



City of Newburgh Council Work Session
*Sesion de trabajo del Concejal de la
Ciudad de Newburgh*
January 20, 2022
6:00 PM

Council Meeting Presentations

1. Police Chaplaincy Swearing In
Juramentacion de la Capellanía Policial

Work Session Presentations

2. Wireless Feasibility Study
Estudio de Viabilidad Inalámbrica
3. NUFFI Presentation Regarding the USDA Urban Agriculture Grant
*Presentación de NUFFI sobre la Subvención de Agricultura Urbana del
USDA*

Engineering/Ingeniería

4. Agreement with INFRAMARK Contract Operator Services at the Water Treatment Plant
Resolution authorizing the City Manager to execute a professional services agreement with INFRAMARK, LLC to provide emergency services at the City of Newburgh Water Treatment Plant.

Resolución autorizando al Gerente Municipal a ejecutar un acuerdo de servicios profesionales con INFRAMARK, LLC para proveer servicios de emergencia en la Planta de Tratamiento de Agua de la Ciudad de Newburgh.

5. Resolution of Support for Removal of the Walsh Road Dam in New Windsor Dam
Resolution of the City Council of the City of Newburgh, New York supporting the removal of the Walsh Road Dam in the Town of New Windsor NYS ID# STATE ID: 195-0535C.

Resolución del Consejo Municipal de la Ciudad de Newburgh, Nueva York apoyando la remoción de la represa Walsh Road en el pueblo de New Windsor NYS ID # STATE ID: 195-0535C.

Finance/Finanza

6. 2022 Liability and Municipal Property Insurance Renewal

Resolution authorizing an extension of the 2021 general liability insurance policy for the period January 1, 2022 to January 31, 2022; cyber liability, equipment breakdown and site pollution liability insurance policies for the period January 1, 2022 to December 31, 2022; and municipal property, general and auto liability, law enforcement liability, and public officials and employment practices liability insurance policies for the period February 1, 2022 to December 31, 2022

Resolución que autoriza una prórroga de la póliza de seguro de responsabilidad civil general de 2021 para el período comprendido entre el 1 de enero de 2022 y el 31 de enero de 2022; de las pólizas de seguro de responsabilidad civil cibernética, de avería de equipos y de contaminación de lugares para el período comprendido entre el 1 de enero de 2022 y el 31 de diciembre de 2022; y de las pólizas de seguro de propiedad municipal, de responsabilidad civil general y de automóviles, de responsabilidad civil de las fuerzas del orden y de responsabilidad civil de los funcionarios públicos y de prácticas de empleo para el período comprendido entre el 1 de febrero de 2022 y el 31 de diciembre de 2022.

7. Updated Take-Home Vehicle Policy

Resolution adopting a revised City of Newburgh Vehicle Usage Policy and Procedure for Commuting with a City-Owned Take-Home Vehicle.

Resolución que adopta una Política y Procedimiento revisados de Uso de Vehículos de la Ciudad de Newburgh para Viajar con un Vehículo Para Llevar a Casa propiedad de la Ciudad.

8. Parking Meter Update

Actualización de los medidores de estacionamiento

Grants/Contracts/Agreements / Becas /Contratos/Convenios

9. Stadium Feasibility Study

Estudio de viabilidad del estadio

10. To Apply for and Accept if Awarded a Hudson River Valley Greenway Grant for \$10,000 for Trail Planning & Design

Resolution authorizing the City Manager to apply for and accept if awarded a Greenway Conservancy for the Hudson River Valley Trail Program Grant from the Hudson River Valley Greenway in an amount not to exceed \$10,000.00 for a bike trail from the Newburgh-Beacon Bridge to downtown Newburgh.

Resolución que autoriza al Gerente de la Ciudad a solicitar y aceptar si se le otorga una Subvención del Programa Greenway Conservancy for the Hudson River Valley Trail program de Hudson River Valley Greenway por

un monto que no exceda los \$10,000.00 para un sendero para bicicletas desde el Puente Newburgh-Beacon hasta el centro de Newburgh.

Fire Department / Departamento de Bomberos

11. Personnel Book Amendment

Resolution amending the 2022 Personnel Analysis Book to change one Temporary Lieutenant position to a Permanent Lieutenant position and to delete one vacant Firefighter position in the Fire Department.

Resolución por la que se modifica el Libro de Análisis de Personal 2022 para cambiar un puesto de Teniente Temporal por un puesto de Teniente Permanente y suprimir un puesto vacante de Bombero en el Cuerpo de Bomberos.

Boards and Commissions/Juntas y Comisiones

12. Board and Commission Appointment Policy

Política de nombramientos de la Junta y la Comisión.

Discussion Items/Temas de Discusión

13. 2022 Council Rules & Order of Procedure

Reglamento del Consejo y Orden de Procedimiento 2022

Executive Session/ Sesión Ejecutiva

14. Proposed, pending, or current litigation

Litigios propuestos, pendientes o actuales

RESOLUTION NO.: _____ - 2022

OF

JANUARY 24, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A PROFESSIONAL SERVICES AGREEMENT WITH INFRAMARK, LLC
TO PROVIDE EMERGENCY SERVICES AT
THE CITY OF NEWBURGH WATER TREATMENT PLANT**

WHEREAS, to avoid staffing shortages and to ensure the continuous provision of City services during the COVID-19 pandemic, the City of Newburgh proposes engage Inframark, LLC, the operator of the City's Wastewater Treatment Plant, to provide water and infrastructure services at the City of Newburgh Water Treatment Plant on an emergency basis; and

WHEREAS, Inframark, LLC has submitted a professional services agreement to provide such water and infrastructure services on an emergency basis with the funding derived from F.8330.0448; and

WHEREAS, the City Council finds that entering into a professional services agreement with Inframark, LLC 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 City Manager is hereby authorized to execute a professional services agreement with Inframark, LLC to provide water and infrastructure services at the City of Newburgh Water Treatment Plant on an emergency basis.

PROFESSIONAL SERVICES AGREEMENT

This **Professional Services Agreement** (the “Agreement”) is made this ____ day of _____ 2022, between:

- 1) **City of Newburgh**, a municipal corporation with its principal place of business at 83 Broadway, Newburgh, New York 12550 (hereinafter the “Client”); and
- 2) **Inframark, LLC**, a Texas limited liability company with its principal place of business at 2002 West Grand Parkway North, Suite 100, Katy, Texas 77449 (hereinafter the “Operator” or “Contractor”).

BACKGROUND

The Client desires to procure operation and maintenance services for its water treatment facility, which is located at _____ (“Facilities”) and the Operator desires to provide said operation and maintenance services to the Client.

In consideration of the mutual promises in this Agreement, the parties agree as follows:

1) TERM

- 1.1 This Agreement shall commence on _____, 2022 (“Commencement Date”) and shall remain in full force and effect until terminated under Section 5 below.

