



**City of Newburgh
RFP #18.22 Request for Proposals (RFP) for Landscape
Architecture Services
Proposals Due:**

July 15, 2022, 12pm

Address and contact name:

CITY OF NEWBURGH COMPTROLLERS OFFICE

Attn: Robert Van Vlack, Purchasing Agent

83 Broadway, 4th floor Newburgh, NY 12550

The City of Newburgh, New York is soliciting the services of a Landscape Architecture Firm to prepare the design of a memorial park and reinterment area for human remains previously removed from what was known as the “Newburgh Colored Burial Ground,” now located around and under the City of Newburgh Court House. The selected consultant shall work with the City of Newburgh stakeholder group to develop concept plans and final designs for the purposes of construction of the memorial park and reinterment area within a pre-determined area of Downing Park.

Background:

The area occupied by the former Broadway School, its parking area and a portion of Robinson Avenue (9W) was designated as a burial ground for persons of African descent in the 19th Century. When the Broadway School was built and the street extended a century ago, excavations at that time uncovered human remains. According to newspaper records from the late 1800s and 1908, remains were to be relocated to two sites: the so-called Alms House burial ground located at Snake Hill on City-owned property, and at Woodlawn Cemetery on Union Avenue, a private facility. It is unknown how many individuals were actually moved, and how many were left in the existing burial ground at the Broadway School location.

The City undertook a renovation of the old Broadway School in 2008. During this renovation project, excavations uncovered skeletal human remains from several individuals. These remains were remanded to the Orange County Medical Examiner's office, which determined that they

came from a historic cemetery. Mindful of the historical and cultural significance of the site, and the need to appropriately reinter and memorialize the remains found, a group of clergy and members of community, along with City officials and staff, held public meetings between March and May 2008 to create a plan to define and carry out this important responsibility. Ultimately, 102 discrete individuals were excavated from the Broadway School burial ground area.

Over the last 14 years, the stakeholder group has maintained the position that the remains must be appropriately reinterred in a suitable location. Earlier this year, the City and the Stakeholder group unanimously agreed on an area near the top of Downing Park, with sweeping Hudson River views.

The area is generally southeast of the parking circle at the northern terminus of Haible Way, near the highest point in Downing Park, and is detailed in the sketch below.



Downing Park is a 35-acre landscape park located in the heart of the City of Newburgh. The park was named after Newburgh's native son Andrew Jackson Downing, eminent horticulturist and pioneer of the public park movement. Downing had advocated for the creation of Central Park, and he was designing the Mall in Washington, D.C., at the time of his accidental death at 38 in 1852. Downing recruited Calvert Vaux in 1850 from London and brought him to Newburgh, where the two ran an architectural practice until Downing's death. Vaux and Frederick Law Olmsted had worked together for many years on Central Park and other projects when the City approached them about the park in Newburgh. In 1889, they agreed to the commission and offered to give the park design to the City if the park was named after their late mentor. Downing Park was the last collaborative effort by Olmsted and Vaux — as well as the only project that included both their sons, John Olmsted and Downing Vaux. Downing Park was designed to be a passive, contemplative environment, a place of refuge in the center of bustling city.

The selected consultant should be prepared to undertake necessary survey work, prepare schematic designs of at least two (2) alternatives for review by the City of Newburgh stakeholders. The preferred schematic shall undergo design development, with reviews at sixty (60) percent, ninety (90) percent, and 100% design milestones, inclusive of all appropriate plans and specifications construction bidding.

SECTION 1. GENERAL INFORMATION

This document solicits Requests for Proposals (RFP) to design a memorial area in Downing Park, City of Newburgh, New York. The Landscape Architect selected for the project will be required to be licensed and currently registered in the State of New York. The selected consultant will be required to subcontract with a Land Surveyor that is licensed and currently registered in the State of New York.

Contract Administration

Address all correspondence regarding this RFP to:

CITY OF NEWBURGH COMPTROLLERS OFFICE

Attn: Robert Van Vlack, Purchasing Agent

83 Broadway, 4th floor Newburgh, NY 12550

All firms/consultants who receive or download this RFP are requested to register their name and email address by sending an email to Robert Van Vlack, Purchasing Agent, rvanvlack@cityofnewburgh-ny.gov. Any revisions or corrections to this RFP after posting will be communicated to those registered. Failure to register your contact information may result in nonparticipation of the RFP process. A proposal will not be considered if it fails to include all requested information as detailed in this original RFP and any subsequent modifications.

