit cards, You agree not to upload such data to Bluebeam’s systems.

Your Data is used to provide transactional information to You, information about updates and upgrades to the Services or Software, respond to inquiries and collect feedback, verifying compliance with the Terms including user validation via the internet, to analyze bugs, error reports or logs, and/or to improve, understand, or monitor the Services or Software by itself or through its selected vendors. You expressly provide Bluebeam a license to Your Data for these purposes.

Bluebeam shall establish and maintain administrative, physical and technical safeguards designed to guard against the destruction, loss, or alteration of Your Data and Your Content to the extent it is stored within Bluebeam systems. Without limiting the foregoing, Bluebeam shall at all times in connection with this Agreement: (i) maintain and enforce an information security program including administrative, physical and technical security policies and procedures with respect to its processing of Your Data and Your Content consistent with commercially reasonable industry practices and standards and the Terms; (ii) provide technical and organizational safeguards designed to protect against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information and ensure a level of security appropriate to the risks presented by the processing of such information and the nature of such information, consistent with commercially reasonable industry practice and standards; (iii) take commercially reasonable measures to secure the Software against “hackers” and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use the Services or Software or the information found therein; and (iv) take commercially reasonable measures to logically separate Your Data from that of other customers. Bluebeam shall periodically test and continuously monitor its systems for potential areas where security could be breached and shall also periodically conduct security testing, including penetration testing. Bluebeam shall be solely responsible for its information



or technical safeguards implemented by Bluebeam for purposes of penetration testing, system assessment or otherwise attempt to probe, scan, or test the vulnerability of any Bluebeam system or network or breach any security or authentication measures.

Bluebeam will require any third-party service providers used to provide the Services or Software to implement and maintain commercially reasonable and appropriate technical, administrative, and physical safeguards for protection of the security, confidentiality and integrity of Your Data. The safeguards will include, but not be limited to, measures designed to prevent unauthorized access to or disclosure of Your Data. Bluebeam shall neither sell Your Data or Your Content nor use either for any purpose other than as described in the Terms.

Your use of third-party software or applications or Your integration of such software or applications with Bluebeam's Services and Software ("Third-Party Applications") may result in Your Data or Your Content being transferred to such third party. Bluebeam is not responsible for the performance or security practices of such Third-Party Applications. You agree to hold Bluebeam harmless for any data or materials including Your Content or Your Data transferred to third parties in connection with Your use of third-party Applications. ANY USE OF THIRD-PARTY APPLICATIONS IS AT YOUR OWN RISK AND UNDER YOUR AGREEMENT WITH THAT THIRD PARTY. BLUEBEAM PROVIDES NO WARRANTY OR INDEMNIFICATION OF ANY KIND RELATED TO SUCH USE.

## 5. Will The Terms Ever Change?

Yes. The Terms may change for a variety of reasons including, but not limited to, product enhancements, improvements, or applicable law or regulatory changes that affect the Services or Software. You agree that Bluebeam has the right to modify the Terms at any time in its sole discretion. When We do, notice on Bluebeam's Legal page which can be accessed [here](#), sending You an email, providing notice through the Services or Software itself, and/or other means to which you have access are agreed to be acceptable written notice of such modifications.

If You don't agree with the updated Terms, You are free to reject them. Unfortunately, that means You will no longer be able to use the Services or Software. In the event you decide to reject Bluebeam's new Terms, You must (i) provide Bluebeam written notice of termination, (ii) remove Your Content by the termination date; (iii) cancel Your User ID; and (iv) discontinue all access and use of the Services and Software as further described in Section 8.4.3.1 in the Term and Termination section below. If You continue to use the Services or Software after a change to the Terms is effective, that means You agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both You and Bluebeam.

## 6. Will Bluebeam Change its Services?



Software in its sole discretion. Bluebeam will try to give notice when we make a material change that would adversely affect You, but this isn't always practical. Similarly, we reserve the right to remove features, functionality, or decommission the Services or Software in compliance with Bluebeam's end of life policies.

## 7. Is Bluebeam Software Available Via a Mobile App

Bluebeam may offer certain Services and Software via mobile applications (for iOS and Android). Mobile applications may include content, services, data, technology and other digital materials and functions. Functionality, technical limitations and technical protection measures, if any, can be found in the respective application description. The Terms also apply to the legal relationships between You and Bluebeam regarding Services provided by Bluebeam via mobile applications for mobile devices including any additional terms of use provided at download. See the [Bluebeam Products and Services Addendum](#) for specific licensing provisions regarding Bluebeam's mobile applications. The mobile applications are provided in cooperation with third parties, or so-called "application providers", such as an app store which may require acceptance of terms applicable to their platform. Mobile applications can only be used after agreeing to the Terms and payment of any applicable fees, if any. Download and use of a mobile application indicates Your agreement to the Terms.

Mobile applications are only available on supported devices and might not work on every device. Determining whether your device is a compatible device is solely your responsibility.

## 8. What else do I need to know?

8.1. Fees and Payments. Unless otherwise mutually agreed in writing, payment terms to purchase Bluebeam Services and Software are as follows:

8.1.1. You agree to provide Bluebeam with complete and accurate billing contact information including a valid email address.

8.1.2. Services or Software Purchases.

8.1.2.1. When Services or Software are purchased directly from Bluebeam, You agree to pay Bluebeam the fees specified in the applicable Order at purchase if required, or if by invoice, within thirty (30) days of the invoice date. Additional Services or Software may be purchased and added to Your account at any time. Unless otherwise agreed in writing by the parties, promotional or discounted pricing is one-time. New purchases or renewals of Services or Software shall be at the applicable fee in effect on the date of such new purchases.

8.1.2.2. If purchased through a Bluebeam authorized reseller (a "Reseller"), You agree to pay Reseller such fees as mutually agreed upon between You and Reseller. You further acknowledge and agree that Reseller has no authority to bind Bluebeam, modify the Terms, or provide any warranty or other commitment or obligation on behalf of Bluebeam.

8.1.3. Bluebeam reserves the right to increase fees in its sole discretion on products and services which You agree to pay for new purchases and renewals unless otherwise agreed in writing.





billing frequency stated in the applicable Order.

8.1.5. Fees are only refundable if an Order is terminated in accordance with Term and Termination sections 8.4.3.1 or 8.4.3.2 below. Except as provided in the cited sections or elsewhere in the Terms, Fees due Bluebeam's are non-cancelable and non-refundable to the fullest extent allowed under applicable law.

8.1.6. If a payment is past due and Bluebeam has provided written notice of the past due status, then Bluebeam may suspend access to the Services and Software, without liability, until such amounts are paid in full.

8.1.7. Fees invoiced pursuant to these Terms, are subject to and may not be reduced to account for, any taxes, which may include local, state, provincial, federal or foreign taxes, withholding taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes (collectively "Taxes"). You shall pay all Taxes imposed on the Services or Software provided under these Terms. If Bluebeam has a legal obligation to pay or collect Taxes for which You are responsible, the appropriate amount will be computed and invoiced to and paid by You, unless You provide Bluebeam with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 8.2. Audit.

Services and Software are subject to the limits specified in the applicable Order, the Terms or the applicable Documentation. If You exceed specified limits, Bluebeam may choose to work with You in its sole discretion to reduce Your usage or it may suspend access to the Services or Software until such usage conforms to agreed limits. If, notwithstanding Bluebeam's efforts, You are unable or unwilling to abide by a limit, You will execute an Order for additional quantities of the applicable Services or Software promptly upon Bluebeam's request, and/or pay any invoice issued by Bluebeam for excess of the limits to bring Your usage into conformance.

## 8.3. Confidentiality.

8.3.1. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Recipient"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure, including, without limitation, the terms and conditions of the Order (including pricing), business and marketing plans; training materials and consulting advice; technology and technical information, including security information, Your Data, Your Content; product plans and designs, and business processes. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party under these Terms, (ii) was rightfully known to the Recipient prior to its disclosure by the Disclosing Party, (iii) is rightfully received by the Recipient from a third party, or (iv) was independently developed by the Recipient without use of or reference to Confidential Information of the Disclosing Party. If applicable, Bluebeam's obligations with respect to Personal Data is outlined in its Privacy Policy and Data Processing Addendum.





confidential information and materials of a similar nature); (ii) to refrain from using the Confidential Information other than in furtherance of these terms or as otherwise authorized in writing by the Disclosing Party; (iii) that it will not disclose, publish or otherwise reveal any Confidential Information (including any extract or portion thereof) to any other person, party or entity whatsoever except employees and contractors of Recipient with a legitimate need-to-know the Confidential Information in furtherance of these Terms and who are instructed and agree not to disclose the Confidential Information under an obligation no less restrictive than the terms in this section; and (iv) to make reasonable efforts not to mingle the Disclosing Party's Confidential Information with any information of Recipient, however, any such mingling shall not affect the confidential nature or ownership of the same.

8.3.3. The Recipient will protect the other party's Confidential Information with the same degree of care as it uses to protect its own Confidential Information. Nothing in these Terms will prevent the Recipient from disclosing the Confidential Information pursuant to any judicial or governmental order or as otherwise required by law, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure unless such notice is prohibited by applicable law.

#### 8.4. Term and Termination.

8.4.1. Term. These Terms are effective as of the date they are first accepted by You by any means including, but not limited to, clicking a box, executing an Order, or using the Services or Software (the "Effective Date") and shall continue until all applicable subscriptions have expired as provided below, professional services have been delivered or until terminated by Bluebeam or You as provided herein (the "Term").

8.4.2. Subscriptions. Except as otherwise specified in the Additional Terms or a written and mutually executed agreement, subscriptions to Bluebeam Software are for one (1) year ("Initial Term") and will automatically renew for additional one year terms (each a "Renewal Term"), unless either party gives the other written notice (email notice is acceptable) of at least thirty (30) days before the end of Initial Term or Renewal Term as applicable.

#### 8.4.3. Termination of Terms.

8.4.3.1. Cause. Either party may terminate the Terms and all related Services and Software for cause (i) upon (30) days written notice to the other party in the event of a material breach of the Terms and provided such breach remains uncured at the expiration of such notice period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

8.4.3.2. Convenience. You may terminate a subscription or license to Software within thirty (30) days of the license or subscription start date and receive a refund if such termination occurs during this thirty (30) day period.

8.4.4. Partial Termination. Either party may be able to terminate a particular Service or Software subscription without terminating all Services or Software Subscriptions by written agreement of the parties.



remaining, unterminated Services and Software shall continue under these Terms. On the effective date of termination, You agree to and shall (i) discontinue use of the Services or Software; (ii) unregister Software from all Devices; (iii) delete and/or destroy all copies of Software including all copies or extracts of the Documentation excluding one (1) archival copy, and subject to section 8.4.6 remove Your Content from Bluebeam's systems. Bluebeam shall terminate all Subscriptions as of the effective date of termination. Upon termination under section 8.4.3.1(i) or 8.4.3.2. by You, Bluebeam will provide a refund of prepaid subscription fees for the affected Services or Software pro-rated for Services delivered or Software used prior to the effective date of termination.. Termination for any other reason is not entitled to a refund or cancellation and will not relieve You of the obligation to pay any fees due to Bluebeam.