2) OPERATOR’S SERVICES

- 2.1. Operator shall provide the services as set forth in Schedule 2, which is attached hereto (the “Services”).
- 2.2. Operator may perform additional services beyond the Services outlined herein with the mutual consent of both parties. The parties shall separately negotiate the costs of any such additional services.
- 2.3. Operator may recommend Capital Improvements or operational changes to the Client as are necessary or recommended to perform the Services in compliance with the terms of this Agreement and Applicable Law. In the event the Client does not approve and make a Capital Improvement or operational change recommended by Operator, Operator will not be liable for any loss, damage or liability arising from or related to the Client’s rejection of or refusal to implement the recommended Capital Improvement or operational changes, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification.
- 2.4. Operator shall:
 - 2.4.1. Perform the Services in accordance with the provisions of this Agreement, Applicable Law, Client’s existing Permits as defined in Schedule 3 of this Agreement, licenses, and specifications applicable to the Services; exercising the degree of skill and care ordinarily exercised by members of Operator’s profession in the geographic region;
 - 2.4.2. Use qualified (and where required, certified) personnel to provide the Services in accordance with Applicable Law and the Client’s Permits and Discharge Permits; and

-
- 2.4.3. Provide response services for an Emergency Event at the Facilities twenty-four hours a day, seven days a week.

3) CLIENT OBLIGATIONS

3.1 Client shall:

- 3.1.1. Obtain and maintain all state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, the Client's Permits and Discharge Permits;
- 3.1.2. Comply with Applicable Law relating to the management, ownership, operation, maintenance, repair and replacement of the Facilities (to the extent that the responsibility of complying with those laws is not specifically assumed by the Operator under this Agreement). The Operator shall not be responsible for Client's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by the Operator hereunder;
- 3.1.3. During visits to the Facilities, comply and shall require its agents, licensees of invitees to comply with all reasonable safety rules and regulations adopted by the Operator;
- 3.1.4. Perform (or contract with a laboratory certified by the appropriate regulatory body to perform) all sampling and laboratory analysis required by Applicable Law, the Client's Permits. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater, or shall be in accordance with testing requirements of Applicable Law and the Client's Permits;
- 3.1.5. Maintain necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit data required for monthly reporting to local, state and federal agencies;
- 3.1.6. Dispose of Process Residue;
- 3.1.7. Perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by the Operator pursuant to the terms of this Agreement; and
- 3.1.8. Grant the Operator, free of charge, a license to use the Facilities, including all equipment, structures, facilities and vehicles under Client's ownership and which have been assigned by Client to the Facilities.
- 3.2. Client shall be responsible for all equipment, materials, supplies, parts, tools, rental equipment, and chemicals related to the operation and maintenance of the Facilities. If Client does not provide any such equipment, materials, supplies, parts, tools, rental equipment, and chemicals, Operator will not be liable for any loss, damage or liability arising from or related to the Client's work, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification. If Client does not provide any such equipment, materials, supplies, parts, tools, rental equipment, and chemicals, Operator may incur said equipment, materials, supplies, parts, tools, rental equipment, and chemicals and Client shall reimburse or compensate the Operator for the costs of such plus an administrative fee of 15%

of the cost thereof.

4) FEES AND PAYMENT

- 4.1 Client shall pay Operator \$150.00 per hour for the Services provided from 7:00 AM to 5:00 PM on Mondays through Fridays that are not holidays (“Regular Hours”). If Operator performs any Services outside the Regular Hours, Client shall pay Operator \$200.00 per hour for the Services. If Operator provides any Services that are subject to prevailing wage rates pursuant to New York Labor Law, Client shall pay Operator the hourly prevailing wage rate plus sixty percent (60%). Operator shall charge Client in four (4) hour increments for the work performed. All payments shall be due within thirty (30) days of the date of invoice.
- 4.2 Any disputes regarding invoices shall be raised, in writing setting forth sufficient detail regarding the nature of the dispute, within ten (10) business days from the date of said invoice. If Client does not properly raise a dispute with an invoice within ten (10) business days from the date of said invoice, any such disputes will be waived.
- 4.3 Any and all late payments due to either party from the other party shall accrue interest at a rate of one and one-half percent (1½ %) per month from the original due date and until payment is received, unless waived by agreement.
- 4.4 In the event of a change in the Services or Applicable Law or other factor which causes an increase in the Operator’s cost of providing the Services, the Operator may provide notice to the Client and the parties shall negotiate in good faith to adjust the Compensation to account for such change in Operator’s costs. If the parties are unable to reach a negotiated agreement within thirty (30) days of the date of notice, then the contract may be terminated immediately by the Operator.

5) TERMINATION

- 5.1 Either party may terminate this Agreement with or without cause upon seven (7) days’ written notice to the other party.
- 5.2 Either party may terminate this Agreement by immediate written notice if the other has failed to comply with a material term, provided that the non-defaulting party has first given the defaulting party written notice to cure their default within forty-five (45) days, or thirty (30) days for failure to pay an undisputed invoice when due (such applicable period, “Cure Period”) and the defaulting party has not done so. If a default cannot be cured within the Cure Period days, the parties may agree to an extension of the time to cure provided the defaulting party provides reasonable evidence within the Cure Period that it has identified a means to cure and is pursuing it diligently. Should Client pay an unpaid, undisputed invoice within the Cure Period, the termination notice under this provision will be deemed automatically withdrawn.
- 5.3 In the event of the termination of this Agreement under Sections 5.1 or 5.2 above, Client shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination, plus the balance of unamortized costs incurred by Operator as reflected on Operator’s financial statements, and the effectiveness of such termination by Client will be conditioned upon receipt by Operator of such payment. If Client incurs costs for damages due to a default of the Operator that results in termination of this Agreement, Client may deduct such costs or damages from the final payment due to Operator under this Section 5.2. Such deduction will not exceed the final payment owed to Operator and will constitute a full and final settlement between Client and Operator for any and all claims against Operator by Client and a release by Client of any and all further claims against Operator. Client shall

make payment within thirty (30) days of the date of termination.

- 5.4 Client shall notify Operator of any dispute with an invoice within ten (10) business days from receipt of said invoice. In the event that Client has a dispute with any charges, all undisputed charges on said invoice(s) will be due in accordance with the above times and the Parties shall negotiate in good faith to resolve any such dispute in a timely manner.