Any requests for additional information that may be needed for the preparation of the proposal should be directed to Robert Van Vlack, Purchasing Agent, rvanvlack@cityofnewburgh-ny.gov. All questions must be received before 4 p.m., 5 days prior to the receipt of proposal date. Questions received after that time will not be addressed.

Submittal of Proposal

Please provide three (3) paper copies and one (1) electronic pdf copy of the Proposal for the evaluation process to:

CITY OF NEWBURGH COMPTROLLERS OFFICE

**Attn: Robert Van Vlack, Purchasing Agent
83 Broadway, 4th floor Newburgh, NY 12550**

Submittals will be accepted until 12 PM on Friday, July 15, 2021

Acceptance of Proposal Contents

The contents of this RFP will be included as part of the contractual obligations if a contract ensues.

SECTION 2: OVERALL SCOPE OF SERVICES

Task 1: Meet with the stakeholder group and City staff and gather input on design ideas. and develop a schematic plan for the memorial park area.

Hold at least three (3) virtual or in-person meetings with the City of Newburgh stakeholder group and various City staff to evaluate the needs of the City in undertaking this project. This must include evaluations of the existing site, incorporation of the proposed area into the greater Downing Park plan, and design for appropriate facilities for the reinterment of the remains. The design must take in to account the cultural needs to the Representatives of the Deceased, the City of Newburgh African American community at large, the importance of Downing Park to the City, and the historic significance of Downing Park.

Task 2: Undertake survey which the design shall be based upon.

Selected consultant shall subcontract with a NYS Licensed Land Surveyor to obtain the necessary site information (i.e. existing features, topography, retaining walls, roadway, etc.)

Task 3: Develop two design schematics for review

Develop a minimum of two (2) conceptual plans for the memorial park and reinternment area and meet with City of Newburgh stakeholder group and City Staff to gather input and review on a preferred plan for design refinement.

Task 4: Prepare visual aids to assist the stakeholder group and City staff present the project to the greater public.

Renderings and colorized plans of various iterations of the schematic plans must be prepared in order to keep City elected representatives and the greater public informed of the project. These

may include details where applicable, especially of the specific details relating to the reinterment. These may also include views from various portions of the Park.

Additional/ Alternative Task 5: Prepare necessary Bid Documents including undertaking necessary environmental review

Prepare final plans, specifications, and bid documents for construction following New York State and City of Newburgh procurement requirements. Required submittals shall be to City staff for review and comment at 60%, 90% and 100% design milestones. All the City comments shall be incorporated into plans, specifications and bid documents. The City has appropriate front-end documents that shall be utilized.

Prepare any necessary environmental review documents for City or agency approvals.

Additional/ Alternative Task 6: Provide construction inspection services

Review construction bid submittals and make a recommendation to the City on award of a construction contract to the appropriate bidder. Provide onsite construction inspection services during the entirety of the construction process.

PROJECT TIMELINE:

Our project timeline will run from approximately August 2022 through December 2022. The City intends to bid the project for Summer 2023 construction.

SECTION 3: PROPOSAL

The proposal submitted shall contain only the information requested below.

Proposal Format

The submittal should include the following:

1. General Information- Provide information about the company/contractor along with a brief history (not more than 1 page).
2. Project Understanding- Include a summary of the company's/consultant's understanding of what is required (not more than 1 page).
3. Project Approach- Provide, in detail, specific methods and concepts that will be used to complete each of the requested tasks.
4. Proposed Project Team and Experience-
 - a. Identify person(s) involved in this project and what their specific roles will be. Provide a flowchart of the project team and provide all professional resumes in the appendix of the response proposal.
 - b. Describe three (3) similar projects completed in the last 10 (10) years. Please provide individuals' specific roles in these projects as well as references and contact information for each.

5. Schedule- Provide a schedule from start to completion including a list of tasks and milestones along with approximate dates and deliverables of each.
Provide this information in a timeline or chart format.
6. Additional Information- Any other relevant information that may be useful and relevant to this project.
7. Cost- Please provide a breakdown of not to exceed costs for each specific task and a total cost for the project. Be advised that surveyor subcontractor will be subject to prevailing wages where appropriate.
 - a. Proposals that do not include a “Not to Exceed” cost for each task along with a total not to exceed amount will be disregarded with no further consideration. It is the responsibility of the proposing firm to accurately predict the amount of time that they will need to spend on the project.
 - b. Tasks 4 and 5 should be included as an Additional or Alternative cost, and may or may not be awarded. Respondents who cannot provide Tasks 4 and 5 may still be considered.