8.4.6. Upon Your written request made on or prior to the effective date of termination, Bluebeam shall give You limited access to the terminated Services or Software storing Your Data or Your Content for a period up to thirty (30) days, at no additional cost, solely for purposes of retrieving Your Data and Your Content. After such time, Bluebeam has no obligation to maintain Your Data or Your Content and shall, unless legally prohibited, delete Your Data and Your Content; provided, however, Bluebeam will not be required to remove copies of the same from its backup media and servers until such time as the backup copies are scheduled to be deleted. Downloaded files and data are available in a format determined in Bluebeam's sole discretion.

8.4.7. The following sections shall survive termination or expiration of these Terms: Section 1 "Intellectual Property Rights Notice and Reservation of Rights"; Section 4 "Privacy, Non-personal data, and Security"; Section 8.2 "Audit" for a period of three (3) years; Section 8.3 "Confidentiality"; Section 8.4.6;; Section 8.6 Indemnity; Section 8.6 "Limitation of Liability"; Section 8.12 "Governing Law"; Section 8.13 "Arbitration"; Section 8.1.4. Attorney's fees; and Section 8.1.6 Trade and Export Law".

## 8.5. Warranties and Disclaimers.

Bluebeam WARRANTS THAT SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE APPLICABLE DOCUMENTATION AND THAT SERVICES ARE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS. OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS, Software IS PROVIDED "AS IS" AND "AS AVAILABLE" AND YOUR USE OF THE SERVICES AND/OR SOFTWARE IS AT YOUR OWN RISK. BLUEBEAM DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES RELATED TO AVAILABILITY, ACCURACY, NON-INFRINGEMENT, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SERVICES AND SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE USE THEREOF. BLUEBEAM MAKES NO WARRANTY THAT THE SERVICES OR SOFTWARE WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS OR THAT THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.

## 8.6. Indemnity



indemnify and hold harmless Bluebeam and its officers, directors, employees, affiliates and agents from and against any third-party claims arising out of or related to any infringement or violation by You of any intellectual property or other right of any person or third party.

#### 8.6.2. Indemnification by Bluebeam.

8.6.2.1. Subject to section 8.6.3, Bluebeam agrees to defend, indemnify and hold You harmless against any third-party claim arising out of or relating to an allegation that the Services or Software violates, misappropriates or infringes upon any issued patent, copyright, trademark, trade secret or other intellectual property right owned by such third party.

8.6.2.2. The indemnification provided in this section will not apply to any claim to the extent such claims arises from or relates to (a) use of the Services or Software not in accordance with the Documentation (b) any modification, alteration or conversion of the Services or Software not created or approved in writing by Bluebeam, (c) any combination or use of the Services and Software with any computer, hardware, software, Services or data not approved by Bluebeam where the infringement arises out of such combination or use, (d) Bluebeam's compliance with specifications, requirements or requests of You, or (e) Your negligence or willful misconduct.

#### 8.6.3. Indemnity Procedures.

8.6.3.1. The indemnification provided in sections 8.6.1 and 8.6.2 are expressly conditioned upon the indemnitee (i) giving the indemnitor prompt notice in writing of any such third party intellectual property claim or threat thereof; (ii) permitting indemnitor sole control of the defense, through counsel of indemnitor's choice, to defend and/or settle the claim; and (iii) giving indemnitor all reasonably requested information, assistance and authority, at indemnitor's expense, to enable indemnitor to defend or settle such claim. Indemnitee has the right to approve all settlements prior to acceptance in regard to rights or restrictions directly affecting Indemnitee. Indemnitee may participate in the defense of such claim with counsel of indemnitee's choice and at Indemnitee's sole expense.

8.6.3.2. In regard to Bluebeam, if the Services or Software are determined to infringe by the applicable tribunal or court, or Bluebeam reasonably determines that it is likely to infringe, Bluebeam may at its option (a) procure for You the rights to continue access and use of the Services or Software; (b) replace or modify the Services or Software so that it becomes non-infringing without causing a material negative effect on the functionality provided by the infringing version; or (c) if neither (a) or (b) are viable options, remove the infringing part of the Services or Software and provide a pro-rated refund of the fees paid which shall be negotiated in good faith with You considering the materiality of the portions removed.

8.6.3.3. Section 8.6.3.2. states the entire liability and obligation of Bluebeam and the exclusive remedy of You with respect to any claims of infringement relating to or arising out of the Software.

#### 8.7. Limitation of Liability.



**ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OR INABILITY TO USE THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THE TERMS, EVEN IN THE EVENT OF FAULT, NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF WARRANTY BY BLUEBEAM, ITS RESELLERS OR ITS SUPPLIERS, AND EVEN IF BLUEBEAM OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL BLUEBEAM, ITS RESELLERS OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID FOR THE SERVICES AND SOFTWARE HEREUNDER WITHIN THE PRECEDING TWELVE (12) MONTHS FROM THE CLAIM, IF ANY.**

#### 8.8. Links and Third Parties.

Some Services and Software allow access to the internet or may contain links to other internet sites or online resources over which Bluebeam has no control. These resources are provided for convenience only and should not be construed as an endorsement by Bluebeam of any content, items, or services on such third-party websites. Your access, viewing and use of internet functionality and website links, including any content, items or services therein, are solely at Your own risk. Bluebeam is not responsible or liable in any way for any internet services, content, advertising, services or goods used or available from such resources.

#### 8.9. Publicity.

Unless You notify Bluebeam in writing to restrict the following, Bluebeam shall be entitled to identify You as a customer of Bluebeam on its websites. You hereby grant Bluebeam a non-exclusive, non-transferable, worldwide, royalty-free license to use Your trademarks, Services marks and trade names ("Marks") in conjunction with the foregoing and in accordance with Your brand guidelines, if any, during the Term. Any other use of Your Marks in any advertising, promotional or sales literature, or in any other form of publicity, news release or other public announcements shall require Your prior written approval.

#### 8.10. Availability.

Bluebeam's websites describing the Services and Software are accessible worldwide; however, not all Services or Software may be available in Your country or in local language.

#### 8.11. English Language.



hereto shall be in the English language.

#### 8.12. Bluebeam Contracting Entity, Governing Law.

The Bluebeam entity entering into the Terms with You determines the law that will apply in any dispute arising out of or in connection with the Terms, the Arbitral Body or courts that have jurisdiction over any such dispute, venue for any disputes, and the address to which notices should be directed according to the chart below. Each party agrees to the applicable governing law and jurisdiction below without regard to either choice or conflict of law rules. The Bluebeam entity You are contracting with is determined by the Bluebeam entity specified on Your Order, or if purchasing via a Bluebeam website, the localized version of the website (for example, if purchasing from the Bluebeam UK website You are contracting with Bluebeam Limited UK Ltd entity); or if telephonically or otherwise, the Bluebeam entity through which Your purchase is processed.

Bluebeam Entity	Notice Address	Governing Law	Arbitral Body	Venue and Jurisdiction
Bluebeam, Inc.	One McKinney Plaza 3232 McKinney Ave., Ste. 900 Dallas, TX 75204 USA	California and controlling United States Federal Law.	American Arbitration Association  Los Angeles, CA, USA	Los Angeles, CA, USA
Bluebeam GmbH	Konrad-Zuse-Platz 1 81829 Munich Germany	Germany	Deutsche Institution für Schiedsgerichtsbarkeit (DIS)	Munich, Germany
Bluebeam AB	Kistagången 12, 164 40 Kista Sweden	Sweden	Arbitration Institute of the Stockholm Chamber of Commerce	Stockholm, Sweden



	London W2 6LG UK			
Bluebeam Australia Pty Ltd	260 Queen Street Brisbane QLD 4000 Australia	Australia	Australian Centre for International Commercial Arbitration	Brisbane, Australia

### 8.13. Arbitration.

8.13.1 The parties agree to negotiate in good faith to resolve any disputes arising out of or relating to the Terms (a “Dispute”). All negotiations pursuant to this section are confidential and shall be treated as compromise and settlement negotiations for all purposes. Each party shall bear its own expenses. Provided negotiations have continued for a period of ninety (90) days and have failed to resolve the Dispute, the Dispute shall be settled by arbitration as follows.

8.13.2. Any Dispute arising out of or relating to the Terms that is not resolved by good faith negotiations shall be settled by arbitration by the Arbitral Body identified in Section 8.13 to the extent allowed by applicable law. The language to be used in the arbitral proceedings shall be English. The parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the written consent of the other parties. Notwithstanding the foregoing, a party shall not be prevented from disclosing such information in order to safeguard in the best possible way his rights vis-à-vis the other parties in connection with the dispute, or if the party is obliged to so disclose pursuant to statute, regulation, a decision by an authority, a stock exchange contract or similar.

### 8.14. Attorney’s Fees.

To the extent provided under applicable law, if either party employs attorneys to enforce any rights arising out of or relating to these Terms, the prevailing party shall be entitled to recover its reasonable attorneys’ fees, costs, and other expenses. The term “prevailing party” means that party, as plaintiff or defendant, who substantially prevails against the other party. Notwithstanding the foregoing, if a written offer of compromise made by either party is not accepted by the other party within forty-five (45) days after receipt and the party not accepting such offer fails to obtain a more favorable judgment, the non-accepting party shall not be entitled to recover its costs of suit and reasonable attorney’s fees and costs (even if it is the prevailing party) and shall be obligated to pay the costs of suit and reasonable attorney’s fees and costs incurred by the offering party.



Code of Conduct and statement regarding the UK Modern Slavery act which are incorporated into these Terms by this reference and can be found [here](#).

#### 8.16. Trade and Export Law.

The Services and Software may be subject to export laws of the United States and other jurisdictions. The parties each represent to the other that it is not on any United States Government denied-party list. You will not permit access to or use of any Services or Software in a United States embargoed country or region or in violation of any United States export law or regulation (currently Cuba, Iran, North Korea, Syria, Crimea, Donetsk, Lubansk, Belarus, and Russia). You shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of the Services or Software from the United States or the transfer of the Services or Software from any other location into another country.

#### 8.17. Federal Government End Use Provisions

If applicable and as provided under U.S. federal law and regulation, Bluebeam provides a pre-existing, commercial Service, including related Software and technology, for federal government end use solely in accordance with these Terms, and provides only the technical data and rights as provided herein. If a government agency has a “need for” rights not conveyed under these Terms, it must negotiate with Bluebeam to determine whether there are acceptable terms for transferring additional rights. A mutually acceptable addendum specifically conveying such rights must be executed by the parties in order to convey such rights beyond those set forth herein.

#### 8.18. Notices

All notices required by the Terms shall be in writing, delivered to the address specified in section 8.12. above and via email to [legal@bluebeam.com](mailto:legal@bluebeam.com), and is effective upon receipt or if sent by email after 5pm United States Pacific Time the next business day. Notices to You shall be mailed to the physical address provided and/or emailed to the email address appointed by You, and if none, the email address of the contact provided in the Order.

#### 8.19. Independent Contractor.

Each party is an independent contractor and neither party is, nor shall be considered to be, an agent, employee or representative of the other.

#### 8.20. Non-Assignment.

The Terms are personal to You and may not be assigned, delegated, or otherwise transferred, without Bluebeam’s express written consent which may be withheld, delayed or conditioned in the sole discretion of Bluebeam. Notwithstanding the foregoing, in the event of the sale or transfer of



the assignment. Any attempt to assign Your rights or obligations under these Terms other than as permitted by this section will be void. Subject to the foregoing, these Terms will bind and inure upon to the benefit of successors and permitted assigns.

#### 8.21. Force Majeure.

Neither party will be liable for any failure or delay in performance under these Terms for causes beyond that party's reasonable control. Dates by which performance obligations are scheduled to be met will be extended for a period equal to the time lost due to any delay so caused.