6) FINES, INDEMNIFICATION AND LIMITATION

- 6.1 Contractor is only liable for environmental regulatory fines and penalties imposed by environmental regulatory bodies that result after the Contract Effective Date and only to the extent said violations are directly attributable to Contractor's breach of its contractual obligations hereunder. Prior to settlement or payment of any such fines or penalties, Contractor reserves the right to contest any actions, suits or proceedings for violations through administrative procedures or otherwise. If the Facility loading exceed its design parameters or if influent contains: i) abnormal, toxic or other substances which cannot be removed or treated by the existing Facility; or ii) discharges which violate applicable ordinances, Contractor will use its best efforts to maximize performance of the Facility but shall not be responsible for associated effluent characteristics or damages, fines or penalties which result.
- 6.2 If the Facilities loading exceed its design parameters or if influent contains: i) Abnormal or Biologically Toxic Materials, Non-Processible Water, or other substances which cannot be removed or treated by the existing Facilities; or ii) discharges which violate applicable sewage ordinances, the Operator will use its best reasonable efforts to maximize performance of the Facilities but shall not be responsible for associated effluent characteristics or damages, fines penalties, damages, or other liabilities which result. Operator shall provide Client with prompt notice of such conditions identified in this Section 7.2.
- 6.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CLIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OPERATOR AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS (EACH IS REFERRED TO HEREIN AS AN "INDEMNIFIED PARTY") AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, COSTS, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OR RESULTING FROM OR RELATED TO OPERATOR'S PERFORMANCE OF THE SERVICES HEREUNDER, BREACH OF THIS AGREEMENT BY THE CLIENT, AND ANY CLAIM ASSERTED BY A THIRD PARTY AGAINST THE INDEMNIFIED PARTY FOR WRONGFUL DEATH, BODILY INJURY AND/OR PROPERTY DAMAGE, UNLESS AND TO THE EXTENT CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF OPERATOR.
- 6.4 Operator is not liable for any liabilities resulting from the collection system for the Facilities unless such liabilities are the result of Operator's negligent direct actions.
- 6.5 Operator shall not be liable for any damages, fines, penalties, or other liabilities of any kind resulting from following the instructions, directions, or policies of the Client or authorized representative.
- 6.6 Operator is not liable for any liabilities, losses, damages, expenses, fines, or penalties incurred by Client or any third party as a result of a data security breach or other cyber security breach to the Facilities or Client's computer systems, operating systems, and all other technological or information systems related to the Facilities and Services provided hereunder, except to

the extent such liability, loss, damage, expense, fine, or penalty is the direct result of Operator's willful or negligent acts or omissions.

- 6.7 Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable, either directly or indirectly, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit, even if such party has been advised of the possibility of such damages.
- 6.8 In the event that claims(s) raised by Client against the Operator on account of this Agreement, or on account of the Services performed hereunder, is/are covered under Operator's insurance policies required of the Operator hereunder, Operator shall not be responsible to Client for any loss, damage or liability beyond the amounts contractually required hereunder and actually paid pursuant to the limits and conditions of such insurance policies. With respect to any causes of action and/or claims raised against the Operator by Client that are not covered by the insurance policies required hereunder, Operator's liability to Client shall not exceed an aggregate amount equal to the compensation paid to Operator in the Agreement Year in which such cause of action and/or claim is raised.
- 6.9 FOR EQUIPMENT OR PARTS PURCHASED BY OPERATOR, OPERATOR SHALL PASS ON ANY MANUFACTURERS WARRANTIES OR GUARANTEES TO THE CLIENT AND PROVIDE THE CLIENT REASONABLE ASSISTANCE IN ENFORCING THE MANUFACTURER'S WARRANTIES AND GUARANTEES. OPERATOR SHALL NOT BE RESPONSIBLE TO THE CLIENT FOR ANY GUARANTEES OR WARRANTIES OFFERED BY OTHERS IN CONNECTION WITH ANY EQUIPMENT, MATERIALS, AND SUPPLIES PROVIDED IN CONNECTION WITH THE SERVICES HEREUNDER AND OPERATOR SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF ANY BREACH OF GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, BY ANY MANUFACTURER OR SUPPLIER OF EQUIPMENT OR MATERIALS PURCHASED FOR THE CLIENT UNDER THIS AGREEMENT. OPERATOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES REGARDING ANY EQUIPMENT, MATERIALS, AND SUPPLIES, IF ANY, OR ANY WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR USAGE OF TRADE.
- 6.10 If any information, opinions, recommendations, advice, or other work product or any data, information, procedures, charts, spreadsheets, logs, instruments, documents, plans, designs, specifications, operating manuals and specifications, customer data, billing information, regulatory filings, permits, authorizations, licenses, operation and maintenance records, or other records are provided by the Client or any third party acting on behalf the Client are provide to and used or relied on by Operator, the Client will be liable for any damages resulting directly or indirectly from such use and reliance.

7) INSURANCE

- 7.1 Operator shall provide and maintain the following levels of insurance coverage at all times during the Term.
- 7.1.1 Commercial General Liability Insurance, including contractual liability, with a limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;
- 7.1.2 Workers Compensation Insurance in compliance with the statutes of the State that has jurisdiction over Operator's employees engaged in the performance of Services

hereunder, to the required statutory amount; and

- 7.1.3. Automobile Liability Insurance with a combined single limit of one million dollars (\$1,000,000).
- 7.2 Operator shall name Client as an additional insured on the general liability policy and automobile liability policy with respect to the Services during the term of this Agreement, except for any claim against or loss suffered by Client arising as a result of Client's negligence or fault and, in circumstances of joint fault or negligence, except to the extent of the loss attributable to Client's proportionate degree of negligence or fault.
- 7.3 Operator shall provide Client with thirty (30) days' notice prior to cancellation of any policy hereunder.
- 7.4 Operator shall provide Client with insurance certificates confirming the levels of coverage in Section 7.1 and that Client is named as an additional insured.
- 7.5 Client warrants that it maintains and will continue to maintain, during the term of this Agreement, appropriate property insurance in relation to the Facilities.

8) DISPUTES

- 8.1 In the event of any disputes, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties shall mediate their dispute before a mediator acceptable to both parties, if they cannot agree, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation but the parties shall share equally the costs of the mediator and the mediation facilities.
- 8.2 If the parties are unable to resolve any disputes in accordance with 8.1 above, either party may request that such dispute be submitted for binding arbitration, which shall be governed by the rules of the American Arbitration Association or such other rules as the parties may agree. The parties agree that any judgment issued as a result of arbitration may be entered in the court having jurisdiction thereof. The parties agree that arbitration shall be the exclusive means to settle any dispute, controversy or claim arising out of this Agreement.

9) MISCELLANEOUS

- 9.1 The relationship of Operator to Client is that of independent contractor for all purposes under this Agreement. This Agreement is not intended to create, and shall not be construed as creating, between Operator and Client, the relationship of principal and agent, joint ventures, co-partners or any other similar relationship, the existence of which is hereby expressly denied
- 9.2 This Agreement contains the entire agreement between Client and Operator and supersedes all prior or contemporaneous communications, representations, understandings or agreements that are not consistent with any material provision of this Agreement.
- 9.3 The parties may only modify this Agreement by a written amendment signed by both parties.
- 9.4 The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

- 9.5 Neither party may actively solicit, for hire, the employees of the other party during the term of this Agreement or for one year following the termination of this Agreement.
- 9.6 This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to a parent, subsidiary, affiliate, or successor of either Party. When written consent of a party is required, such consent shall not be unreasonably withheld.
- 9.7 A party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure, as defined in Schedule 1. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.
- 9.8 The Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- 9.9 In the event that Client receives notice of or undertakes the defense or prosecution of any legal or administrative action or proceeding in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Client shall give Operator prompt notice of such proceedings and shall inform Operator in advance of all hearings. In the event Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Operator shall give Client prompt notice of such proceedings.
- 9.10 All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to the parties by each other will be addressed to:
- | | |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Inframark, LLC
2 Renwick Street
Newburgh, New York 12550
Attn: Michael Batz | City of Newburgh
83 Broadway, First Floor
Newburgh, New York 12550
Attn: Jason C. Morris, P.E. |
| With copy to: | With a copy to: |
| Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, Pennsylvania 19044
Attn: Legal Department | City of Newburgh
83 Broadway, Second Floor
Newburgh, New York 12550
Attn: Corporation Counsel |
- 9.11 All records compiled by Operator with information and material gathered when performing this Agreement are the property of Client.
- 9.12 Defined terms in this Agreement are set out in Schedule 1 or within the main body of this Agreement, capitalized or within quotation marks.
- 9.13 Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.
- 9.14 This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

9.15 Both parties warrant and represent to the other that they have full power and authority to enter into and perform this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date at the top of this Agreement.