SECTION 4: CONTRACTOR SELECTION

Process

City Staff will evaluate and rank all submitted proposals. Following this review, the firm may be asked for an interview prior to consideration of award of this contract.

Proposals shall include, and will be evaluated based upon, the following items/criteria and numerical point values.

Project Understanding and Approach	40 points
Experience, qualifications and ability to provide scope of services	30 points
Schedule of completions	10 points
<u>Cost</u>	<u>20 points</u>
Total	100 points

After conclusion of this review, staff will recommend the most qualified, cost effective consultant to the City Council for consideration of award of a design contract. The recommendation will be based on a combination including, but not limited to: ranking, presentation of materials, and other qualifications. Once advised by the City of selection, the City will issue the selected contractor a notice of award. 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.

If, for any reason, the selected firm/consultant 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.

SECTION 5: CONTRACT TERMS AND CONDITIONS

Upon selection of a firm/consultant, an agreement or contract for services shall be entered into by the City of Newburgh and Contractor. 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.

SECTION 6: ADDITIONAL CONSIDERATIONS

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.

Community stakeholders have collaborated with City government and professionals in the fields of anthropology and archeology to establish protocols and considerations to ensure proper commemoration, management and enshrinement of these human remains, and therefore, City-based and minority and African-American firms are strongly encouraged to apply.

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AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is made and entered into this _____ day of _____, 2020, by and between the City of Newburgh, a municipal corporation, with an office address of 83 Broadway, Newburgh, New York 12550 (“City”), and _____, with an office address of _____ (“Consultant”).

WITNESSETH

WHEREAS, Consultant, in consideration of the terms and conditions herein, agrees to furnish labor, materials, and equipment, and to perform work necessary to complete, in a skillful and professional manner, design services and services related and incidental to the design and reconstruction of the Crescent Avenue Pump Station.

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

Schedule A – _____

Schedule B – _____

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

WHEREAS, Consultant assumes responsibility for design only, with terms of construction of design elements being made pursuant to a separate agreement.

WHEREAS, the basic services amount to be expended under this Agreement shall not exceed _____, with payment being made in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, In consideration of the statements and conditions herein, the City does hereby engage Consultant to perform the services related and incidental to the design, and Consultant does hereby agree to perform such services described herein. The City and Consultant agree as follows:

1. DEFINITIONS

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

1.1 Agreement: The Agreement executed by both the City and Consultant.

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- 1.2 Additional Services: A written authorization for additional work beyond that required to be provided by Section 2, Scope of Services.
- 1.3 Base Design: The design arising out of the provision of the Consultant's basic services that meets project scope and budget.
- 1.4 Budgeted Direct Construction Cost: The City's budgeted cost to construct the project.
- 1.5 City: The City of Newburgh.
- 1.6 Construction Documents: The design drawings, specifications, general conditions, supplementary general conditions, special conditions, addenda, and change orders developed to convey in detail the design, function and construction of the project. These documents will be used as the basis for estimating the cost of the project, securing bids for constructing the project, and directing a contractor in construction of the project.
- 1.7 Construction Documents Phase: The portion of the work during which the Construction Documents are created.
- 1.8 Consultant: The individual or design firm represented who is identified on the signature line of the Agreement.
- 1.9 Contract: Same as Agreement.
- 1.10 Contract Documents: Any Requests for Proposals, Technical and Cost Proposals, this Agreement, Construction Documents, Bid Proposal Form, Notice to Contractors, bonds, and insurance certificates relative to the project.
- 1.11 Cost Control Report: Documentation providing cost data for the continuing evaluation of the work. The cost figures shall be a reasonable estimate of expenditures at the end of the reporting period based on current information.
- 1.12 Final Design Documents: The design drawings, specifications, design analysis, cost estimate, general conditions, supplementary general conditions, and special conditions developed to convey in detail the design, function and construction of the project.
- 1.13 Final Design Phase: The portion of the work during which the Preliminary Design Documents are created, ninety (90) percent design drawings.
- 1.14 Major Categories of (the) Work: Key components, systems and sub-assemblies of a project. These categories include, but are not limited to: demolition, site preparation, foundations,

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exterior enclosure, interiors construction, mechanical, electrical, plumbing systems, built-in casework and equipment, site improvements and landscape.