#### 8.22. Severability.

If any provision of the Terms is held to be unenforceable or invalid, the enforceability of the remaining provisions shall in no way be affected or impaired thereby but shall remain in full force and effect.

#### 8.23. Waiver

No failure or delay in enforcing any right, power or privilege granted herein will be deemed a waiver unless made in writing and signed by a duly authorized representative of the party providing the waiver. No single waiver will be considered a continuing or subsequent waiver.

#### 8.24. Equitable Relief.

You agree that any breach or alleged breach of the Terms may cause irreparable harm and significant injury to Bluebeam that may be difficult to ascertain and in which a remedy at law would be inadequate. Therefore, You agree that Bluebeam shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under the Terms in addition to any other rights and remedies it may have.

#### 8.25. Entire Agreement.

The Terms, including all exhibits and addendums hereto, contain the entire agreement of the parties with respect to the subject matter hereof and supersede all prior or contemporaneous discussion, understandings, communications, proposals, and agreements, whether written or oral. The parties agree that any term or condition stated in Your purchase order or in any other order documentation You provide, even is signed by both parties (excluding Bluebeam's Order) is void and has no effect, nor creates any modification on these Terms.

#### 8.26. Amendment. The Terms may not be modified, amended or supplemented except in a writing signed by an authorized representative of Bluebeam.



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

OF

APRIL 22, 2024

**A RESOLUTION AMENDING RESOLUTION NO. 178-2023 TO AUTHORIZE  
THE REALLOCATION \$1,000,000.00 OF  
AMERICAN RESCUE PLAN ACT OF 2021 FUNDING BETWEEN  
THE CITY OF NEWBURGH LEAD SERVICE LINE REPLACEMENT PROGRAM  
AND WATER METER REPLACEMENT PROJECT**

**WHEREAS**, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act of 2021 (ARPA) which includes Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds), providing federal payments to all state, local, tribal, and territorial governments in the United States that recipients may use, among other approved uses, to make necessary investments in water and sewer infrastructure; and

**WHEREAS**, by Resolution No. 52-2022 of March 14, 2022, the City of Newburgh allocated \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

**WHEREAS**, by Resolution No 178-2023 of September 11, 2023, the City of Newburgh allocated an additional \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

**WHEREAS**, the City of Newburgh proposes to reallocate \$600,000.00 of the additional \$1,000,000.00 of ARPA funds to the City of Newburgh Lead Service Line Replacement Program and the remaining \$400,000.00 of the additional \$1,000,000.00 of ARPA funds to the Water Meter Replacement Project; and

**WHEREAS**, the City Council finds that authorizing and reallocating the additional \$1,000,000.00 of ARPA funds to support the replacement of lead water service lines and water meters is in the best interests of the health, safety and welfare of the residents of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that Resolution No 178-2023 of September 11, 2023 is amended to authorize the City Manager of the City of Newburgh to reallocate \$600,000.00 of the additional \$1,000,000.00 of American Rescue Plan Act of 2021 funds to the City of Newburgh Lead Service Line Replacement Program and \$400,000.00 of the additional \$1,000,000.00 of American Rescue Plan Act of 2021 funds to the Water Meter Replacement Project; and that the City Manager is authorized to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary administer the Programs funded thereby.

RESOLUTION NO.: 178 - 2023

OF

SEPTEMBER 11, 2023

A RESOLUTION AUTHORIZING AND ALLOCATING AN ADDITIONAL \$1,000,000.00  
OF AMERICAN RESCUE PLAN ACT OF 2021 FUNDING TO  
THE CITY OF NEWBURGH LEAD SERVICE LINE REPLACEMENT PROGRAM

WHEREAS, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act of 2021 (ARPA) which includes Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds), providing federal payments to all state, local, tribal, and territorial governments in the United States that recipients may use, among other approved uses, to make necessary investments in water and sewer infrastructure; and

WHEREAS, by Resolution No. 52-2022 of March 14, 2023, the City of Newburgh allocated \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

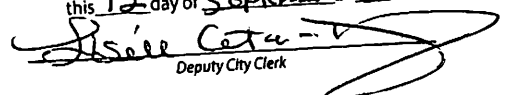
WHEREAS, the City of Newburgh proposes to allocate an additional \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

WHEREAS, the City Council finds that authorizing and allocating an additional \$1,000,000.00 of ARPA funds to support the replacement of lead water service lines is in the best interests of the health, safety and welfare of the residents of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to allocate and additional \$1,000,000.00 of American Rescue Plan Act of 2021 funds to the City of Newburgh Lead Service Line Replacement Program; and that the City Manager is authorized to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary administer the Lead Service Line Replacement Programs funded thereby.

I, Lisette Acosta-Ramirez, 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 September 11, 2023 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 September 2023

  
Deputy City Clerk

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

OF

APRIL 22, 2024

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 54 WILKIN STREET (SECTION 26, BLOCK 3, LOT 31)  
AT PRIVATE SALE TO DOMINIQUE WALLACE-MILLS  
FOR THE AMOUNT OF \$75,000.00**

**WHEREAS**, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

**WHEREAS**, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

**WHEREAS**, the City of Newburgh desires to sell 54 Wilkin Street, being more accurately described as Section 26, Block 3, Lot 31 on the official tax map of the City of Newburgh; and

**WHEREAS**, the prospective buyer has offered to purchase this property at private sale; and

**WHEREAS**, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchasers upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before July 26, 2024, being approximately ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
54 Wilkin Street	26 - 3 - 31	Dominique Wallace-Mills	\$75,000.00

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

# Terms and Conditions of Sale

## 54 Wilkin Street, City of Newburgh

### (SBL: 26-3-31)

#### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, the parcel shall be defined by its section, block and lot number on the City of Newburgh Tax Map.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of **2023-2024**, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year **2023-2024**, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: (i) obtain a Certificate of Occupancy for all buildings on the property; (ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or (iii) demolish any buildings deemed structurally unsound by a New York State-licensed engineer and by the Building Inspector. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for its consideration.
6. The City makes no representation as to whether the property is vacant and/or unoccupied. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed. The parcel is being sold subject to the City's Vacant Property Ordinance (Chapter 121) and all provisions of law applicable thereto. Within 30 days of closing, the purchaser must register the property and pay any applicable fees or submit an acceptable rehabilitation plan to the Building Department.

7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office by the date listed in the approved City Council Resolution, notwithstanding any extensions of time granted pursuant to terms contained herein ("Closing Deadline"). Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.**
11. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days from the Closing Deadline. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for its consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the purchaser shall be entitled only to a refund of the purchase money paid. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title is conveyed on the actual day of closing. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, tax reimbursements, buyer's premium (if applicable), and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon conveyance of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. *The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.*

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh. Any survey description shall be provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 36 months subsequent to the Closing Deadline date. If such conveyance occurs, purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.
18. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the ten (10) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said ten (10) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.
19. Within ten (10) business days of approval of sale by the City of Newburgh, the purchaser shall tender a non-refundable downpayment in the amount of **\$3,150.00** payable to "City of Newburgh" by money order or guaranteed funds to the "City of Newburgh". At closing, the downpayment amount shall be credited against the purchase price.
20. In the event that Seller engaged the services of a New York State Licensed Real Estate Broker in connection with this sale, Seller shall pay said Broker any commission earned pursuant to a separate agreement between Seller and Broker.

ACKNOWLEDGED AND AGREED

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

\_\_\_\_\_  
Dominique Wallace-Mills

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

OF

APRIL 22, 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A LICENSE AGREEMENT WITH MOUNTAIN VALLEY GUIDES LLC  
FOR ACCESS TO AND THE USE OF THE WASHINGTON STREET BOAT LAUNCH  
AND UNICO PARK TO PROVIDE KAYAK RENTALS AND TOURS**

**WHEREAS**, by Resolution No. 54-2016 of March 14, 2016, Resolution No. 93-2017 of April 6, 2017, Resolution No. 54-2018 of February 26, 2018, Resolution No. 46-2019 of February 25, 2019, Resolution No. 80-2020 of March 19, 2020, Resolution No. 102-2021 of April 26 2021, Resolution No. 127-2022 of May 23, 2022, and Resolution No. 79-2023 of May 8, 2023, the City Council of the City of Newburgh approved license agreements with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park to provide kayak rentals and tours; and

**WHEREAS**, Mountain Valley Guides LLC and the City of Newburgh wish to renew the license agreement for the 2024 season; and

**WHEREAS**, the City Council has examined the license agreement annexed hereto and determined that entering into such license agreement is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and is hereby authorized to execute and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh, with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park.

## AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between:

THE CITY OF NEWBURGH, a municipal corporation having its principal place of business at 83 Broadway, City Hall, Newburgh, New York 12550, hereinafter called the "City"; and

MOUNTAIN VALLEY GUIDES LLC, a limited liability company having its principal place of business at 22 Shady Dell Drive, New Windsor, New York 12553 hereinafter called "Licensee".

WITNESSETH, that the City and Licensee, for consideration hereinafter named, agree as follows:

### ARTICLE 1: Term.

This Agreement shall run from May 25, 2024 to October 13, 2024.

### ARTICLE 2: Obligation of the City.

A. The City shall grant to the Licensee a non-exclusive revocable license to access and the use of the Washington Street Boat Launch in the City of Newburgh for the purpose of launching kayaks in connection with providing kayak rentals and tours to the general public on Saturdays and Sundays during the period of time set forth in Article 1 above. The City will allocate parking spaces with parking passes for 2 trucks/trailers in the Washington Street Boat Launch parking area to the Licensee.

B. The City shall grant to the licensee a non-exclusive revocable license to access and the use of Unico Park in the City of Newburgh for the purpose of erecting a pop-up tent from which to sell tickets for the kayak rentals and tours during the time period set forth in Article 1 and Article 2, paragraph A above.

### ARTICLE 3: Obligation of Licensee.

A. The Licensee shall ensure that all supplies, including the tent, are stored off-site each night.

B. The Licensee shall pay the cost of all personnel, supplies and equipment necessary and proper for the kayak rentals and tours as is required by their use thereof.

C. The Licensee agrees that he, she or it shall, at all times, comply with all rules and regulations adopted by the City for the operation of the Washington Street Boat Launch and Unico Park which are now in force or which may be hereafter adopted. The Licensee further agrees to comply with all rules, regulations, laws and ordinances promulgated in the County of



Orange, State of New York including but not limited to the rules and regulations of the Orange County Department of Health. The Licensee further agrees to comply with all laws of the State of New York and the rules and regulations promulgated thereunder including but not limited to the Co-Operative Agreement between the City of Newburgh and the DEC dated June 6, 1997, as amended.

D. It is expressly understood and agreed by the parties hereto that the Licensee is an independent contractor and not an employee of the City and that any persons employed, retained or engaged by the Licensee to perform the services authorized hereunder shall be employees of the Licensee and not of the City. The Licensee shall inform persons so employed, retained or engaged of these facts.

E. The Licensee assumes all risk in the operation of this service and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property and hereby covenants and agrees to indemnify and keep harmless the City and all Departments of the City of Newburgh and their officers and employees from any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature due to the negligence or improper conduct of the Licensee or any servant, agent or employee, which responsibility shall be limited to the insurance coverage herein provided for.

F. The Licensee shall cooperate with City authorities to provide necessary security and supervision of minors, participating in lessons or present as spectators, during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servants, employees or invitees during the period of this agreement.