CITY OF NEWBURGH

INFRAMARK, LLC

By:
Title:
Date:

By:
Title:
Date:

Draft

Schedule 1: Definitions

“Abnormal or Biologically Toxic Materials” may include, but are not limited to, concentrations of heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, any substance that violates the local or USEPA standards for finished water after the routine processing of the raw water, or any substance or material for which the Facilities and routine procedures are not designed to receive or treat.

“Applicable Law” means laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the above, in each case that relate to the (a) parties’ respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery and treatment of the Client’s raw and finished water.

“Capital Improvements” means any modifications, additions or upgrades to the Facilities made by or on behalf of the Client or with its prior approval and funded from Client’s capital proceeds.

“Client’s Permit(s)” and/or *“Permit(s)”* means all permits and licenses issued to Client and required for the treatment of potable water from the Facilities. Copies of all Permits are attached as Schedule 3 of this Agreement.

“Commencement Date” is defined in Section 1.1.

“ Compensation” is defined as Operator's compensation for the Services rendered under this Agreement.

“Emergency Event” means an event which threatens the immediate shutdown of, or the substantial reduction in the operational capacity of, any of the Facilities, or the life, health or property of Client and/or Operator, their employees and/or agents or others

“Force Majeure” means an event which is beyond the reasonable control of a party, including without limitation: (a) acts of God; (b) flood, fire, earthquake, hurricane or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees;] (i) shortage of adequate power or transportation facilities.

“Non-Processible Water” is defined as influent raw water (i) which contains Abnormal or Biologically Toxic Materials; or (ii) which is otherwise detrimental to the operation and performance of the Facilities; or (iii) which exceeds the design capabilities of the Facilities as defined by the Operations and Maintenance Manual for the Facilities or as provided in submissions made to regulatory agencies in connection with the construction and/or the permitting of the Facilities.

“Process Residue” means grit, screenings, water treatment residuals, and wastewater sludge and biosolids generated by or through the operation of the Facilities.

Schedule 2: Scope of Services

Operator shall provide labor to assist the Client in operating and maintaining the Facilities. Upon twenty-four (24) hours' notice from Client, except in the case on an Emergency Event, Operator shall provide personnel to provide operational assistance for the Facilities under the direction, instruction, and supervision of the Client's City Engineer and Water Superintendent. Operator shall abide by all Client's manuals, specifications, and policies and procedures for providing such operational services.

Operator shall not be responsible for all regulatory compliance and reporting required by Applicable Law.

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Schedule 3: Client's Permits

Draft

RESOLUTION NO.: _____ - 2022

OF

JANUARY 24, 2022

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
SUPPORTING OF THE REMOVAL OF
THE WALSH ROAD DAM IN THE TOWN OF NEW WINDSOR
NYS ID# STATE ID: 195-0535C**

WHEREAS, Riverkeeper proposes to remove the Walsh Road Dam (NYS ID# State ID: 195-0535C), located in the Town of New Windsor on Quassaick Creek, as part of a project entitled “Undamming the Quassaick Creek in New York State: site assessment and design for Walsh Road Dam removal to improve community resilience, increase aquatic connectivity, and reduce flooding risks,” (the “Project”) in response to the National Fish and Wildlife Foundation’s 2021 Emergency Coastal Resilience Fund RFP; and

WHEREAS, Riverkeeper’s Project to remove the Walsh Road Dam would reduce the flood potential in a high-risk area and provide a strong measure of flood resilience to an environmental justice community; and

WHEREAS, as a requirement of the application, Riverkeeper must obtain a resolution by the municipality supporting the Project; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby supports the Riverkeeper’s project to remove the Walsh Road Dam (NYS ID# State ID: 195-0535C) located in the Town of New Windsor.

<On City Manager Letterhead>

January 24, 2022

Lynn Dwyer
Program Director, Northeast, Coastal
National Fish and Wildlife Foundation

RE: Undamming the Quassaick Creek in New York State: site assessment and design for Walsh Road Dam removal to improve community resilience, increase aquatic connectivity, and reduce flooding risks

Dear Ms. Dwyer:

The City of Newburgh is pleased to provide this letter in support of the proposal submitted by Riverkeeper entitled, “Undamming the Quassaick Creek in New York State: site assessment and design for Walsh Road Dam removal to improve community resilience, increase aquatic connectivity, and reduce flooding risks,” in response to the National Fish and Wildlife Foundation’s 2021 Emergency Coastal Resilience Fund RFP.

The Quassaick Creek is a tributary to the Hudson River that has numerous obsolete mill dams that no longer serve any useful purpose. These dams block critical spawning and nursery habitat for several imperiled aquatic species. Some of these dams also contribute to localized flooding risks for adjacent communities. The Walsh Road Dam (NYS ID# State ID: 195-0535C) is one of these large legacy dams, threatening residents and impairing habitat connectivity for wildlife. The dam is located just downstream of the Mullins Courtyard Apartments, a public housing complex in the City of Newburgh, identified by USEPA EJSscreen as an environmental justice community. The apartment complex lies wholly within a flood-prone location, and is surrounded by impermeable soils. FEMA mapping shows the apartment complex to be located in a flood zone that is susceptible to 100-year floods or intense rainfall events that are becoming increasingly more frequent with climate change. Additionally, the Walsh Road Dam is directly adjacent to a sewage pump station owned by the Town of New Windsor, which forms critical infrastructure and serves the Town of New Windsor in the area south of the dam site. Removal of the dam will not only improve fish passage and help restore river flow regimes, it will also reduce the risk of flooding, protect community assets and residents, and improve resilience to critical infrastructure.

The Walsh Road Dam will soon be the first barrier to the Hudson River on the Quassaick Creek. In October 2020, Riverkeeper, NYSDEC, The City of Newburgh, and Orange County partnered to remove the Strooks Felts Dam, which was the first barrier to the Hudson River. Newburgh is currently in the process of removing the Holden Dam, which lies just downstream of the Walsh Road Dam. Once the Holden and Walsh Road Dams are removed, approximately 1.5 river miles will be opened, restoring critical habitat for American eel, river herring, blue crab, brown trout, and both species of black bass.

This project furthers the goals of Riverkeeper's dam removal and habitat restoration program. Riverkeeper has been building a groundswell of community support for dam removal to restore aquatic life to the Hudson River and its watershed by increasing habitat connectivity and protecting communities from threats associated with climate change. In addition to the Strooks Felt Dam removal, Riverkeeper successfully brokered a deal that resulted in the removal of the Wynants Kill Dam in Troy in 2016, removed the first barrier on Furnace Brook in Cortlandt in 2020, and created design plans for the removal of Maiden Lane Dam (scheduled to be removed this year by Westchester County). Riverkeeper has agreements to remove additional dams in the watershed.

As a partner of Riverkeeper, we fully support this proposal to create design plans to remove the Walsh Road Dam and engage with the community. The dam's removal would reduce the flood potential in a high-risk area, providing a strong measure of flood resilience to an environmental justice community. We view this project as a high value opportunity to help create a climate resilient community and help foster environmental stewardship for those who live nearby this historic creek.

Sincerely,

Todd Venning
City Manager

RESOLUTION NO.: _____ - 2021

OF

JANUARY 24, 2021

A RESOLUTION AUTHORIZING AN EXTENSION OF THE 2021 GENERAL LIABILITY INSURANCE POLICY FOR THE PERIOD JANUARY 1, 2022 TO JANUARY 31, 2022; CYBER LIABILITY, EQUIPMENT BREAKDOWN AND SITE POLLUTION LIABILITY INSURANCE POLICIES FOR THE PERIOD JANUARY 1, 2022 TO DECEMBER 31, 2022; AND MUNICIPAL PROPERTY, GENERAL AND AUTO LIABILITY, LAW ENFORCEMENT LIABILITY, AND PUBLIC OFFICIALS AND EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICIES FOR THE PERIOD FEBRUARY 1, 2022 TO DECEMBER 31, 2022

WHEREAS, the City of Newburgh has solicited proposals for insurance coverage for the fiscal year 2022; and

WHEREAS, Arthur J. Gallagher of New York, Inc. has obtained an extension of the City's 2021 General Liability Insurance Policy for the period January 1, 2022 to January 31, 2022; and

WHEREAS, Arthur J. Gallagher of New York, Inc. has recommended a package of insurance coverage for cyber liability, equipment breakdown and site pollution liability for the period January 1, 2022 to December 31, 2022; and

WHEREAS, Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. have recommended a package of insurance coverage for municipal property, general and auto liability, law enforcement liability, and public officials and employment practices liability for the period February 1, 2022 to December 31, 2022;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby approves the extension of the City's 2021 General Liability Insurance Policy for the period January 1, 2022 to January 31, 2022; the package of insurance coverage for cyber liability, equipment breakdown and site pollution liability for the period January 1, 2022 to December 31, 2022; and the package of insurance coverage for municipal property, general and auto liability, law enforcement liability, and public officials and employment practices liability for the period February 1, 2022 to December 31, 2022; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to execute agreements with Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. to provide for insurance coverage, as described herein, and third-party claims administration services for the applicable time periods.

RESOLUTION NO.: _____ - 2022

OF

JANUARY 24, 2022

**A RESOLUTION ADOPTING A REVISED CITY OF NEWBURGH
VEHICLE USAGE POLICY AND PROCEDURE
FOR COMMUTING WITH A CITY-OWNED TAKE-HOME VEHICLE**

WHEREAS, by Resolution No. 109-2014 of April 28, 2014, the City Council of the City of Newburgh adopted a Vehicle Policy and Procedure for Commuting; and

WHEREAS, by Resolution No. 291-2021 of December 13, 2021, the City Council adopted an amended Vehicle Usage Policy and Procedure for Commuting with a City Owned Take-Home Vehicle; and

WHEREAS, the City Manager and City Comptroller have proposed an additional revision to the most recent Vehicle Usage Policy and Procedure for Commuting with a City Owned Take-Home Vehicle, and the City Council finds that adopting the policy with the additional revision is in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby adopts the City of Newburgh Vehicle Usage Policy and Procedure for Commuting with a City Owned Take-Home Vehicle, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that the City of Newburgh Vehicle Usage Policy and Procedure for Commuting with a City Owned Take-Home Vehicle shall take effect on January 25, 2022.



CITY OF NEWBURGH

Office of the City Manager

83 Broadway, Newburgh, New York 12550

(845) 569-7301/Fax (845) 569-7370

Todd Venning, City Manager

tvenning@cityofnewburgh-ny.gov

TO: Mayor & City Council

FROM: Todd Venning, City Manager
Ryan Ciancanelli, Acting City Comptroller

Date: January 24, 2022

Subject: City Vehicle Usage Policy for Commuting with a City Owned Take-Home Vehicle

I. Purpose

The purpose of this Memorandum is to update the policies and procedures for employees who are issued a city-owned take-home vehicle, and for the City to comply with IRS rules regarding the fringe benefit cost of such use.

II. General

The Office of the Comptroller will be responsible for ensuring compliance with this Memorandum

III. Vehicle Assignment

The City Manager is responsible for assigning city-owned vehicles to employees for the use of commuting and daily work-related travel. Currently the following positions are authorized to be issued a city-owned vehicle:

1. City Manager
2. Police Commissioner
3. Police Chief
4. Police – Administrative Commander
5. Police – Detective Commander
6. Police – Patrol / Operations Commander
7. Police – Staff Services Supervisor
8. K-9 Unit Members
9. Police - Detective Non-Fatal Shooting Task Force

10. Fire Chief
11. Assistant Fire Chief – Fire Prevention
12. Commissioner of Public Works
13. Superintendent of Public Works
14. Water Superintendent
15. City Engineer

The employees above are deemed on-call for all city of Newburgh related emergencies. Law enforcement officers are authorized to carry a firearm, execute search warrants, and make arrests while commuting in an unmarked police vehicle.

The vehicles are for the exclusive use by the employee assigned the vehicles and driving non-city employees is prohibited. Apart from the City Manager, no personal use is allowed. **Employees are required to commute in the vehicle.**

IV. Notifications

If applicable, the Office of the Comptroller will notify an employee that use of a vehicle is a taxable fringe benefit by memo. The Office of the Comptroller will record the vehicle usage as a taxable fringe benefit on the employee's payroll and W2 form using the method in accordance with IRS regulations.

The City Manager has the authority to take away an employee's commuting vehicle if the employee fails to comply with the policy.

The Office of the Comptroller may require the submission of mileage use forms to ensure proper use of the vehicles is occurring in accordance with this policy.

This policy takes effect January 25, 2022 and replaces all existing policies issued by the City of Newburgh related to city owned commuter vehicles.

Nothing in this policy is intended to conflict with a specific provision in a collective bargaining agreement between the City and the recognized labor organization representing City employees.

RESOLUTION NO.: _____ - 2022

OF

JANUARY 24, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED
A GREENWAY CONSERVANCY FOR THE HUDSON RIVER VALLEY
TRAIL PROGRAM GRANT FROM THE HUDSON RIVER VALLEY GREENWAY
IN AN AMOUNT NOT TO EXCEED \$10,000.00 FOR A BIKE TRAIL
FROM THE NEWBURGH-BEACON BRIDGE TO DOWNTOWN NEWBURGH**

WHEREAS, the City of Newburgh Transportation Advisory Committee has requested that the City of Newburgh apply for a Greenway Conservancy for the Hudson River Valley Trail Program Grant from the Hudson River Valley Greenway to fund the planning and community engagement of a bike trail from the Newburgh-Beacon Bridge to Downtown Newburgh; and

WHEREAS, the grant application requires an approved municipal board resolution authorizing the grant application which may be submitted within 48 hours of the municipal board's meeting date if such meeting date is after the grant application deadline; and

WHEREAS the City is applying for a grant award in the amount of \$10,000.00 with a match to be derived from in-kind City services; and

WHEREAS, if awarded, the funding will be used to plan and design a dedicated bike trail from the Newburgh-Beacon Bridge to downtown Newburgh; and

WHEREAS, this Council has determined that making such application is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a Greenway Conservancy for the Hudson River Valley Trail Program Grant from the Hudson River Valley Greenway in the amount of \$10,000.00 with a City-match of in-kind services to fund planning and community engagement of a bike trail from the Newburgh-Beacon Bridge to Downtown Newburgh; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the project funded thereby.

RESOLUTION NO.: _____-2022

OF

JANUARY 24, 2022

**A RESOLUTION AMENDING THE 2022 PERSONNEL ANALYSIS BOOK
TO CHANGE ONE TEMPORARY LIEUTENANT POSITION TO
A PERMANENT LIEUTENANT POSITION AND
TO DELETE ONE VACANT FIREFIGHTER POSITION IN THE FIRE DEPARTMENT**

WHEREAS, the 2022 Personnel Analysis Book includes Lieutenant position on a temporary basis in the Police Department; and

WHEREAS, the Fire Department proposes to change the temporary Lieutenant position to a permanent Lieutenant position and to delete vacant and to delete a vacant Firefighter position to improve the efficiency of the Fire Department; and

WHEREAS, the change from temporary Lieutenant to permanent Lieutenant and deletion of a vacant Firefighter position in the Fire Department requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2022;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2022 be amended to delete one Lieutenant position on a temporary basis; add one Lieutenant position on a permanent basis; and to delete one vacant Firefighter position in the Fire Department.

CITY OF NEWBURGH
BOARD AND COMMISSION APPOINTMENT POLICY AND PROCEDURE

I. Purpose

To implement a uniform policy and procedure for the appointment of individuals to serve on the City's boards and commissions.

II. General

Consistent with New York State Law and the Newburgh City Charter and Code of Ordinances, the City Council and the City Manager have the authority to appoint members of the City's boards and commissions for terms prescribed therein. The City's boards and commissions are listed in Appendix A.

The Executive Office, the City Clerk and the Corporation Counsel are responsible for administering this policy.

No member of City staff, either full-time, part-time, seasonal or temporary, may be appointed to serve as a voting member of a City board or commission unless specifically provided in the board or commission enabling legislation.

Each year, on or before December 31, the Executive Office in consultation with the City Clerk will prepare and provide to the City Council a list of all board and commission members in the City. The appointment list will include list of all current City board and commission vacancies which will expire during the next calendar year with the name of the incumbent appointee, the date of appointment, and the date the term expires. The appointments list will be made available to members of the public on the City's website.

III. Appointment Process

A. The Executive Office will advertise any vacancy or expiring term of any City board or commission for the purpose of soliciting applications or letters of intent for such positions at least 30 days but not more than 60 days before filling any such vacancy. Such advertisement will be made in the newspapers of record, City website, and City social media during the notice period and include the board or commission name, minimum qualifications (if applicable), current date/time/place/frequency of meetings, term of office, date by which applications or letters of intent are due, and directions to submit such applications and letters to the Executive Office. The City Manager will include an announcement of any vacancy or term expiration during the City Manager's Update at each Council meeting that occurs in the month before term expiration and as soon as practicable after a vacancy occurs.

- B. Applications will be accepted from applicants in the form attached or in the form of a letter of intent containing answers to the questions on the attached form. Such applications or letters of intent shall be directed to the Executive Office.

All incumbent board and commission members seeking re-appointment to a new term must submit an application form or a letter of intent containing answers to the questions in the application form.

The Executive Office will retain the applications received for boards and commissions appointed by the City Manager.

The Executive Office will receive, compile and distribute copies of applications for boards and commissions appointed by the City Council to the City Council.

- C. The Review Process

- 1. City Council appointments

The City Council will review all applications and letters of interest at a work session but may conduct such review in an executive session. The City Council may select candidates for interviews. The Council may conduct interviews in an executive session. The Council may discuss applications following the conduct of any interviews and may conduct those discussions in an executive session. The vote to appoint a candidate to any board or commission shall be by resolution at a public meeting of the City Council.

- 2. City Manager appointments

The City Manager will review all applications and letters of interest. The City Manager may select candidates for interviews. The City Manager's appointment of a candidate to a board or commission shall be confirmed by a letter as provided in Section III(D).

- 3. The City Council and/or the City Manager may decide not to appoint or reappoint any of the candidates and instead direct the Executive Office to re-advertise for applications and letters of intent with a new deadline for submission. The City Council and/or City Manager may retain applications received from any solicitation for subsequent consideration for future vacancies for up to one year, at which time such applications shall be considered expired.

- D. Notification

1. Each appointee shall be notified by letter. The Executive Office is responsible for preparing letters of appointment for the City Manager and letters confirming appointments by City Council which will be signed by the City Manager.
2. Each notification letter shall include the name of the board or commission to which the appointment is made; a copy of the resolution of the City Council, where the appointment is made by City Council; the term of the appointment, including expiration date; oath requirements and procedure; training requirements; a copy of the board or commissions enabling law; and a copy of the City's Ethics Code located in Chapter 34 of the City Code of Ordinances.
3. The Executive Office will be responsible for notifying other applicants that the position has been filled. This notification may be made by mail or e-mail.

IV. Schedule of Boards and Commissions

The Schedule of Boards and Commissions will be reviewed annually and updated to include boards and/or commissions created by law or ordinance; to delete boards and/or commissions repealed by law or ordinance; and to modify based on amendments made by law or ordinance.

Name of Board or Commission	Method of Appointment	Term	Number of Members	Legal Reference
Architectural Review Commission	City Manager	7 years	7 2 alternates	NYS General Municipal Law, Article 5-K City Code Chapter 300
Arts and Cultural Commission	Council	3 years	No fewer than 9 and no more than 15	City Code Chapter 14
Board of Assessment Review	Council	5 years	no fewer than 3 and no more than 5	NYS Real Property Tax Law Article 5 City Charter Section C7.30
Board of Electrical Examiners	City Manager	serve until successors appointed and qualified	5	City Code Chapter 30
Board of Ethics	Council	At the pleasure of the Council	5	NYS General Municipal Law Article 18

				City Code Chapter 34
Conservation Advisory Council	Council	2 years	7	NYS General Municipal Law Article 5 & Article 12-F, NYS Executive Law City Code Chapter 159
Citizens Advisory Committee	Council	2 years	7	City Code Chapter 12
Civil Service Commission	Council	7 years	3	NYS Civil Service Law City Charter Section C15.10
Districting Commission	Council	Date of appointment to 60 days after map is filed	7	City Charter Section C1.21
Examining Board of Plumbers	City Manager	3 years	5	NYS General City Law Article 4 City Code Chapter 230
Human Rights Commission	Council	3 years	7	NYS General Municipal Law Article 12-D City Code Chapter 51
Newburgh Housing Authority	City Manager	5 years	7 5 appointed 2 tenant-elected	NYS Public Housing Law Article III; Section 453
Newburgh Industrial Development Agency	Council	At the pleasure of the Council	not less than 3 or more than 7	NYS General Municipal Law Article 18-a; Section 913
Police Community Relations and Review Board	Council	3 years	7 – one from each ward & 3 at large	City Code Chapter 72
Planning Board	City Manager	7 years	7 2 alternates	NYS General City Law Article 3

				City Code Chapter 76 and Chapter 300
Strategic Economic Development Committee	Mayor	At the pleasure of the Mayor		Community Advisory
Transportation Advisory Committee	Council	2 years	9 – 6 residents; 1 representing an agency advocating for persons with disabilities; 2 City employees from Engineering; Planning & Development or Public Works	City Code Chapter 71
Zoning Board of Appeals	Council	7 years	7 2 alternates	NYS General City Law Article 5-a City Code Chapter 300

V. This policy is effective February 1, 2022.

General Application for City of Newburgh Commission/Board

Name of Commission/Board/Advisory Committee: _____

Applicant name: _____ Date of application: _____

Address: _____

Telephone (home): _____ (work): _____

Age: _____

Length of residence in City (if resident): _____

E-Mail Address: _____

Occupation(s)/place of business: _____

Education: (*schools/degrees/specialties*)

Why are you interested in this position?

What particular strengths would you bring to this position?

Experience and community affiliations:

Please attach any other information you believe would be relevant:

Forms should be returned to City of Newburgh Executive Office, attn: City Manager, 83 Broadway, Newburgh, NY 12550 or e-mail to _____@cityofnewburgh-ny.gov.

DRAFT

The City of Newburgh

Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-7335
Fax. (845) 569-7338

Jeremy Kaufman
Assistant Corporation Counsel

MEMORANDUM

TO: Council Member Anthony Grice
Council Member Giselle Martinez
Council Member Ramona Monteverde
Council Member Omari Shakur
Council Member Robert Sklarz
Council Member Patricia Sofokles
Mayor Torrance Harvey

FROM: Michelle Kelson, Corporation Counsel

RE: 2022 Council Rules and Order of Procedure – Re-adoption
Draft amendment version 2 incorporating City Charter Section C4.01(A)

CC: Todd Venning, City Manager

DATE: January 14, 2022

Attached for your consideration and review is a second draft of the proposed 2022 Council Rules and Order of Procedure based on comments received at the January 6, 2022 work session and by email through January 14, 2022. The amendments proposed are as follows:

- Rule 1(D) – amended to permit a motion to adjourn after the City Manager’s report, which is the point in the meeting where the business of the body is complete but permits the Presiding Officer to adjourn a meeting without a motion in an emergency that endangers the public health, safety, and welfare.
- Rule 1(H) – amended to permit the Presiding Officer to call a recess to address a situation where a Council Member may be out of order or in violation of the rules which will provide an opportunity to de-escalate/resolve and permit resumption of the meeting without a formal adjournment.
- Rule 1(K) – new rule which incorporates by reference City Charter Section C4.01(A) which was amended by local law adopted April 12, 2021 and approved by mandatory referendum at the November 2, 2021 election.

- Rule VII(B)(2) – amended for speakers during public comment to step to a “designated speaking area” which may or may not be at the front of the room in which the meeting is taking place.
- Rule VII(B)(6) – amended to permit Council Members to request permission from the Presiding Officer to respond to a speaker’s remarks after the speaker is finished or time expires for the purpose of correction/clarification, rather than interrupting the speaker during the allotted time.

Other considerations and further information:

- Rule VII(B)(5) – Council must determine whether to amend this rule to permit speakers to yield unused time to another speaker during the public comment portion of the meeting.
- Rule III(D) – already requires resolutions, ordinances, and local laws to be presented at a work session before being listed on a regular meeting agenda and contains an exception for emergencies that endanger the public health, safety, and welfare.
- Rule 1(H) – already permits a Council Member to appeal the Presiding Officer’s direction to leave a meeting where the Member is disruptive or failing to follow the rules; the appeal requires a vote of the Council and, in effect, a vote that results in rejecting the appeal serves the same purpose as a vote of the Council to remove.

The proposed amendments are presented for Council consideration and discussion and not required by law. The Council is free to accept, reject or modify the amendment or any of the Rules and Order of Procedure in its discretion.

Michelle Kelson

MICHELLE KELSON
Corporation Counsel

MK/bhs
Attachments

**City of Newburgh City Council
Rules of Order and Procedure**

Rule I: General Rules of Procedure

- A. The presiding officer shall preserve order and decorum and shall decide questions of order, subject to an appeal by motion to the City Council; the appeal to be taken without debate. The presiding officer may, if (s)he so desires, present motions and resolutions to the City Council, and (s)he may debate on any question which is being considered by it.
- B. When a question is under consideration, no motion shall be entertained except as herein specified, which shall have precedence in the following order:
1. Motion for clarification, or to request reversal of ruling of the presiding officer, or limiting or extending discussion;
 2. Recess the session;
 3. Lay on table;
 4. Postpone to a meeting of a certain date;
 5. Refer to work session;
 6. Amend;
 7. Call the previous question, to be asked as follows: "Shall the main question be put now?" If answered in the negative, the main question remains before the Council.
- C. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone shall be decided without debate.
- D. A motion to adjourn may be made at the conclusion of the City Manager's Report~~shall always be in order~~ and shall be decided without debate. The Presiding Officer may adjourn a meeting in an emergency which endangers the public health, safety or welfare.
- E. Every member desiring to speak shall address the presiding officer. All council members shall confine him/herself to the question under debate and avoid personalities. A member once recognized shall not be interrupted when speaking.
- F. No question or motion shall be debated or put, unless it is seconded. It shall then be stated by the presiding officer.
- G. A motion to reconsider any action taken by the Council may be made on the day such action was taken, either immediately during the session or at a recessed or adjourned session. Such motion must be made by a member on the prevailing side, but may be seconded by any member. The motion is subject to debate. This rule shall not prevent any member of the Council from making or re-making the same or any other motion at a subsequent meeting of the Council.

H. No member of the Council shall by conversation or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to comply with these rules, or the orders of its presiding officer. The Presiding Officer, subject to appeal by motion to the Council, may direct a member who is acting in violation of this section to leave the meeting or call for a recess ~~or adjournment~~.

I. As the sergeant-at-arms of the meetings, the Police Chief shall carry out all order and instructions given by the presiding officer, for the purpose of maintaining order and decorum at the meetings, subject to an appeal by motion, to the Council.

J. Any motion may be withdrawn by the maker before it has been amended or voted upon, but in such case any other member may renew the motion at that time.

J.K. ~~Council Member absence, violation of rules or disorderly behavior may be addressed by City Charter Section C4.01(A).~~

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Rule II. Order of Business

A. The Order of Business shall be in conformity with section 20-3 of the Code of Ordinances. Further comments from the Council shall be limited to 3 minutes for each Council Member.

B. The Order of Business may be departed from by majority vote of the members present.

Rule III. Voting

A. The order of voting shall be by alphabetical order of the last name of each Council member with the Mayor voting last.

B. All votes shall be by roll call. It shall be the duty of the City Clerk to enter on the minutes the names of the members voting for or against the question. Once a question has been put and the vote is being taken, the members of the Council shall confine themselves to voting and shall not resume discussion or make further comments on the question.

C. Every resolution or motion must be seconded before being put to a vote. An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

D. No resolution, ordinance or local law may be introduced at a meeting unless the resolution, ordinance or local law has been considered at a work session of the Council prior to the Council meeting or is listed on the written agenda for said meeting. No resolution, ordinance or local law may be introduced at a meeting if it will result in exceeding the maximum number of work session items set forth in Rule X. Notwithstanding the foregoing, by majority vote, an emergency item concerning the public health, safety or welfare not discussed at work session or appearing on the written agenda may be introduced, considered, and voted upon.

Rule IV. Executive Session

Whenever the Council shall determine to transact business in an executive session, it shall do so in accordance with the provisions of the New York State Open Meetings Law. All executive sessions shall be commenced at the public meeting. Proposals, discussions, statements and transactions in executive session are intended to be and shall be held and maintained in confidence and shall not be disclosed. The presiding officer shall direct all persons except members and designated officers and employees of the City to withdraw.

Rule V. Participation of City Manager and Staff

The City Manager shall be permitted to address the Council and participate in discussions. Heads of Departments shall be permitted to address the Council. Any other City officer or employee shall be permitted to address the Council with permission of the presiding officer, subject to an appeal by motion to the City Council, the appeal to be taken without debate.

Rule VI. Suspension of the Rules

In order to hear persons other than members of the City Council, the Mayor, and members of City staff, it shall be necessary to pass a motion suspending the rules of order. A motion to suspend the rules may be made at any time during the meeting and shall be decided without debate. Any such person speaking shall confine himself-herself to the subject and shall spend not longer than three (3) minutes, unless the time is extended by the presiding officer. This rule shall not apply to public hearings.

Rule VII. Guidelines for Public Comment

- A. The public shall be allowed to speak only during the Public Comment period of the meeting or at such other time as the presiding officer may allow, subject to appeal by motion to the Council.
- B. Speakers must adhere to the following guidelines:
 1. Speakers must be recognized by the presiding officer.
 2. Speakers must step to the designated speaking area in front of the room.
 3. Speakers must give their name, street name without number and organization, if any.
 4. Speakers must limit their remarks to 3 minutes. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
 5. Speakers may not yield any remaining time they may have to another speaker.
 6. Council members may, with the permission of the presiding officer, request to respond to a speaker's remarks after the speaker has concluded remarks or the speaker's time has expired~~interrupt a speaker during their remarks~~, but only for the purpose of clarification or information.

Commented [KM1]: Council must decide whether to permit speakers to yield remaining time to another speaker.

7. All remarks shall be addressed to the Council as a body and not to any specific member or to staff. All speakers addressing the City Council at a public meeting shall speak from the public microphone with employees and agents of the City having the option to speak from the head table using a microphone. In no circumstances shall any speaker sit in front of the head table with his or her back to the public.
8. Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste. No profanities shall be used. No personal, slanderous, boisterous remarks shall be made. Council members, the Mayor and staff shall be treated with respect. The presiding officer, subject to appeal by motion to the Council, or the Council, may, by majority vote, request that the presiding officer direct that a speaker violating this provision or any other rule yield the floor and in the event the speaker fails to obey, (s)he may be escorted from the meeting by the sergeant-in-arms.
9. Interested parties or their representatives may address the Council by written communications. Written communications shall be delivered to the Clerk or their designee. Speakers may read written communications verbatim.

C. Members of the public not speaking shall observe commonly accepted rules of courtesy and decorum. They shall not annoy or harass others or speak when another speaker is being heard by the Council.

Rule VIII. Use of Recording Equipment

All members of the public and all public officials are allowed to audio or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer, subject to appeal by motion to the Council, may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Council, size of the equipment, and the ability of the public to still participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, (s)he may request an accommodation to avoid the interference and if not complied with, may ask the individual to leave the meeting room.

Rule IX. Rules for Public Hearings

The following rules shall apply to a legally required public hearing held before the City Council:

- (a) The Presiding Officer shall recognize each speaker when the hearing is commenced. Speakers shall identify themselves, their street name and organization, if any, prior to the remarks.
- (b) Speakers must limit their remarks to five (5) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another

speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.

(c) All remarks shall be addressed to the Council as a body and not to any individual member thereof.

(d) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.

(e) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.

(f) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.

Rule X. Work Sessions

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions. Work Session items requiring the preparation of a resolution, ordinance or local law shall be submitted to the City Manager's office no later than close of business on Wednesday in the week before the work session. Discussion items for work sessions shall be submitted to the City Manager's office no later than noon on the Friday immediately preceding the work session. The number of work session items and presentations shall be limited to 20. Presentations shall be limited to 10 minutes. Priority shall be given to those items which require the action of the City Council before the next regularly scheduled work session. Items considered in Executive Session shall be excluded from the maximum number of work session items.

Rule XI. Robert's Rules of Order

In the event any question in procedure shall arise that is not provided for by these rules, then, in that event, Robert's Rules of Order, Newly Revised, 10th Edition, shall be followed.

Rule XII. Adoption of Ordinances

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on agenda items before Council

action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

This rule shall not be construed to prevent the Council from holding a public hearing on any ordinance at its discretion, provided a majority of the members of the Council in attendance at a meeting, upon a motion or resolution duly introduced, vote to conduct such public hearing.

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)

January 10, 2014 (Rule IV)

February 22, 2016

April 24, 2017 (Rule VII(B) amended)

January 22, 2018 (Rule II, Rule VII(B), Rule IX amended)

October 22, 2018 (Rule III(D) and Rule X amended)

_____, 2022 (Rule I(K) added, Rule 1(D), Rule 1(H), VII(B)(2), VII(b)(6) amended)

Approved: _____ January 27, 2022