- 1.15 Normal Consulting and Engineering Services: Professional services provided by architect, civil engineer, landscape architect, structural, electrical, and mechanical engineers, design-assist or design-build trade contractors, and cost estimators which are necessary and appropriate to define the project's design and direct the project's construction.
- 1.16 Preliminary Design (Design Development) Documents: Design drawings, outline specifications and cost estimates developed from the Schematic Design Documents prepared to more comprehensively define the size, character and quality of the project and to further confirm compliance of the design with the project scope and budget.
- 1.17 Preliminary Design (Design Development) Phase: The portion of the work during which the Preliminary Design Documents are created sixty percent (60) percent design drawings.
- 1.18 Principal(s): The individual(s) of the Consultant authorized on behalf of the firm to act as signatories to agreements for this project.
- 1.19 Project Manager: A representative of the City designated to act on behalf of the City with respect to the project.
- 1.20 Project Construction Budget: The project construction cost allowance specifically stated in writing as the 'revised' or 'current' 'Project Construction Budget' by the City at each applicable phase of plan development.
- 1.21 Project Construction Cost: The actual amount paid by the City for constructing the project.
- 1.22 Record Documents: An archive reference edition of the Construction Documents prepared by the Consultant incorporating changes from the original Construction Documents indicated in the As Built Drawings.
- 1.23 Schematic Design Documents: Drawings, outline specifications, and room summary schedule developed to sufficient detail to convey an initial indication of the design of the project, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, the materials to be used in construction, the types of mechanical, electrical and structural systems to be utilized.
- 1.24 Schematic Design Phase: The portion of the work during which the Schematic Design Documents are created, thirty (30) percent design drawings.

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2. SCOPE OF SERVICES

- 2.1 Consultant shall render all services and furnish all materials and equipment necessary to provide the City with plans, estimates, and other services and deliverables more specifically described in **Schedule A** in a timely and professional manner.
- 2.2 Consultant shall ascertain the applicable practices of the City, New York State (including any relevant agencies thereto) and/or the United States of America (including any relevant agencies thereto), as applicable, before beginning any of the work of this Project. All work required under this Contract shall be performed in accordance with these practices, sound design and engineering standards, practices and criteria, and any special requirements as may be described in **Schedule A**.
- 2.3 Upon receipt of a fully executed Agreement from the City, Consultant shall prepare Schematic Design Documents in accordance with the Project requirements furnished by the City.
- 2.4 The Schematic Design Documents shall convey an initial indication of the design of the project, functional relationships of relevant areas, the relationship of the project to the site, other buildings, the materials to be used in construction, and the types of mechanical, electrical, and structural systems to be utilized.
- 2.5 Prior to the start of work, Consultant shall submit for approval by the City the names of any subconsultant firms and key individuals proposed for the project design team. The City shall have the exclusive discretion to accept or reject for cause any subconsultant or individual proposed. If a subconsultant is rejected, the Consultant shall propose an alternate subconsultant acceptable to the City. Nothing in this Agreement shall create any contractual relationship between the City and any subconsultant retained by the Consultant.
- 2.6 Prior to the start of work, Consultant shall review the document needs and organization, including coordination with the Project Manager. Based on this review, Consultant shall issue a letter to the Project Manager describing measures to be employed by the design team to ensure document coordination on the project.
- 2.7 Prior to the start of work, Consultant shall propose the number of visits and meetings as required to meet the scope and complete the phase. Project meetings/site visits shall be provided with the Scope of Services and as described in **Schedule A**. Absent specific agreement, no less than the following minimums shall be provided:
 - 2.7.1 One (1) start meeting, which shall include a site visit.