#### ARTICLE 4: Payment.

A. The Licensee shall pay to the City, as and for a fee for access to and the use of the Washington Street Boat Launch and Unico Park during the period of this agreement \$750.00.

#### ARTICLE 5: Insurance.

The Licensee shall not commence activities nor perform any work under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

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

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

property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

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

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

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

C. Any accident shall be reported to the Office of the City Manager as soon as possible and not later than twenty-four hours from the time of such accident. A detailed written report must be submitted to the City as soon thereafter as possible and not later than three (3) days after the date of such accident.

#### ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

A. That it is financially solvent and that it is experienced and competent to perform the type of work, conduct the activities or to furnish the consideration to be furnished by it; and

B. That it is familiar with and will abide by and enforce all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

#### ARTICLE 7: Permits and Regulations.

The Licensee shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

#### ARTICLE 8: Termination of the Agreement.

Each party shall have the right to stop work or terminate this agreement under the following terms and conditions:

1. (a) A party refuses or fails to perform any of its obligations under this agreement; or

(b) A party fails or refuses to comply with all applicable laws or ordinances; or

(c) A party is guilty of substantial violation of any provision of this agreement.

2. Each party, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days' notice to the other party, terminate the agreement for the party's convenience.

#### ARTICLE 9: Damages.

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

#### ARTICLE 10: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee, which responsibility shall be limited to the insurance coverage herein provided and consistent with Article 3(E) of this Agreement.

B. The City agrees to indemnify and save the Licensee, its officers, agents and employees harmless from any liability imposed upon the Licensee, its officers, agents and/or employees arising from the negligence, active or passive, of the City.

#### ARTICLE 11: No Assignment.

The Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

#### ARTICLE 12: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or

otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

#### ARTICLE 13: Notices and Communication.

A. Any and all notices and payments required hereunder shall be addressed as follows or to such other address as may hereafter be designated in writing by either party hereto:

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

TO: Bill Garrison, Licensee  
Mountain Valley Guides LLC  
22 Shady Dell Drive  
New Windsor, New York 12553  
(845)

B. All communication concerning the Licensee's activities and programs provided under this Agreement shall be directed to the Licensee. The City shall not direct any official communication to those employed, retained or engaged by the Licensee to perform the services authorized hereunder unless otherwise directed in writing by the Licensee to the City.

#### ARTICLE 14: Waiver.

No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

#### ARTICLE 15: Modification:

This agreement constitutes the complete understanding of the parties. No modification or any provisions thereof shall be valid unless in writing and signed by both parties.

*Remainder of this page intentionally left blank*

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the day and year first above written.

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
TODD VENNING  
City Manager  
Per Res. No.:

MOUNTAIN VALLEY GUIDES LLC

By: \_\_\_\_\_  
Bill Garrison

Approved as to form:

\_\_\_\_\_  
MICHELLE KELSON  
Corporation Counsel

\_\_\_\_\_  
JANICE GASTON  
City Comptroller

RESOLUTION NO.: 79 - 2023

OF

MAY 8, 2023

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A LICENSE AGREEMENT WITH MOUNTAIN VALLEY GUIDES LLC  
FOR ACCESS TO AND THE USE OF THE WASHINGTON STREET BOAT LAUNCH  
AND UNICO PARK TO PROVIDE KAYAK RENTALS AND TOURS**

WHEREAS, by Resolution No. 54-2016 of March 14, 2016, Resolution No. 93-2017 of April 6, 2017, Resolution No. 54-2018 of February 26, 2018, Resolution No. 46-2019 of February 25, 2019, Resolution No. 80-2020 of March 19, 2020, Resolution No. 102-2021 of April 26 2021, and Resolution No. 127-2022 of May 23, 2022, the City Council of the City of Newburgh authorized the City Manager to enter into a license agreement with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park to provide kayak rentals and tours; and

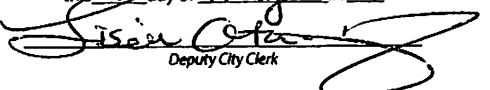
WHEREAS, Mountain Valley Guides LLC and the City of Newburgh wish to renew the license agreement for the 2023 season; and

WHEREAS, the City Council has examined the license agreement annexed hereto and determined that entering into such license agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and is hereby authorized to execute and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh, with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park.

I, Lisette Acosta-Ramirez, 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 May 8th, 2023 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh  
this 8th day of May, 2023

  
Deputy City Clerk

## AGREEMENT

THIS AGREEMENT, entered into this 23<sup>rd</sup> day of May, 2023, by and between:

THE CITY OF NEWBURGH, a municipal corporation having its principal place of business at 83 Broadway, City Hall, Newburgh, New York 12550, hereinafter called the "City"; and

MOUNTAIN VALLEY GUIDES LLC, a limited liability company having its principal place of business at 22 Shady Dell Drive, New Windsor, New York 12553 hereinafter called "Licensee".

WITNESSETH, that the City and Licensee, for consideration hereinafter named, agree as follows:

### ARTICLE 1: Term.

This Agreement shall run from May 27, 2023 to October 8, 2023.

### ARTICLE 2: Obligation of the City.

A. The City shall grant to the Licensee a non-exclusive revocable license to access and the use of the Washington Street Boat Launch in the City of Newburgh for the purpose of launching kayaks in connection with providing kayak rentals and tours to the general public on Saturdays and Sundays during the period of time set forth in Article 1 above. The City will allocate parking spaces with parking passes for 2 trucks/trailers in the Washington Street Boat Launch parking area to the Licensee.

B. The City shall grant to the licensee a non-exclusive revocable license to access and the use of Unico Park in the City of Newburgh for the purpose of erecting a pop-up tent from which to sell tickets for the kayak rentals and tours during the time period set forth in Article 1 and Article 2, paragraph A above.

### ARTICLE 3: Obligation of Licensee.

A. The Licensee shall ensure that all supplies, including the tent, are stored off-site each night.

B. The Licensee shall pay the cost of all personnel, supplies and equipment necessary and proper for the kayak rentals and tours as is required by their use thereof.

C. The Licensee agrees that he, she or it shall, at all times, comply with all rules and regulations adopted by the City for the operation of the Washington Street Boat Launch and Unico Park which are now in force or which may be hereafter adopted. The Licensee further agrees to comply with all rules, regulations, laws and ordinances promulgated in the County of

Orange, State of New York including but not limited to the rules and regulations of the Orange County Department of Health. The Licensee further agrees to comply with all laws of the State of New York and the rules and regulations promulgated thereunder including but not limited to the Co-Operative Agreement between the City of Newburgh and the DEC dated June 6, 1997, as amended.

D. It is expressly understood and agreed by the parties hereto that the Licensee is an independent contractor and not an employee of the City and that any persons employed, retained or engaged by the Licensee to perform the services authorized hereunder shall be employees of the Licensee and not of the City. The Licensee shall inform persons so employed, retained or engaged of these facts.

E. The Licensee assumes all risk in the operation of this service and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property and hereby covenants and agrees to indemnify and keep harmless the City and all Departments of the City of Newburgh and their officers and employees from any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature due to the negligence or improper conduct of the Licensee or any servant, agent or employee, which responsibility shall be limited to the insurance coverage herein provided for.

F. The Licensee shall cooperate with City authorities to provide necessary security and supervision of minors, participating in lessons or present as spectators, during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servants, employees or invitees during the period of this agreement.

#### ARTICLE 4: Payment.

A. The Licensee shall pay to the City, as and for a fee for access to and the use of the Washington Street Boat Launch and Unico Park during the period of this agreement \$750.00.

#### ARTICLE 5: Insurance.

The Licensee shall not commence activities nor perform any work under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

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

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



property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

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

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

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

C. Any accident shall be reported to the Office of the City Manager as soon as possible and not later than twenty-four hours from the time of such accident. A detailed written report must be submitted to the City as soon thereafter as possible and not later than three (3) days after the date of such accident.

#### ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

A. That it is financially solvent and that it is experienced and competent to perform the type of work, conduct the activities or to furnish the consideration to be furnished by it; and

B. That it is familiar with and will abide by and enforce all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

#### ARTICLE 7: Permits and Regulations.

The Licensee shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

#### ARTICLE 8: Termination of the Agreement.

Each party shall have the right to stop work or terminate this agreement under the following terms and conditions:

1. (a) A party refuses or fails to perform any of its obligations under this agreement; or

(b) A party fails or refuses to comply with all applicable laws or ordinances; or

(c) A party is guilty of substantial violation of any provision of this agreement.

2. Each party, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days' notice to the other party, terminate the agreement for the party's convenience.

#### ARTICLE 9: Damages.

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

#### ARTICLE 10: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee, which responsibility shall be limited to the insurance coverage herein provided and consistent with Article 3(E) of this Agreement.

B. The City agrees to indemnify and save the Licensee, its officers, agents and employees harmless from any liability imposed upon the Licensee, its officers, agents and/or employees arising from the negligence, active or passive, of the City.

#### ARTICLE 11: No Assignment.

The Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

#### ARTICLE 12: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or

otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

#### ARTICLE 13: Notices and Communication.

A. Any and all notices and payments required hereunder shall be addressed as follows or to such other address as may hereafter be designated in writing by either party hereto:

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

TO: Bill Garrison, Licensee  
Mountain Valley Guides LLC  
22 Shady Dell Drive  
New Windsor, New York 12553  
(845)

B. All communication concerning the Licensee's activities and programs provided under this Agreement shall be directed to the Licensee. The City shall not direct any official communication to those employed, retained or engaged by the Licensee to perform the services authorized hereunder unless otherwise directed in writing by the Licensee to the City.

#### ARTICLE 14: Waiver.

No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

#### ARTICLE 15: Modification:

This agreement constitutes the complete understanding of the parties. No modification or any provisions thereof shall be valid unless in writing and signed by both parties.

*Remainder of this page intentionally left blank*

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the day and year first above written.

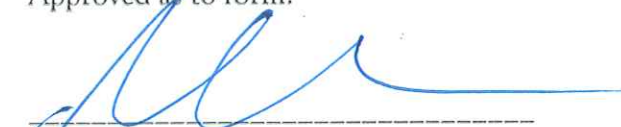
THE CITY OF NEWBURGH

By:   
Mike Neppel  
Acting City Manager  
Per Res. No.: 79-2023

MOUNTAIN VALLEY GUIDES LLC

By:   
Bill Garrison

Approved as to form:

  
MICHELLE KELSON  
Corporation Counsel

  
JANICE GASTON  
City Comptroller

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

OF

APRIL 22, 2024

**A RESOLUTION SCHEDULING A PUBLIC HEARING FOR MAY 13, 2024  
TO RECEIVE PUBLIC COMMENT ON THE CITY OF NEWBURGH'S  
ROUND 8 NY RESTORE COMMUNITIES INITIATIVE GRANT APPLICATION FOR  
THE DEMOLITION OF 96 CARTER STREET, 15 SOUTH JOHNSTON STREET,  
40 WILLIAM STREET, 39 LUTHERAN STREET AND 47 LUTHERAN STREET**

**WHEREAS**, the 2023-24 State Budget provided new funding for the Restore New York's Communities Initiative to be implemented by the Empire State Development Corporation ("ESDC") purpose of revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods; and

**WHEREAS**, the City Council of the City of Newburgh has scheduled a public hearing for May 13, 2024 in the Council Chambers of City Hall for the purpose of receiving comments from the public related to the submission of an application to Empire State Development for financial assistance under Round 8 NY Restore Communities Initiative for a project to facilitate revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods as follows:

1. 96 Carter Street: 840 square feet, vacant residential property proposed for demolition
2. 15 South Johnston Street: 5,228 square feet, vacant commercial property, proposed for demolition
3. 40 William Street: 750 square feet, vacant residential property, proposed for demolition
4. 39 Lutheran Street: 2,739 square feet, vacant residential property, proposed for demolition
5. 47 Lutheran Street: 2,560 square feet, vacant residential property proposed for demolition

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that there is scheduled a public hearing to receive public comment on the City of Newburgh's proposed Round 8 NY Restore Communities Initiative application, including the Property Assessment List, for a normal project to facilitate revitalizing urban and rural areas, disadvantaged communities, and stabilizing neighborhoods by proposing for demolition 96 Carter Street, 15 South Johnston Street, 40 William Street, 39 Lutheran Street, and 47 Lutheran Street; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 13th day of May, 2024 in the City Council Chambers, 83 Broadway, City Hall, 3rd Floor, Newburgh, New York.



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

OF

APRIL 22, 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER  
INTO AGREEMENTS WITH CHAPMAN STEAMER ARTS, INC., JEAN-MARC  
SUPERVILLE SOVAK AND KIM TURNER, AND STEVE GERBERICH  
TO PROVIDE PUBLIC ART PROJECTS AND RELATED SERVICES FOR  
THE CITY OF NEWBURGH'S PUBLIC ART WORKS PROGRAM FOR 2024**

**WHEREAS**, the City Council of the City of Newburgh adopted Ordinance No. 10 of 2005 which added new Chapter 14 of the City Code of Ordinances entitled Arts Programs and created the City of Newburgh Arts and Cultural Commission; and

**WHEREAS**, it is a goal of the Arts and Cultural Commission to create expanded educational opportunities to all persons, and to young persons in particular, to learn about the arts; and

**WHEREAS**, the Arts and Cultural Commission created the Public Art Works, a non-capital public art program to enrich and expand the experience of public art for all City of Newburgh residents by reaching historically underserved residents, while increasing economic opportunities for local artists and small arts organizations in the City; and

**WHEREAS**, the City of Newburgh Arts and Cultural Commission solicited proposals for projects spanning a variety of temporary public art categories, including Art education, performing arts and temporary art, Chapman Steamer Arts, Inc., Jean-Marc Superville Sovak and Kim Turner, and Steve Gerberich were selected as funding recipients for their project proposals which were determined to provide the public benefit of being free to participants/audiences, or feature a free or low-cost component to participants/audiences as well as open to and of interest to the Newburgh residents; and

**WHEREAS**, it is appropriate and necessary to authorize the City Manager to enter into agreements by which artist services, and necessary administration, supplies, equipment and facilities shall be provided; and

**WHEREAS**, the costs for these activities will not exceed \$15,000.00 and will derive from budget line A.8043.0448; and

**WHEREAS**, this Council has determined that entering into agreements in connection with this Public Art Works program is in the best interests of the City of Newburgh and its residents;

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into agreements with terms and conditions as Corporation Counsel may require, with the artists and providers of related necessary services in connection with the Public Art Works program, at cost not to exceed \$15,000.00.

# AGREEMENT FOR VENDOR SERVICES

**THIS AGREEMENT** is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and \_\_\_\_\_, an individual with principal offices at \_\_\_\_\_ hereinafter referred to as “**VENDOR**.”

## ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”). In the event of a conflict between the body of this Agreement and Schedule A, the provisions in the body of this Agreement shall govern.

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall remain the property of VENDOR, except that CITY shall have VENDOR’s permission to make full use for the completion and implementation of the Project for which the material was prepared without compensation in addition to the amounts set forth in Article 3 and Schedule B of this Agreement. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such

intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY’s rights regarding same for any purpose outside the scope of the Project and its implementation.

## ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning \_\_\_\_\_, 2024, and ending December 31, 2024.

## ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the CITY an itemized invoice for SERVICES rendered, as set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within 30 days after the CITY receives Claimant’s Certification form. If the Claimant’s Certification form is objectionable, the CITY will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$5,000.00 has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization

of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than six (6) months after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

#### **ARTICLE 4. EXECUTORY CLAUSE**

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

#### **ARTICLE 5. PROCUREMENT OF AGREEMENT**

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This

remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 6. CONFLICT OF INTEREST**

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.



## **ARTICLE 7. FAIR PRACTICES**

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

## **ARTICLE 8. INDEPENDENT CONTRACTOR**

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means

and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

## **ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING**

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

#### **ARTICLE 10. BOOKS AND RECORDS**

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### **ARTICLE 11. RETENTION OF RECORDS**

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic

inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

#### **ARTICLE 13. INSURANCE**

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

When applicable, VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with the following requirements:

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall

not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

#### **ARTICLE 14. INDEMNIFICATION**

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of

the SERVICES performed pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 15. PROTECTION OF CITY PROPERTY**

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation,

reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

#### **ARTICLE 16. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

#### **ARTICLE 17. TERMINATION**

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any

unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 18. GENERAL RELEASE**

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

#### **ARTICLE 19. SET-OFF RIGHTS**

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

#### **ARTICLE 20. DISPUTE RESOLUTION**

All disputes shall be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

#### **ARTICLE 21. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

#### **ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES**

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an

actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 23. ENTIRE AGREEMENT**

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

#### **ARTICLE 24. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum to this Agreement, which Addendum shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
TODD VENNING  
CITY MANAGER

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

Per Resolution No.:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Kelson  
Corporation Counsel

\_\_\_\_\_  
Janice Gaston  
City Comptroller

## SCHEDULE A

### SCOPE OF SERVICES

**Objectives:**

To assist the City of Newburgh enrich and expand the experience of public art.

**Deliverables & Timeline as per Vendor's proposal attached herewith including but not limited to:**

- Plan, implement and manage a 2023-2024 Public Art Works project.
- Submit updated project plan and timeline no later than 30 days after contract execution.
- Work with Public Art Works Program consultant project manager.
- Provide monthly production reports reflecting work done by Vendor and support staff.
- Meet regularly with City staff, NACC and consultants.
- Present, upon request, overview of the project at a public meeting.
- Submit close out report no later than 10 days after completion of public art project.
- Assist the City of Newburgh and NACC with other duties that may be reasonably requested related to the 2023-2024 Public Art Works program.

## **SCHEDULE B**

### **FEES AND EXPENSES**

The Vendor will be compensated for completion of services defined in Schedule “A” for approved budgeted costs, administrative costs not to exceed 40% of total budget costs, total cost not to exceed \$5,000.00.



CITY OF NEWBURGH

NEWBURGH PUBLIC ART WORKS

REQUEST FOR PROPOSALS:  
ART EDUCATION, PERFORMING ARTS, AND TEMPORARY ART

ADDRESS AND CONTACT NAME:  
ATTN: Tallie Carter, Esq.  
83 Broadway, 2nd Floor, Newburgh NY 2550

ISSUED: Friday, October 26, 2023

PROPOSALS TO BE RECEIVED BY: 4:00 PM on Monday, November 20, 2023

The City of Newburgh (“City”) is seeking proposals for arts programming and projects (“Proposal(s)”) from qualified Respondents (“Respondent(s)”). Selected Respondents will be retained by the City as Consultants (“Consultant(s)”) to implement the proposed arts programming and/or projects.

To perform this work, the selected artists will work with the City of Newburgh and Newburgh Arts & Cultural Commission.

BACKGROUND

The City of Newburgh is located approximately sixty (60) miles north of New York City on the west side of the Hudson River in Orange County New York. Newburgh is a small, densely populated city with a population of approximately 29,000 people, covering a surface area of 3.5 square miles, and bounded by the Town of Newburgh to the north and west, the Hudson River on the east and the Town of New Windsor to the south.

***Newburgh Public Art Works*** (“Project”) is the City’s non-capital public art program. More information on the City’s various arts and culture initiatives, including those dedicated to capital art (permanent physical installations) can be found at [www.newburgharts.org](http://www.newburgharts.org).

The Project’s goals are to enrich and expand the experience of public art for all City of Newburgh residents by reaching historically underserved residents, while increasing economic opportunities for local artists and small arts organizations in the City. These goals are aligned with the City’s vision for a more dynamic and equitable city of and for the arts. They are also aligned with

several goals and strategies of the Newburgh Arts and Culture Study found at [www.newburgharts.org](http://www.newburgharts.org).

In this round of the public arts program, a total of \$30,000 will fund diverse arts programming and projects that benefit the Newburgh community. The concept for the Project was developed by the Newburgh Arts & Cultural Commission.

Respondents may submit a funding request for \$5,000. Each Respondent may only submit one funding request.

### ELIGIBILITY

Qualifying applicants may be:

- Individuals or groups/organizations. Groups/organizations do not have to be MWBE- certified or nonprofits to qualify.

Qualifying arts programming and projects must:

- Belong to one or more of these three categories:
  - Art education
  - Performing arts, including but not limited to dance, music, drama or oratory
  - Temporary art, including but not limited to art exhibitions, street painting, or chalk art
- Meet the following “public benefit” criteria:
  - Free to participants/audiences, or feature a free or low cost component to participants/audiences
  - Open to and of interest to the Newburgh residents
- Located in the City of Newburgh
- Be completed between December 31, 2023, and December 31, 2024. Temporary art must be installed within that year, but the City will work with artists and organizations to determine if and when temporary art needs to be deinstalled.
- Align with the Project goals (see above)

The following are examples of programming or projects that are **ineligible** for Project funding (This is not a complete list. The City reserves the right to include additional ineligible programming or projects at its discretion):

- Events receiving Special Events funding through the City
- Murals
- Physical art or sculpture that requires a concrete footing or other permanent attachment structure
- Parades
- Block parties
- Trade shows, conventions
- Annual luncheons, holiday parties, class or family reunions

- Sports tournaments, school or athletic leagues

The City anticipates that a wide variety of activities may be submitted. Therefore, the City reserves the right to determine which activities are eligible for this funding program.

#### ANTICIPATED TIMELINE

Activity	Date
RFP Release	October 26, 2023
Virtual Pre-Submission Conference	November 7, 2023
Deadline for questions	November 10, 2023
Responses for questions submitted	November 13, 2023
Proposals due	November 20, 2023
Consultant Selection and Award Notification	Week of December 15, 2023

The dates shown above may be subject to change within the City of Newburgh’s sole discretion and upon written notification as set forth herein.

#### COMMUNICATIONS

All communications by Respondents who have indicated an intent to submit or have submitted a Proposal in response to this RFP, including any questions or requests for clarifications, submission of the Proposal, requests for status updates about the Proposal selection process and any other inquiries whatsoever concerning this RFP shall be sent, via email, to the following City staff person (“City Contact”):

Tallie Carter, Esq., Assistant Corporation Counsel.  
**EMAIL CONTACT ONLY:** [nacc@cityofnewburgh-ny.gov](mailto:nacc@cityofnewburgh-ny.gov)

No contact is permitted with any other City staff member with regard to this RFP during the RFP process unless specifically authorized in writing. Prohibited contact may be grounds for

disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City's web page for this RFP. The City's failure to timely respond or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

The City will make every reasonable effort to keep Respondents informed about the RFP process. Notifications about Timeline date changes, amendments to the RFP and other information about the RFP will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City's website for this RFP. The City's failure to provide such information shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

#### VIRTUAL PRE-PROPOSAL CONFERENCE

In order to provide the City with an opportunity to discuss the RFP and Respondents with an opportunity to ask questions and clarify the RFP, a pre-proposal conference will be held virtually on November 7, 2023.

To register for this meeting, email: [nacc@cityofnewburgh-ny.gov](mailto:nacc@cityofnewburgh-ny.gov)

After registering, you will receive a confirmation email containing information about joining the meeting. There is no requirement to attend the pre-proposal conference and no obligation by the City to provide information from the conference to parties who fail to attend. The City intends to post a recording of the pre-proposal conference at [www.newburgharts.org](http://www.newburgharts.org)

#### SCOPE OF SERVICES

The City is seeking the services of a Consultant to provide the necessary services to implement the Project. The Respondents selected by the City will be required to enter into a Vendor Services Agreement (VSA) with the City (see Appendix A, Standard VSA Form). The City will draft the VSA with a scope of services, which will include a clear description of deliverables and schedule, based on the proposed services described in Respondent's Proposal to this RFP.

## PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be received by the City **no later than 4:00 p.m. on Monday, November 20, 2023.**

Respondents may submit their Proposals via mail, in person or digitally.

Respondents submitting via mail or in person must submit 4 hard copies and 1 digital copy (on a flash drive) of the Proposal as outlined below. *Faxed submissions will not be considered.* Submit to:

City of Newburgh  
Attn: Executive Office  
City Hall  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

Digital submissions are allowed via email. Respondents may attach their Proposal file(s) to the email submission or include a link to a file sharing platform if files are too large for email attachments. File(s) should be in PDF format. Email submissions to:

nacc@cityofnewburgh-ny.gov

This RFP is designed to facilitate the evaluation and selection of Consultants that are best able to achieve the City's objectives as described in this RFP. The Proposal shall contain a table of contents. All pages shall be numbered and major sections and all attachments shall be referenced in the table of contents. Sections should correspond to requirements included in Proposal Content below.

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its proposal, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFP.

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent selected by the City will be required to enter into a Vendor Services Agreement (VSA) with the City. Unless otherwise stated in the Proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this VSA.

**Responses that miss the deadline will not be considered.**

## PROPOSAL CONTENT

The proposal should include the following information in the order specified:

**A. Cover Sheet**

Please fill out the Project Cover Sheet (Appendix B, Mandatory Cover Sheet).

**B. Proposed Project Description (500 words maximum)**

Describe your proposed project and include all known details, including proposed location(s), dates and length of the project or programming, as applicable. The City can work with Respondents to identify location options (e.g. parks, Recreation Center, Heritage Center) if the Respondent would like that assistance.

**C. Public Benefit (300 words maximum)**

Describe how the Proposal will meet the Project goals and the “public benefit” criteria of the eligibility requirements, including the free or low cost component to your programming or project. If there will be a cost for the participants/audiences, include that information, as well as what the cost for participants/audiences would be without funding.

**D. Budget**

Include an itemized budget for the project, including:

- Expenses and funding. Incorporate as much detail as possible, including Respondent’s staff hours and billing rates, and which expenses would be covered by the funding requested.
- Additional funding/income sources (if any)
- If the programming or project will have a cost for participants/audiences, (e.g. you will be charging for tickets to a performance or charging a fee to artists to exhibit their art) your itemized budget should justify the need for the fees you are charging.

Please note: The City may ask selected Consultant(s) to provide a breakdown of the Project by task and timeline.

**E. Programming or Project History (300 words maximum)**

If you have prior experience with the proposed programming or project, provide information about the previous version(s), including details such as when you completed it, where it was located/distributed, how many attended the programming, etc. Please include images and/or links to video content if applicable to supplement the

description of prior programming and projects.

**F. Relevant Experience (500 words maximum)**

Provide description(s) of other relevant programming and projects that you have completed, including details such as when you completed it, where it was located, how many attended the programming, etc. Please include images and/or links to video content if applicable to supplement the description of prior programming and projects.

**G. References**

Please include the names and email addresses of two references who can speak to your ability to effectively manage and complete a project.

**H. Programming or Project Personnel**

- Provide the name of the lead person for this Proposal (the person named as the individual or the lead for the group/organization on the Cover Sheet).
- For groups/organizations: list the names of all staff who will be involved in the proposed programming or project (“Project Personnel”), as well as their role(s) in the programming or project.
- Provide data on the diversity of Respondent’s overall workforce, including total number of employees, and percentages of minorities and females employed.
- *Optional:* If the experience of any Project Personnel is not adequately illustrated in Sections E. and F. above, provide the resume(s) for such person(s).

**I. Subcontractors**

Names and roles of sub-contractors, associates, or any non-employees who will be involved in the programming or project, if any. If the experience of a sub-contractor is not adequately illustrated in Sections E. and F. above, provide the resume(s) of sub-contractor.

**EVALUATION CRITERIA**

The following is a summary of the proposal evaluation criteria. It is within the City’s sole discretion to determine the value assigned to each of these criteria.

- A. Proposal quality: Taking into consideration the project design, proposed artists, audience experience, and artist’s past activities. Does the proposal illustrate a well-considered plan?
- B. Proposal feasibility: The project has clearly defined activities and the Respondent demonstrates the ability to successfully complete the project. Is the budget and timeline feasible?
- C. Public benefit: Is the Proposal aligned with the Project’s goals to enrich and expand the

experience of public art for all City residents by reaching historically underserved residents, while increasing economic opportunities for local artists and small arts organizations in the City of Newburgh? If there is a cost to participants/audiences, the City reserves the right to assess whether the Project is sufficiently “open to the public”, creates a new program, fosters an emerging arts discipline, or increases opportunities for local artists.

- D. Experience: Does the Respondent have experience providing the same or similar services? Did the references verify that capacity?
- E. Local Impact and Inclusivity: The City favors contracting with firms located in the City of Newburgh and a preference will be given to Consultants located in the City, through an additional weighting of 10%. Non-local firms may wish to consider partnerships or other collaborative arrangements with local firms as a strategy to address this criterion. Note that location within the city is defined by the boundary of the city, not a Newburgh ZIP code.
- F. Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so.

The selection of a Consultant is within the City’s sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City’s best interest and the goals of the Project.

## MISCELLANEOUS

### **Other Conditions**

Justice, Equity, Diversity and Inclusion are core values to the City of Newburgh, where there is a strong commitment to establishing and maintaining an environment free of discrimination. These values are promoted through the daily practice of professionalism, respect, acceptance and understanding. As such, City residents along with women, minorities, individuals with disabilities, members of the LGBTQ community, and veterans are encouraged to apply.

Minority and Women-owned Business Enterprises (“MBW/WBE”), small and disadvantaged businesses are encouraged to apply.



### **Additional Services**

Any other information which the respondent feels may be relevant to the City's review and selection process for this project, please limit the amount of information for ease of City review. The City reserves the right to require additional information as deemed necessary to complete the review of proposals resulting in the selection of the Consultant. The City may opt to interview one or several of the respondents after the initial review but before final selection.

### **Evaluation Criteria**

Each proposal will be evaluated based on the information submitted. The firm may be asked for additional information and/or an interview prior to consideration of award of this contract.

Proposals received within the stated deadline and containing all required information will be evaluated using the following criteria:

Overall Quality of Proposal	20 points
Experience Qualifications and References	10 points
Technical Approach and Workplan	10 points
Project Management and Implementation	10 points
Pricing, fees & Costs Savings	10 points
Local Impact and Inclusivity	20 points
Public Benefit	<u>20 points</u>
Total	100 points

### **Selection Process**

All proposals that are deemed responsive (as described above) will be reviewed by City staff and Stakeholder group as determined in the judgment of the City. All content of proposals will be kept confidential, except to the extent disclosure of proposals is required by law or deemed advisable by the city in any litigation arising from this RFP. The recommended may be disclosed unless it contains details on business models and/or proprietary secrets.

City staff will make a recommendation of one or more respondent(s) that best meets the evaluation criteria to the City Council for its consideration. The final approval of a contract for the Consultant services will be determined by the City Council. The City reserves the right to reject any and/or all

proposals.

After conclusion of this review, City staff will recommend one or more respondent(s) that best meets the evaluation criteria to the City Council for its consideration of award of a Vendor Services Agreement. The selected Consultant shall provide the City with a partially executed contract within 15 days of a notice of award. Once the City fully executes the contract, the City will return the contract to the selected Consultant and issue a Notice to Proceed. The stated timelines in the Consultant's proposal shall begin upon the issuance of a Notice to Proceed by the City. details on business models and/or proprietary secrets.

If, for any reason, the selected firm is not able to move forward within 60 days, the City of Newburgh reserves the right to contract with another qualified firm/individual.

The City of Newburgh shall not be liable for any expenses incurred prior to the contract being signed including the proposal preparation, telephone interviews, subcontractor agreements and/or final contract negotiations.

The City of Newburgh reserves the right to reject any and all proposals or to request more information from any or all of the firms/individuals.

#### Contract Terms and Conditions

Upon selection of a firm, a Vendor Services Agreement shall be entered into by the City of Newburgh and Firm. It is expected that the contract will provide for compensation for actual work completed on a not to exceed basis. Standard terms and conditions can be found in Appendix A.

#### **Terms and Conditions**

1. The City may, at its option, request more information from any or all of the prospective respondents and or interview prospective respondents as part of this selection process. However, selection may take place without such interviews. Therefore, applicants are urged to present proposals that are as complete as possible upon initial submission.
2. The City reserves the right to amend its evaluation criteria at any point, at its sole discretion.
3. The City may terminate the RFP process at any time for any reason.
4. The City reserves the right to reject any and/or all proposals.
5. The City has no obligation to discuss its reasons for selecting, accepting, or rejecting any proposals with the respondent or representatives of said respondent, but will entertain such requests.
6. The issuance of the RFP does not obligate the City to select a proposal and/or enter into any agreement. Any submission does not constitute business terms under any eventual agreement.
7. This RFP does not in any way commit the City to reimburse respondents for any costs associated with the preparation and submission of proposals including but not limited to proposal preparation, telephone interviews, subcontractor agreements and or final contract negotiations.

8. The proposal chosen will be one that represents the best value to the City. This may or may not be the lowest cost proposal.
9. The City reserves the right to amend or withdraw this RFP in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.
10. The Proposal and all materials submitted with the Proposal shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted with the Proposal, it must be clearly identified and a request to keep such information confidential must be submitted.

#### **Appendices**

- A. Standard Vendor Services Agreement
- B. Mandatory Proposal Cover Sheet

## **Appendix A**

### Vendor Terms and Conditions

# AGREEMENT FOR VENDOR SERVICES

**THIS AGREEMENT** is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and \_\_\_\_\_, an individual with principal offices at \_\_\_\_\_ hereinafter referred to as “**VENDOR**.”

## ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”). In the event of a conflict between the body of this Agreement and Schedule A, the provisions in the body of this Agreement shall govern.

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall remain the property of VENDOR, except that CITY shall have VENDOR’s permission to make full use for the completion and implementation of the Project for which the material was prepared without compensation in addition to the amounts set forth in Article 3 and Schedule B of this Agreement. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such

intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY’s rights regarding same for any purpose outside the scope of the Project and its implementation.

## ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning \_\_\_\_\_, 2023, and ending \_\_\_\_\_, 2024\_\_\_\_\_.

## ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the CITY an itemized invoice for SERVICES rendered, as set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within 30 days after the CITY receives Claimant’s Certification form. If the Claimant’s Certification form is objectionable, the CITY will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$\_\_\_\_\_ has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization

of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than six (6) months after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

#### **ARTICLE 4. EXECUTORY CLAUSE**

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

#### **ARTICLE 5. PROCUREMENT OF AGREEMENT**

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This

remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 6. CONFLICT OF INTEREST**

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

## **ARTICLE 7. FAIR PRACTICES**

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

## **ARTICLE 8. INDEPENDENT CONTRACTOR**

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as

agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

## **ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING**

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary

to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

#### **ARTICLE 10. BOOKS AND RECORDS**

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### **ARTICLE 11. RETENTION OF RECORDS**

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books,

Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

#### **ARTICLE 13. INSURANCE**

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

When applicable, VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with the following requirements:

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be



primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

#### **ARTICLE 14. INDEMNIFICATION**

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of

litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 15. PROTECTION OF CITY PROPERTY**

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

#### **ARTICLE 16. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

#### **ARTICLE 17. TERMINATION**

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 18. GENERAL RELEASE**

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to

the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

#### **ARTICLE 19. SET-OFF RIGHTS**

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

#### **ARTICLE 20. DISPUTE RESOLUTION**

All disputes shall be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

#### **ARTICLE 21. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

#### **ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES**

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This

limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 23. ENTIRE AGREEMENT**

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

#### **ARTICLE 24. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum to this Agreement, which Addendum shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and

effect to the terms and conditions contained  
in such Addendum.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement as of  
the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
TODD VENNING  
CITY MANAGER

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

Per Resolution No.:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Kelson  
Corporation Counsel

\_\_\_\_\_  
Janice Gaston  
City Comptroller

## SCHEDULE A

### SCOPE OF SERVICES

#### Objectives:

To assist the City of Newburgh enrich and expand the experience of public art.

Deliverables & Timeline as per Vendor's proposal attached herewith including but not limited to:

- Plan, implement and manage a 2023-2024 Public Art Works project.
- Submit updated timeline no later than 30 days after contract execution.
- Provide monthly production reports reflecting work done by Vendor and support staff.
- Meet regularly with City staff, NACC and consultants.
- Present, upon request, overview of the project at a public meeting.
- Submit close out report no later than 10 days after completion of public art project.
- Assist the City of Newburgh and CAC with other duties that may be reasonably requested related to the 2023-2024 Public Art Works program.

## **SCHEDULE B**

### **FEES AND EXPENSES**

The Vendor will be compensated for completion of services defined in Schedule “A” for approved budgeted costs, administrative costs not to exceed 40% of total budget costs, total cost not to exceed \$5,000.00.

## **Appendix B**

Proposal Cover Sheet

**Newburgh Public Art Works Program**

**Proposal Cover Sheet**

**DEADLINE: 4:00PM, MONDAY, NOVEMBER 20, 2024**

Name of Proposal Respondent: \_\_\_\_\_

Email address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Residence: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Type of Project:

- \_\_\_\_\_ Art education
- \_\_\_\_\_ Performing arts
- \_\_\_\_\_ Temporary art

Proposal Checklist – each proposal must include the following:

- ✓ Cover Sheet
- ✓ Proposed Project Description
- ✓ Public Benefit
- ✓ Budget
- ✓ Programming or Project History
- ✓ Relevant Experience
- ✓ References
- ✓ Programming or Project Personnel
- ✓ Subcontractors

**TRANSPARENCY**

*Let us know if you or your nominee has an affiliation with the City of Newburgh. This is for transparency only; the panel will review your application without bias. Read our full Conflict of Interest policy ([link](#)).*

Confirmation and Consent affirmation

1. Attend interview upon request;
2. Confirmation of availability to complete the project in 2024;
3. Agree to the conditions and terms of the standard Vendor Services Agreement

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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



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

OF

APRIL 22, 2024

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN  
THE CITY OF NEWBURGH AND LISA BAUSO  
FOR PROJECT MANAGEMENT SERVICES  
RELATED TO THE PUBLIC ART WORKS PROGRAM**

**WHEREAS**, the City Council of the City of Newburgh adopted Ordinance No. 10 of 2005 which added new Chapter 14 of the City Code of Ordinances entitled Arts Programs and created the City of Newburgh Arts and Cultural Commission; and

**WHEREAS**, it is a goal of the Arts and Cultural Commission to create expanded educational opportunities to all persons, and to young persons in particular, to learn about the arts; and

**WHEREAS**, the Arts and Cultural Commission created the Public Art Works, a non-capital public art program to enrich and expand the experience of public art for all City of Newburgh residents by reaching historically underserved residents, while increasing economic opportunities for local artists and small arts organizations in the City; and

**WHEREAS**, spanning a variety of temporary public art categories, including Art education, performing arts and temporary art, Newburgh Public Art Works will provide the public benefit of being free to participants/audiences, or feature a free or low-cost component to participants/audiences as well as open to and of interest to the Newburgh residents; and

**WHEREAS**, Lisa Bauso submitted an application and is qualified to provide project management services to the City of Newburgh to administer the Public Art Works program; and

**WHEREAS**, the costs of these services will not exceed \$8,400.00 and will be derived from A.8043.0455; and

**WHEREAS**, this Council has determined that entering into an agreement for such services is 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 is hereby authorized to enter into an agreement with Lisa Bauso at cost not to exceed \$8,400.00 for project management services related to the Public Art Works program.

# AGREEMENT FOR VENDOR SERVICES

**THIS AGREEMENT** is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the **“CITY,”** with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Lisa Bauso, an individual with principal offices at \_\_\_\_\_ hereinafter referred to as **“VENDOR.”**

## ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”). In the event of a conflict between the body of this Agreement and Schedule A, the provisions in the body of this Agreement shall govern.

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall remain the property of VENDOR, except that CITY shall have VENDOR’s permission to make full use for the completion and implementation of the Project for which the material was prepared without compensation in addition to the amounts set forth in Article 3 and Schedule B of this Agreement. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such

intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY’s rights regarding same for any purpose outside the scope of the Project and its implementation.

## ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning April \_\_, 2024, and ending December 31, 2024.

## ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the CITY an itemized invoice for SERVICES rendered, as set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within 30 days after the CITY receives Claimant’s Certification form. If the Claimant’s Certification form is objectionable, the CITY will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of **\$8,400.00** has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization

of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than six (6) months after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

#### **ARTICLE 4. EXECUTORY CLAUSE**

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

#### **ARTICLE 5. PROCUREMENT OF AGREEMENT**

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This

remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 6. CONFLICT OF INTEREST**

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

## ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

## ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means

and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

## ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

#### **ARTICLE 10. BOOKS AND RECORDS**

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### **ARTICLE 11. RETENTION OF RECORDS**

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic

inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

#### **ARTICLE 13. INSURANCE**

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

When applicable, VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with the following requirements:

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall

not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

#### **ARTICLE 14. INDEMNIFICATION**

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of

the SERVICES performed pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 15. PROTECTION OF CITY PROPERTY**

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation,

reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

#### **ARTICLE 16. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

#### **ARTICLE 17. TERMINATION**

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any

unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **ARTICLE 18. GENERAL RELEASE**

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

#### **ARTICLE 19. SET-OFF RIGHTS**

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

#### **ARTICLE 20. DISPUTE RESOLUTION**

All disputes shall be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

#### **ARTICLE 21. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

#### **ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES**

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an

actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 23. ENTIRE AGREEMENT**

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

#### **ARTICLE 24. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum to this Agreement, which Addendum shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum.



IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
TODD VENNING  
CITY MANAGER

BY: \_\_\_\_\_  
LISA BAUSO  
TITLE: Public Art Works  
Project Manager

Per Resolution No.:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Kelson  
Corporation Counsel

\_\_\_\_\_  
Janice Gaston  
City Comptroller

## SCHEDULE A

### SCOPE OF SERVICES

#### **Program Description:**

*Newburgh Public Art Works* is the City's non-capital public art program.

The Project's goals are to enrich and expand the experience of public art for all City of Newburgh residents by reaching historically underserved residents, while increasing economic opportunities for local artists and small arts organizations in the City. These goals are aligned with the City's vision for a more dynamic and equitable city of and for the arts. They are also aligned with several goals and strategies of the Newburgh Arts and Culture Study.

#### **Deliverables:**

- Orientation with City Staff and NACC Public Art Subcommittee.
- Kickoff meeting with selected artists, NACC Public Art Subcommittee and City Staff.
- Plan and coordinate the implementation of multiple public art projects in the City of Newburgh in conjunction with the NACC Public Art Subcommittee, City Staff, vendors and community members.
- Administer the public art project budget, expenditures and artist fee schedules and related project costs. Ensure that each Public Art Works project is delivered within scope and budget.
- Develop and make recommendations and updates on policies and procedures affecting the temporary art review and implementation process as well as maintenance and deaccession of artwork.
- Prepare routine narrative and/or statistical reports relative to the 2023-2024 Public Art Program including information about selected artists.
- Plan, schedule and coordinate the activities of artist contractors and others on a project basis managing all related details and deadlines.
- Implement the 2023-2024 goals, objectives and policies of the Public Arts Program into workable projects.
- Work with professional photographers to document completed projects;

- Coordinate 2024 Public Art Works program schedule
- Manage marketing and outreach for 2024 Public Art Works program.
- Be present for each 2024 Public Art Works project.
- Adhere to all City safety protocols as provided by NACC.
- Keep track of attendance.
- Report weekly to NACC Public Art Subcommittee throughout duration of the 2024 program.
- Attend monthly NACC meetings to provide updates on the project.
- Create and maintain comprehensive project documentation.
- Prepare a close out report at end of 2024 program.
- Performs other duties as assigned.

**Timeline:**

Orientation on or before May 10, 2024.

Submit close out report no later than 30 days after final 2024 Public Art Works project.

## **SCHEDULE B**

### **FEES AND EXPENSES**

The Vendor will be compensated at \$35 per hour, total cost not to exceed \$8,400.00.

DRAFT

2/5/24

Dear Newburgh Arts and Cultural Commission,

As a believer in the power of public art to equalize, engage and educate, I am passionate about the work I have done in public art through writing, research, programming, and project management in the field. My great joy is to see public art in practice because it is truly the most democratic means to the benefits and enjoyment that art can provide to all. The restrictions or barriers commonly associated in private or institutional art are not present in public art. All can actively engage in thought, dialogue and appreciation of art and activism through public art activation. For these reasons, I am interested in the contract position as the Public Art Program Project Manager for Newburgh.

As a graduate fellow for NYC Department of Cultural Percent for Art Program, Public Art unit I served as an Artist Curator. In this position I participated in the daily responsibilities of the art commissions from initial implementation of sites to researching artists, creating panels for stakeholders, reviewing architectural plans for art locations, informing, and inviting artists to submit proposals and shepherding them through the proposal process through virtual and in person check-ins with artists and sitting on panels for final selections for commission. These panels include research, curation, presentation creation and bio presentations with thoughtful consideration of details to consider and include about the artists and their work.

I have written about art for popular audiences, including public art roundup listings in the NY area. I have also written academic papers about controversial public art as well as popular museum exhibitions. I have conducted research on public monuments. I have curated for a small community non-profit art gallery and conducted artist residencies for K-12 students using photography. Finally, my experience as an Events and Promotions Manager for a start-up outdoor gear company required administrative skills as well as budget, logistics and marketing experience.

In my position as a public art curator for NYC DCLA I gained firsthand experience in the teamwork and organizational skills involved in project management for a large city agency. Most recently I have held contract positions as public art grant reviewer for Portland, Oregon, art education outreach for marginalized youth and organized public artist demonstrations for art festivals.

My interest lies squarely in public art, placemaking and public engagement through art activation. I look forward to discussing the position with you further.

Sincerely,


Lisa Bauso

# Lisa Bauso

## PROFILE

Personable, creative, culture focused applicant with diverse experience in art-based systems and projects.

## SUMMARY OF QUALIFICATIONS

- Public Art Curation and Project Management
- Academic and popular arts writing and art research
- Cultural competence working with communities of color and immigrant communities
- Excellent written and oral communication skills. 
- Proficient computer skills in Microsoft suite, Adobe PS, Google Docs, Photography.
- Marketing strategies, email and social media campaign creation and management for culture/lifestyle brands
- Project management for event, trade and launch projects including logistics, vendor negotiations, contracts.
- Art Education
- Art management for community engagement.
- Gallery and exhibition design
- Visitor Services in a cultural setting. Engage with public, client, and visitors with warmth and enthusiasm

## EXPERIENCE

**Regional Arts and Culture Council, Portland, Oregon.** Grant Reviewer. (remote) Fall 2023 Contract. Review grant applications **and** supplemental materials prior to panel meeting. Give each application an initial score prior to the panel meeting and make notes in the RACC Opportunity Portal. Recommend with panel final ranking of grant applications to RACC team.

**Lakewood Center Art School Outreach Program, Art Educator.** 2023 6/23-8/23 Boring, Oregon

Design and taught indigenous folk art curriculum to migrant farm worker's children

**Lake Oswego Festival of Arts 2023** Workshop/Demonstration Coordinator Contract position 3/23-6/23

Procure artists to lead workshops & demonstrations for public art festival. Design specifics of artist demos in consultation with the artists. Communication, planning and scheduling for full calendar of events.

**NYC Dept. of Cultural Affairs, Public Art Unit, Artist Curator Graduate Fellow** 10/2021 - 6/2022

Through site review, artist research and preparation of presentations to voting stakeholders, I assisted in the facilitation of awarded commissioning of permanent public art in city buildings and schools through the NYC Percent for Art program budget.

- Curation by research and identification of local and national artists for presentation and commissioning consideration.
- Choose artists to present based on consideration of architect renderings of site, appropriate materials, community diversity.
- Prepare visual presentations about artists, assist in facilitating live presentation decision panels to stakeholders.
- Review and track voting for school and public art commissions.
- Support artists in creating proposals.
- Use shared cloud drive to review, update and keep track of projects.
- Collaboration with Public Art for Public Schools and NYC School Construction Authority staff partners.

**@MutualProtectionSociety.** Founder, Curator - Italian regional subscription boxes 9/2020-9/2021

Buyer, sourcing for ethnographic based project cultural protective rituals & modern objects of design & function; handmade &/or thoughtfully sourced.  
<https://www.instagram.com/mutualprotectionsociety/>.

**Freelance Art & Culture Writer. Untapped NY** 2021 <https://untappedcities.com/author/lisabauso/>.

**Gallery Manager, Union Knott Gallery, Portland, Oregon** 2018 –2020

Curation, exhibition design and installation, marketing for a small community based non-profit art gallery.

**Brooklyn Botanic Garden Visitor Center** 2018-2019, Client/Visitor Services Representative

Engage with wide ranging customer base to answer questions and make suggestions based on visitor inquiries. Selling/scanning tickets, register memberships, serve as a welcoming "information concierge" by providing proactive, positive customer service to members, guests, and staff.

**Nutcase Helmets, Portland, Oregon** Events Manager 2/2010-1/2017

Event, trade, consumer show project management from concept through deliverables and activation for unique, design conscious helmet brand.

- Event project management includes discovery through trend tracking, contracts, logistics, staffing, travel planning and booth creation.
- Contribute to planning and execution of web, email, social media campaigns. Source/Buy branded merchandise for promotional purposes.
- Design innovative and engaging experiences for bike enthusiasts. Interface with the public.

## EDUCATION

**New Jersey City University, BFA, Photography**

**City College New York, MA, Art History, Museology.** 2024 completion.

RE: References for Lisa Bauso

Kendal Henry  
Assistant Commissioner, Public Art  
NYC Department of Cultural Affairs

[REDACTED]  
[REDACTED]

Natalie Wood  
Artistic Development & Festival Coordinator  
Lake Oswego Festival of the Arts

[REDACTED]  
(503) 636-1060  
[REDACTED]

Kristin Calhoun  
Regional Arts and Culture Council  
Portland, Oregon

[REDACTED]

## **Public Art Program - Project Manager**

### **Job Overview:**

The Newburgh Arts & Cultural Commission is seeking an energetic and visionary individual with a track record in public art project management and community engagement to manage the City's 2023-2024 Public Art program. If you're a creative professional with a passion for activating public spaces and people, please apply! For more information, visit [newburgharts.org](http://newburgharts.org).

Under direction, coordinates arts and cultural services, including planning, publicizing, implementing, evaluating, and reporting on various performing and visual arts projects.

### **Job Description:**

Plans and coordinates the implementation of multiple public art projects in the City of Newburgh in conjunction with the NACC Public Art Subcommittee, City Staff, vendors and community members.

Develops and maintains public art project budget, expenditures and artist fee schedules and related project costs.

Develops and make recommendations and updates on policies and procedures affecting the temporary art review and selection process as well as maintenance and deaccession of artwork.

Prepares routine narrative and/or statistical reports relative to the 2023-2024 Public Art Program including information about chosen artists.

Plans, schedules and coordinates the activities of artist contractors and others on a project basis managing all related details and deadlines.

Implements the 2023-2024 goals, objectives and policies of the Public Arts Program into workable projects.

Designs and coordinates public art request for proposals, review/selection process, recruitment of volunteer review panel and recommendation to City Council.

Works with professional photographers to document completed projects;

Performs other duties as assigned.

### **Program Description:**

*Newburgh Public Art Works* is the City's non-capital public art program. More information on the City's various arts and culture initiatives, including those dedicated to capital art (permanent physical installations) can be found at [www.newburgharts.org](http://www.newburgharts.org).

The Project's goals are to enrich and expand the experience of public art for all City of



Newburgh residents by reaching historically underserved residents, while increasing economic opportunities for local artists and small arts organizations in the City. These goals are aligned with the City's vision for a more dynamic and equitable city of and for the arts. They are also aligned with several goals and strategies of the Newburgh Arts and Culture Study.

**Principle Organizer:**

This program is being organized and offered by the Newburgh Arts & Cultural Commission (NACC). NACC is committed to fostering a thriving and vibrant cultural life in Newburgh through the arts. As a volunteer-led extension of City Government, the Commission works to promote the City's artistic and cultural activities and creative industry for all residents and visitors. The Commission advises the City of Newburgh and its agencies on all matters of arts and culture, develops strategies and recommends priorities to the City, liaises between the City and the arts and cultural community, creates and sponsors public arts projects and cultural events, encourages cultural tourism and the economic impact of the arts, and works to strengthen arts education, accessibility, and participation for all persons.

**Compensation:** \$35 per hour, not to exceed \$8,400. This position primarily involves a 10-hour work week, with some weekend and evening hours required over a period of 8 months.

**Qualifications, Skills, and Knowledge Requirements:**

Bachelor's degree in Arts, Fine Arts or related field from an accredited college or university; eighteen month's experience in arts or related management. Understanding of public art best practices/industry standards, including experience with project management and related technology. Equivalent combinations of education and experience may be considered.

**Desirable:** Preference may be given to those with experience with one or more of the following:

- Experience with bid processes, RFPs, and working with city government;
- Developing and managing public art or design enhancement projects;
- Planning public art projects within an urban design context.

To inquire about the position, please submit your résumé, letter of interest and 3 references to [nacc@cityofnewburgh-ny.gov](mailto:nacc@cityofnewburgh-ny.gov) no later than Friday, February 9, 2024, 11:59 p.m.

**CITY OF NEWBURGH - AN EQUAL OPPORTUNITY EMPLOYER**

Justice, Equity, Diversity and Inclusion are core values to the City of Newburgh, where there is a strong commitment to establishing and maintaining an environment free of discrimination. These values are promoted through the daily practice of professionalism, respect, acceptance and understanding. As such, City residents along with women, minorities, individuals with disabilities, members of the LGBTQ community, and veterans are encouraged to apply.



# CITY OF NEWBURGH PUBLIC ART WORKS PROGRAM

*The City of Newburgh is seeking proposals for arts programming and projects from qualified respondents!*

**SUBMIT YOUR FUNDING  
REQUEST FOR \$5,000!**



**Take advantage of this exciting and unique opportunity to help enrich and expand the experience of public art for all City of Newburgh residents!**



**ART EDUCATION, PERFORMING ARTS, AND TEMPORARY ART**

*Selected artists will work with the City of Newburgh and Newburgh Arts & Cultural Commission  
Each respondent may only submit one funding request*

**DEADLINE** | **NOVEMBER 20, 2023**  
4:00 PM

VIRTUAL PRE-PROPOSAL CONFERENCE ON NOVEMBER 7, 2023 at 6:00 PM  
REGISTER VIA E-MAIL: [nacc@cityofnewburgh-ny.gov](mailto:nacc@cityofnewburgh-ny.gov)

Learn more at: [www.newburgharts.org](http://www.newburgharts.org)



**CIUDAD DE NEWBURGH**

# PROGRAMA PÚBLICO DE OBRAS DE ARTE

*¡La ciudad de Newburgh busca propuestas de programas y proyectos artísticos de personas calificadas!*

**¡ENVÍE SU SOLICITUD DE  
SUBVENCIÓN PARA \$5,000!**



**¡Aproveche esta oportunidad única y emocionante de contribuir a enriquecer y ampliar la experiencia del arte público para todos los residentes de la ciudad de Newburgh!**



**EDUCACIÓN ARTÍSTICA, ARTES ESCÉNICAS Y ARTE TEMPORAL**

*Los artistas seleccionados colaborarán con la Ciudad de Newburgh y la Comisión Artística y Cultural de Newburgh  
Cada participante sólo podrá presentar una solicitud de subvención*

**FECHA  
LÍMITE** | **NOVIEMBRE 20, 2023**  
4:00 PM

CONFERENCIA VIRTUAL PREVIA A LA PRESENTACIÓN DE PROPUESTAS EN NOVIEMBRE 7, 2023  
A LAS 6:00 PM REGÍSTRESE POR CORREO ELECTRÓNICO: [nacc@cityofnewburgh-ny.gov](mailto:nacc@cityofnewburgh-ny.gov)

Para más información: [www.newburgharts.org](http://www.newburgharts.org)

4/5/24          HUMAN RIGHTS (HRC) INTEREST LIST

Section 51-1 (A) provides for a Commission of 7 members:

- 3 year terms

4 vacancies – 3 unexpired vacancies and 1 open seat

Applicants seeking initial appointment for vacancies:

Francesca Amato  
Gabrielle Burton-Hill  
Michael Garda  
Virginia Kasinki  
Richard Letts  
Liana Rivers  
Margaret Speedling  
Cheri Lynn Szady