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- 2.7.2 Three (3) project progress review meetings, scheduled at thirty percent (30%) completion of work, sixty percent (60%) completion of work, and ninety percent (90%) completion of work.
- 2.7.3 Two (2) Coordination meetings with outside agencies (NYSDOT & Utilities), as applicable
- 2.7.4 One (1) project completion meeting.
- 2.8 Consultant will commence work no later than ten (10) days after receiving written notice to proceed from the City.
- 2.9 Physical prints and electronic copies of documents shall be provided upon request by the City at any time, including after project completion, at Consultant's sole cost and expense. Absent specific exclusion no less than the following minimums shall be provided:
 - 2.9.1 One (1) full size print copies of completed work, with size to be determined by the City.
 - 2.9.2 One (1) electronic copy of all plans, and specification in an electronic format acceptable to the City.
 - 2.9.3 One (1) copy of an integrated 3D BIM model (if applicable), DWG, Word, and/or PDF of plans and specifications.
- 2.10 Consultant shall complete work and services in accordance with the Schematic Design Documents, typically 30% design drawings, and submit such work to the City for approval. Consultant shall keep the City informed as to the progress of the work and document to the City in writing if the Project Design Schedule needs to be revised.
- 2.11 Consultant shall solicit and obtain written authorization from the City to proceed with any Preliminary Design Phase work, typically 60% design drawings. Upon receipt of written authorization, the Consultant, using the approved Schematic Design Documents, shall prepare the Preliminary Design Documents. The development of the Preliminary Design Documents shall be responsive to the comments received from the City during the Schematic Design Phase.
- 2.12 Preliminary Design Documents shall continue from the Schematic Design Documents to develop the design of the project in greater detail confirming or adjusting as required all aspects of the Schematic Design Documents to fix and illustrate the size, character, and quality of the project.

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- 2.13 Consultant shall solicit and obtain written authorization from the City to proceed with any Final Design Phase work, typically 90% design drawings. Upon receipt of written authorization, the Consultant, using the approved Preliminary Design Documents, shall prepare the Final Design Documents. The development of the Final Design Documents shall be responsive to the comments received from the City during the Preliminary Design Phase.
- 2.14 Consultant's performance of this Contract within the compensation provided shall be continuously reviewed in good faith by Consultant. Consultant shall notify the City of the results of those reviews in writing by submitting of a Cost Control Report to the Project Manager. Such Cost Control Report shall be submitted to the City monthly or at such alternative interval described in **Schedule A**.
- 2.15 If Consultant believes that any work the Consultant has been directed to perform is beyond the Scope of Services as outlined in Section 2 and in the Agreement, and constitutes Additional Services, the Consultant shall promptly notify the City, in writing, of its objections prior to the commencement of the objected to work. The City shall review said objections in good faith and, in its sole discretion, decide whether such work is beyond the Scope of Services and in the Agreement generally, and constitutes Additional Services. If the City determines that such work does constitute Additional Services, the City shall provide extra compensation to the Consultant as provided for in Sections 3 and 4, below. In this instance, an amendment to the Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the City.

3. ADDITIONAL SERVICES

- 3.1 During the project, the City may elect to seek additional work that, in its discretion, is substantially beyond that required to be provided by Section 2 (Scope of Services). Such work shall be considered Additional Services.
- 3.2 Additional Services require pre-authorization in writing by the parties. When Additional Services are authorized and accepted, they shall be provided by the Consultant and shall be paid for by the City as provided in Section 4 (Compensation).
- 3.3 The following services are expressly not covered by Section 2 (Scope of Services) of this Agreement and are considered extra services unless otherwise described in **Schedule A**:
- 3.3.1 Providing feasibility studies necessary to define the scope for a Schematic Design.

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- 3.3.2 Providing civil surveys, site evaluations, or comparative studies of prospective sites.
 - 3.3.3 Making measured drawings of existing construction, as required for planning renovation work, if adequate record drawings are not available. Consultant is entitled to rely upon the accuracy of any information supplied by the City. As a part of the Scope of Services, Consultant shall make themselves familiar with the observable site and existing building conditions.
 - 3.3.4 Revising previously approved work, notwithstanding Section 3.4.2.
 - 3.3.5 Providing additional design assessments and remedial documentation for the replacement of work during construction damaged by fire or other causes not the fault of the Consultant.
 - 3.3.6 Providing additional professional services made necessary through no fault of the Consultant, but by the fault of a builder/contractor, or the City in the performance of the construction contract. No extra services will be authorized in connection with change order preparation arising out of Consultant's misinterpretations, errors or omissions.
 - 3.3.7 Providing additional professional services made necessary to affect a material change of the Agreement requested by the City.
 - 3.3.8 Providing special delineations or renderings, other than that required in Section 2 (Scope of Services).
- 3.4 The following services are expressly covered by Section 2 (Scope of Services), of this Agreement and shall not be considered extra services:
- 3.4.1 Changes required by Federal, New York State, or local code laws, rules, or regulations, applicable as of the date of this Agreement. Modifications required by updates to such authority implemented during, or after, the course of the Services shall be extra services.
 - 3.4.2 Changes resulting from Consultant's errors, omissions, or design deficiencies.

4. COMPENSATION

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- 4.1 This Contract shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the City beyond the monies legally available for the purposes hereof. Each notice or authorization to proceed issued by the City shall constitute a warranty that the money to pay for the authorized services are legally available.
- 4.2 Compensation for Consultant's Scope of Services shall be as indicated in **Schedule B**.
- 4.3 Fee proposals by the Consultant shall be reflective of the actual effort necessary to design and document the condition identified in Section 2 (Scope of Services).
- 4.4 For Consultant's Additional Services, as described in Section 3 (Additional Services), the compensation to be paid will be identified in a supplemental agreement as applicable.
- 4.5 Payments under this Agreement shall be made in arrears of work increment(s) completed to the satisfaction of the City and upon submittal of an invoice to the City. If not otherwise specified, payment for services rendered will be processed within thirty (30) days upon presentation of the invoice.
- 4.6 At the conclusion of work on the project, the Consultant shall submit a final invoice for any remaining amounts due. This invoice shall be prominently identified as 'FINAL INVOICE'.
- 4.7 Consultant agrees that no charges or claim for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the City may decide, it being understood, however, that the permitting of the Consultant to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein. Nothing in this Section will prevent the Consultant from exercising his rights under Section 2 (Scope of Services) of this contract.
- 4.8 All subcontractors and subconsultants performing work on this project shall be bound by the same required contract provisions as the Consultant. All agreements between the Consultant and a subcontractor or other subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the City.
- 4.9 Payment to Consultant is subject to the following audit rights of the City:
 - 4.9.1 For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.

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4.9.2 For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the City.

4.9.3 For Lump Sum Cost Plus Reimbursable Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the City.

5. CITY RESPONSIBILITIES

5.1 The City shall make any surveys, reports, or other documents in the City's possession that the parties deem relevant to the project available to the Consultant as required, at City expense. Consultant is entitled to rely upon the quality, propriety, and accuracy of the information contained in said documents.

5.2 To the best of its ability, the City shall provide site information that indicates lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries, grades and contours of the site; locations, dimensions and data pertaining to known utilities, existing structures, landscaping and trees, and other improvements.

5.3 The City shall provide a geotechnical report, test borings, test pit information, soil bearing values, and other geotechnical assessments appropriate to define sub-surface conditions, if required by for this project.

6. CONSULTANT RESPONSIBILITIES

6.1 Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services as determined by the City.

6.2 Neither the City's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Consultant shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Consultant's negligent performance or breach of contract of any of the services furnished under this Agreement.

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6.3 The rights and remedies of the City provided for under this contract are in addition to any other rights and remedies provided by law.

7. OWNERSHIP AND USE OF DOCUMENTS

7.1 Consultant shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years from the date of creation or three (3) years after final payment is remitted by the City, whichever is later. Any authorized representatives of the City, New York State, or Federal Government shall have access to the Records during normal business hours at an office of the Consultant within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for inspection, auditing, and copying.

7.2 All technical data related to this Agreement that exists in the offices of the City or in the offices of the Consultant shall be made available to the other party to this Agreement upon written request and without expense to such other party.

7.3 Consultant agrees that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement, whether in draft or final form, shall become the property of the City. The City shall have access, during regular business hours, to inspect and obtain copies of notes, designs, drawings, specifications, electronic files, calculations, and other technical data pertaining to the work performed under this Agreement.

7.4 The City reserves the right to use documents prepared under this Agreement regardless of whether the Agreement is terminated or the project is suspended or abandoned. This right allows the City to use these documents in the future for the same project, a modified version of it, or for one that is similar. Any modifications to the documents made by someone other than Consultant, or use of the documents other than for the single purpose that they were specifically created, are at the sole risk of City.

7.5 At the time of completion of the work, the Consultant shall make available to the City all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the City. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Consultant shall make available to the City all the aforementioned data and material. All documents prepared and in final form shall bear the New York State Professional Engineer stamp and signature of the consultant. All plans, estimates, and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the City.

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7.6 Consultant agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to, and does hereby grant, to the City, the State of New York, and the Federal Government, a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world, all in accordance with the provisions of 48 CFR 1-27.

8. TERMINATION

8.1 The City may terminate this Agreement or suspend or abandon the project upon fourteen (14) days written notice to the Consultant. Consultant may terminate this Agreement only if the City substantially fails to perform in accordance with Section 5 (City Responsibilities) of this Agreement. Prior to Consultant terminating this Agreement, a Notice of Termination must be given in writing and in accordance with the notice provision is Section 10 (Miscellaneous Provisions), below, to the City that allows the City fourteen (14) days to correct any default. If the default is corrected/cured, Consultant may not terminate this Agreement.

8.2 In the event the City terminates this Agreement, suspends the project for more than 180 days, abandons the project or the Consultant terminates this Agreement in accordance with Section 8.1, the City shall pay to the Consultant full payment for services performed and expenses incurred under this Agreement as follows:

8.2.1 The sum due under Section 4 (Compensation) as shall have become payable because of progress in the work plus a pro-rata portion of the next succeeding and uncompleted step, if any, for services actually rendered by Consultant, plus any pro-rata sums due to Consultant for Additional Services.

8.2.2 In ascertaining the services actually rendered up to the date of termination of this Agreement, suspension or abandonment of the project, consideration will be given to completed work and work in process including incomplete drawings and other documents whether delivered to the City or in the possession of the Consultant.

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

9. INSURANCE AND RISK MANAGEMENT

APPENDIX A

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

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

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Insurance or self-insurance maintained by the City, their officers, employees, representatives, volunteers, and agents shall be in excess of the Consultant's insurance and shall not contribute with it.

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

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

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

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

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

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

10. MISCELLANEOUS

10.1 Consultant, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the City by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

10.2 Consultant agrees to comply with all applicable Federal, State and City Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, Consultant will not discriminate against any employee or applicant for

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employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, Consultant agrees that neither it nor its sub-consultants shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement.

- 10.3 Consultant certifies compliance with providing a drug-free workplace.
- 10.4 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 10.5 Consultant warrants that no officer or employee of the City of Newburgh has received, or shall receive, compensation from the Consultant or subconsultants for work performed in the execution of this Agreement, or for any architectural or engineering services, public or private, performed for the Consultant or its subconsultants.
- 10.6 This Agreement shall be binding on, and inure to the benefit of, the successors and permitted assigns of the parties.
- 10.7 Consultant may not assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or its power to execute such Agreement, to any other person, company or corporation, without written consent of the City. If this provision is violated, the City may revoke and annul the Agreement and the City shall be relieved from all liability and obligations thereunder to the person, company or corporation to whom the Consultant shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of the City.
- 10.8 Notice for either party may be served by delivering it in writing via any form of United States Postal Service that contains a tracking number, or by Federal Express, or by United Parcel Service, to the respective party and address as shown on the Agreement page.
- 10.8.1 Notice served upon the City shall be delivered to:

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City of Newburgh
Attn.: City Engineer
83 Broadway
Newburgh, New York 12550

- 10.8.2 Notice served upon Consultant shall be delivered to:
- 10.9 In the event of any claims made or any actions brought against the City in connection with the Agreement, Consultant agrees to provide all information and assistance in the City's opinion that is reasonably necessary to defend such Claim.
- 10.10 The State courts located in New York State, County of Orange, shall have exclusive jurisdiction to adjudicate any disputes arising out of or relating to, this Agreement. Each party hereto consents to the jurisdiction of such court and waives any right it may otherwise have to challenge the appropriateness of the forum for any reason. Arbitration shall not be used to resolve any claims, controversies, or disputes between the parties.
- 10.11 This Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws principles that may apply.
- 10.12 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. Any changes to this Agreement may be amended by mutual consent of the parties hereto in writing.
- 10.13 This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.
- 10.14 In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

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[Signature and Acknowledgment Pages to Follow]

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**SIGNATURE PAGE
AGREEMENT FOR PROFESSIONAL SERVICES**

City of Newburgh with _____.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2022

CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

Per Resolution

DATED: _____, 2022

Approved as to Form:

By: _____

Name: Michelle Kelson

Title: Corporation Counsel

DATED: _____, 2022

Approved as to Finances:

By: _____

Name: Janice Gaston

Title: City Comptroller

DATED: _____, 2022

By: _____

Name:

Title:

