A regular meeting of the City Council of the City of Newburgh was held on Monday, January 9, 2017 at 7:00 PM in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

Prayer/Rezo

The Prayer was led by Rev. Nelson McAllister from the Calvary Full Gospel Church followed by the Pledge of Allegiance.

Pledge of Allegiance/Juramento a la Alianza

Roll Call/ Lista de asistencia

Present: Mayor Kennedy presiding; Councilwoman Abrams, Councilwoman Angelo, Councilman Harvey, Councilwoman Holmes, Councilwoman Mejia, Councilwoman Rayford - 7

COMMUNICATIONS

Approval of the minutes of the meeting of December 12, 2016

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Carried

PRESENTATIONS

There were no presentations scheduled.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Lorraine McNeill, former Councilwoman in the Town of Woodbury and resident of Highland Mills, said that she is here tonight to speak about Agenda Item #18 in regard to the feral cat population and she has a solution that might address the City's concerns. Her program is called TNR which addresses concerns for public and animal welfare and she asked the Council if they want an immediate temporary solution or a permanent long term solution. Her solution is to trap, neuter, vaccinate and release (TNR). All animals will defend their territory and what is happening with the feral cat population right now is that they are defending their territory and adding to it by having kittens. With TNR if you stop them from reproducing it makes the population more manageable and decreases it over time. It also does not pose any public health threats because these animals are vaccinated so the transmitting of disease such as rabies is not going to be a problem. There are a

number of ways to address this issue with the community and if they adopt this program there are additional resources and grant monies so it costs less than doing relocation and euthanasia. If anyone is interested in finding out more about the TNR Program, she would be glad to share that information with them. The benefit of having a TNR Colony is that the rodent population is more manageable and the cost to the municipality is less than doing a relocation or euthanasia program. It would also decrease the Animal Control Officer's time and the cats in this program are just as healthy as pet cats.

Dr. Laura Stein, resident of Cornwall said that she started her Veterinary Practice in Newburgh twenty years ago. She submitted and read the attached statement. (copy attached)

Lisa McEwen, City of Newburgh resident, said that she is the lead contact of this rescue project at 14 VanCleft and has been in charge of this rescue attempt since December 1, 2016. She has also been a teacher for the past twenty-two years with the Newburgh Enlarged City School District. She stated that the Media has been very inaccurate with their facts regarding 14 VanCleft Avenue and they have also been made aware that Councilwoman Abrams, who is pro Project Cat, has a direct connection with specific reporters and it is documented that she was once a copy editor for the Times Herald Record. This is definitely a conflict of interest providing a one sided false account to the pubic of what has been going on since the beginning of December at 14 VanCleft Avenue. Currently to date from December 1, 2016 to January 9, 2017 twelve cats have been removed from the property by local rescues and relocated to safe shelters. There are only twelve to fourteen cats remaining on the property not the thirty-five that has been reported by the Media. Local Rescues have been working diligently since December to remove these cats for free at no charge to the taxpayers of Newburgh and are committed to removing and relocating all of these cats safely. Some members of the City Council still want to pay Project Cat $2,000.00 of taxpayer's money to kill the remaining cats. Why pay an outside organization to kill cats when the local rescue organizations here have offered to remove them for free and let them live? In addition, the owner of the property has a written letter that prohibits Project Cat from entering his property.

Steve Gold, Beacon resident, said this is a very difficult decision to make as he has been in that seat. He was the Mayor of Beacon from 2008 to 2011 during hard economic times yet they still managed to find money for a TNR Program. They had a person come before them in Beacon offering to do something similar to what Lisa McEwen is doing and they accepted her because she was offering a professional database to inform the Council on the cats that had been captured and where they were placed. He promised that he will work with Lisa McEwen and the multitude of organizations offering to do this work at no cost. He owns two cats who were strays that he loves and they would be dead if an organization like Project Cat had taken them and killed them. This would break his heart as well as the hearts of others if this is allowed to happen here in the City of Newburgh. It would not be good for the City of Newburgh to be known as the City that kills cats when there is another alternative out there.

Jennifer Bediako, New Windsor resident said that her children attend school in the City of Newburgh and she is here to speak in regard to Item #17. She supports the ShotSpotter technology because her son, Keyshan Gayle was shot and killed on August 30, 2016 in from of the Goldback Store just two blocks from N.F.A. The streets were dark, the lights were out and the moon was not visible that night. There was a camera pointed directly at the spot where her son took a single shot to the back but it was not working. Had there been a system like ShotSpotter the killer may not have gotten away and been able to walk, eat, sleep and enjoy life for six long weeks. This technology will help the police do their job more efficiently and limit gun violence because a criminal will think twice before shooting knowing that they will more likely get caught. We have to join together and take a stand for a safer community for our innocent children and for us. She did not think this was going to happen to her as just two weeks before his death Keyshan was as at a four day, five night Church sponsored Youth Camp as he praised God wholeheartedly. This could happen to any one of our innocent children or ourselves so when have we had enough? Unity is key here so we have to take a stand to protect our children and our community. If we sit here and think about how we are going to pay for this today or tomorrow then we will never make any progress in this community. She told everyone to rely on God and trust in Him. The ShotSpotter can be a great change in our community.

A resident of New Windsor spoke in regard to Item #17 for ShotSpotter. He is looking forward to seeing more Officers around the City of Newburgh and added that we still need the cameras and lights. With ShotSpotter the police will be able to tell where the people are shooting and where the violence is. He said a Prayer for Newburgh.

Colleen Bailey, Precious Paws Cat Rescue, resides in New Windsor and is here to speak about Item #18 concerning the feral cat problem on VanCleft. She has been doing rescue for twenty-five years now and has rescued many cats from the City of Newburgh at no cost to the City. They do fundraisers to take them off the streets and get them into good loving homes through the Adoption Center at PetSmart. To continue what Lisa McEwen was saying, these cats are not dying, mistreated, malnourished animals as has been reported. She showed pictures of some of the cats that are at the property on VanCleft and noted that they are not sick, dying or diseased and they are not attacking people. Most of them have already been spayed and neutered and they have been cared for consistently for years by a compassionate man to the best of his ability. Relocation is not the answer for outside cats but in specific one time situations they are willing to do it. Many organizations such as Precious Paws, SCATS, MDW and Stray HELP all want to fix this situation and move forward. Let the cats live and be relocated for free. Don't kill them for unnecessary reasons with taxpayer's money.

Tony Mazzella is a resident of the Town of Newburgh and has been a volunteer for Precious Paws Rescue for the past four to five years. She is in the City of Newburgh constantly and she supports it but she doesn't think the City should put money forward to euthanize cats. When she read the resolution from Project Cat it states *"free roaming cats"* and she has two outside cats that live in her home. They come in at night and go out during the day so if someone trapped them and euthanized them that would create a serious problem. The other problem she sees is that if they do this for VanCleft they will have

residents from other areas demanding they do this for their area which will start a cat kill. That is what she sees happening if they allow Project Cat to come here and do this.

Ann Lagoy, President of Stray HELP is a resident of Fishkill. She said that the Greek work euthanasia means an easy or happy death or a good death. A legally sanctioned mercy killing. To euthanize is to kill a person or animal painlessly especially to relieve suffering from an incurable illness. To depend on one letter from PETA stating their misguided position on what is happening on the ground here in Newburgh is a mistake. PETA is a radical animal rights group who is consistently in litigation for killing neighborhood pets. Regarding PETA, Virginia Senator, Lynwood Lewis, Jr. calls for an investigation regarding the theft and killing of a puppy off the porch of his constituent. The Richmond ASPCA, the County Attorney, The Virginia Federation of Humane Societies and the No Kill Advocacy Center all asked for an investigation regarding PETA and their practices. Taken from the Center for Consumer Freedom PETA killed 1,456 cats and dogs in 2015 bringing the total that PETA has reported killing to 34,970 since records began in the second half of 1998. Those unfortunate victims amounted to 73.76% of the total dogs and cats that entered PETA's shelter. A more reasonable approach would be to strongly consider the position of several National and International Organizations such as the ASPCA, Alley Cat Allies and Best Friends Animal Society as well as state and local organizations such as the Mayor's Alliance, Stray Cat Alliance and all of the local organizations that are here tonight. New York State also has a supportive position on the effectiveness of TNR. There are thousands of cats all over the city and Newburgh is fortunate to have so many Rescues willing to jump in and resolve the concerns of the Council. Contrary to recent statements made the Rescues are not moving cats and kittens to random locations.

Pattie Dolan, Town of Newburgh, spoke on Item #18 and asked the Council to vote against the Project Cat proposal to euthanize the cats at VanCleft. We can all agree that the situation needs to be addressed but killing them is an offensive, egregious, appalling decision especially when there is a humane option available. What are we trying to teach our children? That it is alright to annihilate a particular species? What is next and where does it end? Isn't there enough killing going on in the City of Newburgh and in our Country? The City already has a reputation for high crime but by voting in favor of Project Cat you are giving it the reputation of a city full of cat killers as well. The leaders and the community need to do better. There are more humane, compassionate, common sense and cost effective options and a huge group of them are here tonight who are committed to and offering that option. We need to have a solution that we can be proud of that addresses the health and welfare of the residents and the cats. We need to teach our children that all of God's creations need to be treated with compassion and kindness and to do the right thing. We need to use this as a teachable moment. She believes that all of the Council members are people of Faith who believes that killing God's creatures is just plain wrong. When they vote on this resolution she said to ask themselves the WWJD question, what would Jesus do?

Jodi Lamelli, a resident of Washingtonville said that she opposes the resolution and asked the Council to vote against it. The City Council knowingly entering into an agreement that

would undeniably result in a number of cats being unjustifiably killed is irresponsible and not in the best interest of the City. It would send a clear message to the City streets that it is OK to kill animals and it is no secret that there is a direct connection between cruelty to animals and criminal violence. The Council has a moral obligation to the residents and children of the City to show compassion and kindness to animals. As elected officials they have an ethical responsibility to their constituents to find non-lethal solutions to this problem. Project Cat is not the solution. Choose the most responsible, humane and compassionate solution that benefits both the residents and the cats. Choose to rescue and save not seize and kill.

Judy Thomas, a City of Newburgh resident is really glad to hear a lot of positive comments from people in organizations who are taking an active part in trying to convince the City Council that this proposition is a bad idea. She has personally rescued three cats out of her back yard. Feral cats can be rehabilitated very simply and very easily with love and companionship. One of her cats, Callie Girl, is an indoor outdoor cat who goes in and out whenever she pleases and she wears a collar that pops off if she gets caught in a bush. What would happen if Callie Girl was wandering around outside without her collar and she got rounded up and killed because of some overzealous operation to get rid of the cats? She would be brokenhearted.

Cindy Moore, City of Newburgh said that she is completely opposed to this and hopes they don't do it. This is horrible and she doesn't want her tax dollars paying for this.

Cheryl, City of Newburgh, stated that she wants to be proud to say that she lives in the City of Newburgh but this does not make her proud. To finish what Ann Lagoy was saying, unmanaged populations expand as they seek resources elsewhere when they outgrow their location and start new colonies. Killing a colony of cats will do nothing to temper the overpopulation crisis and it will only leave a negative memory in the minds of your constituents and a scar on your conscience. The City of Newburgh is in prime position to humanely acknowledge the community cat population but please do not vote in haste. Capturing and removing a particular colony takes time regardless of who is doing the capturing and the end result whether these animals live or die depends on the Council. Tonight's vote from the Council will have a ripple effect in the City of Newburgh and regionally. Before she moved here she lived in Maybrook and because she always loved animals she wanted to do something important to make a difference so she started doing TNR on her own street because she wanted to help. Living here she has met so many people who do rescue and volunteers with more than one. If we don't start educating people this is never going to change. Just killing them is not going to change anything so maybe $2.000.00 could put education in place for people so that we can make a difference.

Ms. Ramos, 108 Dupont Avenue said that she has a problem with her neighbor at 110 Dupont Avenue who has approximately seventeen cats living in her backyard. She is not able to enjoy her backyard or porch because this neighbor does nothing to take care of her cats other than feed them. If she had pets, she would have to take care of them and not bother her neighbors so she would appreciate it if something could be done about this. She

does not agree with the killing of the cats but she has to live with this situation every day by cleaning up after them so she is asking for some help with this.

Lisa, a licensed Vet Tech who resides in New Windsor works with the Animal Rights Alliance in Middletown where they provide low cost spaying and neutering and other services for animals. She knows a lot of the people in the Rescue Groups who are focused on giving the cats the best life they can have. Between all of them they have years of experience and she thinks we should trust their judgement rather than just pulling in someone from the outside who wants to quickly kill and get rid of the cats. We have to remember that the cats are only in this position because of humans not having them spayed and neutered when they were younger so they just keep multiplying which is our fault. The wording on the Agenda says *"Cat Removal Services"* which to her sounds like cockroaches that need to be exterminated. If these were Golden Retriever dogs running around would we be so quick to euthanize? Many think it is quick and easy to euthanize an animal but it is heartbreaking because they all feel fear and confusion so to extinguish the life of an animal for the convenience of a human being is just not right. She has fostered for a lot of these Rescues and when you have a feral kittens relax and purr in your arms it makes it all worthwhile. It is very time consuming, however, so they ask to be able to do things the correct way by giving these cats a chance to heal if they are sick and find contentment and love. She believes they can do this if they are given the chance.

Steve Tardif, resident of Warwick, Vice President and co-founder of the Animal Rights Alliance also known as TARA, said that they provide low cost spaying and neutering in the Hudson Valley. They have been spaying and neutering in the Town of Newburgh once a week since 2002 and to date have spayed and neutered over 115,000 cats. He sat with Chief Cameron and provided a lot of information to the Council as well as documented statements and facts. In the City of Newburgh right now there are approximately four thousand four hundred and sixty five cats. They had a two year Grant from PetSmart Charities for 2012 to 2014 and spayed two thousand eight hundred and one cats for the City of Newburgh.

Rachel Hurtzburg, New Windsor, said that she is against killing the cats. She has five cats that were all feral and she doesn't see how it makes any sense to do this when you have so many people here who are willing to trap and vaccinated them as well as a Veterinarian who is willing to do this at no cost to anybody. Any other alternative will cost money, is inhumane and will only be a temporary fix at this point.

Joan Kay, resident of Fort Montgomery and Board President for the Hudson Valley ASPCA finds it unconscionable that we are willing at this point in time to use violence as an answer. We are obligated to educate our youth and our community. Killing is not an answer and it will not solve the problem. We need to make a plan and stick to it. She has been involved in Rescue for thirty years and they have done Colony after Colony with tremendous help from TARA to decrease populations so the plan works. The only plan is to humanely trap, neuter and release these cats it is not to kill them. That is not the method we want to send to our community and our youth.

Deborah Cruz, owner and founder of Precious Pets Rescue in Warwick, New York said that they rescue dogs, cats and rabbits and do TNR. She has done TNR on cats in the City and Town of Newburgh and has utilized TARA and the ASPCA. A fountain of information can be found on the Website for the ASPCA and the Humane Society for the United States regarding the usefulness of feral cat colonies as long as they are maintained with TNR. We have too many humans who are not spaying and neutering and all that does is allow other colonies to start up which can bring in diseases. When you have a colony in place they repel any other cats from joining from outside the colony. These cats are vaccinated and they are working on the rodent problem. If people do some research on the Website she feels they can obtain a wealth of information that may help make a decision on this.

Ray Staffon, Resident of the Town of Newburgh and President of General Traffic at 259 Broadway, said that he doesn't want to see their tax money going towards killing cats. With less cats you have more rodents and he would rather see the cats than the rodents. There are a lot of problems here in the City of Newburgh other than cats that need to be addressed. They should be addressing the crime problem that is rampant in the City.

Councilman Harvey said that he agrees. When humans are being killed he hopes to see everyone here supporting the survival of humans just like they are advocating the survival of cats.

There being no further comments this portion of the meeting was closed.

January 9,2017

My name is Dr. Laura Stein. I have a license to practice veterinary medicine in the state of New York (NY6636). I worked at the ASPCA in Manhattan and was the shelter vet at the midtown Bide-a-Wee for two years before settling in the Hudson Valley. I have been practicing locally since 1995, and own a clinic in Cornwall-on-Hudson.I have neutered hundreds of homeless cats at no charge in an effort to help the community. I have also participated in cruelty cases, aiding in removal and care of animals, and have testified for the state.

I am not able to solve the homeless cat problem in New York State in three minutes, but am here to offer a solution to this immediate problem at Van Cleft Street.My hope is a solution to save the tax payers 2000 dollars and offer an ethical, humane solution for the cats.

As a licensed veterinarian I will remove, treat, neuter and euthanize if necessary all the cats in question at no cost to the City of Newburgh. All cats are companion animals under the law and deserve to be treated as such. To hire a random woman who is not a licensed professional to trap and kill cats with tax payer money is appalling. Ms. Mihocko represents herself as a not for profit group dedicated to animal welfare.Proposing to trap and kill companion animals for monetary gain is contradictory to her Projectcat mission

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COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Mayor Kennedy said that she has rescue cats herself and she has read all of the information. She went over to the VanCleft property today and counted 12 to 14 cats remaining there. Everyone is here tonight supporting the cats and we heard one resident describe the pain she is suffering because of cats next door that are not being managed. Human life is just as important as cat life. She has been told that Precious Paws has been trapping and catching some of those cats so people have been working on this. She spoke with the owner of the Daycare Center and she recognizes that fewer cats are there and that progress has been made. The City Council does not want to kill cats. People have property rights and they should be able to live in their homes without cats running all over the place. She agrees that colonies do help and did not know until tonight that there was a Veterinarian willing to help so we are finding out more information as we move forward. The bottom line is that the cats at 14 VanCleft cannot be released back there. The City is overrun with cats right now so she would like to see all of the organizations interested put together a consolidated plan and figure out how to use the money to take care of these colonies throughout the City. She understands that they need more time but we need a deadline of perhaps two weeks.

Councilwoman Abrams thanked everyone for coming tonight and speaking so passionately. She loves cats just as much as anyone and they are not voting to kill cats. The Project Cat proposal is to trap and relocate to their shelter and if they are not adoptable they would be euthanized. That made sense to her and when she brought the Mayor over to VanCleft tonight they were down to about 12 to 14 cats and still trying to trap the rest. She doesn't care how they do it as long as the cats are no longer next to the Daycare Center. Even if they are spayed or neutered the cats still poop and pee all over the place when they are outdoors and without the efforts of these organizations, which they appreciate, it would be unbearable. Right now it is mildly unbearable so she thanked them for what they have done so far. It they can't complete this in two weeks then maybe the deadline could be for a month. She asked them to please get together with each other and figure out what can be done. She added that ShotSpotter is a great idea that should have been voted on before and she will be voting for it tonight.

Councilwoman Angelo said that she has no intention of voting to get rid of cats. She recently lost her cat so she is thinking about getting another one for companionship. Perhaps she could get one of these cats at VanCleft so she told everyone in attendance that if there is anything she can do to help to please let her know. She thanked them all very much.

Councilman Harvey thanked everyone for coming out and said that they have educated him on this issue. We have citizens here tonight from Warwick, Highland Falls, Cornwall, Town of Newburgh, New Windsor, Washingtonville, Fishkill and Fort Montgomery and no one on this Council supports the idea of killing cats. He is an animal lover overall but he hopes

that when human beings are being murdered in our streets and we are racking our brains to deal with murders, robberies and violent crimes that everyone here tonight will have the same kind of passion. Not to minimize what they represent and stand for because he supports that but he would love to see a coalition of experts speaking to the issues we are dealing with such as the violent crimes and the murders as they all have done so eloquently about cats. We are all in this together and it's wonderful to see people here from other communities surrounding the City of Newburgh on a particular issue. He is going to look for them when the warm weather gets here and the streets start heating up because he would love to see this same energy and support for human life in our City. It was not his understanding that Project Cat was going to trap or catch cats and euthanize or kill them. They get bombarded with phone calls from residents that complain about the cat problems and out of twenty-five people who spoke tonight only four were from the City of Newburgh. Three of that four were not in support of Project Cat and one is dealing with a cat problem on Dupont Avenue. He is not sure why this was being proposed by our Police Chief as their understanding was that the cats were to be trapped and adopted out to new homes. They had no idea that they were going to be caught and euthanized.

City Manager, Michael Ciaravino said that at the presentations and discussions it was stated that this group would separate the feral cats and those that were truly unable to be redeemed and domesticated would be euthanized. Tonight we have all heard this very generous offer from Dr. Stein that would be coordinated with Mr. Gold and Ms. McEwen and we should take this opportunity to do our diligence and explore this other option which is incredibly generous and could present us with a path forward.

Councilwoman Abrams said that he is talking long term.

City Manager, Michael Ciaravino agreed that it is for the long term as well as short term because there is an immediate need that we have all articulated and we know is out there. Before tonight we had not heard this offer from Dr. Stein so if it pleases the Council we would like the opportunity to evaluate this proposal made tonight for a more humane path forward.

Councilman Harvey said that he will not be voting in support of Item #18 tonight. We don't want to kill animals.

Councilwoman Holmes thanked everyone for coming tonight and said that she was never in favor of euthanizing the cats. She appreciates all of the organizations that have been coming out and said that perhaps they can help Ms. Ramos on Dupont Avenue. Her proposal is to vote on this resolution and vote it down. As the City Manager said, Dr. Stein is here tonight and the Rescues that have been coming she trusts as they are very satisfied with what they are doing. She is not in favor of killing cats as she loves all animals that God put on this earth so she doesn't think this should happen. She proposed that they vote this resolution down.

Councilwoman Mejia said that resolution #10-2017 is for the renewal of the Ferry parking for people who are commuters and use the Ferry. This is great news and it's important for everyone to know that the City will be renewing the Lease to secure that we have Ferry services to Metro North. Another thing that might be of some interest is that we will be voting on some of our surplus equipment so if anyone is interested in a 1990 Suburban vehicle there will be a link on the City's Website to bid on that. Resolution #336-2016 is extremely important and she hopes it passes tonight for ShotSpotter. This is an additional tool that our Police Department needs and has been missing. We have been fortunate through different efforts to finally be able to pull all of the pennies together to acquire this for the next eighteen months and then we will figure out what it looks like after that. It is an extremely important tool that we need and she would hate to see it fail again tonight. In regard to the cats, she heard all sorts of great things tonight. She took a ride out there and even though it is not in her Ward it impacts the entire City and she is very pleased with what she heard tonight. They have appointed Lisa as the lead contact person so she asked that the City Manager gets her contact information. We also should have a point person from our end which by default is our City Manager and she volunteered to assist the City Manager to coordinate that back and forth help. She feels that they need to look beyond VanCleft as we had Ms. Ramos here tonight on Dupont Avenue so she would like to see a city-wide strategy around a TNR approach. If we could attach the $2,000.00 to that city-wide strategy that is something she thinks would be beneficial and she looks forward to having that discussion.

Councilwoman Rayford wished everyone a Happy New Year and thanked everyone for coming out tonight. We do have a cat situation here in the City but we also have a rodent problem here especially in Ward 2 on Hasbrouck. They would like the Rescue organizations to get together and have a key person to rescue these cats. If they can get together and make a commitment in a timely manner it would be greatly appreciated. They should put together an agreement that would help one another so this won't come up again but it has to be done quickly. All of the Ward representatives are here as well as At Large representatives so she asked them to each go into their Wards to find out where these cats are so that we can all help one another save these cats. She agrees to vote this resolution down as she wants there to be no more deaths in the City whether it be animal or human. In regard to the ShotSpotter, she wonders if anyone heard from the not-for-profit organizations such as the Hospital, Colleges and Churches to see if they can donate towards this.

Mayor Kennedy is very pleased to see so many people so passionate about an idea. It is very important to stand up for what we believe in and they learned some new information tonight. They can't know everything so it is important for people to bring forth information and their willingness to help. She told Dr. Stein and the Vet Tech from New Windsor that she appreciates their wanting to help. She plans to vote this down as well because violence is violence and we all need to figure out a way to peacefully solve problems. She doesn't want to kill anything but she also can't stand to see an animal suffer so she needs to know that these animals are not suffering and that they are being taken care of, fed and are in a good place. She suggested that as a group they get together and think about a process. We just heard from a woman who has a situation with a neighbor who has seventeen cats and she has been to the City before but has received no answers. She didn't know where to

start so we need a contact number for people to call when they have a cat problem to get some help. She asked the City Manager and the Police Department to put something together so we know where to go for help to deal with this. Perhaps we can use that $2,000.00 to help with this over the long haul because there is a solution in here somewhere. In regard to ShotSpotter, we are not buying software. It is a service from an organization that will put sensors all over the City and when a shot goes off they can triangulate it within ten feet. The can also tell the difference between gunshots and who shot first. This is another way to curb violence in the City. We have the money to do the first subscription for eighteen months and then we will need to raise money for a yearly subscription from then on. We are going to use a combination of funds and will be looking for volunteers to help raise some money for this. This is a start in the right direction and she hope that they can pass this resolution tonight.

There being no further comments this portion of the meeting was closed.

CITY MANAGER'S REPORT

Resolution No. 1 - 2017 - Lake Drive Bridge Replacement Design Proposal

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 2 -20017 - Sunset Ridge Subdivision Bond Reduction

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 3 -2017 - Authorizing the Extension of Time to Close Title on 70 Liberty Street WH

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 4 - 2017 - Discharge of Judgments - 254 Liberty Street

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 5 - 2017 - Authorizing the Execution of a Release of Covenants from Deed to 5 Hillcrest Place

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 6 - 2017 - of Support for Orange County's Grant Application for EPA's Community-Wide Brownfields Assessment Grant

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 7 - 2017 - Purchase of 20 Pierces Road, Unit 40

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 8 - 2017 - Purchase of 585 South Street

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolutionj No. 9 - 2017 - Purchase of 257 Liberty Street

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 10 - 2017 - Parking Lease Agreement for Ferry Commuters

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 11 - 2017 - MOU with Metro-North

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 12 - 2017 Declaring a 1990 Suburban Vehicle to be Surplus Equipment

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 336 - 2016 - Contract Agreement to Acquire Shot Spotter

Councilwoman Abrams stated that this is long overdue.

Councilwoman Holmes wonders if Steve Gold would be able to help with finding the money for this subscription. This is great software to help find who is doing wrong and shooting someone but her problem is that we get software and we don't continue with it because we don't have the money or plan for it. She will vote for this Resolution but asks Steve Gold to please help us get the money for the next eighteen month subscription.

Councilwoman Abrams noted that Steve Gold works for Assemblyman Frank Skartados for those here tonight who are not aware.

Councilman Harvey asked if they have ironed out the details regarding the funds for the Skateboard Park.

Mayor Kennedy said that they had a discussion on Thursday and the reason this did not pass the first time was because we wanted to make sure we had enough money for the Skateboard Park as well as this and everything else we are trying to do.

Councilwoman Rayford said that she is for the ShotSpotter. She has lost family member after family member; all teenagers and like the mother who lost her son and stated earlier, money shouldn't be an issue. We need everyone to help us with this particular matter. There are a lot of open, unsolved cases and a lot of families are hurting so this device will help everyone. We don't know where these perpetrators are or where they are getting the

guns but we don't want any more victims. We want these things solved so as we all come together as human beings let us all help one another. She is going to vote for this and hopes that anyone who can contribute will help the City of Newburgh. They don't care if it is $5.00 or $10.00 because it will help with this cause.

Mayor Kennedy said that there is a way in which to do this and she recommended opening a line in the Budget for donations. She asked how soon that could be set up.

Michael Ciaravino, City Manager, said it could be done by the next Council Session.

Michelle Kelson, Corporation Counsel said that they would have to pass a resolution authorizing the City to accept donations.

Mayor Kennedy asked that they get a resolution ready and to the people in the audience who offered to donate she said that she will hold them to it. This is for an eighteen month subscription where we have found the money to fund it and then from there on it is a yearly subscription. This is not software that we are buying, we are buying a service. When shots go off the data is sent to a call center where it is analyzed through all of their computers and then sent back to us within thirty seconds as to where this is happening. She is very excited about what this can do to help us really drive the violence down in this City.

Councilwoman Angelo told Mayor Kennedy that she changed her vote provided that they receive contributions

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 13, - 2017

Councilwoman Abrams asked Michelle Kelson, Corporation Counsel in regard to the proposal from Project Cat if she understands it correctly. This is not to euthanize cats but to board them and euthanize only the ones that they try and cannot get adopted.

Michelle Kelson, Corporation Counsel, responded that they do say in their proposal that they will live trap and remove. They also said that they will be partnering with no kill shelters.

Councilwoman Abrams wanted that to be out there so that the wrong information is not out in the public. Project Cat is not an organization that will ship them off to kill.

Michelle Kelson said that in the representations made to the City of Newburgh in December and their proposal did make those statements. There may be members of the public who have had more involvement with them or may have information that the Council is not aware of that may have changed perceptions of that organization.

Councilwoman Abrams thinks that instead of voting this up or down we should give all of the organizations here a month to work together to try to get these cats away from 14 VanCleft Avenue.

Michelle Kelson, Corporation Counsel said that Councilwoman Abrams is suggesting to table this resolution but under Roberts Rules with a motion to table or postpone we would have to put this on for the next Council Agenda. If they are not ready to take it off the table and revisit it at the next Work Session, then it can't be considered again unless it's brought up as a new business item. Given the time frame that they have discussed tonight she thinks it may be more prudent and respectful of Roberts Rules of Order to do a thumbs up or thumbs down vote and if in the time frame that they have specified they haven't reach the goal that they are seeking, we can certainly bring the matter back as a fresh Agenda item.

Mayor Kennedy said that she would like to see a new TNR Proposal brought before the Council by a Coalition in a thirty day period to see what can be done for a long term solution. She also agrees with Councilwoman Abrams and she will be visiting the location on VanCleft to assure that that specific problem is being addressed and hopefully the issues on Dupont Avenue will begin to be addressed as well.

Councilwoman Rayford said that once this is voted down she doesn't want everyone else to stop what they are doing as this problem still festers so please continue to do what you do. When it comes to euthanizing, the technicians and Vets know when there is no other way and we don't so please keep your end up. If this is voted down, we don't want you to stop. We still want VanCleft to be cleared out.

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams - 1
Nays: Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy-6
Defeated

Resolution No. 14 - 2017

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7

Adopted

Resolution No. 15 - 2017

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 16 - 2017

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

Resolution No. 17-2017 - 123 Grand Street -- Rep. Maloney District Office Lease

Councilwoman Abrams moved and Councilwoman Angelo seconded.
Ayes: Abrams, Angelo, Harvey, Holmes, Mejia, Rayford, Kennedy - 7
Adopted

NEW BUSINESS

Councilwoman Abrams asked if they have to put something on a Work Session Agenda to discuss what is to be done with 104 S. Lander Street.

City Manager, Michael Ciaravino said that since they last spoke about it they want to take a first look at furniture and items that can be salvaged and see what is immediately usable. Other items can be put into storage for later use and other items may need to come before the Council for permission to be treated as property that we no longer need and find a way to dispose of. The final discussion is related to the dumpster and how we literally throw garbage out of that building.

Councilwoman Abrams said it would be great to find out when a DPW crew can go over with a dumpster to get all of the garbage out of there. Before the Grand Opening for the Auxiliary Police, who will be making that their new home, do we need to have anything on for discussion at a Work Session?

City Manager, Michael Ciaravino said that at our next Work Session we can do a status update and achieve a consensus on if it is thorough and complete or if there are other items remaining.

Mayor Kennedy asked if in that update they could please check into the tree there that is about to go through the roof. That tree must be trimmed down.

Councilman Harvey said that he has received a lot of calls from business owners in the City and some of the neighboring Town's because there have been a string of robberies involving some of our City residents and taxicab companies. One call was from the owner

of Papa John's concerning the pizza delivery guys not wanting to come into the City just like Dominoes doesn't want to deliver here from Vails Gate. He also received a phone call from a gentleman who wants the City, the Newburgh School District and possibly Mt. St. Mary College to partner on bringing him here as a motivational speaker under the auspices of 100 Men for Newburgh. He is an N.F.A. and Harvard College Graduate as well as a Georgetown Law School Graduate who competed in the 2012 Olympic Games in London, England. He would like to come to help with the issues that young men of color are dealing with and motivate them. We are going to try to figure out a way to bring him here and endorse that effort.

Councilwoman Abrams asked if she heard correctly that Papa John's in the Town of Newburgh will not deliver to the City.

Councilman Harvey said that they have concerns about delivering in the City with the recent robberies. They don't want to stop delivering in the City but this is an issue that was brought to his attention by the business owner. Dominoes, however, will not deliver in the City of Newburgh. Papa John's wants to continue but they have grave concerns because a delivery person was recently robbed.

There being no further comments this portion of the meeting was closed.

OLD BUSINESS

Councilman Harvey said that he received a phone call from Dr. Robert Padilla of the Newburgh Enlarged City School District making him aware that any day now the My Brother's Keeper Federal Grant Awards will be revealed since we agreed in a previous resolution to partner with the School District. He also wanted to make us aware that he would like to be on the Agenda for our Work Session on the 19th of this month and also on the 23rd to do a presentation on this Grant and what we need to do to collaborate on that effort to help the young men in our City make better choices. He will also try to make it to the Anti-Poverty Speak Out on the 21st from 11:00 a.m. to 5:00 p.m. He noted that New York State was first in this Country to jump on this Federal Initiative and that he is part of the Blue Ribbon Committee for this Grant. Hopefully the City of Newburgh and the School District will get awarded.

Mayor Kennedy said that the ask is to be on the Work Session Agenda to give us a presentation and educate the Council and then be at the Monday night meeting.

There being no further old business this portion of the meeting was closed.

PUBLIC COMMENTS REGARDING GENERAL MATTERS OF CITY BUSINESS

Sandy Kissam, Town of Newburgh provided the Council with a draft resolution for their review that was put out by the City of Kingston regarding the Pilgrim Pipeline which was given to her by someone with Riverkeeper. Orange Residents Against Pilgrim Pipeline is continuing to struggle against having such a facility built in our Towns and our City and they are also concerned about the bomb trains. They are planning to go up to Albany on Wednesday morning to demonstrate peacefully at the SUNY Albany Campus and ask the Governor to totally disallow this use of the Thruway right of way. If anyone is interested in joining them she will leave flyers on the table.

Lisa McEwen, City of Newburgh, said that she has been a teacher in the District for twenty-two years and although she is an animal rights activist and she does rescue she has also been dealing with the crime in the City. She is just as compassionate about what they are doing for the people in the City of Newburgh as she is for the cats. She lives it every day as a teacher in the School District with these kids and she has buried five students in the past twenty-two years from violence so anything she can do to help she will be more than happy to work with the Council. Although she is here tonight speaking for the cats she is here for the public as well and will do whatever is possible to reduce the crime in the City.

Patty Dolan, Town of Newburgh thanked the Council for voting down the resolution. Even though she doesn't live in the City she supports any community that commits itself to positive compassion and kindness. Even though her specialty is cats and recycle, repurpose and reuse, she is willing to share her ideas and knowledge but she needs them to ask. Keep the lines of communication open because we need to educate people about the importance of spaying and neutering. Prevention would help reduce the population and maybe someday we could offer free spaying and neutering and then we could never have an overpopulation problem and we would never have to kill animals.

Nancy Lane, has lived on Lilly Street here in the City of Newburgh for thirty-seven years and her children have purchased homes and are raising their children here as well. Her daughter is an Administrator with the Newburgh Enlarged City School District and her son is a City of Newburgh Police Officer so she is very pleased that tonight they passed the ShotSpotter. She has seen so much growth in this City in the past five years and a lot of hard work by our City Manager and our Council so she is proud of what is going on. We are all aware, however, that crime and poverty is what this City is known for and ShotSpotter will help the Officers as well as keep the kids safe. She agrees with Councilman Harvey that she would like to see the same passion here when our kids get shot and for our children and families who live in poverty. There are so many people here who are hungry. She does love animals and appreciates what everyone said tonight but she

hopes we get this kind of passion for what is going on here in the City of Newburgh. The young man who was shot by the Deli is one block from where she lives and she informed them that that it is very dark there. The lights are back out and people are just hanging out there.

There being no further comments this portion of the meeting was closed.

FURTHER COMMENTS FROM THE COUNCIL

Councilwoman Abrams read a poem for Councilwoman Angelo because the print was not very clear entitled, "My Hometown". She wished everyone a good night.

Councilwoman Angelo said that the Poet gave her a typed copy to keep. She thanked Deirdre Glenn and Michelle Kelson for the properties on our Agenda tonight and for bringing more revenue into the City. She said that they should start thinking about permits for some of our parking lots where we used to charge $10.00 a month to park. She noted that the Ann Street Parking Lot is loaded with cars and another one is on Broadway behind the Fire House as well as one on VanNess Street. She feels this would be a good idea to try to make some revenue and it's not too much to ask. We are also in the process of meeting with the Board of Education about the Lease for the Library lot.

Katie Mack, City Comptroller said that we are looking to do a comprehensive plan for all of the lots and down at the Waterfront where we have parking meters that were not installed.

Michelle Kelson, Corporation Counsel noted that there were some regulatory changes that we have to make to implement a comprehensive plan. If we are going to have parking meters in spaces where we don't have them know, we will have to amend the schedules. If we are going to have any kind of permitting or meters in the parking lots, whether it be day or night, we probably need to review what is currently in the Code and update it so that it satisfies the comprehensive plan and it is approved by the current Council.

City Manager, Michael Ciaravino said that they have already started to work on this and they are aggressively looking to generate options for the City Council to consider in terms of generating additional revenue.

Councilman Harvey thanked the women who stayed and made final comments because it really does take a village to correct a lot of these challenges and sometimes he is so passionate about what he is doing that he comes off a little tough. He had a conversation with Ms. Lane's daughter who is a colleague and friend of his and it was a very meaningful conversation because you don't find a lot of families who grow up and stay here so it

moved him. We are all pushing for the same goals and it was beautiful to see people here from all of the surrounding communities tonight. He has been on this Council for one year and during the holiday break felt lots of emotions regarding all of the things that they have achieved in the past year. He thought about the civility and comradery they have amongst one another compared to previous Councils and he realized that they accomplished a lot and moving forward they will do more. He is happy and grateful to serve in this capacity to continue the work that they have done thus far and he had a chance to rest and recharge for 2017. After a lot of reflection and pondering he has hope for our community.

Councilwoman Holmes thanked everyone for coming out tonight. She appreciates the support and she is glad that the resolution was voted down as she is sure this is all going to work out. The streetlight by the Goldback Deli on Fullerton and Third is in her Ward so she will text George Garrison to report that the light is out. She is very happy that Steve will help with finding more money to keep the ShotSpotter going because she hates voting for things that we can't maintain or keep up with. On Saturday, January 21, 2017 everyone should go to the Armory for the Million Dollar Poverty Grant from 11:00 a.m. to 5:00 p.m. She added that several people who work at Woodbury Commons have asked why people can get the bus for a $1.00 over to Beacon but they have to pay $7.50 to the Woodbury Commons and they have been working there for years. She wished everyone a great evening.

Councilwoman Mejia thank everyone for coming and feels that if we all hold on to this sentiment of hope and persistence then 2017 will be the year that we go down in the history books. We had a Deli at 212 Broadway that was selling synthetic marijuana, K2, and they were caught in a raid. How do we send a strong signal to the business owners that are selling illegal substances in our City? Can we revoke licenses and shut them down? This business is in the heart of our City on Broadway and they had the audacity to be selling this. This is unacceptable and it won't be tolerated. What do we need to pass that says one strike and you're out? ShotSpotter says that we are a community coming together to help and we are united. 2017 is the year when we say, *"No more to that kind of behavior. We are going to battle you and close you down and you cannot do this to our community".* She would like to work with Corporation Counsel or whoever she has to work with to see how to do that. She reminded everyone that part of living in a healthy community deals with housing and the Newburgh Community Land Bank has taken a small step by recently rehabbing two single family homes at 53 and 55 Farrington Street that are being sold for $75,000.00. The next Open House will be on January 18th from 4:00 p.m. to 7:00 p.m. but there are some requirements such as you have to have lived in the City of Newburgh for five years and there will be financial assistance available. This is another example of what happens when a municipality partners with a not-for-profit and when the community comes together to make sure that people who want to make that transition to homeownership are able to do that. She urged everyone to check those out as well as the new rental opportunities on Dubois Street. She ended by saying don't sell illegal things in our block because we have families who live here and we are trying to do the best that we can with a difficult situation. We are going to create a strong, united, diverse community.

Councilwoman Rayford said that there is a huge problem with the local liquor stores being

open late at night. Surrounding cities close their stores at 7:00 p.m. so people come here to Newburgh to purchase their liquor. Perhaps we need to close our liquor stores a little earlier also to help prevent crime. She thanked Deirdre Glenn for doing an outstanding job because it was her night tonight with the selling of all these properties. She also thanked Katie Mack for finding the money needed for the ShotSpotter. The United Way on the 21st was already mentioned and the first one hundred people will receive a $50.00 gift card just for showing up. There will be a celebration for Martin Luther King Day on Sunday, January 15th at 5:30 p.m. at the Crossroads Assembly of God, 7 D'Alfonso Road behind Aldi's which will be hosted by the Christian Ministerial Fellowship. Also on January 16th the New Hope Baptist Church, will hold their 49th Annual Celebration hosted by the Black History Committee with Sister Tallie and Bishop Dorsey from 9:30 a.m. to 2:30 p.m. with workshops, a continental breakfast and lunch. She noted that the Warming Station is open from 4:00 p.m. to 8:00 p.m. and she believes that if the temperature reaches 32 degrees or below is when it is open. The Shelter for the homeless or those in need of a place to stay opens at 9:00 p.m. on a first come first serve basis and the person in charge is Dr. Watson. This is located at the First United Methodist Church, 241 Washington Street and you should enter from the side of the building. She thanked everyone on the Council, the City employees and the residents because we have to ban together to make this life a little easier as we press for Peace and move this City forward. She wished everyone a good night.

Mayor Kennedy said that there is a lot going on here and this last year has been a year of a lot of turmoil but we have made a lot of progress and we are moving in the right direction. She is happy about the streets that have been paved thanks to Councilwoman Mejia who put together a three year plan to start paving streets during the 2014 Budget discussions and progress is now happening. She is glad to hear that our Superintendent of Schools wants to come to the Council. For the past five years as Mayor she has been trying to pull the school and City together and now it is starting to blossom. It is important to recognize that it takes a while to turn a big ship around but we are getting there. She is currently working with a contractor who speaks mainly Spanish on a project that is getting done despite the language barrier. They are communicating better than she was with a contractor who spoke English. This just goes to show that working together we can do a lot of things. She added it up and the buildings sold tonight total $106,000.00 thanks to Planning and Development. She is especially grateful for ShoptSpotter and believes we will find the money to keep going with it. She thanked everyone for coming tonight.

There being no further comments this portion of the meeting was closed.

ADJOURNMENT

There being no further business to come before the Council the meeting adjourned at 9:39 p.m.

LORENE VITEK
CITY CLERK

RESOLUTION NO.: 1 - 2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH HUDSON VALLEY ENGINEERING ASSOCIATES, P.C. FOR ENGINEERING SERVICES FOR THE LAKE DRIVE BRIDGE (BIN No. 2223630) REPLACEMENT PROJECT AT A COST NOT TO EXCEED $364,949.00

WHEREAS, the Lake Drive Bridge has been Red Flagged for structural deficiencies by the New York State Department of Transportation; and

WHEREAS, the City of Newburgh has funding allocated in the Transportation Improvement Program (TIP) in project PIN#8761.39 for the replacement of this bridge; and

WHEREAS, the City of Newburgh has proceeded with the RFQ process for selecting a design consultant in accordance with the Federal Aid process and wishes to accept a proposal and execute an agreement with Hudson Valley Engineering Associates, P.C. for engineering services related to the Lake Drive over the Quassaick Creek (BIN No. 2223630) Bridge Replacement Project (the "Project"); and

WHEREAS, the proposal includes preliminary design, right-of-way incidentals, final design and construction support consistent with the requirements of the New York State Department of Transportation and federal regulatory agencies for federal-aid local projects; and

WHEREAS, the cost of the services shall not exceed $364,949.00 with funding to be derived from the 2016 BAN--H1.5110.0208.8102.2016 which funding shall be reimbursed through the TIP program via project PIN#8761.39; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Hudson Valley Engineering Associates, P.C. for engineering services related to the Lake Drive over the Quassaick Creek (BIN No. 2223630) Bridge Replacement Project at a cost not to exceed $364,949.00.

HVEA
ENGINEERS

RECEIVED
DEC 14 2016
CITY ENGINEER

December 9, 2016

Mr. Jason Morris, P.E.
City of Newburgh Engineer
City Hall
83 Broadway
Newburgh, New York 12550

Re: City of Newburgh
PIN 8761.39 – Lake Drive over Quassaic Creek (BIN 2223630) Bridge Replacement

Dear Mr. Morris:

Enclosed please find two copies of our contract proposal for the design of the Lake Drive Bridge Replacement project. The contract employs the NYSDOT's recommended language for federal-aid local projects.

Please review and if you find the proposal acceptable return one fully executed copy for our records.

Thank you very much for this assignment. We look forward to working with you and the City.

Sincerely,

HVEA Engineers

by Mia K Nadasky
Mia K. Nadasky, P.E.

Encs. (2)

HVEA ENGINEERS

CERTIFICATION
of Consultant Contract Costs

City of Newburgh
Lake Drive/Quassaick Creek Bridge Replacement
PIN 8761.39

I, Mia K. Nadasky, principal with HVEA Engineers, hereby certify that to the best of my knowledge and belief:

☐ the salary rates and overhead multiplier used in the contract between (name of administering agency) and HVEA Engineers conform to the most recent certified salary roster submitted by HVEA Engineers to the NYSDOT on (date).

☐ the salary rates and overhead multiplier used in the attached contract between (name of administering agency) and HVEA Engineers are the lowest salary and overhead rates that HVEA Engineers charges clients for similar services. (Applies only to services provided by the consultant valued at less than $250,000.00.)

☒ the salary rates and overhead multiplier used in the contract between the City of Newburgh and HVEA Engineers conform to the firm's audited overhead rate and to the Certified Salary Roster submitted to the NYSDOT on May 3, 2016.

STATE OF NEW YORK MIA NADASKY 072366 LICENSED PROFESSIONAL ENGINEER

Mia K Nadasky
Signature

12/9/16
Date

Architectural/ Engineering Consultant Contract

PIN (s) 8761.39 Municipal Contract No. _____

Agreement made this _____ day of _____, _____ by and between

City of Newburgh
(Municipal Corporation)
Having its principal office at 83 Broadway, Newburgh, New York 12550 (the ***"Municipality"***)

and

HVEA Engineers with its office at 560 Route 52, Beacon, New York 12508
(to be known throughout this document as the ***"Consultant")***

WITNESSETH:

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this contract as **Lake Drive/Quassaick Creek Bridge Replacement** (as described in detail in Attachment A annexed hereto, the "Project") the Sponsor has sought to engage the services of a Consultant Engineer) to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the Sponsor has selected the Consultant to perform such services in accordance with the requirements of this Contract; and

WHEREAS, _____ , is authorized to enter this Contract on behalf of the Sponsor,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS CONTRACT

This contract consists of the following:

- **Agreement Form** - this document titled "Architectural/Engineering Consultant Contract";
- **Attachment "A"** - Project Description and Funding;
- **Attachment "B"** – Scope of Services;
- **Attachment "C"** - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS

2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the Sponsor with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The CONSULTANT shall ascertain the applicable practices of the Sponsor, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Contract shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the Sponsor.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Sponsor shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

☒3.3 Lump Sum Cost Plus Reimbursables Method

ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
ITEM I	A Lump Sum paid to Consultant for the scope of services hereunder, unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A Lump Sum of $364,949.	The Consultant shall be paid in monthly progress payments based upon the percentage of work accomplished and Direct Non-Salary Costs incurred during the period. Progress payments are subject to approval by the Sponsor's representative.
ITEM II	• Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Contract; all subject to audit.	• Actual costs incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative. • All reimbursement for travel, meals and lodging shall be made at actual cost paid, but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor. • For Reimbursable Direct Non-Salary Costs a	

ARTICLE 4. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 5. AUDITS

5.1 Payment to the Consultant is subject to the following audit rights of the Sponsor:

A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.

B. 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 Sponsor.

C. For Lump Sum Cost Plus Reimbursables 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 Sponsor.

5.2 In order to enable the Sponsor to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.

A. Records of Direct Non-Salary Costs;

B. Copies of any subcontracts relating to said contract;

C. Location where records may be examined; and

D. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

6.1 The Sponsor will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the Sponsor from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Contract or for any part thereof except as otherwise provided herein.

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Contract within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Sponsor of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Sponsor on a monthly basis or such alternative interval as the Sponsor directs in writing.

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Contract and constitutes extra work, the CONSULTANT shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole judge as to whether or not such work is in fact beyond the scope of this Contract and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT CONTRACT, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the CONSULTANT for execution after approvals have been obtained from necessary Sponsor officials, and, if required from the Federal Highway Administration.

7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the Sponsor all assistance required by the Sponsor. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Contract for the additional services above described, the Sponsor's directions shall be exercised by the issuance of a separate Contract, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Contract.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the Sponsor from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against the Sponsor beyond such as may legally exist irrespective of this Article or this Contract.
The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars ($1,000,000) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Contract. The CONSULTANT shall supply any certificates

of insurance required by the Sponsor and adhere to any additional requirements concerning insurance.

ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this contract. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this contract in the sum of at least $1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the Sponsor or existing in the offices of the CONSULTANT shall be made available to the other party to this Contract without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The 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 or three (3) years after final payment is received, whichever is later. The Sponsor, State, Federal Highway Administration, or any authorized representatives of the 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 the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Sponsor 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 Sponsor of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this contract.

ARTICLE 13. TERMINATION

The Sponsor shall have the absolute right to terminate this Contract, and such action shall in no event be deemed a breach of contract:

A. for convenience of the Sponsor - if a termination is brought about for the convenience of the Sponsor and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.

B. for cause - if the termination is brought about as a result of the Sponsor's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Sponsor, of the total amount of work contemplated by the PROJECT CONTRACT.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Contract, and the Sponsor shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Sponsor or his duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the Sponsor for any damages it may sustain by reason thereof. Upon the delivery of all such data to the Sponsor, the Sponsor will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

The CONSULTANT specifically agrees that this Contract may be canceled or terminated if any work under this Contract is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The 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 Sponsor 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 Sponsor, including but not limited to Worker's

Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that he 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 Contract. For breach or violation of this warranty, the Sponsor shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees, that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Contract or of his right, title or interest therein, or his power to execute such Contract, to any other person, company or corporation, without the previous consent in writing of the Sponsor.

If this provision is violated, the Sponsor may revoke and annul the Contract and the Sponsor shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Contract without such consent in writing of the Sponsor.

ARTICLE 19. PROPRIETARY RIGHTS

The 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 United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS

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 Sponsor.

ARTICLE 20.1 PROMPT PAYMENT. While federal regulation (49 CFR 26.29) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other

payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Contract, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
C. does not have a proposed debarment pending; and
D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

A. The 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 contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Sponsor may in certain circumstances, provide compensation for such work.

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

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

D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor 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, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, CONSULTANT agrees that neither it nor its SUBCONSULTANTS shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. CONSULTANT is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Contract, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

a. an existing contract for the PROJECTs ROW incidental work or construction engineering; or

b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS *(unless more restrictive municipal laws apply)*

For all contracts other than personal services in excess of $5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of $20,000 except printing contracts in excess of $10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. WAGE AND HOURS PROVISIONS

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

ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Consultant agrees, as a material condition of the contract, that neither the Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Consultant, or any of the aforesaid affiliates of Consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or

modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Sponsor and the New York State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (see 2 NYCRR 105.4).

ARTICLE 29. SERVICE OF PROCESS

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

ARTICLE 30. DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA. At the time of completion of the work, the Consultant shall make available to the Sponsor 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 Sponsor. 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 Sponsor all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the Sponsor by the Consultant shall bear thereon the endorsement 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 Sponsor.

ARTICLE 31. MISCELLANEOUS

31.1 ***Executory Contract.*** This Contract shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Sponsor beyond the monies legally available for the purposes hereof.

IN WITNESS WHEREOF, the parties have duly executed this Contract effective the day and year first above written.

Reference: Sponsor Contract # _____

Sponsor	Consultant
by: _____	by: Mia K. Nadasky
Date:	Date: 12/14/16

For the Sponsor:
STATE OF NEW YORK

ss:

COUNTY OF ORANGE

On this ___ day of _____, _____ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the _____, New York; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Sponsor.

_____

Notary Public, _____ County, N.Y.

For the Consultant:
STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS
On this 14 day of December, 2016 before me, Mia K. Nadasky, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the Somers, New York; that he/she is the Principal of HVEA Engineers, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Consultant.

Diane E. Butler

Notary Public, DUTCHESS County, N.Y.

DIANE E. BUTLER
Notary Public, State of New York
No. 01BU6127803
Qualified in Dutchess County
My Commission Expires June 8, 2017

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Federal-Aid Requirements for Architectural/ Engineering Consultant Supplement

ARTICLE A. DOCUMENTS FORMING THIS AGREEMENT

The contract must include the documents forming the contract between the Sponsor and the Consultant. The following will be included in the contract:

- Agreement Form - "Municipal Consultant Contract";
- Project Description and Funding;
- Scope of Services;
- As applicable, Staffing Rates, Hours, Reimbursables and Fee;
- Federal-Aid Requirements for Architectural/Engineering Consultant Supplement.

ARTICLE B. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Sponsor shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described in this contract. Compensation methods must be clearly documented in the contract. Compensation methods available are Cost Plus Fixed Fee Method, Specific Hourly Rate Method, and Lump Sum Cost Plus Reimbursables Method.

ARTICLE C. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE D. EXTRA WORK

If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT CONTRACT and constitutes extra work, the CONSULTANT shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole judge as to whether or not such work is in fact beyond the scope of this Contract and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT CONTRACT, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the CONSULTANT for execution after approvals have been obtained from necessary Sponsor officials, and, if required from the Federal Highway Administration.

ARTICLE E. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this contract. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this contract in the sum of at least $1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

ARTICLE F. RECORDS RETENTION

The 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 or three (3) years after final payment is received, whichever is later. The Sponsor, State, Federal Highway Administration, or any authorized representatives of the 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 the purposes of inspection, auditing and copying.

ARTICLE G. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that he 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 Contract. For breach or violation of this warranty, the Sponsor shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE H. PROPRIETARY RIGHTS

The 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 United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE I. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Contract, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

C. does not have a proposed debarment pending; and

D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE J. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative contract, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE K. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor 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 Title VI of the Civil Rights Act of 1964, as amended, and any other State and Federal Statutory and constitutional non-discrimination provision, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, CONSULTANT agrees that neither it nor its SUBCONSULTANTS shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. CONSULTANT is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE L. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Contract, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

a. an existing contract for the PROJECTs ROW incidental work or construction engineering; or

b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE M. WAGE AND HOURS PROVISIONS

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

ARTICLE N. INTERNATIONAL BOYCOTT PROHIBITION

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

ARTICLE O. PROMPT PAYMENT.

While federal regulation (49 CFR 26.29) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

APPENDIX A-2
IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.
Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Transportation (NYSDOT) may approve a request for Assignment of Contract

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Attachment A

Project Description and Funding

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Attachment A
Architectural/ Engineering Consultant Contract
Project Description and Funding

PIN: 8761.39 *Term of Agreement Ends: December 31, 2018*
BIN:

☒Main Agreement ☐Amendment to Contract [add identifying #] ☐Supplement to Contract

Phase of Project Consultant to work on:

☒P.E./Design ☒ROW Incidentals ☒ROW Acquisition
☒Construction, C/I, & C/S (Supplemental)

PROJECT DESCRIPTION:

Preliminary and Final Design of:

Lake Drive/Quassaick Creek Bridge Replacement

Project Location:

City of Newburgh, Orange County

Consultant Work Type(s): See Attachment B for more detailed Scope of Services.

MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:
$364,949

Footnotes:

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Attachment B

Task List

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Section 1 - General

1.01 Project Description and Location

Project Name: Lake Drive/Quassaick Creek Bridge Replacement

PIN: 8761.39

Project Description: The project will remove the two existing corrugated metal arch culverts and replace them with a precast bridge structure to carry both vehicles and pedestrians along Lake Drive over the Quassaick Creek. The replacement of these structures will also allow reestablishment of the stream bed and resulting aquatic habitat of the Quassaick Creek through the structure.

Project Limits: Lake Drive, approximately 305 +/- feet west of Lake Street to approximately 398 +/- feet west of Lake Street

Sponsor: City of Newburgh

County: Orange

The anticipated start date of preliminary design – January 15, 2017
The letting date – May 30, 2018
The construction completed date – November 30, 2018
The anticipated design costs - $0.365M
The anticipated ROW acquisition costs - $0.130M
The anticipated construction costs – $1.450M

1.02 Project Manager

The **Sponsor's** Project Manager for this project is **Jason Morris, P.E.**, who can be reached at **(845) 569-7448.**

All correspondence to the **Sponsor** should be addressed to:

Jason Morris, P.E.
City Engineer
City Hall
83 Broadway
Newburgh, New York 12550
845.569.7448

The Project Manager should receive copies of all project correspondence directed other than to the **Sponsor.**

1.03 Project Classification

This project is assumed to be a C List action under USDOT Regulations, 23 CFR 771.

Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be Type II. The City of Newburgh will be the lead agency.

1.04 Categorization of Work

Project work is generally divided into the following sections:

Section 1	General
Section 2	Data Collection & Analysis
Section 3	Preliminary Design
Section 4	Environmental
Section 5	Right-of-Way
Section 6	Detailed Design
Section 7	Advertising, Bid Opening and Award
Section 8	Construction Support
Section 9	Construction Inspection
Section 10	Estimating & Technical Assumptions

When specifically authorized in writing to begin work the **Consultant** will render all services and furnish all materials and equipment necessary to provide the **Sponsor** with reports, plans, estimates, and other data specifically described in Sections 1, 2, 3, 4, 5, 6, 7, 8 and 10.

1.05 Project Familiarization

The **Sponsor** will provide the **Consultant** with the following information:

- Approved project initiation document (Initial Project Proposal or similar documentation) indicating project type, project location, cost estimate, schedule, and fund source(s).
- Transportation needs.
- Plans for future related transportation improvements or development in the area of the project.
- Traffic data.
- Accident records and history.
- Most recent bridge inspection and condition report, NYSDOT weighted-average bridge condition rating, FHWA sufficiency rating, and NYSDOT Bridge Management System rating.
- Record as-built plans.
- Pavement history.
- Anticipated permits and approvals (initial determination).
- Terrain data requirements for design.
- Available project studies and reports.
- Other relevant documents pertaining to the project.

The **Consultant** will become familiar with the project before starting any work. This includes a thorough review of all supplied project information and a site visit to become familiar with field conditions.

1.06 Meetings

The **Consultant** will prepare for and attend all meetings as directed by the **Sponsor's Project Manager**. Meetings may be held to:

- Present, discuss, and receive direction on the progress and scheduling of work in this contract.
- Present, discuss, and receive direction on project specifics.
- Discuss and resolve comments resulting from review of project documents, advisory agency review, and coordination with other agencies.
- Preview visual aids for public meetings.
- Manage subconsultants and subcontractors.

The **Consultant** will be responsible for the preparation of all meeting minutes; the minutes will be submitted to meeting attendees within one (1) week of the meeting date.

1.07 Cost and Progress Reporting

For the duration of this contract, the **Consultant** will prepare and submit to the **Sponsor** on a monthly basis a Progress Report in a format approved by the **Sponsor**. The Progress Report must contain the *Cost Control Report*.[1] The beginning and ending dates defining the reporting period must correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the **Sponsor**, this task will not be performed during the suspension period.)

1.08 Policy and Procedures

- The design of this project will be progressed in accordance with the current version of the *NYSDOT Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual*[2] including the latest updates.
- If there are conflicts between local policies and procedures and those listed in the *PLAFAP* those listed in the *PLAFAP* take precedence.]

1.09 Standards & Specifications

The project will be designed and constructed in accordance with the current edition of the NYSDOT Standard Specifications for Construction and Materials, including all applicable revisions.

1.10 Subconsultants

The **Consultant** will be responsible for:

- Coordinating and scheduling work, including work to be performed by subconsultants.
- Technical compatibility of a subconsultant's work with the prime consultant's and other subconsultants' work.

[1] https://www.dot.ny.gov/plafap/view-document?id=1598
[2] https://www.dot.ny.gov/plafap

1.11 Subcontractors

Procurement of subcontractors must be in accordance with the requirements set forth in the *NYSDOT PLAFAP Manual.*

Section 2 - Data Collection and Analysis

2.01 Design Survey

A. Ground Survey

The **Consultant** will provide terrain data required for design by means of a topographic field survey **250 feet** east and west of the centerline of the structure. The survey will be aligned in the state datum.

B. Stream Survey

The **Consultant** will perform field surveys necessary to provide stream cross-sections for the hydraulic analysis of the Quassaick Creek. Cross-sections will be taken every 25 feet for a distance of 200 feet upstream and downstream of the structure.

C. Supplemental Survey

The **Consultant** will provide supplemental surveys when needed for design purposes and to keep the survey and mapping current.

C. Standards

Survey will be done in accordance with the standards set forth in the *NYSDOT Land Surveying Standards and Procedures Manual*[3] and in accordance with local standards described in Section 10 of the SOS..

2.02 Design Mapping

The **Consultant** will provide the following design mapping:

- 40 scale mapping with 2 foot contour intervals from terrain data provided by the **Sponsor** and obtained by the **Consultant.**

The **Consultant** will provide supplemental mapping when needed for design purposes and keep the mapping current for the duration of the project.

2.03 Determination of Existing Conditions

[3] https://www.dot.ny.gov/divisions/engineering/design/design-services/land-survey/repository/LSSPM09.pdf

The **Consultant** will determine, obtain or provide all information needed to accurately describe in pertinent project documents the existing conditions within and adjacent to the project limits.

2.04 Accident Data and Analysis

The **Sponsor** will provide accident records for the last three years for roads within the project limits plus one-tenth of a mile immediately outside of the project limits
The **Consultant** will prepare collision diagrams and associated summary sheets for accidents involving pedestrians and bicyclists, and note any clusters of accidents or patterns implying inadequate geometrics, or other safety problems, within the project limits.

2.05 Traffic Counts

The **Consultant** will provide traffic count data for existing conditions, growth factors for forecasting, and forecast data, in accordance with the requirements noted in the *NYSDOT Traffic Monitoring Standards for Contractual Agreements Manual*[4].

The **Consultant** will provide flow diagrams for appropriate peak periods (e. g., am, noon, pm) showing existing and design year volumes on the mainline, on each approach of all intersections, and at major traffic generators.

2.06 Capacity Analysis

The **Consultant** will perform capacity analyses using the latest version of the Transportation Research Board's *Highway Capacity Manual* at mainline and intersection locations within the project limit to determine:

- Existing level of service.
- Design year level of service.
- Estimates of the duration of the poor level of service where it occurs during commuter travel periods.

The **Consultant** will develop project travel speed and delay estimates for the peak hour and average hour for:

- Existing traffic conditions.
- Design year traffic for the null alternative.

2.07 Future Plans for Roadway and Coordination with Other Projects

The **Sponsor** will provide a brief written statement specifying whether or not plans exist to reconstruct or widen the highway segments immediately adjacent to the project within the next twenty years.

The **Sponsor** will determine the influence, if any, of other existing or proposed projects or proposed developments in the vicinity of this project (e.g., whether a nearby highway widening would influence this project's design traffic volumes).

[4] https://www.dot.ny.gov/divisions/engineering/technical-services/hds-respository/Traffic%20Monitoring%20Standards%20for%20Contractual%20Agreements.rtf

The **Sponsor** will provide all necessary information pertaining to the other projects or developments.

2.08 Soil Investigations

The **Consultant** will determine the boring locations, diameters, and sampling intervals; designate soil boring numbers; stake out the locations; take the soil borings; document the resulting subsurface information; and survey and map the actual boring locations.

2.09 Hydraulic Analysis

The **Consultant** will perform a hydraulic analysis in accordance with the principles outlined in the Section 3.4 of the *NYSDOT Bridge Manual*[5].

2.11 Pavement Evaluation

The **Consultant** will take pavement cores to determine the depth of existing asphalt on Lake Drive.

Section 3 - Preliminary Design

3.01 Design Criteria

The **Consultant** will identify the applicable design standards to be used for this project, and will establish project-specific design criteria in accordance with the "Locally Administered Federal Aid Procedures Manual."

The **Sponsor** will approve the selected project design criteria and will obtain NYSDOT concurrence (either by a written submission or at a meeting).

Based on the selected design criteria, the **Consultant** will identify all existing non-standard features that are within and immediately adjacent to the project limits. Non-standard features that correlate with a high accident rate will be noted.

3.02 Development of Alternatives

A. Selection of Design Alternative(s)

The **Consultant** will identify and make rudimentary evaluations of potential design alternative concepts that would meet the **Sponsor's** defined project objectives. These evaluations are not to be carried beyond the point of establishing the feasibility of each concept as a design alternative; only those significant environmental and geometric design constraints that bear on the feasibility should be identified.

For each concept the **Consultant** will prepare rudimentary sketches of plan, profile, and typical section views which show:

- **On plan:** proposed centerlines; pavement edges; curve radii and termini; and existing ROW limits.

[5] https://www.dot.ny.gov/divisions/engineering/structures/repository/manuals/brman_4th_edition

- **On profile:** theoretical grade lines; critical clearances; vertical curve data; grades; and touchdown points.
- **On typical section:** lane, median, and shoulder widths; ditches; gutters; curbs; and side slopes.
- **Where necessary:** important existing features.
- **Where pertaining to feasibility:** significant environmental and geometric design constraints, labeled as such.

These sketches will include only the minimum information needed to select design alternatives to be studied in further detail.

The **Consultant** will meet with the **Sponsor** to discuss the concepts, using the sketches as discussion aids to describe the relative order-of-magnitude costs, advantages, disadvantages, and problem areas of each. From these concepts the **Sponsor** will select one, or in some cases more, design alternative(s) for further development.

B. Detailed Evaluations of Alternative(s)

The **Consultant** will further evaluate each design alternative and the null alternative with specific engineering analyses and considerations. Analyses will be conceptual and limited to determining the relative suitability of each design alternative, and will include:

- Design geometry, including the identification and comparison of alignment constraints and (where applicable) justification for retaining nonstandard design features, per the "Locally Administered Federal Aid Procedures Manual."
- Environmental constraints and potential environmental impact mitigation measures (identified under Section 4 tasks).
- Traffic flow and safety considerations, including signs, signals, and level of service analysis for intersections.
- Pavement.
- Structures, including bridges, retaining walls, major culverts, and building alterations (limited to establishing basic concepts, accommodating clearances and stream flow, and estimating costs). Bridge investigative work (inspection, deck coring, etc.) is covered under Section 2.
- Drainage.
- Maintenance responsibility.
- Maintenance and protection of traffic during construction.
- Soil and foundation considerations.
- Utilities.
- Railroads.
- Right-of-way acquisition requirements.
- Accessibility for pedestrians, bicyclists and the disabled.
- Lighting.
- Construction cost factors.

The **Consultant** will prepare the following drawings for each design alternative analyzed:

- 100 scale plans showing (as a minimum) stationed centerlines; roadway geometrics; major drainage features; construction limits; cut and fill limits; and proposed right-of-way acquisition lines.
- Typical sections showing (as a minimum) lane, median, and shoulder widths; ditches; gutters; curbs; and side slopes.

3.03 Cost Estimates

The **Consultant** will develop, provide and maintain a cost estimate for each design alternative.

The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes.

3.04 Preparation of Draft Design Approval Document

For this project, the Design Approval Document (DAD) will be a **"Design Report."**

The **Sponsor** will make all determinations not specifically assigned to the **Consultant** which are needed to prepare the Draft DAD.

The **Consultant** will prepare a Draft DAD, which will include the results of analyses and/or studies performed in other Sections of this document. The DAD will be formatted as specified in the NYSDOT *Project Development Manual (PDM)*.[6]

The **Consultant** will submit 2 copies of the Draft DAD to the **Sponsor** for review. The **Sponsor** will review the Draft DAD and provide the **Consultant** with review comments. The **Consultant** will revise the Draft DAD to incorporate the comments.

3.06 Public Information Meeting(s) and/or Public Hearing(s)

A Public Information Meeting(s)

The **Sponsor** will hold public information meeting(s) with advisory agencies, local officials, and citizens. The **Consultant** will prepare a discussion of the project and conduct the meeting. The **Sponsor** will arrange for the location of public information meeting(s). The **Sponsor** will be responsible for providing appropriate notification.

3.07 Preparation of Final Design Approval Document (DAD)

The **Sponsor** will obtain all necessary approvals and concurrences and will publish all applicable legal notices.

The **Consultant** will prepare the Design Recommendation, and will modify the DAD to include the Design Recommendation, re-title the DAD in accordance with the *PDM* Manual, and update existing conditions and costs as necessary. The **Consultant** will

[6] https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm

incorporate changes resulting from the advisory agency review and all public information meetings and public hearings.

The **Consultant** will submit 2 copies of the Final DAD to the **Sponsor** for review. The **Sponsor** will review the Final DAD and provide the **Consultant** with review comments. The **Consultant** will revise the Final DAD to incorporate the comments.

The **Sponsor** will submit 1 copy of the Final DAD to NYSDOT for a Final Environmental Determination. NYSDOT will make the determination or obtain FHWA's determination. If necessary, NYSDOT will transmit the Final DAD to FHWA for final review and concurrence. The **Consultant** will again revise the Final DAD to incorporate changes (assumed minor) resulting from the NYSDOT and/or FHWA review.

The **Sponsor** will grant or obtain, from or through NYSDOT, Design Approval.

Section 4 – Environmental

4.01 NEPA Classification

The **Consultant** will verify the anticipated NEPA Classification.

If the project is assumed to be a Class II action, then the **Consultant** will complete the Federal Environmental Approval Worksheet (FEAW), and forward the completed worksheet to the **Sponsor** for forwarding to NYSDOT (with the Final DAD) for a final NEPA determination. The FEAW need not be completed for projects assumed to be Class I or III actions.

The Lead Agency for NEPA is the Federal Highway Administration (FHWA).

4.02 SEQRA Classification

The **Consultant** will assist the **Sponsor** in complying with SEQRA (6 NYCRR Part 617). The **Sponsor** is the Lead Agency. Consultant tasks include, but are not limited to:

- Drafting Environmental Assessment Form(s) (Short EAF).

The **Consultant** will document the results of SEQRA processing in the body of the Design Approval Document (DAD) and will include documentation of the final SEQRA determination in the Appendix of the DAD.

4.03 Screenings and Preliminary Investigations

The **Consultant** will screen and perform preliminary investigations to determine potential impacts resulting from the design alternative(s) for:

- General Ecology and Endangered Species
- Ground Water

- Surface Water
- State Wetlands
- Federal Jurisdictional Wetlands
- Floodplains
- Coastal Zone Management
- Navigable Waterways
- Historic Resources
- Parks
- Hazardous Waste
- Asbestos
- Noise
- Air Quality
- Energy
- Farmlands
- Invasive Species
- Visual Impacts
- Critical Environmental Areas
- Smart Growth
- Environmental Justice

Work will be performed, as summarized in the PLAFAP Manual and detailed in the PDM and the TEM, to determine whether further detailed analysis or study is required. The results of these screenings and preliminary investigations will be summarized in the appropriate sections of the DAD.

4.05 Permits and Approvals

The **Consultant** will obtain all applicable permit(s) and certification(s), including but not necessarily limited to:

- NYSDOT Highway Work Permit
- Article 24 Freshwater Wetlands Permit
- Article 25 Tidal Wetlands Permit
- FHWA Executive Order 11990 Wetlands Finding
- U.S. Coast Guard Section 9 Permit
- U.S. Army Corps of Engineers Section 10 Permit (Individual or Nationwide)
- U.S. Army Corps of Engineers Section 404 Permit (Individual or Nationwide)
- NYSDEC Section 401 Water Quality Certification
- NYSDEC State Pollution Discharge Elimination System (SPDES) Permit
- NYSDEC Article 15 Protection of Waters Permit
- Safe Drinking Water Act Section 1424(e)
- Migratory Bird Treaty Act
- Coastal Zone Consistency
- Scenic, Wild and Recreational Rivers

Section 5 - Right-of-Way

5.01 Abstract Request Map and/or Title Search
The **Consultant** will engage a qualified title company to complete title searches (abstracts of title) for properties to be acquired by the **Sponsor**.

5.02 Right-of-Way Survey
The **Consultant** will perform survey needed to accurately determine existing right-of-way limits and establish side property lines.

5.03 Right-of-Way Mapping
The **Consultant** will meet with the **Sponsor** to discuss the types of right-of-way acquisitions required and the limits of acquisition lines.

The **Consultant** will prepare acquisition maps in accordance with the format provided by the **Sponsor**.
All right-of-way mapping will show dimensions in U.S. Customary units of measurement.

The **Consultant** will prepare all map revisions or additions which are determined necessary during the construction of the project.

5.04 Right-of-Way Plan
The **Consultant** will prepare the Right-of-Way Plan(s) in accordance with the PLAFAP Manual.

5.05 Right-of-Way Cost Estimates
The **Consultant** will provide cost estimates for the right-of-way to be acquired by the **Sponsor** on all alternatives being considered and will provide updated estimates, as necessary.

5.07 Property Appraisals
The **Consultant** will prepare property appraisals establishing an opinion of value for any damages caused by the acquisition(s). The **Consultant** will also prepare estimates for the rental of occupied property(ies).

5.08 Appraisal Review
The **Sponsor** must have a Certified General Appraiser review the property appraisals. The appraisal reviewer will recommend a value of "just compensation" to the Sponsor. The Sponsor must set the value of just compensation prior to offers being made to the property owners.

5.09 Negotiations and Acquisition of Property
Property offers must not be made until authorization is granted to the **Sponsor** by the NYSDOT.

The **Consultant** will negotiate with property owners for the acquisition of their property, including completion of all documents required by the **Sponsor** in order to obtain the property.

Section 6 - Detailed Design

6.01 Preliminary Bridge Plans

A. New and Replacement Bridges

The **Consultant** will prepare and submit to the **Sponsor** a Preliminary Bridge Plan in accordance with the *NYSDOT Bridge Manual*.[7] For each bridge, the **Consultant** will prepare and submit to the **Sponsor** a Structure Justification Report. The format and content of the Structure Justification Report will be as outlined in the *NYSDOT Bridge Manual*.

6.02 Advance Detail Plans (ADP)

The **Consultant** will develop the approved design alternative to the ADP stage. At this stage all plans, specifications, estimates and other associated materials will be **90%** complete.

As part of this task the **Consultant** will prepare templated cross sections at 50 foot intervals.

Advance Detail Plans will be in accordance with Chapter 21 of the NYSDOT Highway Design Manual.[8]

The **Consultant** will prepare and submit 2 copies of the ADP's to the **Sponsor** for review. The **Consultant** will modify the design to reflect the review of the ADP package.

6.03 Contract Documents

The **Consultant** will prepare a complete package of bid-ready contract documents. The package will include:

- Instructions to bidders.
- Bid documents.
- Contract language, including applicable federal provisions and prevailing wage rates.
- Special notes.
- Specifications.
- Plans.
- A list of supplemental information available to bidders (i.e., subsurface exploration logs, record as-built plans, etc.).
- Other pertinent information.

The **Consultant** will submit the contract documents to the **Sponsor** for approval. Upon approval, the **Sponsor** will submit 3 copies of the contract bid documents to NYSDOT as described in the *PLAFAP Manual*.

[7] https://www.dot.ny.gov/divisions/engineering/structures/repository/manuals/brman-usc/2011_nysdot_Br_Man_repl_pgs.pdf
[8] https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/Chapt_21.pdf

6.04 Cost Estimate

The **Consultant** will develop, provide, and maintain the construction cost estimate for the project. The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes, and will develop and provide the final Engineer's Estimate, including all quantity computations.

6.05 Utilities

The **Consultant** will coordinate with affected utility companies to ensure the timely relocation of utility poles and appurtenances. The **Consultant** will assist the **Sponsor** in preparing any necessary agreements with utility companies. Any agreements containing reimbursable relocations must be approved and signed by the Design Support Section of the NYSDOT Design Quality Assurance Bureau (see PLAFAP Manual Appendix 10-8).

6.08 Information Transmittal

Upon completion of the contract documents, the **Consultant** will transmit to the **Sponsor** all project information, including electronic files. The electronic information will be in the format requested by the **Sponsor.**

Section 7 - Advertisement, Bid Opening and Award

7.01 Advertisement

The **Consultant** will prepare the advertisement for bids to be placed in the NYS Contract Reporter and any other newspaper or publication identified by the **Sponsor.** The **Consultant** will submit the ad(s) to the **Sponsor** for review and will revise the ad(s) to reflect comments generated by that review. Upon approval, the **Sponsor** will place the advertisements.

Advertisements must not be placed until authorization is granted to the **Sponsor** by the NYSDOT.

7.02 Bid Opening (Letting)

The **Sponsor** will hold the public bid opening.

7.03 Award

The **Consultant** will analyze the bid results. The analysis will include:

- Verifying the low bidder.
- Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, etc.).
- Breaking the low bid into fiscal shares, if necessary.
- Determining whether the low bid is unbalanced.
- For pay items bid more than 25% over the Engineer's Estimate:
  Checking accuracy of quantity calculations.
  Determining appropriateness of price bid for work in the item.

Determining whether the low bidder is qualified to perform the work.

The **Consultant** will assist the **Sponsor** in preparing and compiling the package of information to be transmitted to the NYSDOT.

The **Sponsor** will award the contract and will transmit the award package to the NYSDOT as described in the Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual.

Section 8 - Construction Support

To be added to the Consultant Agreement by Supplemental Agreement.

Section 9 - Construction Inspection

To be added to the Consultant Agreement by Supplemental Agreement.

Section 10 - Estimating and Technical Assumptions

10.01 Estimating Assumptions

The following assumptions have been made for estimating purposes:

Section 1

Estimate 8 meetings during the life of this agreement. Assume 4 hours per meeting.

Estimate 12 cost and progress reporting periods will occur during the life of this agreement. Assume 1.5 hours per report.

Section 2

Assume that GPS methods and equipment will be used to establish local control points.

Survey will be based on NYS Plane.

Estimate 10 accidents will require analysis.

Traffic data will be based on available traffic counts from the City and NYSDOT

Estimate 4 soil borings will be taken.

Estimate 6 pavement cores will be taken.

Section 3

Estimate 3 concepts will be evaluated.

Estimate 2 design alternatives will be analyzed in addition to the null alternative.

Estimate 1 cost estimate plus 2 updates will be required.

Estimate 0 bridges will be rehabilitated.

Estimate 1 public meeting will be held.

Section 4

Assume project is a NEPA "C List" requiring the Federal Environmental Approval Worksheet

Project will be a SEQR Type II Action requiring at most a Short EAF.

Estimate 3 permits will be required.

A Section 106 (SHPO) determination package will be required.

USFWS Section 7 and NYSDEC Heritage Program consultation will be required.

A Habitat Assessment will be required. Detailed habitat studies will not be required.

Section 5

Estimate 3 properties will require title searches.

Estimate 3 taking maps will be required.

Estimate 0 public hearings.

Estimate 0 administrative settlements.

Estimate 0 condemnations.

Section 6

Detailed Design or Final Design

Final Design will include but not be limited to:

- Development bridge, sidewalk, and drainage plans.
- Highway design.
- Maintenance and protection of traffic during construction.
- Preparation and submission of final Plans, Specifications, and Estimate (PS&E) for the project.

Estimate 1 cost estimate(s) plus 2 updates will be required.

Estimate 1 bridges will be replaced and 0 will be rehabilitated.

Estimate 4 utility companies and 0 railroad agencies will be affected.

Section 7

Estimate 4 copies of the final contract bid documents will be needed for Sponsor and NYSDOT. The Sponsor shall be responsible for additional paper copies to bidders. The Consultant will provide CD's containing the project documents.

Attachment C

Staffing Rates, Hours, and Estimated Direct Non-Salary Costs

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Salary Schedule

JOB TITLE	ASCE (A) OR NICET (N) GRADE	AVERAGE HOURLY RATES PRESENT Dec-2016	PROJECTED Jul-17	OVERTIME CATEGORY
Principal-in-Charge	VIII (A)	$73.50	$73.50	A
Project Manager	VI (A)	$73.50	$73.50	A
Project Engineer	IV/V (A)	$52.82	$53.88	B
Design Engineer	III (A)	$42.06	$42.90	C
Staff Engineer	I/II (A)	$30.56	$31.17	C
CAD Operator/Detailer	I/II (A)	$24.50	$24.99	C

OVERTIME POLICY

Category A - No overtime compensation.
Category B - Overtime compensated at straight time rate.
Category C - Overtime compensated at straight time rate x 1.50.

Overtime applies to hours worked in excess of the normal working hours of 8 hours per day.

Staffing Worksheet

Section	Task	Principal In Charge	Project Manager	Project Engineer	Design Engineer	Staff Engineer	CAD Operator
Preliminary Design							
SECTION 1 General	1.05 Project Familiarization		8	8	8	8	
	1.06 Meetings		32	32	32		
	1.07 Cost and Progress Reporting		18				
	1.10 Subconsultant Coordination		4	12			
	1.11 Subcontractors						
	Subtotal, Section 1	0	62	52	40	8	0
SECTION 2 Data Collection and Analysis	2.01 Design Survey						80
	2.02 Design Mapping						
	2.03 Determination of exist. Conditions			4	8	40	
	2.04 Accident Data and Analysis			8	16	24	
	2.05 Traffic Counts (flow diag.)					16	
	2.06 Capacity Analysis					16	
	2.07 Future Plans						
	2.08 Soil Investigations				8		
	2.09 Hydraulic Analysis			8	40	40	40
	2.11 Pavement Evaluation				4		4
	Subtotal, Section 2	0	0	20	76	136	124
SECTION 3 Preliminary Design	3.01 Design Criteria, identify nonstandard features			2			
	3.02 Development of Alternatives		4	40	80	80	100
	3.03 Cost Estimates			8	40	60	
	3.04 Preparation of Draft DAD		8	24	80	80	
	3.05 Advisory Agency Review						
	3.06 Public Information Meeting		8	16	24	40	
	3.07 Preparation of Final DAD		4	24	40	40	
	Subtotal, Section 3	0	24	114	264	300	100
SECTION 4 Environmental	4.01 NEPA Classification			2	4		
	4.02 SEQRA Classification			2	8		
	4.03 Screenings and Prelim. Invest.			4	40	40	
	4.04 Detailed Studies and Analyses						
	4.05 Permits and Approvals			16	80	80	
	Subtotal, Section 4	0	0	24	132	120	0
	Subtotal, Preliminary Design:	0	86	210	512	564	224
	Direct Technical Labor, Prelim. Design:	$0.00	$6,321.00	$11,092.20	$21,534.72	$17,235.84	$5,488.00
ROW Incidentals							
SECTION 5 Right-of-Way	5.01 Abstract Request Map/Title Search						
	5.02 Right-of-Way Survey						
	5.03 Right-of-Way Mapping			8	24		
	5.04 Right-of-Way Plan			4	16		
	5.05 Right-of-Way Cost Estimates				4		
	5.06 Public Hearings/Meetings						
	5.07 Property Appraisals				4		
	5.08 Appraisal Review				2		
	5.09 Negotiations and Acquistion of Prop.			40	40		
	5.10 Relocation Assistance						
	5.11 Property Management						
	Subtotal, Section 5	0	0	52	90	0	0
	Subtotal,ROW Incidentals:	0	0	52	90	0	0
	Direct Technical Labor, ROW Incidentals:	$0.00	$0.00	$2,746.64	$3,785.40	$0.00	$0.00
Detailed Design							
SECTION 6 Detailed Design	6.01 Preliminary Bridge Plans		8	40	80	80	80
	6.02 Advance Detail Plans		24	80	120	120	120
	6.03 Contract Documents		8	80	80	80	
	6.04 Cost Estimate			4	24	80	
	6.05 Utilities			16	40	40	
	6.06 Railroads						
	6.07 Bridge Inventory & Load Rating						
	6.08 Information Transmittal					8	
	Subtotal, Section 6	0	40	220	344	408	200
SECTION 7 Advertisement, Bid Opening, and Award	7.01 Advertisement			2	2		
	7.02 Bid Opening (Letting)						
	7.03 Award			4	24	8	
	Subtotal, Section 7	0	0	6	26	8	0
SECTION 8 Construction Support	8.01 Construction Support						
	Subtotal, Section 8	0	0	0	0	0	0
	Subtotal, Detailed Design:	0	40	226	370	416	200
	Direct Technical Labor, Final Des./Constr. Suppor	$0.00	$2,940.00	$12,176.07	$15,873.44	$12,967.22	$4,998.00

Direct Non-Salary Expense

Preliminary Engineering

1. Topographic Survey (Subconsultant - estimated)

Set/Tie Secondary Traverse Points and Benchmarks				$ 750.00	
Run Secondary Horizontal Traverse				$ 900.00	
Primary & Secondary Processing & Report				$ 400.00	
CAD work for control				$ 150.00	
Field Survey (topo)				$ 3,000.00	
Drafting				$ 2,000.00	
TOTAL SURVEY					$ 7,200.00

2. Pavement Cores (Subconsultant - estimated)

Pavement Cores	6 @	$ 200.00	each		$ 1,200

3. Soil Borings (Subconsultant - estimated)

Soil Borings	4 @	$ 3,000.00	each		$ 12,000
TOTAL Preliminary Engineering					$ 20,400

ROW Incidentals

4. Right-of-Way Incidentals (Subconsultant-estimated)

5.01 Abstract Request Map/Title Search	Assume 3 maps @ $250 each	$ 750	
5.02 Right-of-Way Survey			
Set/Tie Secondary Traverse Points and Benchmarks		$ 650	
Run Secondary Horizontal Traverse		$ 750	
Primary & Secondary Processing & Report		$ 400	
CAD work for control		$ 350	
Field Survey		$ 6,000	
Record Research		$ 1,500	
Compile Research		$ 350	
Boundary Computations		$ 2,500	
Drafting		$ 2,500	
5.03 Right-of-Way Mapping	Assume 3 maps @ $1250 each	$ 3,750	
5.04 Right-of-Way Plan			
5.05 Right-of-Way Cost Estimates			
5.06 Public Hearings/Meetings			
5.07 Property Appraisals	Assume 3 maps @ $1500 each	$ 4,500	
5.08 Appraisal Review	Assume 3 maps @ $500 each	$ 1,500	
5.09 Negotiations and Acquistion of Prop.	Assume 3 maps @ $4000 each	$ 12,000	
5.10 Relocation Assistance			
5.11 Property Management			
TOTAL ROW Incidentals			$ 37,500

TOTAL DIRECT NON-SALARY COST **$ 71,100**

Summary (Preliminary Design)

Item IA, Direct Technical Salaries	$	61,672
Item II Direct Non-Salary Cost *(estimated, subject to audit)*	$	20,400
Item III, Overhead (1.34) (NYSDOT audited rate)	$	82,640
Item IV, Fixed Fee (12%)	$	17,317
Subtotal, Preliminary Design	$	182,029

Summary (ROW Incidentals)

Item IA, Direct Technical Salaries	$	6,532
Item II Direct Non-Salary Cost *(estimated, subject to audit)*	$	37,500
Item III, Overhead (1.34) (NYSDOT audited rate)	$	8,753
Item IV, Fixed Fee (12%)	$	1,834
Subtotal, ROW Incidentals	$	54,619

Summary (Final Design/Construction Support)

Item IA, Direct Technical Salaries	$	48,955
Item II Direct Non-Salary Cost *(estimated, subject to audit)*	$	-
Item III, Overhead (1.34) (NYSDOT audited rate)	$	65,599
Item IV, Fixed Fee (12%)	$	13,746
Subtotal, Final Design Design	$	128,301

Total, Preliminary Design and Final Design	**$**	**310,330**
Total ROW Incidentals	**$**	**54,619**
Maximum Amount Payable	**$**	**364,949**

RESOLUTION NO.: 2 - 2017

OF

JANUARY 9, 2017

A RESOLUTION REDUCING THE FIXED AMOUNT TO BE PROVIDED IN THE FORM OF A PUBLIC IMPROVEMENT PERFORMANCE SECURITY TO BE POSTED BY THE OWNER/SPONSOR OF THE SUNSET RIDGE SUBDIVISION PROJECT

WHEREAS, by Resolution No. 142-2005 of July 11, 2005, the City Council of the City of Newburgh declared that the sum of One Million One Hundred Fifty Thousand Six Hundred Forty Five and zero/one-hundredths ($1,153,645.00) Dollars was to be established and accepted as the amount estimated as the cost of infrastructure and improvements required by the Planning Board, and therefore, as the sum to be covered by such Public Improvement Performance Security to be posted by the owner/sponsor of the Sunset Ridge Subdivision in order to sufficiently safeguard the interests of the City of Newburgh and to secure the installation of the public improvements and infrastructure necessarily involved in said project; and

WHEREAS, the original developer partially completed the installation of the infrastructure and improvements and current developer, Iconic Properties, LLC, requested a reduction in the amount of the Public Improvement Security to be posted based on a review by a licensed engineer, which was reviewed by the City Engineer and by Resolution No. 101-2013 of May 13, 2013, the City Council further reduced the Public Improvement Performance Security to be posted by the owner/sponsor of the Sunset Ridge Subdivision from One Million One Hundred Fifty Thousand Six Hundred Forty Five and zero/one-hundredths ($1,153,645.00) Dollars to Five Hundred Seventy Five Thousand Five Hundred and zero/one-hundredths ($575,500.00) Dollars; and

WHEREAS, current developer, Iconic Properties, LLC, has requested another reduction in the amount of the Public Improvement Security to be posted based on a review by a licensed engineer, from Five Hundred Seventy Five Thousand Five Hundred and zero/one-hundredths ($575,500.00) Dollars to Three Hundred Thirty-Six Eight Hundred Fifty and zero/one-hundredths ($336,850.00) Dollars; and

WHEREAS, the City Engineer has reviewed the developer's submission and completed his own survey of the subdivision and the infrastructure work installed and completed and recommends that the performance bond for the infrastructure improvements be reduced from Five Hundred Seventy Five Thousand Five Hundred and zero/one-hundredths ($575,500.00) Dollars to Three Hundred Thirty-Six Eight Hundred Fifty and zero/one-hundredths ($336,850.00) Dollars; and

WHEREAS, this Council finds that the reduction in the performance bond, as recommended by the City Engineer, is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh, New York that the Public Improvement Performance Security to be posted by the owner/sponsor of the Sunset Ridge Subdivision be and hereby is reduced from Five Hundred Seventy Five Thousand Five Hundred and zero/one-hundredths ($575,500.00) Dollars to Three Hundred Thirty-Six Eight Hundred Fifty and zero/one-hundredths ($336,850.00) Dollars; as the amount sufficient to secure the installation of the remaining public improvements and infrastructure required by said project; and

BE IT FURTHER RESOLVED, that pursuant to Code Section 266-6, such Public Improvement Performance Security shall be posted with the City Manager by the owner/sponsor of the Sunset Ridge Subdivision and in a form acceptable to the Corporation Counsel.

Sunset Ridge Subdivision - City of Newburgh
Site Improvement Bond Estimate 12-8-2016

TASK	QUANTITY	UNIT PRICE	TOTAL COST	% DONE	Balance Completed	Balance Remaining
Right-of-Way						
Clear & Grade	1740 LF	$16.50	$28,710	100%	$28,710	$0
18" Item #4 Foundation Course	6050 SY	$18.00	$108,900	90%	$98,010	$10,890
3" Asphalt Base Course	6050 SY	$23.00	$112,530	90%	$101,277	$11,253
1-1/4 Asphalt wearing course	6050 SY	$11.80	$71,390	0%	$0	$71,390
Prime Coat – MCO Asphalt	6050 SY	$0.65	$3,933	100%	$3,933	$0
Concrete Curbing	3350 LF	$30.00	$79,395	90%	$71,456	$7,940
4' Concrete Sidewalk	3200 LF	$38.00	$98,560	40%	$39,424	$59,136
Guiderail	32 LF	$45.00	$1,440	0%	$0	$1,440
Street Lights	10	$7,500.00	$75,000	100%	$75,000	$0
Street Trees	36	$750.00	$27,000	19%	$5,130	$21,870
Topsoil & Seed	1740 LF	$5.00	$8,700	0%	$0	$8,700
Monuments	13	$145.00	$1,885	0%	$0	$1,885
Traffic Control Signs	3	$225.00	$675	0%	$0	$675
Street ID Signs	3	$250.00	$750	0%	$0	$750
As-Built Drawing	1740 LF	$1.10	$1,914	0%	$0	$1,914
Soil Erosion & Sediment Control	8 AC	$3,200.00	$20,800	50%	$10,400	$10,400
Page 1 Total			***$641,582.00***		***$433,339.50***	***$208,242.50***

Sunset Ridge Subdivision - City of Newburgh
Site Improvement Bond Estimate 12-8-2016

TASK	QUANTITY	UNIT PRICE	TOTAL COST	% DONE	Balance Completed	Balance Remaining
Water System						
8" DIP Water main	1730 LF	$75.00	$114,180	100%	$114,180	$0
8" Mainline Valves	6	$1,500.00	$9,000	100%	$9,000	$0
Hydrant Assemblies	5	$4,500.00	$15,750	100%	$15,750	$0
8" Mainline Fittings w/thrust block	9	$300.00	$2,700	100%	$2,700	$0
Concrete Encasement	5 CY	$250.00	$1,250	100%	$1,250	$0
¾" Copper Water Services	32	$2,000.00	$64,000	90%	$57,600	$6,400
Relocate Existing Hydrant	1	$2,000.00	$2,000	50%	$1,000	$1,000
Shipp & Hawthorne Pavement Restore	1	$1,000.00	$1,000	0%	$0	$1,000
Sanitary Sewer System					$0	$0
8" PVC Mainline Gravity pipe	1647 LF	$68.00	$100,138	100%	$100,138	$0
4' Diameter Manholes	11	$4,000.00	$36,080	100%	$36,080	$0
4' Diameter Drop manholes	1	$4,500.00	$3,870	100%	$3,870	$0
4" PVC Gravity House Services	32	$2,000.00	$64,000	90%	$57,600	$6,400
Concrete Encasement	1 CY	$250.00	$250	100%	$250	$0
Ship & Hawthorne Pavement Restore	1	$1,600.00	$1,600	0%	$0	$1,600
R.O.W. Storm Drainage System					$0	$0
15" ADS N-12 Pipe	165 LF	$55.00	$7,145	90%	$6,431	$715
18" ADS N-12 Pipe	1126 LF	$68.00	$56,300	90%	$50,670	$5,630
Catch Basins	18	$3,500.00	$46,800	90%	$42,120	$4,680
Page 2 Totals			***$526,063.00***		***$498,639***	***$27,425***

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Sunset Ridge Subdivision - City of Newburgh
Site Improvement Bond Estimate 12-8-2016

TASK	QUANTITY	UNIT PRICE	TOTAL COST	% DONE	Balance Completed	Balance Remaining
Off-Site Storm Drainage (Hawthorne Avenue)						
18" ADS N-12 Pipe	235	$68.00	$15,980	90%	$14,382	$1,598
24" ADS N-12 Pipe	85 LF	$75.00	$6,375	90%	$5,738	$638
5' Diameter Flushing Basins	1	$3,500.00	$3,500	90%	$3,150	$350
Hawthorne Avenue Pavement Restore	235 LF	$30.00	$7,050	0%	$0	$7,050
Hawthorne Avenue Topsoil & Seed	235 LF	$5.00	$1,175	0%	$0	$1,175
Parcel A – Storm Water Sand Filter						
Clear & Grade	1300 SY	$6.75	$8,775	50%	$4,388	$4,388
Excavation & Backfill	1	$5,000.00	$5,000	50%	$2,500	$2,500
Masonry Retaining Wall	870 SF	$22.00	$19,140	50%	$9,570	$9,570
12" Layer of Crushed Stone	166 SY	$12.00	$1,992	100%	$1,992	$0
Concrete Structure	80 CY	$300.00	$24,000	90%	$21,600	$2,400
3'-6" Railings	184 LF	$12.00	$2,208	0%	$0	$2,208
Sand/Gravel Media 2/Underdrain Pipe	1	$7,000.00	$7,000	0%	$0	$7,000
10" ADS N-12 Inlet Pipe	60 LF	$35.00	$2,100	0%	$0	$2,100
15" ADS N-12 Outlet Pipe	28 LF	$55.00	$1,540	0%	$0	$1,540
Catch Basin	1	$3,500.00	$3,500	0%	$0	$3,500
12" Shale Drive	38 SY	$15.00	$570	0%	$0	$570
6' High Chain Link Fence	325 LF	$25.00	$8,125	0%	$0	$8,125
Topsoil and Seed	1	$2,000.00	$2,000	0%	$0	$2,000
White Pines	15	$750.00	$11,250	0%	$0	$11,250
Soil Erosion & Sediment Control	5 AC	$3,200.00	$1,600	0%	$0	$1,600
As-Built Drawings	1	$1,000.00	$1,000	0%	$0	$1,000
Page 3 Total			***$133,880***		***$63,319***	***$70,561***

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Sunset Ridge Subdivision - City of Newburgh
Site Improvement Bond Estimate 12-8-2016

TASK	TOTAL COST	Balance Completed	Balance Remaining
Total Page 1	$641,582	$433,340	$208,243
Total Page 2	$526,063	$498,639	$27,425
Total Page 3	$133,880	$63,319	$70,561
GRAND TOTAL	*$1,301,525*	*$995,297*	*$306,228*
General Cost Increase of 10%			$30,622
GRAND TOTAL W/INCREASE	**$1,332,147**	**$995,297**	**$336,850**
Bond Amount Posted by Excell	$575,500		
Proposed Bond Reduction December 2016	$238,650		
Proposed Bond Balance after Reduction	**$336,850**		

RESOLUTION NO. 3 - 2017

OF

JANUAR 9, 2017

A RESOLUTION AUTHORIZING THE EXTENSION OF TIME TO CLOSE TITLE ON THE PROPERTY LOCATED AT 70 LIBERTY STREET WH (SECTION 48, BLOCK 5, LOT 35) SOLD AT PRIVATE SALE TO LAMONT D. STAPLES

WHEREAS, by Resolution No.: 103-2016 of April 25, 2016, the Council of the City of Newburgh, New York, authorized the sale of 70 Liberty Street WH (Section 48, Block 5, Lot 35) to Lamont Staples; and

WHEREAS, the City Manager granted the sixty (60) day allotted extension to close title on said premises on or before September 22, 2016; and

WHEREAS, by Resolution No.: 265-2016 of October 11, 2016, the City Council authorized an extension to close on or before December 31, 2016; and

WHEREAS, due to continuing circumstances, specifically outstanding title issues and lender requirements, Mr. Staples, by his attorney, is requesting an additional extension of time to close; and

WHEREAS, this Council has determined that granting the additional requested extension would be in the best interests of the City of Newburgh and the future homeowner;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title for the property located at 70 Liberty Street WH is hereby authorized until March 31, 2017.

RESOLUTION NO.: 4 -2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SATISFACTION OF JUDGMENT FOR PROPERTY AT 254 LIBERTY STREET

WHEREAS, the Newburgh Community Action Committee ("NCAC") owned the property known as 254 Liberty Street in the City of Newburgh (18 – 6 – 26) ("Property") between November 20, 2007 and February 18, 2015; and

WHEREAS, during that period of time, the City of Newburgh filed and recorded six (6) Judgments against NCAC and the Property totaling $2,450.00; and

WHEREAS, the City of Newburgh acquired title to the Property from NCAC in the Matter of the Foreclosure of Tax Liens Pursuant to Article 11, Title 3 of the Real Property Tax Law by the City of Newburgh for the Year 2012 and under Real Property Tax Law Section 1136, and upon the execution of the tax deed by the City of Newburgh on February 18, 2015, the City's judgments were extinguished; and

WHEREAS, by Resolution No. 173-2016 of July 11, 2016, the City Council of the City of Newburgh authorized the sale of the Property to Hudson Todd, LLC, which has requested that the City issue an instrument in recordable form documenting the discharge of the Judgments; and

WHEREAS, this Council has determined that executing an instrument of discharge in the form of a Satisfaction of Judgment, a copy of which is annexed hereto, is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute the attached Satisfaction of Judgment for the six (6) Judgments in favor of the City of Newburgh against NCAC.

SATISFACTION OF JUDGMENT

KNOW ALL MEN BY THESE PRESENTS, THAT

The City of Newburgh, a municipal corporation with a principal place of business at 83 Broadway, Newburgh, New York 12550;

Does hereby certify that the following Judgments against the Newburgh Community Action Committee, which have not been further assigned of record, are of no further force and effect, and does hereby consent that the same be discharged of record:

1. Instrument 20110067623, Book 8108, Page 218 for $100.00;
2. Instrument 20110067624, Book 8108, Page 220 for $400.00;
3. Instrument 20100105818, Book 8097, Page 1630 for $750.00;
4. Instrument 20130097612, Book 8137, Page 1704 for $750.00;
5. Instrument 20120093076, Book 8125, Page 568 for $200.00; and
6. Instrument 20120093077, Book 8125, Page 569 for $250.00.

Dated: January ___, 2017

CITY OF NEWBURGH

_____

By: Michael G. Ciaravino, City Manager
Per Resolution No.: _____-2017

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

On the_____ day of January, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL G. CIARAVINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

_____

Notary Public

RECORD & RETURN TO:

RESOLUTION NO.: 5 -2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO HEFLA AND LETITIA J. MYERS
TO THE PREMISES KNOWN AS 5 HILLCREST PLACE
(SECTION 21, BLOCK 2, LOT 6)

WHEREAS, on April 1, 1998, the City of Newburgh conveyed property located at 5 Hillcrest Place, being more accurately described on the official Tax Map of the City of Newburgh as Section 21, Block 2, Lot 6, to Dwelling Group, Inc.; and

WHEREAS, Hefla and Letitia J. Myers have conveyed said property to Beaver Dam Properties, Inc; and

WHEREAS, Beaver Dam Properties, Inc. intends to sell said property and has requested, by their attorney, a release of the restrictive covenants contained in the deed from the City of Newburgh to Hefla and Letitia J. Myers; and

WHEREAS, it has been determined that such release be granted; and

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

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN ($10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 5 Hillcrest Place, Section 21, Block 2, Lot 6, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3 and 4 in a deed dated April 1, 1998, from the CITY OF NEWBURGH to HEFLA AND LETITIA J. MYERS, recorded in the Orange County Clerk's Office on April 15, 1998, in Liber 4763 of Deeds at Page 25 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2017

THE CITY OF NEWBURGH

By: _____
Michael G. Ciaravino, City Manager
Per Resolution No.: _____-2017

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

On the _____ day of January in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL G. CIARAVINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

_____

RECORD & RETURN TO:

RESOLUTION NO. 6 - 2017

OF

JANUARY 9, 2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH EXPRESSING CONTINUING SUPPORT OF THE APPLICATION OF ORANGE COUNTY FOR AN ENVIRONMENTAL PROTECTION AGENCY BROWNFIELD ASSESSMENT GRANT TO FUND A PHASE II ASSESSMENT OF THE PROPERTY KNOWN AS THE DIAMOND CANDLE FACTORY SITE LOCATED IN THE TOWN OF NEW WINDSOR

WHEREAS, by Resolution No. 304-2014 of December 15, 2014, the City Council of the City of Newburgh, New York, expressed its support for the application of Orange County for an Environmental Protection Agency Brownfield Assessment Grant to fund a Phase II assessment of the property known as the Diamond Candle Factory Site located in the Town of New Windsor and its commitment to assisting with the implementation of the County's Community Involvement Plan by providing space for public meetings and posting notices in City Hall; and

WHEREAS, by Resolution No. 296-2015 of November 23, 2015, the City council of the City of Newburgh, New York, expressed its continuing support for such application; and

WHEREAS, the County of Orange has requested that the City Council of the City of Newburgh, New York reaffirm its continued support of such application and its commitment to the project by assisting with the implementation of their Community Involvement Plan to include providing space for public meetings and posting notices in City Hall for the purposes of public outreach; and

WHEREAS, the City of Newburgh intends to construct a pedestrian nature trail along the northern bank of the Quassaick Creek at some point in the future, and the County's Diamond Candle Factory site is essential to providing future public access and parking for this future trail; and

WHEREAS, this Council has determined that such support and commitment is in the best interests of the City of Newburgh, Town of New Windsor, County of Orange for the future development to provide public access to the Quassaick Creek corridor and future Quassaick Creek trail;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York, hereby continues to support the application of Orange County for an Environmental Protection Agency Brownfield Assessment Grant to fund a Phase II assessment of the property known as the Diamond Candle Factory Site located in the Town of New Windsor; and

BE IT FURTHER RESOLVED, that this Council further extends its commitment to assisting with the implementation of the County's Community Involvement Plan by providing space for public meetings and posting notices in City Hall.

CITY OF NEWBURGH

Department of Planning & Development

83 Broadway, Newburgh, New York 12550
(845) 569-9400/Fax (845) 569-9700
www.cityofnewburgh-ny.gov

December 15, 2016

David Church, Commissioner
Orange County Planning Department
124 Main Street
Goshen, NY 10924

Re: Community-Wide Brownfields Assessment Grant

Commissioner Church,

The City of Newburgh would like to offer our complete support of the County's efforts to obtain an EPA Community-Wide Brownfields Assessment Grant for the area along the lower Quassaick Creek in the City of Newburgh and Town of New Windsor. The City highly values our partnership with our neighboring town and with Orange County on this larger effort to clean up the Quassaick Creek in order to provide environmental, recreational, and economic benefits to the City and its residents.

The City is committed to provide space for public meetings and to post notices in City Hall and other City facilities. The City is willing to assist, if necessary, with maps, history, and other information about city owned parcels including work done or being done which may affect other properties in the corridor; and the City will allow access to city owned parcels, if required, for assessment purposes.

The City is pleased that the EPA continues to offer our communities valuable resources to mitigate environmental justice concerns, and look forward to the potential to leverage our Making a Visible Difference status to have long lasting environmental improvements that benefit all of our communities' residents and visitors.

Sincerely,

Michael Ciaravino
City Manager

RESOLUTION NO.: 7 - 2017

OF

JANUARY 9, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 20 PIERCES ROAD, UNIT 40 (SECTION 53, BLOCK 1, LOT 1.-40) AT PRIVATE SALE TO EUGENIO NEVAREZ & JOSE LUIS NEVAREZ FOR THE AMOUNT OF $38,555.00

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

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

WHEREAS, the City of Newburgh desires to sell 20 Pierces Road, Unit 40 being more accurately described as Section 53, Block 1, Lot 1.-40 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before April 10, 2017, being ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
40 Pierces Road, Unit 40	53 - 1 - 1.-40	Eugenio Nevarez & Jose Luis Nevarez	$38,555.00

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

Terms and Conditions of Sale
20 Pierces Road, Unit 40, City of Newburgh
(58-1-1.-40)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the five (5) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said five (5) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.

7. Notice is hereby given that the properties are vacant and unoccupied. These parcels are being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the properties and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before April 10, 2017. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 8 - 2017

OF

JANUARY 9, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 585 SOUTH STREET (SECTION 14, BLOCK 2, LOT 6.1) AT PRIVATE SALE TO JUNIOR THOMAS & JUWEL ISAAC FOR THE AMOUNT OF $55,720.00

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

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

WHEREAS, the City of Newburgh desires to sell 585 South Street, being more accurately described as Section 14, Block 2, Lot 6.1 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before April 10, 2017, being ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
585 South Street	14 - 2 - 6.1	Junior Thomas & Juwel Isaac	$55,720.00

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

Terms and Conditions of Sale
585 South Street, City of Newburgh
(14-2-6.1)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the five (5) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said five (5) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.

7. Notice is hereby given that the properties are vacant and unoccupied. These parcels are being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the properties and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before April 10, 2017. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 9 - 2017

OF

JANUARY 9, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 257 LIBERTY STREET (SECTION 18, BLOCK 8, LOT 1.1) AT PRIVATE SALE TO LAUREN MAPLES FOR THE AMOUNT OF $12,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 257 Liberty Street, being more accurately described as Section 35, Block 2, Lot 19, on the official tax map of the City of Newburgh; and

WHEREAS, the City of Newburgh issued a Request for Proposals seeking proposals to purchase, rehabilitate and re-use this historic building; and Lauren Maples of the Bija School was the sole bidder; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchasers be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before April 10, 2017, being ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
257 Liberty Street	18 - 8 - 1.1	Lauren Maples	$12,000.00

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

Terms and Conditions Sale
257 Liberty Street, City of Newburgh (18-8-1.1)

STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. Notice is hereby given that the properties are vacant and unoccupied. These parcels are being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the properties and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.

8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before April 10, 2017. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 10 - 2017

OF

JANUARY 9, 2017

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OF LEASE WITH RBG OF NEWBURGH LLC FOR THE CONTINUED LEASE OF VACANT REAL PROPERTY KNOWN AS SECTION 31, BLOCK 5, LOTS 13.2 AND 14 FOR THE PURPOSE OF PROVIDING PARKING FOR THE NEWBURGH-BEACON FERRY COMMUTERS

WHEREAS, the City of Newburgh ("City") and Memorare Realty Holding Corp. ("Memorare") executed a Lease on July 30, 2004 for the lease and use of approximately 3.65 acres of vacant real property situated on the Hudson River known as Section 31, Block 5, Lots 13.2 and 14, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours, with the City being reimbursed by New York State for the rental payments and improvements provided under such Lease; and

WHEREAS, by Resolution No. 142 - 2010 of June 14, 2010, the City Council authorized the City Manager to execute a First Amended Agreement of Lease with Memorare to accord with the amended reimbursement agreement with New York State that was effective April 21, 2010; and

WHEREAS, by Resolution No. 169 - 2014 of July 14, 2014, Resolution No. 308-2014 of December 15, 2014, Resolution No. 75 -2015 of April 13, 2015 and Resolution No. 318-2015 of December 15, 2015, the City Council authorized an extensions of the renewal term of the First Amended Lease through January 31, 2017; and

WHEREAS, the First Amended Lease was assigned to new owner, RBG of Newburgh, LLC, who desires to continue the lease for parking to be used for ferry service between the City of Newburgh and Beacon and uses associated therewith; and

WHEREAS, the City and RBG of Newburgh, LLC agree that it is necessary to enter into a new lease agreement for the period February 1, 2017 through December 31, 2018; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager on behalf of the City of Newburgh, be and he is hereby authorized to execute a Lease Agreement for a term beginning on February 1, 2017 to December 31, 2018 with RBG of Newburgh LLC, in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and uses associated therewith.

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE ("Lease"), made as of this _____ day of _____, 201_, by and between RBG of Newburgh LLC, a limited liability company, having an address of _____, New York _____, ("Landlord"), and the City of Newburgh, a New York municipal corporation with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("Tenant").

WITNESSETH:

WHEREAS, the Landlord and Tenant are parties to a First Amended Agreement of Lease dated April 21, 2010 and extended to January 31, 2017, and

WHEREAS, the Landlord owns in fee simple certain vacant real property situated along the west bank of the Hudson River and comprised of portions of two contiguous parcels of land (commonly known, respectively, Tax Map Nos.: Section 31, Block 5, Lot 13.2 and; Section 31, Block 5, Lot 14) with an aggregate of approximately 3.65 acres, in the City of Newburgh, in the County of Orange and State of New York, as more particularly described in Schedule A annexed hereto and made a part hereof known as and referred to herein as "Premises"; and

WHEREAS, Landlord and Tenant desire to continue a lease of the Premises for use in connection with parking to be used for ferry service between the City of Newburgh and Beacon and uses associated therewith and Landlord desires to lease to Tenant the Premises therefor;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. LANDLORD'S AUTHORITY, PREMISES, TERM

1.1 Landlord's Authority. Landlord is the sole owner in fee simple of the piece, parcel or tract of land lying and being in the City of Newburgh in the County of Orange and State of New York, more particularly described in Schedule A annexed hereto (the "Land"), upon which, in the locations outlined in red on Schedule A annexed hereto, a ferry landing and a parking area have been constructed. Landlord represents and warrants that it has full right and authority to lease the Premises (as hereinafter defined) to Tenant and to otherwise enter into this Lease on the terms and conditions set forth herein.

1.2 Premises: Landlord hereby does lease and devise to the Tenant, and the Tenant hereby does take and hire from Landlord those certain premises containing approximately 3.65 acres of land and improvements thereon, as more fully delineated on Schedule A annexed hereto (the "Premises"), for the purpose of providing two hundred and fifty (250)

parking spaces for commuters using the Ferry to the Beacon Train Station, TOGETHER WITH all facilities which serve the Premises and with all and singular appurtenances, rights, including, without limitation, riparian rights appurtenant to the operation of ferry service, including a barge, landing and other necessary facilities (the "Facilities"), and as described herein and in other agreements between and among the parties; including such other uses granted to Tenant hereunder, privileges and easements in or anywise pertaining thereto including but not limited to, the right to use in common with Landlord and Landlord's tenants, such driveways, entranceways, stairways and such other similar or related facilities as may exist in and about the Premises, upon the covenants, conditions, limitations and agreements herein contained.

1.3 Term: The initial term of this Lease (the "Initial Term") shall commence on February 1, 2017 and terminate on December 31, 2018 ("Expiration Date") (such Initial Term and any renewal thereof is hereinafter referred to as the "Term") The Term is further subject to renewal ("Renewal Term") or termination at Tenant's option as further set forth herein.

1.4 Access: Commencing on the date hereof and thereafter throughout the Term and Renewal Term, if any, Tenant shall be permitted upon the Premises to prosecute any improvements work by Tenant, its employees, contractors, agents and assignees, provided that the same does not adversely interfere with the use of the Premises. Landlord shall permit Tenant to bring and store at the Premises all equipment, supplies, and other property required or appropriate to prepare the Premises for Tenant's use and occupancy. If Tenant or its contractors enter upon the Premises as provided herein, then, Tenant shall provide or cause to be provided appropriate insurance naming Landlord as an additional insured. In addition, the parties each agree to defend and indemnify the other from all claims, actions and damages arising from their own errors, acts, omissions and/or negligence. Tenant agrees to be responsible, directly or contractually with others, for the provision of Workers Compensation and for all other necessary and appropriate insurance coverage for its own employees, contractors and sub-contractors.

2. RENT

The rent under this Lease ("Rent") shall be payable as follows: Rent payable monthly in advance in equal monthly installments of Twenty-One Thousand Two Hundred Seventy-Eight ($21,278.00) Dollars each provided however that Tenant shall have the right to terminate this lease if the Tenant has not received reimbursement from state sources, including but not limited to the Metropolitan Transportation Authority, Metro-North Railroad and/or The New York State Department of Transportation, of the full amount of the rent, and in no event shall Tenant's obligation to pay rent to Landlord exceed Tenant's reimbursement from other sources.

3. TENANTS RIGHT TO TERMINATE LEASE

Tenant shall have the right to notify Landlord, in writing, of Tenant's cancellation of this Lease. Such notice of cancellation delivered to Landlord shall take effect ninety (90) days following Landlord's receipt of same.

In addition to the foregoing, at any time during this Lease, Tenant shall have the right to terminate this Lease immediately and with no further liability to Landlord thereupon upon the happening of the following: the occurrence of an accident or Act of Providence ("force majeure"), which has the effect of terminating or suspending for a significant extended period of time, the operation of the Ferry service which is the subject hereof, or has as its consequence the immediate termination of Federal and/or State funding therefor, it being expressly understood that the Tenant's source of funding for payment of the Rent is from State and/or Federal funding sources. It is further understood and agreed that Tenant shall have no obligation for rent payments in the event reimbursement from such State and/or Federal funding sources is terminated.

4. REAL ESTATE TAXES

For the purposes of this Lease, "Real Estate Taxes" shall mean all real estate taxes and assessments, special or otherwise, levied or assessed upon the Property, the Land or the improvements thereon, including without limitation any tax, assessment, charge or fee imposed in substitution for real estate taxes, any income or franchise tax or tax on rents in substitution for real estate taxes, and any increase in taxes attributable to special or non-standard fixtures, improvements or appurtenances installed at the Premises or at any portion of the Property, all of which taxes, assessments, charges or fees shall be deemed to constitute Real Estate Taxes hereunder. Landlord shall be responsible to pay all Real Estate Taxes and other taxes and assessments in the nature of real estate taxes (including any assessment for public betterments or improvements and any taxes levied or imposed upon or against the receipt of income or rent and any other tax imposed as a substitute in whole or in part for a real estate tax or assessment) which may be levied, assessed or imposed upon the Premises or the Property and any improvements thereon. The Tenant shall have no responsibility for any such Real Estate Taxes, taxes, or assessments, or other such charges, or for any expense, including payments to attorneys, experts and/or appraisers, paid or incurred by the Landlord in connection with contesting the assessed valuation of the Premises or any part of any real property of which the Premises are a part or with any application, proceeding, or settlement to obtain a reduction in real estate taxes for the Premises or any part of any real property of which the Premises are a part. Tenant shall not be entitled to any refund of real estate taxes or other taxes and assessments in the nature of real estate taxes which have been paid by Landlord and for which Landlord becomes entitled to a full or partial refund.

5. MUTUAL RENEWAL OPTIONS

No later than six (6) months prior to the expiration of the Term, unless the Lease is sooner terminated, each party shall have the right to notify the other of its intention to terminate this Lease, or to seek a renewal thereof.

6. LANDLORD'S OBLIGATIONS TO COMPLY

Landlord, at its sole cost and expense, has obtained and complied with all environmental reviews, permits, permanent certificates of occupancy, and all other approvals from all governmental or quasi-governmental entities having jurisdiction and from all other entities from whom the same must be obtained (collectively, "Consents") necessary for Tenant's legal occupancy of the Premises as a parking area for the ferry service, and has obtained lien waivers ("Lien Waivers") from any and all general contractors, construction managers, subcontractors, materialmen, architects, engineers, and others engaged by or through Landlord for the construction and installation of improvements at the Premises. Except as provided in Section 7, Landlord shall not be responsible for any permits, reviews, or consents required by any other government or quasi-governmental authorities including, but not limited to, NYS DEC, U.S. Corps of Engineers, U.S. EPA, related to the operation of the Ferry or its docking and landing facilities.

7. LANDLORD'S IMPROVEMENTS

7.1 Landlord shall have the right to redevelop the Premises as part of a larger redevelopment plan. Landlord, at its sole cost and expense, shall redevelop the Premises in compliance with all applicable laws, ruled and regulations. Landlord shall obtain and comply with all environmental reviews, permits, permanent certificates of occupancy, and all other approvals from all governmental or quasi-governmental entities having jurisdiction and from all other entities from whom the same must be obtained necessary for Landlord's redevelopment project which includes the Premises. Landlord covenants and warrants that the redevelopment of the Premises will not interfere with or impede Tenant's Intended Use as a parking area for the ferry service. Landlord shall be permitted to engage general contractors, construction managers, subcontractors, materialmen, architects and engineers for the construction and installation of improvements at the Premises. Landlord shall be responsible for any permits, reviews, or consents required by any other government or quasi-governmental authorities including, but not limited to, the City of Newburgh NYS DEC, U.S. Corps of Engineers, U.S. EPA, related to the redevelopment of the Premises. Landlord shall have the right to relocate the Facilities and fixtures located on the Premises during construction operations upon providing written notice to Tenant, MTA/Metro-North and the Ferry operator two weeks in advance of such relocation. Landlord shall obtain all permits, reviews, or consents required by any other government or quasi-governmental authorities including, but not limited to, NYS DEC, U.S. Corps of Engineers, U.S. EPA, necessary to relocate the facilities and fixtures.

Landlord's relocation of the Facilities and fixtures shall not disrupt the operation of the Ferry or its docking and landing facilities.

7.2 RESERVED

8. LANDLORD'S INSURANCE

8.1 Upon the commencement of this Lease, Landlord shall name Tenant as an additional insured on Landlord's policy of insurance covering damage to the Premises, which coverage shall remain fully in effect during the life of this Lease. Landlord shall provide Tenant with the appropriate certificate of insurance naming Tenant as additional insured. The parties further understand and agree that standard maintenance during ferry operations including, but not limited to, trash removal, snow removal, repairs and upkeep shall be the responsibility of the Ferry operator. Such operator shall also be responsible for any and all costs associated with the negligence or failure of the operator to properly perform such maintenance during ferry operations.

9. USE

The Tenant shall have the right to use and occupy the Premises by itself, and/or by having a third party or parties use, occupy and operate the Premises, pursuant to an assignment or sublease or agency agreement or other contract, as a site for a parking lot, dock and facility for a cross-Hudson River ferry project, ~~together with any other accessory public, civic or commercial uses by or on behalf of the Tenant~~ as may be permitted by law (the "Intended Use"). The Landlord warrants and represents that the Premises may lawfully be used for the Intended Use for the Term and the Renewal Term, if any. Landlord covenants that it will do no act or thing, with respect to the Premises or otherwise, which will adversely affect ingress into or egress from the Premises or the Tenant's ability to use the Premises for the Intended Use. Landlord shall indemnify and defend Tenant against any cost, liability, or expense arising from, through or in connection with use of the right of way by third parties any other tenant of landlord or anyone permitted by Landlord to use the same. Landlord warrants and represents that such grant of right of ingress and egress shall not adversely affect or interfere with Tenant's use and enjoyment of the Premises and shall expend in good faith its best efforts to remedy any such interference as may occur. The parties agree that they will cooperate to secure such insurance and indemnification as may be provided for either or both of them by the New York State Department of Transportation, Metro-North Commuter Railroad or both, or either of them. Landlord shall have no duty or authority to monitor, control, or regulate the parking spaces provided for ferry commuters during ferry commuting hours. Specifically, and not in limitation of the foregoing, the Landlord shall not be permitted to use or permit any portion of the Premises to be used by the general public for commercial purposes, such as the holding of flea markets, meetings or gatherings, food or social events, or the display, sale or storage of goods, vehicles or other items, without Tenant's prior express written approval thereof, during ferry commuting hours which has the effect of interfering or preventing parking use

by ferry users. Tenant shall have the obligation to enforce parking for ferry riders only during ferry-commuting hours. In the event the lot is being used for non-ferry rider use, landlord reserves the right to establish and enforce parking restrictions non-ferry rider use during non-commuting hours~~cancel lease~~.

10. LEGAL REQUIREMENTS

10.1 Tenant's Obligations with Respect to Legal Requirements: Tenant at its sole cost and expense shall comply with all applicable laws, orders and regulations of federal, state, county and municipal authorities, and with any direction of any public officer or officers, pursuant to law ("Legal Requirements") which duty to comply arises from Tenant's Intended Use of the Premises, (other than the duty to make any structural repair to or alteration of the Premises); the Tenant shall not do or permit to be done any act or thing upon the Premises, which will invalidate or be in conflict with fire or other insurance policies ("Insurance Requirements") covering the Premises and fixtures and property therein. Landlord represents, warrants, and covenants that the zoning for the area in which the Premises is located permits the use of the Premises for the intended use, (i) that the improvements constructed by Landlord at the Premises are constructed in accordance with applicable legal requirements for the Landlord's Use and the Intended Use, (ii) that a permanent or final certificate of occupancy has been or will be issued by appropriate authorities allowing use of the Premises for the Intended Use if necessary. Landlord shall not permit or suffer the certificate of occupancy for the Premises to be amended or revoked during the Term to prohibit or interfere with the Intended Use. Landlord further represents, warrants, and covenants that there is no easement, covenant or other encumbrance upon or affecting the Property or any portion thereof which will prevent, restrict or in any way limit the Tenant's ability to use the Premises for the Intended Use and that Landlord has no notice of any violation affecting the Premises or knowledge of any condition at the Premises which but for the passage of time would be in violation.

11. ASSIGNMENT, MORTGAGE OR ENCUMBRANCE

11.1 Assignment; Sublet: Except as provided herein, the Landlord may not assign, underlet, mortgage or encumber this Lease without the prior written consent of the Tenant which shall not be unreasonably withheld, delayed or conditioned. Notwithstanding anything herein to the contrary, the Tenant shall have the absolute right upon notice to the Landlord to assign any and all of its rights and obligations hereunder to or any governmental or quasi-governmental entity of the State of New York or of the United States or ferry operator and/or parking operator.

11.2 Subordination; Quiet Enjoyment: This Lease shall be subordinate to all present and future mortgages which affect the Premises, including renewals, consolidations, replacements and extensions thereof for which Tenant has received non-disturbance agreements in form and substance reasonably satisfactory to Tenant. The Landlord hereby represents and warrants to the Tenant that the only mortgages, ground leases or other

superior interests (the "Superior Interests") which will affect the Premises are those listed on Schedule C. Notwithstanding such subordination, the Tenant's right to quiet possession of the Premises shall not be disturbed if the Tenant is not in material monetary default hereunder beyond any applicable notice and cure periods, unless this Lease is otherwise terminated pursuant to its terms.

12. ESTOPPEL CERTIFICATE

Upon reasonable prior written request by either party to this Lease, the other party shall promptly execute, acknowledge and deliver to the requesting party a statement certifying, to the certifying party's knowledge, that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and setting forth such modifications), stating, to that party's knowledge, the dates to which rent has been paid, whether the requesting party is in default and, if so, specifying such default.

13. NON-LIABILITY FOR THE TENANT'S WORK

Landlord shall not be liable to pay for, and the Tenant shall hold the Landlord free and harmless from any obligation to pay for, any work, labor or services rendered or materials furnished or claimed to be furnished, to or for the account of the Tenant upon or in connection with any construction and improvement of the Premises by the Tenant, and no mechanic's or architect's lien in form of a mechanic's lien filed by any contractor, subcontractor or architect for work, labor and services performed and/or materials furnished to or for the account of the Tenant shall in any instance be attached to or affect the Premises or any alterations, repairs or improvements to be made thereon, and, if any such lien or liens shall be filed, the Tenant shall within thirty (30) days after the receipt of notice thereof pay or bond such mechanic's lien or otherwise cause the same to be discharged. This Clause 14 shall in no event be interpreted or construed to mean or intend that Tenant shall in any manner be liable to Landlord for any liability, lien or encumbrance of any kind which shall result from any act, omission or decision of the New York State Department of Transportation or Metro-North Commuter Railroad.

14. ASSIGNMENT FOR THE BENEFIT OF CREDITORS; BANKRUPTCY

14.1 To the fullest extent permitted by law, if at any time after the Commencement Date there shall be filed by or against the Landlord in any court a petition for the appointment of a receiver of all or a portion of the Landlord's Property, or if the Landlord makes an assignment for the benefit of creditors, or petitions for or enters into an agreement or arrangement for the disposition of the Property, at Tenant's option without waiver of any right or remedy Tenant may have at law, at equity or otherwise, this Lease shall terminate on the date specified in a notice by Tenant of its exercise of its right to terminate or this Lease shall remain in full force and effect, and neither the Landlord nor any person

claiming through or under the Landlord or by virtue of any statute or of an order of any court shall be entitled to possession of the Premises or other use, right or entitlement thereto or part thereof.

14.2 Bankruptcy: Should a petition for bankruptcy be filed by or against either party pursuant to Title 11 USC or its successor statute, such party shall comply with all requirements as set forth in 11 USC §365 or any successor statute regarding the assumption, assignment or rejection of this Lease. Such party shall either cure all defaults, compensate actual losses, give adequate assurance of future performance and fulfill all obligations pursuant to 11 USC §365 (b)(1) or other applicable law and assume the obligation; or shall reject this Lease as provided by the Bankruptcy Code. No sale or assignment of the Premises shall be permitted without the written consent of the other party or without compliance with the assumption and assignment provisions under the Bankruptcy Code pursuant to 11 USC §365 or its successor statute. If a petition in Bankruptcy has been filed, the applicable sections of Bankruptcy Law regarding assignment shall govern.

14.3 Nothing contained in this Lease shall limit or prejudice the right of either party thereto to prove for and obtain, in proceedings for the termination of this Lease by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeding in which, the damages are to be proved.

15. DEFAULT

15.1 Default by Tenant: The occurrence of any of the following at any time during the Term shall constitute an Event of Default:

15.1.1 If Tenant shall fail to pay any installment of Rent, as and when the same becomes due and payable, and such failure shall continue for a period of sixty (60) days after Tenant's receipt of written notice thereof from Landlord referring to this Section 15, specifying such failure and requiring that it be remedied, except during any tolling period as set forth in Section 2 herein.

15.1.2 If Tenant shall fail to perform or comply with any material term of this Lease (other than a failure referred to in (i) above), and such failure shall continue for a period of ninety (90) days after Tenant's receipt of written notice thereof by Landlord referring to this Section 15 specifying such failure and requiring it to be remedied, provided however, that in case such failure cannot be completely cured or remedied within said ninety (90) day period, if Tenant commences to remedy such failure within such ninety (90) day period, and thereafter prosecutes with reasonable diligence and in good faith, then the period of time after the receipt of such notice by Tenant within which such failure may be remedied shall be extended so long as tenant prosecutes the remedying of such failure with reasonable diligence.

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15.2 Default by Landlord: If (i) Landlord shall default in the observance or performance of any obligation on Landlord's part to be observed or performed under or by virtue of any of the material terms or provisions of this Lease and/or such requirements as may be set forth in any agreements between Landlord and New York State Department of Transportation and Metro-North Commuter Railroad, the Operator and/or any other party involved in the operation of the Project and/or the Ferry); and (ii) Tenant shall notify Landlord of the existence of such default referring in such notice to this Section 15.2 , and (iii) said default shall continue for a period of ninety (90) days after said notice, or, if such observance or performance within such ninety (90) day period cannot be reasonably had within such ninety (90) day period, Landlord has not in good faith commenced such observance or performance within said ninety (90) day period or does not prosecute the same with reasonable diligence to completion, then Tenant may (but shall not be obligated) immediately or at any time thereafter without further notice perform the obligation of Landlord hereunder, and if any obligations for payment of money (including, but not limited to, reasonable attorneys' fees and disbursements) such sum so paid or incurred shall be repaid by Landlord to Tenant within thirty (30) days after demand or Tenant may set off the amount thereof against the installment or installments of Rent coming due hereunder. Following the occurrence of any Event of Default by Landlord, Tenant may terminate this Lease and surrender the Premises without any liability therefor, whereupon the Lease shall be of no further force and effect.

16. LANDLORD'S REMEDIES

16.1 If this Lease is terminated and if Landlord shall re-enter the Premises, or in the event of termination of this Lease and of re-entry, by or under any proceeding or action or any provision of law, or by reason of any Event of Default hereunder on the part of Tenant, or in the event of termination by the State or under State law, rule or decision, Tenant covenants and agrees that (a) the Rent shall become due thereupon and be paid up to the time of such termination; and (b) the Landlord may re-let the Premises or any part or parts thereof, either in the name of the Landlord or otherwise, for a term or terms which may at the Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease.

16.2 Notwithstanding the foregoing, a pre-condition to the serving of any notice to terminate on account of an Event of Default by Tenant or by any involved State agency or private company, is that Landlord shall first have sent any and all notices concerning that default or violation to all parties entitled to notice hereunder, including Tenant, and such party or parties shall have a reasonable opportunity to cure such default.

17. TERMINATION PROCEDURES

17.1 End of Term or Renewal Term, if any: Except as otherwise provided herein, upon the expiration or earlier termination of the term of this Lease, the Tenant shall quit and

surrender to the Landlord the Premises in good order and condition, ordinary wear excepted, and the Tenant shall remove all of its property from the Premises. The Tenant's obligation to observe or perform this covenant shall survive the expiration or earlier termination of the term of this Lease. Other than the removal of such of the Tenant's personal property, the Tenant shall have no obligation whatsoever to remove any property or restore the Premises in any manner whatsoever, it being the parties' intention that the Tenant will, except as otherwise set forth in this Section 17.1, leave the Premises "as is" at the Expiration Date. Tenant shall not be liable to Landlord to perform any service or provide money or thing of value to Landlord on behalf of any other State or government agency or any private party, except as provided herein in Paragraph 3.

17.2 Holdover upon Consent: In the event Tenant remains in possession of the Premises after the expiration of the Term or the Renewal Term, if any, Tenant shall be deemed to be a tenant from month to month under all of the same terms and conditions, except as to the duration of the Term. Either party may terminate such tenancy by delivering to the other at least thirty (30) days prior written notice of its intent to terminate.

18. QUIET ENJOYMENT

18.1 Quiet Enjoyment: The Landlord covenants and agrees that the Tenant, so long as it shall not be in default hereunder beyond the expiration of any applicable grace or notice period, shall and may peacefully and quietly have, hold and enjoy the Premises, subject to the other terms and conditions hereof.

19. NO WAIVER

19.1 Surrender: At the expiration of the Term, Tenant agrees to quit and surrender possession of the Premises to Landlord in as good condition as when delivered by Landlord, excepting reasonable wear and tear and except as provided in this Section 19.1.

19.2 No Waiver: The failure of Landlord or Tenant, as the case may be, to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of any original violation. The receipt by the Landlord of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. The payment by Tenant of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by either party hereto, unless such waiver be in writing signed by such party. No payment by the Tenant or receipt by the Landlord of a lesser amount than the monthly rent due hereunder shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the Landlord may accept such check or payment

without prejudice to the Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease, except as may be expressly provided herein. This Lease contains the entire agreement between the parties, and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part unless such executory agreement is in writing and signed by the party against whom endorsement of the change, modification, discharge or abandonment is sought.

20. WAIVER OF TRIAL BY JURY AND NON-BINDING ARBITRATION

Landlord and Tenant shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use and occupancy of the Premises, and any equitable, statutory or other remedy. The parties agree that in the first instance any dispute which arises hereunder shall be referred to a process of non-binding arbitration or other acceptable form of alternative dispute resolution.

21. NOTICES

Notices: Except as otherwise in this Lease provided, a bill, statement, notice or communication which the Landlord or the Tenant may desire, or be required, to give to the other, shall be deemed sufficiently given or rendered if, in writing, delivered to that party personally or addressed to, or sent by certified mail or nationally recognized overnight courier service addressed to, the addressees listed below at the addresses listed below and to any other addressees as either party hereto shall designate by written notice to the other in accordance herewith, and the time of the delivery of such bill or statement and notices shall be deemed given when mailed, except for any notice of default, which shall be deemed given when received. Any notice to Landlord must be served by certified mail or nationally recognized overnight courier service, addressed to the Landlord at the Landlord's address as set forth in the caption hereof or at any such other address as the Landlord shall designate by written notice to the Tenant in accordance herewith.

If to Landlord at the address set forth above, with a copy to:

If to Tenant, then to:

City Manager
The City of Newburgh
83 Broadway, City Hall

Newburgh, New York 12550
with a copy to:

Corporation Counsel
The City of Newburgh
83 Broadway, City Hall
Newburgh, New York 12550

with a copy to:

MTA Metro-North Commuter Railroad Company
347 Madison Avenue
New York, New York 10017
Attention: Vice President of Planning and Development

with a copy to:

New York State Department of Transportation
Regional Office 8
4 Burnett Boulevard
Poughkeepsie, New York 12603

with a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attention: General Counsel

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22. INDEMNITY

22.1 Indemnity. To the fullest extent permitted by law, each party hereto (an "Indemnifying Party") shall indemnify the other party and the other party's principals, agents, affiliates and subsidiaries, as well as their officers, directors, affiliates, employees, agents, attorneys, legal representatives, and their respective successors and assigns (referred to individually as an "Indemnified Party" and collectively as "Indemnified Parties") from and against any claims for death, personal injury or property damage arising out of the act, omissions or negligence of the indemnifying party in accordance with the policies and practices of insurance of the parties. The Landlord's policy of insurance is attached hereto. This indemnification shall include all costs, expenses and liabilities incurred in connection with any claim covered by this Section 22, including but not limited to, reasonable

attorney's fees (to and through appellate proceedings). This provision shall survive the termination of this Lease.

22.2 Limitation of Liability. The Indemnified Parties shall not be liable for (a) any damage to property of the one or of others entrusted to the Indemnifying Party or its employees or for the loss of or damage to any property by theft; (b) any injury or damage to persons or property resulting from fire, explosion, or from any other cause of whatever nature, unless caused by or due to the negligence or intentionally tortious acts of any of the indemnified Parties; nor shall any of the Indemnified Parties be liable for any such damage caused by the Indemnified Parties or third persons on the Premises; (c) notwithstanding whether the injury or damage is caused by any act or failure to act of any of the Indemnified Parties, any injury or damage for which an Indemnified Party would have been reimbursed under policies of insurance required by the terms of this Lease to be maintained (i) had the indemnifying party not failed to procure or maintain such policies of insurance or (ii) had the indemnifying party not failed to procure or maintain such policies of insurance with at least the limits herein specified; or (d) injury to or interruption of the party's business by reason of any of the foregoing events. If either party has supplied the other with liability insurance, and if an action or proceeding against an Indemnified Party is within the scope of coverage of such policy, the Indemnified Party shall look solely to such policy and the Indemnifying Party shall have no obligation to defend, protect, indemnify or hold harmless the other even if the amount of such policy is exceeded. In no event shall any of the individuals who are the employees, officers, and/or directors of Landlord or Tenant be personally liable for any cause of action arising hereunder. It is the understanding of the parties hereto that each and both of them will be fully insured and indemnified by the involved State agencies and/or by the private operator.

23. TITLE TO IMPROVEMENTS

The Landlord's Improvements upon the Premises shall belong solely and absolutely to the Landlord. Title to any other improvements (including without limitation security gates, parking revenue devices, and the like) to be installed by or on behalf of the Project shall remain with the Landlord, except as may be provided in other agreements with involved State agencies or other private parties, and except as provided for herein.

24. SERVICES

It is the understanding of the parties that it shall be the responsibility of the Ferry operator and/or the involved State agencies to re-strip and re-seal the Premises as part and parcel of necessary on-going maintenance of the Premises. The Landlord shall provide two (2) ADA compliant bathrooms. It is the understanding of the parties hereto that during the life of this Lease, the operator of the Ferry shall be responsible for normal care and cleaning and security of said bathrooms during ferry operations, as may be further provided in written agreements by and between the parties and/or other involved parties.

25. LIABILITY INSURANCE

25.1 The Landlord's Insurance: The Landlord, at its expense, shall maintain such property insurance, casualty insurance, loss of rental insurance, workers compensation and employers liability insurance (unless the Landlord has no employees at the Premises), as a prudent owner of such riparian property as the Premises in the City of Newburgh, County of Orange, would carry. It is the further understanding of the parties hereto that the Ferry operator shall provide adequate environmental insurance, and other insurance as referenced in Section 22 hereof as is approved and acceptable to the Landlord.

25.2 Underwriters: Each insurance policy required under this Article 25 shall be written by an insurance company authorized to do business in the State of New York, including New York "non-admitted carriers" having a Best & Company, Inc. rating of "A" or higher and a financial size category of not less than VII. Each of the parties hereto shall carry such insurance as the State and other involved entities and parties shall require.

27. CONDEMNATION

Condemnation: The condemnation of but a part of the Premises by competent authority shall not affect the provisions of this Lease except for a proportional abatement of rent hereunder, but if the condemnation of the whole of the Premises or of any part which materially interferes with the conduct of the operation of the ferry and/or Tenant's business thereon shall occur, then the term of this Lease shall thereupon expire, the Tenant shall quit the Premises, leaving them and the structures thereon in their then condition as set forth in Section 19.1 and other provisions hereof, and any subsequent award for such taking shall be apportioned between the Landlord for its fee interest and the Tenant for its leasehold interest and value of the Tenant-constructed improvements thereon.

28. OPERATION OF THE PROJECT

28.1 Condition of Premises: All parties and involved entities shall cooperate to keep the Premises in good condition and in a proper state of repair. It is the understanding of the parties that the Ferry operator and/or its contractor shall be obligated to keep the premises clean and free and clear of refuse, snow, ice and any obstructions to the free and safe use thereof during ferry operations. The Tenant shall take reasonable precautions to prevent nuisances, disorders and breaches of the peace. The Landlord and Tenant shall comply with all of the rules and regulations of the involved State agencies and of reasonable amendments thereto provided that the Landlord and Tenant have received prior written notice and that such rules and regulations are applied uniformly to Landlord and any other tenant at the Property.

28.2 Waste Removal: The Tenant and Landlord shall mutually furnish and maintain receptacles sufficient to contain each party's own and ferry customers' rubbish, waste and litter. It is the understanding of the parties that during ferry operations, Metro-North Commuter Railroad and/or the Ferry operator and/or its contractor shall be solely responsible for the regular removal of all trash, rubbish, waste and litter from the Premises.

28.3 No Damage or Defacement: The Tenant covenants and agrees that its representatives and employees will not deface or damage any property of the Landlord. The parties shall expend reasonable efforts to keep and maintain the Premises free from defacement and graffiti at all times.

28.4 Advertising and Signs: Tenant and the involved State agencies shall have the right to install or erect such signs as they deem necessary or appropriate in or on the Premises. The specifications and design of any exterior signs shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed.

28.5.1 Risk of Loss: The Landlord assumes all risk of loss or damage to the fixtures, equipment, currency and property of every nature and description, brought, placed or kept by the Landlord at the Premises, whether such loss or damage is due to fire, burglary, theft, vandalism, riot, or any other cause. In no event shall the Tenant be liable to the Landlord on account of damage to or loss of any such property, except where such loss arises from Tenant's negligence or misconduct.

28.5.2 It is the parties' mutual understanding that they and each of them shall be named as an additional insured and indemnitee of the Ferry operator, New York State Department of Transportation and Metro-North Commuter Railroad in the event of any and all claims, proceedings, actions and/or damages resulting from the negligence, acts or omissions of such other entities, as provided in Section 22 hereof.

28.6 Publicity: The Landlord shall not make any public statement or issue any publicity with respect to this Lease without the prior written approval of Tenant and the involved State agencies, which may be granted or denied in the Tenant's and/or State agencies' sole discretion. The Landlord may not use, and shall not place, or allow to be placed, the name or logo or any intellectual property of Tenant or any of the other Tenant's indemnities or any governmental or quasi-governmental authority or affiliates of any of the foregoing entities or persons in any advertisement, publication, disclosure statement, private placement memorandum or similar document without first affording Tenant reasonable opportunity to review such document and obtaining the Tenant's prior written consent to the printing and dissemination of such document, which consent may be granted or denied in the Tenant's sole discretion, except that Tenant shall not unreasonably withhold consent to a request by Landlord to publicize the Project in connection with the further development of the Project. Any request for Tenant's consent must include a copy of the proposed materials.

28.7 Other obligations: the parties acknowledge that the Tenant has separate agreements with the New York State Department of Transportation and/or Metro-North Commuter Railroad regarding the provision of ferry service and parking. The parties to this Lease will cooperate with each other to enable the City to fulfill its obligations under said agreements.

29. HAZARDOUS MATERIALS

29.1 Hazardous Materials. The Landlord shall not cause, permit or suffer any Hazardous Materials (as hereinafter defined) to be used, stored, generated or disposed of above actionable levels on or in the Premises, except for those Hazardous Materials used in the normal course of vehicle parking and ferry docking operations. If the Landlord causes, suffers, or permits contamination by Hazardous Materials above actionable levels at the Premises during the Tenant's use of the Premises, the Landlord shall indemnify and defend the Tenant and the other Indemnitees against, and hold the Tenant and the other Indemnitees harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for settlement of claims and for reasonable attorneys', consultant, and expert fees) arising during or after the term of this Lease by reason of such contamination. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the Premises which is required by Environmental Laws (as hereinafter defined) or any cleanup, removal or restoration required by a federal, state or local agency including, without limitation, any such costs associated with the contamination above actionable levels of adjacent property or ground water. In addition, if the Landlord causes, suffers or permits the contamination of the Premises by Hazardous Materials above actionable levels, the Landlord shall promptly, at its sole expense, take any and all actions required by Environmental Laws to Remediate (as hereinafter defined) the Premises. However, Landlord shall not be responsible for any contamination which results from the actions, negligence and/or neglect of the Tenant and/or its subtenants and invitees.

29.2 Landlord's Representations: The Landlord represents and warrants to the Tenant that now and throughout the Term and Renewal Term, if any: (i) the Premises are in compliance with applicable Environmental Laws; (ii) the Premises are not subject to any Environmental Actions (as hereinafter defined); and (iii) neither the Premises nor any personal property located thereon are subject to any Environmental Liens (as hereinafter defined). The Landlord shall remediate the Premises to the satisfaction of the New York State Department of Environmental Conservation and any federal, state or local governmental agencies with regulatory or enforcement authority for environmental conditions at the Premises, and shall provide Tenant with written notification from the New York State Department of Environmental Conservation, or such other governmental entities, to this effect. Landlord will (i) employ such construction techniques, procedures, and other measures to assure the health and safety of all persons during any excavation, demolition, and construction activities it may perform at the Premises; (ii) undertake and

complete any and all environmental investigations and remedial actions as may be required under statutes, rules, regulations and common law existing during the period of time of such work to ensure that upon completion of the work the condition of the Premises is appropriate for the public uses and other purposes to which it will be put; and (iii) remove and dispose of any extraneous tanks, pipes, and appurtenances. Any limitations set forth in this paragraph regarding "existing" statutes, rules, regulations and common law shall not limit Landlord's indemnification obligations contained in this Lease. Landlord hereby, for itself and its legal representatives, successors and assigns (the "Releasing Parties") completely and unconditionally waives, releases, remises, requites and forever discharges Tenant and its legal representatives, successor and assigns (the "Released Parties") from any and all actions or proceedings, cost, expense and liability of every kind whatsoever (including, without limitation, fees, costs, and disbursements of experts, consultants, and attorneys) whether known or unknown, suspected or unsuspected, of any kind or nature whatsoever which any of the Releasing Parties ever had, now has, or may, shall or can hereafter have or acquire, arising out of, or in any way connected with (i) the presence, suspected present, release or threatened release of Hazardous Materials in, on, under, above or about the Premises during the Term and Renewal Term, if any; (ii) the effect of any Environmental laws with respect to the Premises or any activity conducted thereon during the Term and Renewal Term, if any; (iii) any Environmental Claim (as hereinafter defined), any environmental clean-up liability, any environmental compliance cost, and any defect, latent or patent arising in connection with the condition of the Property during the Term and Renewal Term, if any.

29.3 Environmental Indemnification by Landlord.

29.3.1 The Landlord hereby agrees to defend, indemnify and hold harmless Tenant and the other Tenant's Indemnitees from and against, any Environmental Claim, and any Environmental Liabilities and Costs (as hereinafter defined) arising out of: (i) any Releases (as hereinafter defined) of Hazardous Materials above actionable levels that occurred prior to or on account of conditions existing at, on, under or about the Property at any time and at, on, conditions existing under or about the Premises during the Term and Renewal Term, if any; (ii) any violations of Environmental Laws or Environmental Actions that are attributable to the Landlord's acts or omissions (or those of any affiliate of the Landlord, or any prior occupant or predecessor-in-interest or servant, employee or agent of the Landlord) or on account of conditions existing at, on, under, or about the Property at any time, and conditions existing at, under, or about the Premises during the Term and Renewal Term, if any; (iii) any breach of any warranty or representation or covenant regarding environmental matters made by the Landlord; and (iv) any Releases or threatened Releases of Hazardous Materials caused by the Landlord or any affiliate of the Landlord (or any prior occupant, predecessor-in-interest or servant, employee or agent of the Landlord) or on account of conditions at the Property at any time, and on account of conditions at, under, on, and about the Premises prior to and during the Term. This indemnification shall survive the expiration or earlier termination of this Lease.

29.3.2 Upon discovery of any Hazardous Materials at the Premises (which, for purposes of this Section, includes, but is not limited to the air, surface water, or ground water, or riparian areas of the Premises) which does not arise out of the acts or omissions of the Tenant, its employees, agents or contractors, or invitees at the Property where such condition may reasonably be anticipated to affect the Premises, the Tenant shall have the following options:

A. Upon thirty (30) days written notice to the Landlord, the Tenant may terminate this Lease without penalty of any kind and be released from any liability under this Lease as of the termination date and receive a full refund of all payments of the additional rent paid for the amortization of Construction Costs hereunder; provided, however, nothing contained herein is intended to limit the Tenant's rights or remedies against the Landlord for damages incurred by the Tenant as a result of the termination of this Lease; or

B. The Tenant may require the Landlord, at the Landlord's sole cost and expense, to diligently and in good faith promptly perform all work necessary to investigate and/or Remediate any Hazardous Materials above actionable levels in, on or about the Premises, such work being performed in conformity and compliance with all Environmental Laws; or

C. The Tenant may, at the sole cost and expense of the Landlord, perform all work necessary to investigate and/or Remediate any Hazardous Materials above actionable levels in, on or about the Premises, in which case the Landlord shall reimburse the Tenant promptly for all costs and expenses incurred by the Tenant, including, without limitation, reasonable professional fees, upon demand accompanied by written evidence of such costs and expenses reasonably satisfactory to the Landlord. This Paragraph (C) shall only be available to Tenant if Landlord, after reasonable notice, has failed to undertake the remedy provided in Paragraph (B) herein.

Notwithstanding the Tenant's election to exercise its rights under subsection (B) or (C) above, the Tenant may, at any time, exercise its right to terminate this Lease as provided for in subsection (A) above or elsewhere in this Lease prior to the completion of the Remediation. If the Tenant's use of the Premises is rendered substantially or totally impaired by the presence of Hazardous Materials above actionable levels not caused by the Tenant, its agents, employees or contractors, the Rent and other charges due under this Lease shall abate until such time as the Tenant is able in its judgment to resume uninterrupted operation of the Project at the Premises.

29.4 Definitions: For the purposes of this Section, the following definitions will apply:

"Environmental Actions" refers to any complaint, summons, citation, notice, fine, directive, order, claim, litigation, investigation, judicial or administrative proceeding or judgment, letter or other communication from or by any governmental authority or any third party involving violations of Environmental Laws or Releases of Hazardous Materials at, on, in, under, from or onto the Premises.

"Environmental Claims" means any and all actions, suits, orders, claims, liens, notices, investigations, proceedings, or complaints, whether any of the foregoing are administrative, judicial or otherwise, brought, issued, asserted or alleged by: (i) a federal, state or local governmental authority or by a private person or business entity for compliance, injunctive relief, damages (including, but not limited to, natural resources damages), penalties, removal, response, remedial, or other action pursuant to any applicable Environmental Law; and/or (ii) a third party seeking damages and/or injunctive relief related to actual or alleged personal injury, medical monitoring, wrongful death, and/or property damage resulting from a release of, or exposure to, a Hazardous Substance.

"Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et. seq., as amended; the Resource Conservation Recovery Act, 42 U.S.C. 6901 et. seq., as amended; the Clean Air Act, 42 U.S.C. 7401 et. seq., as amended; the Clean Water Act, 33 U.S.C. 1251 et. seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., the New York Environmental Conversation Law, the New York Navigations Law, and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability and/or establishing standards of conduct for protection of the environment and/or relating to Tanks (as hereinafter defined).

"Environmental Lien" means any lien, security interest, charge or other encumbrance for Environmental Liabilities and Costs levied or imposed by, or easement for environmental purposes reserved by or granted to, a governmental authority or any third party.

"Environmental Liabilities and Costs" means any monetary obligations, losses, liabilities of any kind whatsoever (including strict liability), damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable out-of-pocket fees, disbursements and expenses of counsel, out-of-pocket expert and consulting fees and out-of-pocket costs for environmental site assessments, remedial investigation and feasibility studies, environmental cleanup liabilities, environmental compliance costs, fines, penalties, sanctions and interest incurred as a result of any Environmental Action filed by any governmental agency or any third party which relate to any violations of Environmental Laws; Remedial Actions; or Releases or threatened Releases of Hazardous Materials at, on, in, under, from or onto the Premises.

"Hazardous Materials" shall include any solid, liquid or gaseous element, compound, or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws; petroleum and its refined products; polychlorinated biphenyls; lead; any substance exhibiting a hazardous waste characteristic, including, but not limited to, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and any raw materials, building components, including, but not limited to, asbestos-containing materials, and manufactured products containing hazardous substances.

"Involved State Agencies" shall include the New York State Department of Transportation ("NYSDOT"), Metro-North Commuter Railroad, and any other agency or official with regulatory jurisdiction over the Project, the Premises, or any other aspect or component of the Project.

"Release(s)" or "Released" means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) of Hazardous Materials into the environment.

"Remedial Action" or "Remediate" or "Remediation" means all actions taken or to be taken in order to clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or any other actions authorized by CERCLA or any other applicable federal, state or local law or regulation.

"Tanks" means all underground storage tanks and aboveground storage tanks and their appurtenances, pipes, lines, fixtures and other related equipment which exist or have existed at the Premises.

30. NO PARTNERSHIP

Nothing contained in this Lease shall be construed to be or create a partnership, joint venture, express or implied agency, or employer/employee relationship between the Landlord, its successors or assigns, on the one hand, and the Tenant and/or any of the other Tenant's Indemnitees, their successors or assigns, on the other hand.

31. MISCELLANEOUS

31.1 Binding Effect; Entire Agreement; No Oral Modification: The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of

the Landlord and the Tenant and their respective assigns, heirs, distributes, executors, administrators and successors. This instrument contains the entire agreement made between the parties and may not be modified orally or in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest. There are no understandings or agreements of any kind between the parties hereto, verbal or otherwise, other than as set forth in this Lease.

31.2 Captions; Gender and Number: Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. Any captions to Articles or Sections hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

31.3 No Broker: the Landlord and the Tenant each represent to the other that they have dealt with no broker in connection with the negotiation and execution of this Lease or in procuring same. The Landlord and the Tenant further agree that, should any claim be made for brokerage fees, by, through, or on account of any acts of the Landlord or the Tenant or their respective representatives, the party upon whose acts such claim is made will hold the other harmless from any and all liabilities and expenses in connection therewith.

31.4 Severability. The provisions of this Lease are severable, and it is the intention of the parties hereto that, if this Lease cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts hereof, the remaining provisions of this Lease shall be given full force and effect as completely as if the part or parts held invalid had not been included herein.

31.5 Governing Law: This Lease shall be governed by and construed in accordance with the laws of the State of New York and the venue for any action or proceeding hereunder shall be in the City of Newburgh or the County of Orange, New York.

IN WITNESS WHEREOF, the Landlord and the Tenant have duly executed this Lease in duplicate as of the day and year first above written.

RBG of Newburgh LLC, Landlord

By_____

CITY OF NEWBURGH, Tenant

By_____
Michael G. Ciaravino
City Manager
Per Resolution No.:

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

On the ____ day of _____in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

_____

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

On the ____ day of _____ in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL G. CIARAVINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

_____

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SCHEDULE A

Description of the Premises showing location, size and perimeter in the aggregate and showing delineation of the Premises and showing location of ferry landing and parking area.

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RESOLUTION NO.: 11 - 2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH METRO-NORTH COMMUTER RAILROAD COMPANY TO PROVIDE REIMBURSEMENT OF PARKING LOT LEASE PAYMENTS RELATED TO THE NEWBURGH-BEACON FERRY SERVICE

WHEREAS, the City of Newburgh and Metro-North Commuter Railroad ("MNR") entered into an Agreement, dated August 16, 2004 (the "Agreement"), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by MNR or its contractor between the City of Beacon and the City of Newburgh; and

WHEREAS, in compliance with the terms of the Agreement, the City entered into a lease with the owner of certain premises to provide a docking facility and 250 space parking lot for the ferry service, beginning July 30, 2014, and superseded by a First Amended Lease, effective April 21, 2010 and extended through December 31, 2015, (the "Amended Lease"); and

WHEREAS, by Resolution No. 169 - 2014 of July 14, 2014, Resolution No. 308-2014 of December 15, 2014, Resolution No. 75 -2015 of April 13, 2015 and Resolution No. 318-2015 of December 15, 2015, the City Council authorized an extensions of the renewal term of the First Amended Lease through January 31, 2017; and

WHEREAS, the First Amended Lease was assigned to new owner, RBG of Newburgh, LLC, who desires to continue the lease for parking to be used for ferry service between the City of Newburgh and Beacon and uses associated therewith; and

WHEREAS, the City and RBG of Newburgh, LLC have agreed to enter into a new lease agreement for the period February 1, 2017 through December 31, 2018 ("New Lease"); and

WHEREAS, by Resolution No. 111-2015 of May 11, 2015, the City Council authorized a Memorandum of Understanding with MNR to provide reimbursement to the City of Newburgh for payments made under the First Amended Lease for the purpose of providing parking for users of the Newburgh-Beacon Ferry; and

WHEREAS, the City and MNR wish to working cooperatively to ensure the continuation of the ferry service between the Cities of Newburgh and Beacon by providing continued reimbursement to the City for payments under the New Lease with RBG of Newburgh, LLC

consistent with the term of the New Lease; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager on behalf of the City of Newburgh, be and he is hereby authorized to execute a Memorandum of Understanding coterminous with the period of the New Lease, with such other terms and conditions as may be recommended by the Corporation Counsel, for Metro-North Commuter Railroad to provide reimbursement to the City of Newburgh for payments made under the New Lease with RBG of Newburgh, LLC for the purpose of providing parking for users of the Newburgh-Beacon Ferry.

THIRD MEMORANDUM OF UNDERSTANDING

THIRD MEMORANDUM OF UNDERSTANDING ("Third MOU") dated _____ __, 2017, by and between Metro-North Commuter Railroad Company ("Metro-North"), a public benefit corporation of the State of New York and a subsidiary of the Metropolitan Transportation Authority ("MTA"), with its principal offices at 420 Lexington Avenue, 11th floor, New York, New York 10170 and the City of Newburgh ("City"), a municipal corporation with its principal offices located at City Hall, 83 Broadway, Newburgh, New York 12550 (collectively, the "Parties").

WHEREAS, the Parties entered into an Agreement dated August 16, 2004 (the "Agreement"), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by Metro-North or its contractor between the City of Beacon and the City of Newburgh ("Ferry Service"); and

WHEREAS, the Agreement states that the City will enter into a lease with the owner of certain premises ("Premises") to provide a docking facility and 250 space parking lot for the Ferry Service (the "Lease"), and the City did enter into such Lease, beginning July 30, 2004 and superseded by a First Amended Lease effective April 21, 2010 and extended through December 31, 2015 (the "Amended Lease"); and

WHEREAS, the City and the New York State Department of Transportation ("NYSDOT") had entered into a contract dated July 12, 2006, by which NYSDOT reimbursed the City for the rent payments under the Lease, but this contract expired; and

WHEREAS, the City had represented that it lacked funds to make the rent payments under the Amended Lease for the period from May 2015 through December 2015 ("May-December Period") and had requested that Metro-North reimburse the City for the rent payments under the Amended Lease for the May-December Period; and

WHEREAS, NYSDOT had indicated to the City that it will reimburse the City for the rent payments under the Amended Lease up to and including April 2015, and thereafter had committed to provide Congestion Mitigation and Air Quality ("CMAQ") funds to Metro-North, which could be used to reimburse Metro-North for assistance payments made to the City by Metro-North to fund the Amended Lease; and

WHEREAS, the City and Metro-North had entered into a Memorandum of Understanding dated May 26, 2015 ("MOU") whereby Metro-North had agreed to reimburse the City for the rent payments made by the City under the Amended Lease for the May-December Period at the rate of $21,278 per month; and

WHEREAS, the Amended Lease was further extended for the period January 1, 2016 through January 31, 2017 at the same rate of $21,278 per month ("January 1, 2016 – January 31, 2017 Period"); and

WHEREAS, the City had represented that it lacked the funds to make the rent payments under the Amended Lease for the January 1, 2016 – January 31, 2017 Period and had requested that Metro-North reimburse the City for the rent payments under the Amended Lease for the January 1, 2016 – January 31, 2017 Period; and

WHEREAS, the City and Metro-North entered into a Second Memorandum of Understanding dated January 26, 2016 ("Second MOU") whereby Metro-North had agreed to reimburse the City for the rent payments made by the City under the Amended Lease for the January 1, 2016 – January 31, 2017 Period at the rate of $21,278 per month; and

WHEREAS, the City has entered into a new lease with the new owner of the Premises to provide a docking facility and 250 space parking lot for the Ferry Service (the "New Lease") for a term beginning February 1, 2017 and continuing until December 31, 2018 with rent payments of $21,278 per month ("February 1, 2017 – December 31, 2018 Period") and represents that it lacks the funds to make the rent payments under the New Lease for the February 1, 2017 to December 31, 2018 Period, and unless the rent payments under the New Lease are made to the landlord for the February 1, 2017 – December 31, 2018 Period, the Ferry Service is in danger of being discontinued; and

WHEREAS, the Ferry Service is important to the City as well as being an important part of Metro-North's provision of commuter service to its ridership, especially for commuters from Orange and Dutchess Counties; and

WHEREAS, the Parties desire to prevent the discontinuance of the Ferry Service.

NOW THEREFORE, in consideration of the benefits accruing to each of the Parties hereto, the Parties agree as follows:

1. Supplement. Unless otherwise stated herein, this Third MOU supplements the terms set forth in the Agreement, the MOU and the Second MOU.

2. Lease Rent Payments: Metro-North agrees to reimburse the City for the rent payments made by the City under the New Lease for the February 1, 2017 –December 31, 2018 Period only, at the rate of $21,278 per month. For the February 1, 2017 –December 31, 2018 Period, the City will make timely monthly rent payments to the lessor under the New Lease. The City will submit proof of each timely monthly rent payment along with an invoice for that monthly rent payment to Metro-North within ten (10) days of making the rent payment. Metro-North agrees to pay the City within thirty (30) days of receipt of the City's invoice for the monthly rent payment and proof of timely payment of the monthly rent payment under the New Lease.

3. During the February 1, 2017 – December 31, 2018 Period, the City agrees to comply with all terms under the New Lease, not to terminate the New Lease and not cause the landlord to terminate the New Lease.

4. Metro-North is not required to reimburse the City for any late fees, interest or other charges under the New Lease.

5. This Third MOU does not create any obligations for Metro-North in connection with the New Lease, or create any landlord-tenant relationship between the Parties.

6. The Parties agree to diligently work together in a cooperative and time sensitive manner to identify and make available alternative locations for the Ferry Service, docking facility and parking facility suitable to the needs of each party, and to cooperatively work together to identify other sources of funding for the Ferry Service, docking facility and parking facility.

7. Assignment: Neither party shall assign, transfer or delegate any of its rights or obligations under this Third MOU without the written consent of the other party, provided that Metro-North may so assign, transfer or delegate to the MTA any such right or obligation upon written notice to the City.

8. Personal Liability: No officer, director, member or employee of either of the parties hereto shall be liable personally or be sued individually for damages under or by reason of this Third MOU.

9. Notices: (a) Any notice, request, approval, demand or other communication under this Third MOU shall be in writing and given by (i) hand delivery, (ii) mailing the same by registered or certified mail, return receipt requested, (iii) reputable overnight courier service, or (iv) facsimile transmission with an original sent by any manner above described, addressed in each case as follows:

If to Metro-North:

Metro-North Commuter Railroad Company
420 Lexington Avenue, 11th floor
New York, New York 10170
Attention: General Counsel
(Fax No. 212-697-9079)

If to the City:

City of Newburgh
City Hall
83 Broadway
Newburgh, New York 12550
Attn: City Manager
(Fax No. 845-569-7370)

With a copy to:

City of Newburgh
City Hall
83 Broadway
Newburgh, New York 12550
Attn: Corporation Counsel
(Fax No. 845-569-7338)

(b) Any party may by notice to the other change the addresses to which notice to such party or copies of such notices shall thereafter be sent. Notices shall be deemed to have been given (i) immediately upon acknowledgement of receipt when delivered by personal service on the person(s) designated to receive notice, (ii) on the fourth (4^{th}) business day after the same shall have been deposited in the United States mails as aforesaid, (iii) on the next business day after the same shall have been sent by overnight courier service and (iv) upon receipt of the telecopy; provided that no notice shall be deemed to have been given until a copy thereof has been given to each person entitled thereto as set forth above.

10. No Third-Party Rights. No provision of this Third MOU shall create or give to third-parties any claim or right of action against the Parties hereto.

11. Board Approval Necessary. This Third MOU will only become effective upon approval of the Boards of the respective parties.

12. Miscellaneous:

a) This Third MOU contains the entire agreement of the Parties respecting the subject matter hereof.

b) This Third MOU may be amended, modified or supplemented only by an instrument in writing signed by the Parties hereto.

c) The headings of the various paragraphs, exhibits and attachments of this Third MOU are for the convenience of reference only and do not in any way define or limit the scope of intent of any provision hereof.

d) If any provision of this Third MOU is to any extent invalid or unenforceable, the remainder of this Third MOU, and the application of such provision to matters as to which it is not invalid or unenforceable, shall not be affected thereby.

e) This Third MOU shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

f) This Third MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g) This Third MOU shall be governed by and construed in accordance with the laws of the State of New York.

h) Either party may terminate this Third MOU upon sixty (60) days written notice, provided that any obligations incurred by either party prior to the termination date, shall survive such termination.

IN WITNESS WHEREOF, Metro-North and the City have caused this Third Memorandum of Understanding to be duly executed as of the date first above written.

METRO-NORTH COMMUTER RAILROAD COMPANY

_____

BY:

CITY OF NEWBURGH

_____

BY: Michael G. Ciaravino, City Manager
Per Resolution No. -2017

RESOLUTION NO.: 12 - 2017

OF

JANUARY 9, 2017

A RESOLUTION DECLARING A 1990 SUBURBAN VEHICLE DESIGNATED VIN NO. 1GNEV16KXLF177394 TO BE SURPLUS EQUIPMENT

WHEREAS, the City of Newburgh Fire Department possesses a 1990 Suburban Vehicle designated VIN No. 1GNEV16KXLF177394 which is no longer of use to the City; and

WHEREAS, the Fire Department has requested that the vehicle be designated as surplus and sold; and

WHEREAS, the City Council has determined that declaring the vehicle surplus is in the best interests of the City of Newburgh; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the 1990 Suburban Vehicle designated VIN No. 1GNEV16KXLF177394 is hereby declared to be surplus and of no further use or value to the City of Newburgh; and

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

RESOLUTION NO.: 336 - 2016

OF

DECEMBER 12, 2016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SST, INC. FOR SHOTSPOTTER FLEX GUNFIRE LOCATION, ALERT AND ANALYSIS SERVICES FOR THE CITY OF NEWBURGH POLICE DEPARTMENT

WHEREAS, SST, Inc. offers subscription-based ShotSpotter gunfire location, alert and analysis services to assist local law enforcement agencies to identify locations of gunfire to enhance rapid response by police; and

WHEREAS, the City of Newburgh proposes to utilize ShotSpotter services to improve response to gunfire incidents, aid in investigative efforts, utilize data to establish hotspots for targeted enforcement and foot patrols, and manage staff and resources more efficiently and effectively; and

WHEREAS, the cost for the ShotSpotter Flex services, equipment and training in the initial year is $351,500.00 and such funding shall be derived from the CDBG program; and

WHEREAS, the City Council finds that entering into such a contract with SST, Inc. for the subscription-based ShotSpotter flex program is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to enter into an agreement with SST, Inc., as annexed hereto with such other terms and conditions as may be required by Corporation Counsel, to provide subscription-based ShotSpotter Flex gunfire location, alert and analysis services to the City of Newburgh Police Department.

SST™

DETECT • PROTECT • CONNECT

PURCHASE AGREEMENT

FOR A SUBSCRIPTION BASED

SHOTSPOTTER® FLEX™ GUNFIRE LOCATION

ALERT AND ANALYSIS SERVICE FOR

NEWBURGH, NEW YORK

confidential

Purchase Agreement for a Subscription-Based
ShotSpotter® Flex™ Gunfire Location, Alert and Analysis Service

Customer:	Newburgh, New York
Agreement ID:	NBURGHNY11222016
Date:	November 22, 2016
Submitted by:	Jack Pontious, Director – Northeast Region +1.202.258.0141 mobile +1.703.940.1085 fax jack@ShotSpotter.com

SST, Inc.
7979 Gateway Blvd, Suite 210
Newark, California 94560
+1.888.274.6877
info@ShotSpotter.com
www.ShotSpotter.com

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SST Introduction and Background

About SST, Inc.

SST was founded in 1995 and with 33 issued patents, and over 90+ successful agency engagements covering over 300 square miles, SST has become the de-facto leader in the development and deployment of wide area acoustic gunshot surveillance systems. Our sensor-based technology detects, locates and alerts on all outdoor urban gunfire on a real time and precise basis. These alerts are then vetted by an acoustic reviewer in our 24/7 Incident Review Center before getting pushed to a customer web accessible laptop or mobile device. The alerts will show a precise dot on a map with the real recording of the actual gunfire event. The situational intelligence advantage and ground truth that our alerts bring to a tactical response provides for enhanced officer safety. At an agency level, it provides for an efficient and effective way to respond to and investigate gun crime.

Our service is delivered as an easily implemented Software as a Service (SaaS) solution requiring no investment in or maintenance of expensive hardware or software. Our contracts are based on an affordable one year subscription agreement providing for maximum flexibility and the de-risking of a ShotSpotter deployment.

Our Core Beliefs

Our inspiration comes from our Principal Founder, Dr. Bob Showen's core belief that technology in its highest and best use should be harnessed for social good. The collective passion of our employees, investors and partners is based on providing a compelling solution and consulting expertise focused on helping reduce gun violence and creating safer more vibrant communities coping with the epidemic of gun violence. We are committed to developing comprehensive, respectful and intimate partnerships with agencies and their respective cities organized around making a positive difference. Today, ShotSpotter is highly regarded as a critical component of a comprehensive gun violence reduction strategy and is playing an active part in making communities safer for our future generations. We aspire to make that both our individual and firm wide legacy.

Our Experience

Our company has had over 20 years of successful experience in designing and deploying ShotSpotter arrays in a number of diverse urban environments with various acoustic and environmental challenges. We have the largest database of gunfire events and other impulsive noise detections on the planet allowing us to continually refine and improve our machine classification techniques. Our data is scientifically sound and used in court cases at both the state and federal levels.

Most importantly, we have over the years, been able to learn alongside our clients, a number of best practices techniques to improve on measurable outcomes and the operational effectiveness of our solution. We take a consultative approach to our client engagements and bring to bear a formal on boarding process and provide comprehensive training and ongoing webinars to advance the state of gun violence abatement.

Our Service and Product Offerings

SST is well known and respected for its gunshot detection solutions that have historically helped police identify, analyze and respond to violent gun crime in urban cities. The ShotSpotter product continues to become a household name in law enforcement agencies across the world. Today, the company has expanded its solution offering to include small area and indoor gunshot detection. This new security solution is focused on K-12 schools, college and university campuses, corporate facilities and other key critical infrastructure that are vulnerable to unpredictable active shooter attacks.

An overview of our suite of services include the following:

- **ShotSpotter® Flex™** – gunfire alerting and analysis of gunfire for local law enforcement agencies in urban areas.
- **ShotSpotter® SiteSecure™** for Critical Infrastructure – physical security designed to detect gunfire attacks on commercial and federal buildings, electrical substations, airports, and large outdoor structures.
- **SST SecureCampus®** – designed to provide indoor and outdoor gunfire coverage at university and school campuses.

About Our Service – ShotSpotter Flex

Real Time Gunfire Data

ShotSpotter Flex helps law enforcement agencies by directing police to the precise location of illegal gunfire incidents. ShotSpotter instantly notifies officers of shootings in progress with real-time data delivered to dispatch centers, patrol cars and even smart phones. Instant alerts enable first responders to aid victims, collect evidence and quickly apprehend armed, dangerous offenders.

ShotSpotter's actionable intelligence can then be used to prevent future crimes by positioning law enforcement when and where crime is likely to occur. Police now possess a scientific barometer of success: smart policing leads to fewer shootings.

Key Features	Key Benefits
• Constant, 360-degree wide-area acoustic surveillance throughout large coverage areas.	• Enhanced situational awareness and officer safety.
• Immediate alerts when no one calls 9-1-1.	• Faster evidence collection and witness identification.
• Precise location including latitude/longitude, street address.	• Court-admissible, detailed forensic reports (DFRs).
• Number and exact time of rounds fired.	• Increased gun crime arrests.
• Identification of fully-automatic or high-capacity weapons.	• Improved community relations and collaboration.
• Identification of multiple shooters.	• Proactive gun crime pattern analysis and strategic deterrence.
• Shooter position, speed and direction of travel.	• No need to buy/manage a complex technology infrastructure.
• Detailed forensic data for investigation, prosecution, analysis.	• Expedited response to shooting victims.
• Easily-accessible single and cumulative historical reports.	• Increased suspect leads, suspect arrests.
• Annual subscription-based service is a hosted cloud-based solution.	• Increased ability to identify homicides and injured victims.

Sensor Platform

Our detection solution is enabled through proprietary special purpose-built sensors that are designed to trigger and time-stamp impulsive acoustic events that spike above ambient noise. When three or more sensors "trigger" the software system is able to triangulate the exact location of the event within 82 feet.

SST designs and deploys a sensor array of typically 15-20 sensors per square mile in order to support a coverage area. Although the company may seek assistance from the city/agency for permissions to mount the sensors, the ownership and maintenance of the sensors is the sole responsibility of SST.

Subscription-based and Software as a Service

SST's cloud-based system is cost effective.

In addition to owning and operating the underlying sensor network, SST also owns and operates the data center infrastructure which provides the 24x7x365 real-time data. Sensors operate on "machine-to-machine" (M2M) data contracts provided by our cellular provider partners. Because SST maintains thousands of live sensor connections with those partners, we achieve per-sensor connectivity savings far beyond what a single agency could negotiate, and we pass those savings along to our customers in the form of a fixed price subscription.

Built-in redundancy eliminates any single point of failure.

SST operates fully redundant data centers on both the East and West Coasts, both of which have doubly-redundant power and HVAC, and triply-redundant Internet connectivity. The company has invested in full data redundancy and backups, as well as offsite backup, and provides a level of 24x7x365 fault tolerant hardware and network uptime that no agency—even the biggest—could afford to procure, let alone maintain, on its own.

Subscription Based

The subscription-based cost structure of ShotSpotter Flex not only makes sophisticated gunshot detection a reality for your agency, it helps you maximize your people by speeding investigations, supporting prosecutions and deploying

patrol officers where and when they're needed most to successfully prevent gun violence.

Annual terms provide the maximum flexibility and reduction of risks as an agency can opt out after the one year term (although we trust our service will provide positive outcomes that you will want to continue to receive).

Incident Review Center

Our 24x7x365 commitment coupled with unparalleled acoustic expertise provides an instant assessment of all incidents, freeing up time that dispatchers and officers would otherwise spend analyzing alerts. We provide the level of data qualification needed to have confidence when dispatching based on alerts. Drawing on their experience, SST experts add critical situational intelligence to alerts, that can help personnel respond more safely and successfully.

After an explosive (or impulsive) sound triggers ShotSpotter sensors that an incident is detected and located, audio from the incident is sent to the SST Incident Review Center via secure, high-speed network connections for real-time qualification. Within seconds, an SST professional reviewer analyzes audio data and recordings to confirm gunfire. The qualified alert is then sent directly to the dispatch center, PSAP, mobile/patrol officers and any other relevant safety or security personnel.

SST's team of expert reviewers has direct experience reviewing thousands of incidents captured by SST systems. Reviewed alerts help law enforcement respond safely and effectively to gunfire by providing:

- Precise location of gunfire, both latitude/longitude and street address.
- Number and exact time of shots fired.
- Shooter position, speed and direction of travel (if moving).
- Faster, more accurate alerts.
- Gunfire incident history and pattern analysis.

SST's incident reviewers hear thousands of gunfire incidents during their training, and each incident is presented to them from the perspective of multiple sensors. SST incident reviewers have reviewed and analyzed more acoustic gunfire incidents, from more perspectives, than quite literally anyone else in the world.

SST's Real-Time Incident Review Center operates 24 hours a day, 365 days a year in a protected and fully redundant environment. Our software provides live chat functionality for immediate communication and assistance when required.

Best Practices and Onboarding Training

The SST Training Team

The Training Team consists of former law enforcement professionals with over 40 years of experience. Our mission is to make the customer as successful as possible. We do this through continued and on-going support to help you learn how to get the most benefit from the services we offer. All the training modules we offer are included in the price of the service, so never hesitate to request training if your agency is in need.

Getting Started

Early in the engagement process, one of our trainers will be assigned to the agency to ensure wide-ranging but consistent training is delivered based on the agency customer's need. While the service is being deployed, we first present to command staff personnel and key identified stakeholders in the service. This Best Practices Presentation is based on knowledge of law enforcement practices and learning from our customer agencies that have been successful with incorporating ShotSpotter services into the fabric of the department. The idea is to get the agency thinking about success and ways to achieve it right from the beginning.

Educational and Best Practices Webinars

To help support you in your deployment process, SST has a number of training webinars to help you get your team trained internally on how to use our products and services. We also offer a series of archived best practices webinars on a variety of law enforcement topics from reducing celebratory gunfire to keeping neighborhoods safer. These webinars are led by our internal SST experts, many of whom have an extensive backgrouond in both public safety and business.

Gunfire Data and Alerts

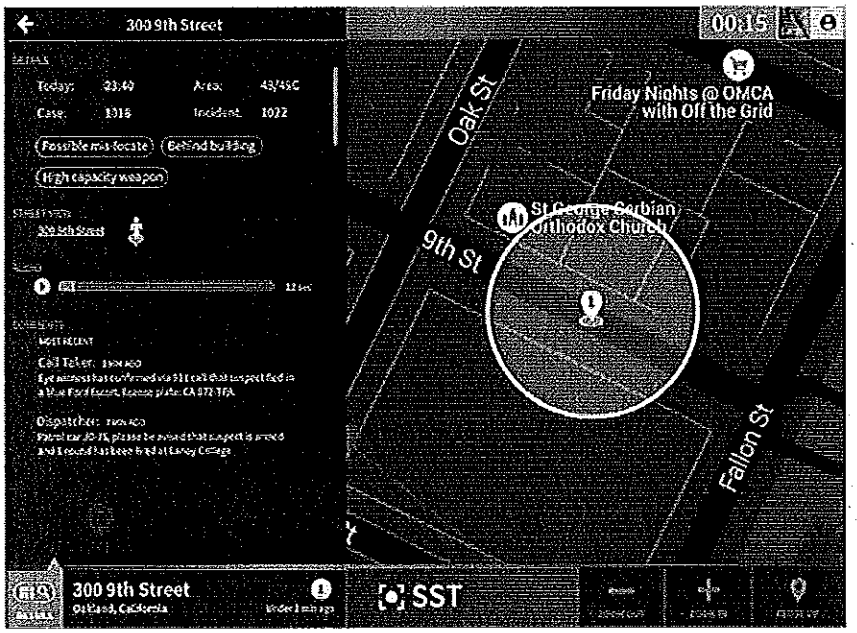
The alerts that are generated by ShotSpotter are delivered in the following forms:

i. Alerts Console

The ShotSpotter Flex Alerts Console is the user interface most often used by Call Takers, Dispatchers, and Patrol Officers in the field. Real-time notifications of gunfire incidents are delivered to this console.

The console provides the type of gunfire (single round, multiple round), a unique identification number (Flex ID number), a date and time of the muzzle blast (trigger time), latitude-longitude of the location of the muzzle blast, nearest address of the location of the muzzle blast, number of shots, direction of travel (moving shooter, multiple rounds), speed of travel (moving shooter, multiple rounds), district identification, and beat identification.

An SST analyst may add other contextual information related to the event such as the possibility of multiple shooters, high capacity weapons, full-automatic weapons, and the shooter's location related to a building (front yard, back yard, street, etc.). An audit trail of the time the alert was published, acknowledged and closed at customer facility is also contained in the report. All notes by Call Takers and Dispatchers are added to the alert are time and date stamped and indicate the operator's identification. For Patrol Officers, an audio clip of the incident is provided with the alert.

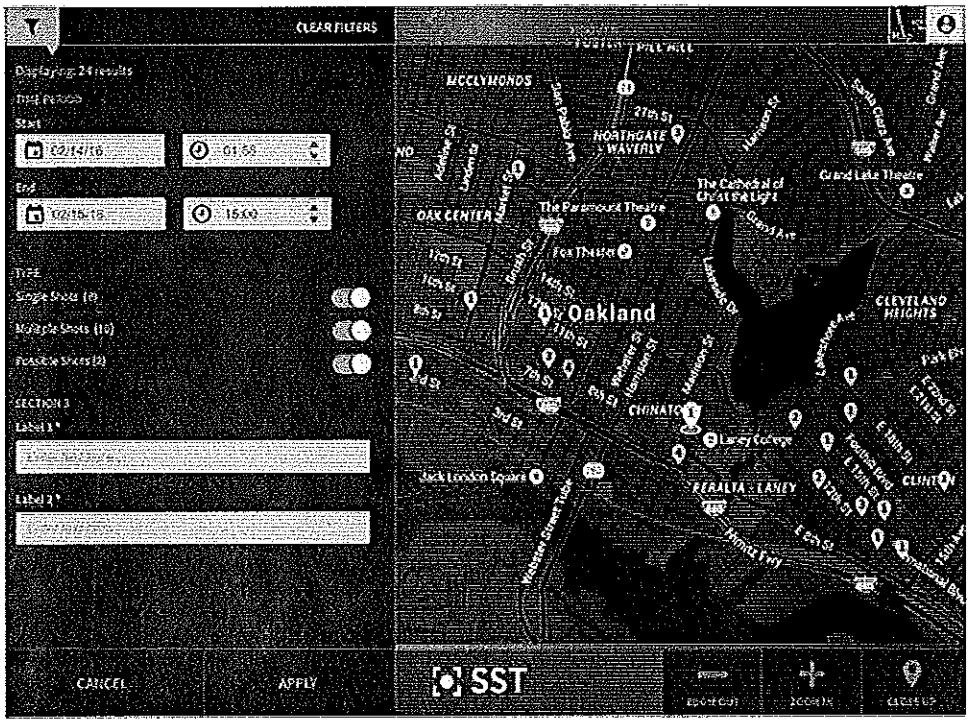


ii. Investigator Portal

All historical incident data in the ShotSpotter Flex database can be viewed, searched, sorted, and filtered using the ShotSpotter Investigator Portal. Reports for single incidents and groups of incidents can be run. Parameters and filter settings may be used to select incidents grouped into a single report. Any predefined reports may be viewed on a monitor, printed, or exported to standard CSV format.

End-users can create their own custom reports or otherwise analyze the data using standard COTS products such as Microsoft SQL Server Report Builder, Crystal Reports, ArcGIS including Spatial Analyst, and any other SQL tools or SQL Server compatible tools. Because the system stores all incident details into an SQL database, generating reports is relatively simple.

The Investigator Portal also includes the ability to save any audio clip as a standard MP3 file to any recordable media (e.g., CDROM, USB drive).



iii. Mobile Alerts

Real-time gunfire alert data may also be delivered to smartphones and smart watches through email, SMS text messages, or a native smartphone application, available for use on iPhones and Android platforms. The location of gunfire is represented as a dot on a map in addition to the number of rounds fired, including access to the incident audio.

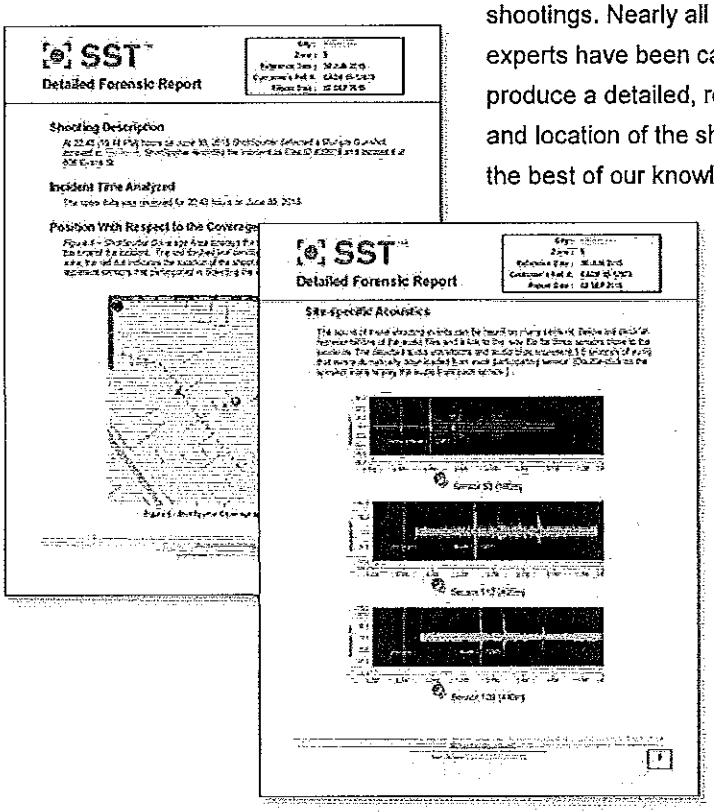
iv. Notification Engine (machine based)

The ShotSpotter Notification Engine Interface permits client applications such as video management systems, Computer-Aided Dispatch (CAD), Records Management Systems (RMS), video analytics, automated license plate number readers (ALPR), camera management systems, crime analysis and statistics packages (including COMPSTAT software), and common operating picture (COP) software to receive accurate, timely, and detailed information about ShotSpotter gunfire alerts, including precise latitude and longitude (geolocation), GPS-synchronized timestamps, incident audio, and situational context provided by the 24x7x365 SST Incident Review Center.

Integration of ShotSpotter data with other systems has already proven successful in cities across the United States. Police in Minneapolis, MN used an earlier version of the ShotSpotter Notification Engine to trigger video recordings of certain key intersections in high crime areas. Soon thereafter, a ShotSpotter alert triggered those cameras to capture the image of a murderer fleeing the scene of a shooting. Similarly, in Boston, MA, police correlate ShotSpotter data with surveillance cameras and parolee ankle bracelet tracking data to maintain 24x7x365 awareness of any parolee who may be violating the terms of parole by committing crimes or consorting with those doing likewise.

v. Forensic Reports & Certified Expert Witness Services

ShotSpotter Flex data is also useful for detailed forensic analysis that helps reveal and clarify what actually occurred during a gunfire incident, including the identification of weapon type (i.e. automatic vs. semi-automatic), the number of rounds fired, the number of shooters involved, and the direction and speed of a shooter-in-motion for drive-by shootings. The audio clips also provide conclusive evidence to prosecutors to allow jurors to directly experience the incident and gain a more detailed firsthand awareness of what are often horrifying moments for the victims. In support of prosecutions, SST offers key members of its staff to provide expert witness testimony to help interpret and clarify crime scene activity derived from the system's data. In addition to predefined and customer-generated reports, ShotSpotter experts can create a detailed forensic report of any single gunfire incident. ShotSpotter detailed forensic reports have helped with many convictions and also to clarify what occurred during officer involved shootings. Nearly all of the criminal proceedings in which its experts have been called to testify, SST has been able to produce a detailed, round-by-round analysis of the timing and location of the shots fired by one or more weapons. To the best of our knowledge, no other acoustic-based gunshot detection system has been accepted in a court of law as providing this kind of forensic evidence.)



In 11 states and in the District of Columbia, ShotSpotter evidence and SST expert witness testimony have been successfully admitted in over 50 court cases. In four of those states (CA,NY,MO,NE), ShotSpotter scientific technique was subject to Kelly (Frye) or Daubert challenges and was found to be admissible.

Customer References

Minneapolis (MN) Police Department
350 South 5th Street, Room 130, Minneapolis, MN 55415-1389
Chief Janeé Harteau (janee.harteau@minneapolismn.gov, 612.673.3559)
Coverage Area: 5 square miles (1 expansion)
2006 to Present

New York City (NY) Police Department
1 Police Plaza, New York, NY 10007
Sergeant Joe Freer (joe.freer@nypd.org, 646.610.8676)
Coverage Area: 15 Square Miles (planning on expansion)
2015 to Present

Kansas City (MO) Police Department
700 Minnesota Avenue, Kansas City, KS 66101
Chief Darryl Forte (darryl.forte@kcpd.org, 816.234.5015)
Commander Scott Caron (scott.caron@kcpd.org, 816.234.5000)
Coverage Area: 4.5 square miles
2012 to Present

Rocky Mount (NC) Police Department
One Government Plaza, Rocky Mount, NC 27801
Lieutenant Ryan Hepler (ryan.hepler@rockymountnc.gov, 252.972.1475)
Coverage Area: 3 square miles
2011 to Present

Additional Services & Support

SST, Inc. ShotSpotter Flex subscription service offering includes the following:

Coverage Area Details:

- Coverage area footprint is determined by customer's needs and requirements.
- SST hosts, secures, monitors and maintains all infrastructure.
- Qualified, reviewed and analyzed gunfire alerts verified by SST acoustic analysts.
- Allocation of Alert Consoles, dispatcher or mobile, is configured at the discretion of the customer.

Data Retention:

- SST guarantees 2 years of alert/incident history (additional years at a fee).
- Stored gunfire incidents and a complete summary report of gunfire and fireworks activity is available for analysis.
    - High-level Summary and Basic Incident Reports
    - Detailed Forensic Reports

Training:

- Comprehensive Onboarding Program tailored to customer's needs.
- Customers are eligible for an in-person training program which include the following:
    - Best Practices
    - Recommended TTPs
    - End-user documentation
    - Administrator training
    - Online end-user training

Support:

- Standard customer support includes 24/7 assistance with user account, software interface, tools, features, incident (re)classification and review.
- Investigative and consultative support for gunfire incidents, forensic reports, expert witness services, and integration services.

Customer Requirements:

- Provision network access required to meet SST minimum specifications and requirements (ref "Host and Services Required to Use ShotSpotter Flex Clients" SST FED-72-01) for all computers (PC and MDC) which will access the ShotSpotter Flex Service.
- Run the SST System Profiler (a web-based analyzer) to verify system configuration and network access required for each computer (PC or MDC) which will access the ShotSpotter Flex service.

Coverage Area(s)

Systems are deployed to provide a dome of coverage for one or more specified areas. Each area is bounded by a specific coverage area perimeter. The area(s) to be covered are shown in the aerial map image below, with each coverage area perimeter denoted by a boundary line.The areas outlined in the images are rough estimates of the requested coverage area(s) and are not exact as they cannot be verified with actual acoustic propagation information to determine the precise size(s) of each area (e.g., in square miles or square kilometers). This verification can only be accomplished during the installation process, therefore the shapes may vary. Additionally if there is a discrepancy between the identified area(s) as defined by the square mileage listed in the caption and the area(s) outlined in any aerial image, the size listed in the caption text shall take precedence and be considered the true size and therefore what SST shall maximally deploy.

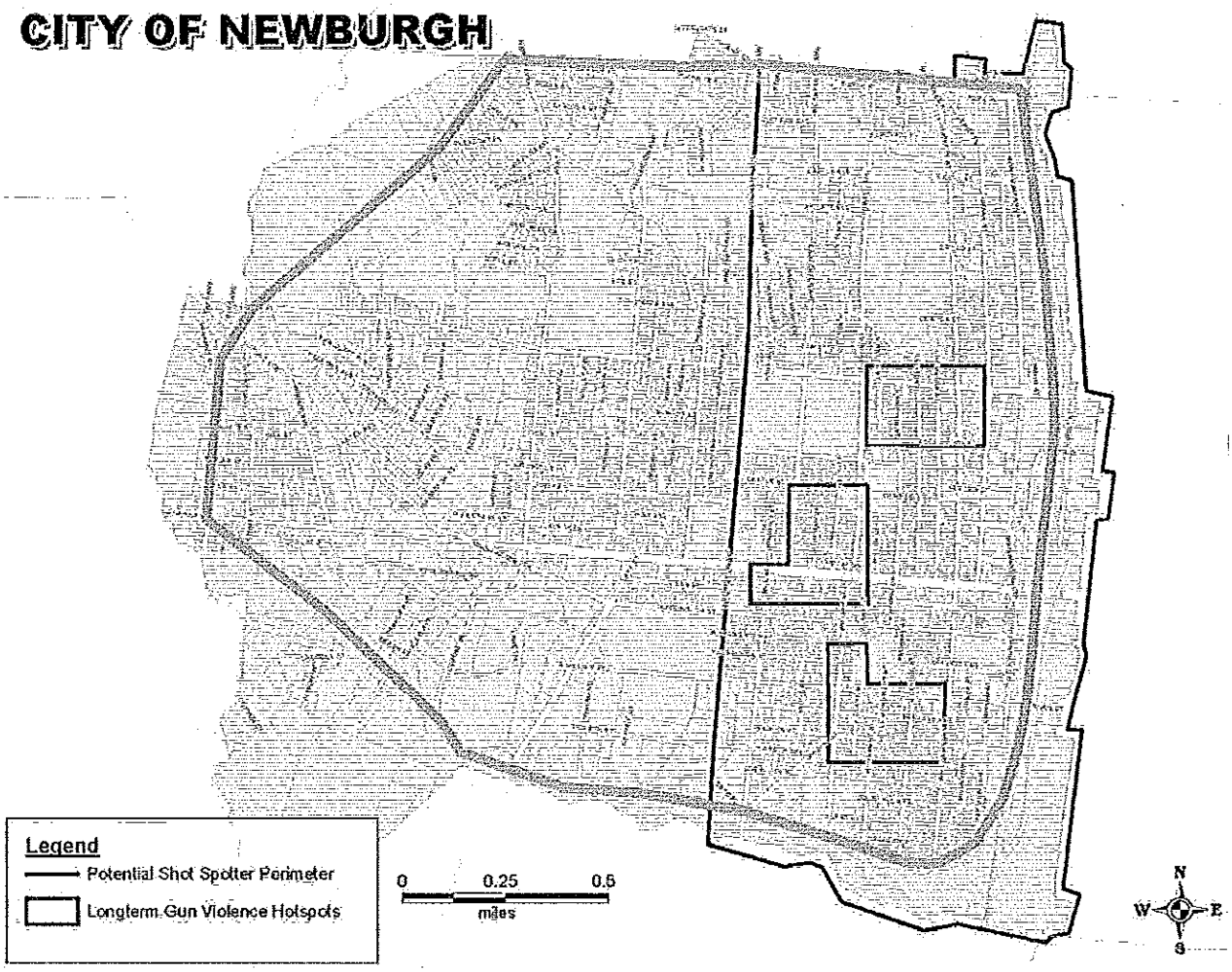


Figure 1: Proposed ShotSpotter Coverage (GREEN) = 3.0 mi²

Pricing, Terms and Conditions

The pricing provided is a firm fixed price quote, which remains valid for ninety (90) days from the date prepared (listed on the cover page).

The price as listed herein does not include any state or local taxes. Customer is responsible for notifying SST if the price needs to be adjusted for taxes.

One-Time Service Startup Fees

Service initiation fee for 3.0 square miles @ $10,000/mi²	$ 30,000.00
SST GO Program Onboarding, Training, and Best Practices Support	$ 10,000.00
Notification Engine (Video Surveillance) Interface License • Does Not include 3rd party middleware	$ 19,000.00
Total One-Time Fees	**$ 59,000.00**

Subscription Fee for Eighteen (18) Month Term

3.0 square mile coverage area @ $65,000/mi²/year (Figure 1-GREEN)	$ 292,500.00
Total Subscription Fee	**$ 292,500.00**

Total for First Eighteen (18) Month Term

One-Time Service Startup Fees	$ 59,000.00
18-Month Subscription for 3.0 square miles	$ 292,500.00
Grand Total First 18 Month Subscription	**$ 351,500.00**

Optional

Annual Subscription Renewal	$ 195,000.00

Payment Terms

Payment for the service initiation and startup, all subscription fees, and any and all optional service fees shall be as follows:

- 50% due upon execution of agreement
- 50% due upon ShotSpotter Flex℠ "live" status

Detailed Flex Service Agreement (See Attached Exhibit)

The attached ShotSpotter Flex Service Agreement is incorporated herein by reference and constitutes an integral part of this purchase document. Unless specifically so-stated above, should there be any question of precedence between the exhibit and this purchase document, then the exhibit, a single consolidated document shall be superior to the purchase document itself.

Agreement

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date(s) shown below.

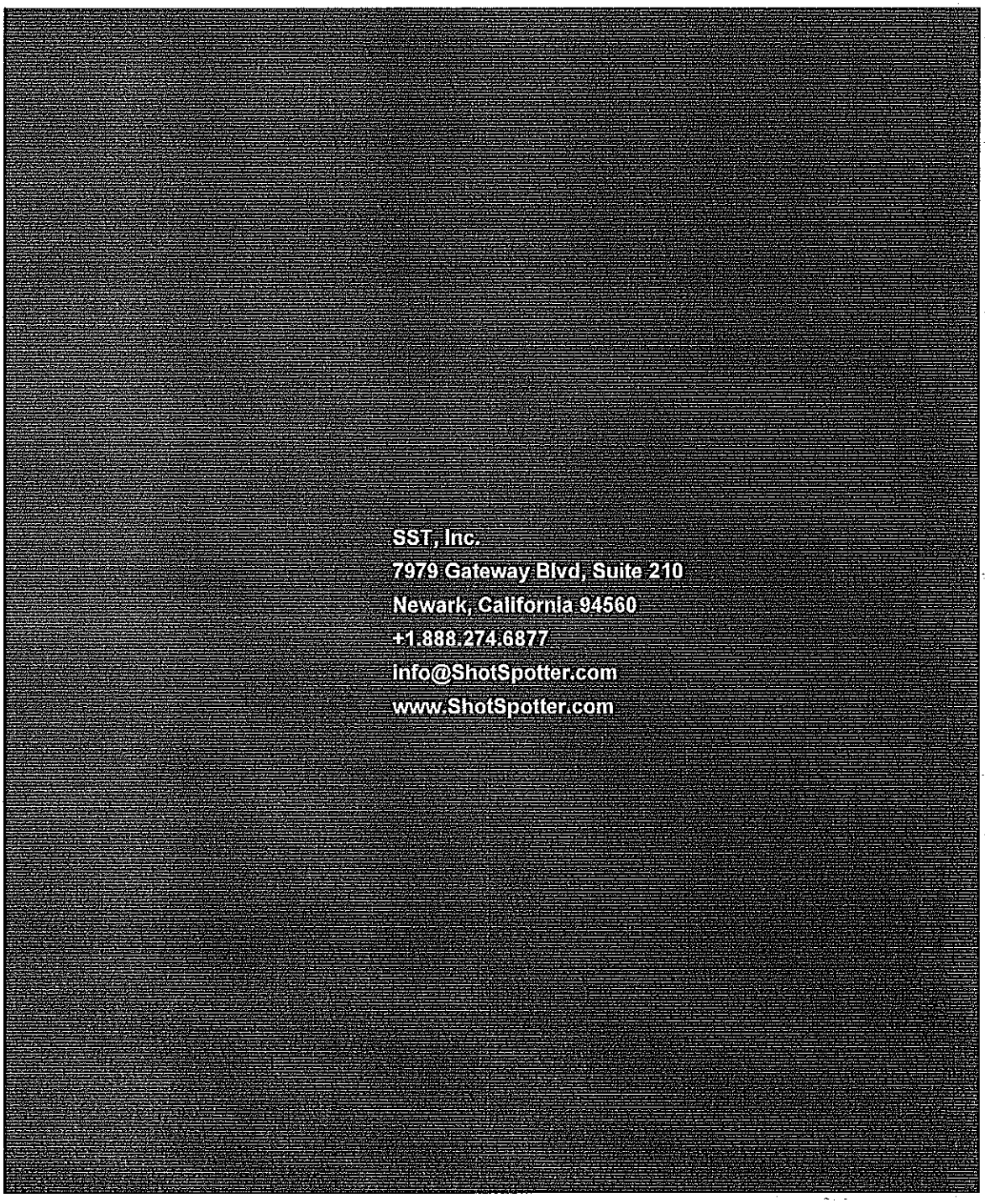
ShotSpotter, Inc.	**City of Newburgh, New York**
By:	By:
(Authorized Signature)	(Authorized Signature)
Name:	Name: **Michael Ciaravino**
Title:	Title: **City Manager**
Date:	Date:

By: _____
(Authorized Signature)

Name: **Dan Cameron**

Title: **Chief of Police**

Date:


SST, Inc.
7979 Gateway Blvd, Suite 210
Newark, California 94560
+1.888.274.6877
info@ShotSpotter.com
www.ShotSpotter.com

SERVICES AGREEMENT

ShotSpotter® Flex℠

confidential

SST, Inc.

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info@ShotSpotter.com
www.ShotSpotter.com

SST, Inc. (also "ShotSpotter," "we," "us," or "our") and the end-user customer (also "Customer," "you" or "your") agree to the following Services and License Agreement and General Terms and Conditions (hereinafter, "Agreement").

The following Agreement is an essential part of the "Purchase Documents" (which term shall include this Agreement and all executed proposals and purchase orders, together with all attachments and appendices) under which you purchase ShotSpotter Gunshot Location services identified in the Purchase Documents and described herein ("Service"). Your access, or use of any part of the Service (and/or signature on the purchase order and/or agreement) shall constitute your representation that you have read all the terms and conditions of this Agreement, and your acceptance of them as an integral part of the Agreement and your purchase or order of the Service. If you do not agree to be bound by these terms and conditions, do not access or use any part of the Service.

1. SERVICES

In consideration of the parties' mutual undertakings set forth in the Purchase Documents and in this Agreement, you and we agree as follows:

For purposes of this Agreement, the Service shall consist of (i) providing access by the Customer to Reviewed Alerts delivered via a password-protected internet portal ("Alert Console") and user interface supplied by SST (together the Alert Console and interface shall be called the "Software") (ii) providing access to historical Reviewed Alerts and incident information via the Software; and (iii) other services as specified in the Purchase Documents.

Reviewed Alerts consist of data for gunfire incidents, detected by the ShotSpotter Gunshot Location System and reviewed by a SST incident reviewer employee (see Exhibit A).

SST will install or convert the ShotSpotter Gunshot Location System in the coverage area specified in the Purchase Document. SST will host the Service and may update the functionality and Software of the Service from time to time in its sole discretion and in accordance with this Agreement.

Except in the circumstances where a system has been previously purchased and is being converted, SST shall retain ownership of, and all rights to, all components of the ShotSpotter Gunshot Location System, including hardware components, Software and firmware. Under this Agreement the Customer is only licensing rights to access the incident information detected by the ShotSpotter Gunshot Location System.

2. LICENSE

The following sets forth the terms and conditions of your non-exclusive, non-transferable and terminable license to use the Service and Data (as those terms are defined herein).

This License creates important legal rights and obligations, so please read it carefully before using the Service. This License constitutes an offer by us to you. **By manifesting electronically your assent to these terms, using the service, or by issuing a purchase order or signing a purchase**

agreement, you agree to be bound by the terms and conditions of this license. If you do not agree to be bound by the terms of this License, do not issue or execute a Purchase Document, or use the Service.

A. RIGHTS IN DATA.

All Data created, generated, modified, compiled, stored, kept or displayed by SST through the Subscription Service in the course of providing the Subscription Service and related Services to Customer, remains the sole and exclusive property of SST . Subject to subparagraph (ii) below, SST expressly reserves the rights to copy, publish, display, adapt, modify, translate, perform publicly, make works derived from, transfer, sell, offer for sale, and to use any and all Data for any purpose. Notwithstanding the foregoing sentence and although SST owns the Data with respect to the Subscription Service, SST will provide reasonable notice if any Data to be released is specific forensic or law enforcement sensitive incident information – For discussion that may pertain to any active investigation or prosecution. At no time, either in a non-exclusive or exclusive data ownership, does SST release, sell, license, or otherwise distribute the gunfire alert Data to the press or media without the prior express consent, which shall not be unreasonably withheld.

If the customer purchases the exclusivity option, then SST will not distribute to any third party any Data related to or generated by ShotSpotter Gunshot Location System in Customer's coverage area, unless in response to a valid order or subpoena issued by a court or other governmental body, or as otherwise required by law.

SST expressly reserves the rights to copy, publish, display, adapt, modify, translate, perform publicly, make works derived from, transfer, sell, offer for sale, and to use any and all Data (including, without limitation, Reviewed Alerts) for any purpose, and to authorize, license, and sublicense others to do any or all of the same.

B. RESTRICTIONS.

The Software and Data are our proprietary products, may incorporate components supplied to us under license by third-party suppliers, and may be protected by United States patent, trade secret, copyright law and international treaty provisions. All such rights in and to Software and Data and any part thereof are the property of us or our suppliers. By virtue of this License, you acquire only the right to use the Software and Data in accordance with this Agreement, but otherwise acquire no license, title or ownership rights, express or implied, in or to the Software or Data, or any right to use or practice any of our patents, copyrights, trademarks, or trade secrets, all of which rights are reserved expressly by us or our suppliers. You may not make any copies of the written materials or documentation that accompanied any component of the Software, or use them, or any other information concerning the Service that we have designated as confidential, for any purpose other than bona fide use of the Service or Software for the specific purposes contemplated herein, nor allow anyone else to do so. You shall not, without our express

written consent, which may be withheld or conditioned in our sole discretion: (i) modify, adapt, alter, translate, copy, perform or display (publicly or otherwise) or create compilations, derivative, new or other works based, in whole or in part, on the Software or Data, or on the Service; (ii) merge, combine, integrate or bundle the Software or the Data, in whole or in part, with other software, hardware, data, devices, systems, technologies, products, services, functions or capabilities; (iii) transfer, distribute, make available the Service, Data, or Software to any person other than the specific end-user customer identified to SST in the Purchase Documents, sell, resell, sublicense, lease, rent, or loan the Service, Data, or Software, in whole or in part, or (iv) provide use or permit operation of any of the Service, Software or Data by any person other than the original end- user customer designated in the Purchase Documents, nor in or through any application service provider, service bureau, rental or time-sharing arrangement; (v) disassemble, decompile, or otherwise reverse engineer or attempt to reconstruct, derive, or discover, any source code, underlying ideas, algorithms, formulae, routines, file formats, data structures, programming, routines, interoperability interfaces, drawings, or plans from the Data or Software, or any data or information created, compiled, displayed, or accessible through the System, in whole or in part; or (vi) remove, modify or obscure any identification or proprietary or restrictive rights markings or notices from the Data, Software or any component thereof.

SST and its licensors retain all ownership of all intellectual property rights in and to all Data, Software, all computer programs, related documentation, technology, knowhow and methods and processes embodied in or made available to you in connection with the Service, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. All rights not expressly granted to you herein are reserved by SST. You shall take all reasonable measures to protect SST's intellectual property rights in the Service and Software, including providing assistance and measures as are reasonably requested by SST from time to time.

You are hereby placed on notice that alteration or removal of copyright management information (including, without limitation, licensor's name and other identifying information, name of the Service, the terms and conditions of this License, and identifying numbers or symbols) embodied in or associated with the Service is prohibited, because such conduct may cause others to infringe our rights in and to the system, Service and/or Software. You may also not obscure or remove any confidentiality, patent, trademark or copyright notices on any component of the Service, or any documentation.

C. TERMINATION.

You agree that your right to use the Service, Software and Data will terminate automatically if you violate any of the terms of this License, or fail to timely pay any sums you owe to us or resellers

or integrators of our Service, or fail to renew the Service upon expiration of the Service term. In the event of termination, your access to the Data and Software will be terminated, and SST will cease delivering Reviewed Alerts, and disable your access to the Data. Customer agrees that SST shall not be liable to Customer nor to any third party for any suspension of the Service resulting from Customer's nonpayment of fees as described in this section.

D. MODIFICATION TO OR DISCONTINUATION OF THE SERVICE.

SST reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that SST modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, SST, at Customer's request, shall use commercially reasonable efforts to restore such functionality to Customer. In the event that SST is unable to substantially restore such functionality, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the annual Service fees paid under the Agreement for use of the Service which was paid for by Customer but not yet furnished by SST as of the date of such termination. Customer acknowledges that SST reserves the right to discontinue offering the Service at the conclusion of Customer's then current term. Customer agrees that SST shall not be liable to Customer or to any third party for any modification of the Service as described in this section.

E. OTHER RESTRICTIONS.

You acknowledge and agree that the source code and internal structure of the Software, Data and Service, as well as documentation, operations manual and training material are our confidential property, and trade secrets, the value of which would be destroyed by disclosure to the public. Use by anyone other than you of the Service, documentation, and Data is prohibited, unless pursuant to a valid assignment under this Agreement.

3. LIMITED EXCLUSIVE WARRANTY.

Provided that you comply with your obligations under the terms and conditions stated herein, we warrant that the Software (as defined herein) will be free of defects in workmanship which materially impair the functioning of the Service and Software in substantial conformity with the specifications documentation accompanying the Service.The Software covered under this limited exclusive warranty consists exclusively of ShotSpotter Alert Console software and user interface, installed and operated locally on customer's computers and devices supplied by SST for your use by on and in connection with a ShotSpotter System, subject to the terms and conditions of the License between you and us.

A. REVIEWED ALERT SERVICE LEVELS.

As regards to sonic event review and alert services, subject to the Customer's compliance with its obligations hereunder, and to the disclaimers and limitations set forth in Exhibit A, and in Sections

5(C), 6, 7, 13 and 15 of this Agreement, we agree to provide the service levels set forth in Exhibit A, attached hereto.

B. SYSTEM CONFIGURATION AND SERVICE LEVELS.

As regards to System configuration, subject to the Customer's compliance with its obligations hereunder, and to the disclaimers and limitations set forth in Exhibit B, and in Sections 5(C), 6, 7, 13 and 15 of this Agreement, we agree to provide the service levels set forth in Exhibit B, attached hereto.

C. OTHER WARRANTY.

SST warrants that the Service, Data and Software shall be free of viruses, Trojan horses, worms, spyware, or other malicious code or components.

The limited exclusive warranties expressly set forth in this Agreement are the only warranties made to you and are provided in lieu of any other warranties (if any) created by any documentation or packaging, or otherwise express or implied. These limited exclusive warranties give you specific legal rights, and you may also have other rights which vary by jurisdiction.

4. SST SUPPORT.

During the term of the Services, SST will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to providing Customer with user guides, online help, online training presentation, and online training sessions (as available). SST will provide reasonable efforts to respond via email to requests for support relating to incident classification within 8 hours of the request.

In addition, SST will use commercially-reasonable efforts to respond to other support requests within 24 hours of receipt of the request during the period of 8am to 5 pm Monday through Friday. The e-mail support specialist shall be responsible for receiving Customer reports of missed incidents, or errors in the Service, and, to the extent practicable over email or telephone, making commercially-reasonable efforts to assist the Customer in resolving the Customer's reported problems. In the event the problem cannot be resolved telephonically, then SST will use commercially-reasonable efforts to restore functionality of the Service to Service specifications within 72 business hours of receipt of the report.

A. FORENSIC REPORTS.

SST, at the specific request of the customer, will produce and provide a reasonable quantity of detailed incident forensic reports for any ShotSpotter detected incidents, including Reviewed Alerts, if such information is deemed by the customer to be valuable to the customer for investigation follow-up, prosecutorial requirements, or after action review.

Such reports must be requested a minimum of 5 days in advance of when needed, and all such requests must be in writing and addressed to the SST Customer Service Department. Customer

should expect delivery of these reports within 5 days after receipt of the request. This benefit shall only be available to Customer if Customer is fully current with payments due under this Agreement. In the case that Customer is not current with their payments, then forensic reports shall not be generated nor provided to Customer until Customer becomes current with its payment obligations.

B. EXPERT WITNESS SERVICES.

SST offers reasonable expert witness services. The Customer will be responsible for all travel and per diem reimbursement. At the specific request of the customer, SST will provide individual(s) for the purposes of expert witness testimony for any ShotSpotter detected incidents, including Reviewed Alerts, for which the incident information is deemed by the customer to be valuable to the customer's prosecutorial requirements. Customer understands that SST undertakes to provide individuals whose qualifications are sufficient for such services, but does not warrant that any person or his or her opinion will be accepted by every court. SST requires at least fourteen (14) days prior notice of such a requirement in writing from the Customer. Customer must include dates, times, specific locations and a point of contact for SST personnel. Due to the nature of legal proceedings, SST cannot guarantee that its services described in this section shall produce the outcome, legal or otherwise, which Customer desires. Payment for expert witness services described shall be due and payable when services are rendered regardless of the outcome of the proceedings.

5. TERM, RENEWAL

A. TERM AND COMMENCEMENT.

The Service term shall be specified in the Purchase Document and will commence on the date that the Service is available to the Customer via the Alert Console.

B. RENEWAL.

The Service may be renewed for successive periods of one year each, in accordance with the following procedure. Not later than thirty (30) days prior to the expiration of the Service term then in effect, Customer shall issue a purchase order and tender payment in full for the next annual renewal (unless otherwise agreed in writing by SST), and the term shall be renewed for another year. SST shall provide Customer with renewal fees, terms and conditions for the next successive renewal term upon Customer's request but no later than 90 days from the expiration date. Customer acknowledges that the Service fees, terms and conditions and service levels hereunder are subject to change and that such fees, terms and conditions, and service levels may vary from those applicable to this Agreement in successive renewal terms.

If Customer fails to renew in a timely manner and hence allows the Service term to expire then the Service will terminate in accordance with Section 2. C. At its discretion, SST may remove the ShotSpotter Gunshot Location System and any

components from the coverage area at that time. If SST does not remove the ShotSpotter Gunshot Location System from the coverage area, Customer may reinstate the Service at a later date by renewing, however Customer will not have access to any Reviewed Alerts that they would have had access to during the lapsed period.

C. COMMERCIAL CARRIER DATA SERVICES.

The ShotSpotter Gunshot Location System may use wired, wireless or cellular wireless acoustic sensor communications which necessitates the existence of a real- time data communications channel from each sensor to the hosted servers via a commercial carrier. The unavailability or deterioration of the quality of such wired, wireless or wireless cellular communications may impact the ability of SST to provide the Service. In such circumstances SST will use commercially reasonable efforts to obtain alternate wired or wireless cellular communications or adjust the coverage area as necessary. In the event SST is unable to do so, SST will terminate the Service and refund a pro-rata portion of the annual Service fee to Customer.

6. IP INFRINGEMENT; EXCLUSIVE REMEDY.

Subject to the terms and conditions hereof, SST agrees to defend and indemnify Customer (provided it is the actual End-user Customer of the Service) from and against losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of a claim asserted in a lawsuit or action against the end-user customer by a third party unrelated to the customer, in which such third party asserts a claim that the Service and/or Software, when used in accordance with SST's specifications and for the purposes intended, infringes any United States patent which was issued by the U.S. Patent and Trademark Office, or United States copyright which was registered by the U.S. Copyright Office, as of the effective date of Customer's agreement to purchase the ShotSpotter Flex System.

Provided, however, that SST shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof, and that Customer shall provide SST with reasonably prompt written notice of any such suit or action, and of any oral, written or other communication or other information or circumstances of which Customer becomes aware that could reasonably be expected to lead to such a suit or action (including any and all cease and desist demands or warnings, and offers or invitations to enter license agreements), and shall provide SST all reasonable assistance and information in connection with SST's investigation and defense of any claim of infringement.

Further provided, however, that this section shall not apply and SST shall have no obligation to defend and indemnify Customer in the event the Customer or a reseller, integrator, service provider or supplier modifies, alters, substitutes, or supplements any of the Service, or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger or combination of any of the same with other

hardware, software, systems, technologies, or components, functions, capabilities or applications not licensed by SST as part of the Service, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction or specification furnished by the Customer, nor to the extent that the Service or Software are used for or in connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

If, in SST's opinion, the Service, or Software may, or is likely to become, the subject of such a suit or action, does become the subject of a claim asserted against a customer in a lawsuit which SST is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to SST's obligations under this section, then SST may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for Customer the right to continue using the affected Service or Software, (2) modify or replace such Service or Software to make it or them non-infringing, or (3) refund to the purchaser a pro-rata portion of the annual Service price paid for the Service System.

The foregoing section states the entire liability of SST and customer's and its suppliers' exclusive remedy for or relating to infringement or claims or allegations of infringement of any patent, copyright, or other intellectual property rights inor to the system, system components, and software. This section is in lieu of and replaces anyother expressed, implied or statutory warranty against infringement of any and all intellectual property rights.

7. LIMITED WARRANTIES EXCLUSIVE; DISCLAIMERS IMPORTANT; PLEASE READ CAREFULLY

To the maximum extent permitted by applicable law, the limited warranties expressly set forth above are exclusive, and in lieu of all other warranties, whether written, oral, express, implied or statutory. There are no warranties that extend beyond those expressly set forth herein, and no prior statements, representations, or course of dealing by any SST representatives shall vary, expand or modify these warranties.

To the maximum extent permitted by applicable law, all other representations or warranties, express, implied, or statutory, including without limitation, any warranties of non-infringement, quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this agreement are hereby expressly disclaimed and superseded by the exclusive limited express warranty and disclaimers set forth herein.

Without limiting the generality of the foregoing limitations and disclaimers, while the Service is not designed, sold, or intended to be used to detect, intercept, transmit or record oral or other communications of any kind, SST cannot

controlhow the Service is used, and, accordingly, SST does not warrant or represent, expressly or implicitly, that use of the Service will comply or conform to the requirements of federal, state or local statutes,ordinances and laws, or that use of the Service will not violate the privacy rights of third parties. You shall be solely responsible for using the Service in full compliance with applicable law and the rights of third persons.

Further, regardless of any prior statements, representations, or course of dealings by any SST representatives, we do not warrant or represent, expressly or implicitly, that the Service or its use will: result in the prevention of crime or hostile enemy action, apprehension or conviction of any perpetrator of any crime, military prosecution of any enemy force, or detection or neutralization of any criminal, combatant or threat; prevent any loss, death, injury, or damage to property due to the discharge of a firearm or other weapon; in all cases result in a Reviewed Alert for all firearm discharges within the designated coverage area; or that the SST-supplied network will remain in operation at all times or under all conditions.

SST expressly disclaims, and does not undertake or assume any duty, obligation or responsibility for any decisions, actions, reactions, responses, failure to act, or inaction, by Customer as a result of or in reliance on, in whole or in part, any Services or Reviewed Alerts provided by SST, or for any consequences or outcomes, including any death, injury, or loss or damage to any property, arising from or caused by any such decisions, actions, reactions, responses, failure to act, or inaction. It shall be the sole and exclusive responsibility of the Customer to determine appropriate decisions, actions, reactions or responses, including whether or not to dispatch emergency responder resources. The Customer hereby expressly assumes all risks and liability associated with any and all action, reaction, response, and dispatch decisions, and for all consequences and outcomes arising from or caused by any decisions made or not made by the Customer in reliance, in whole or in part, on any Services provided by SST, including any death, injury, or loss or damage to any property.

Any and all warranties, express or implied, of fitness for high risk purposes requiring fail-safe performance are hereby expressly disclaimed.

You and we each acknowledge and agree that the Service is not a consumer good, and is not intended for sale to or use by or for personal, family or household use.

8. YOUR OBLIGATIONS.

You acknowledge and agree that SST's duties, including warranty obligations, and ability to perform its obligations to you shall be predicated and conditioned upon your timely performance of and compliance with your obligations hereunder, including, but not limited to:

A. You agree to pay all sums due under the purchase agreement or order as and when they are due pursuant to the terms of such agreement or order. Actual access and use of the SST Service shall constitute evidence that the Service is active and the final payment is due.

B. You agree to use your best efforts to timely perform and comply with all of your obligations allocated to you in the Purchase Documents and/or other contract documents, including, without limitation, provisions regarding assisting SST in obtaining sensor site permissions from premises owners or lessors, in locations reasonably acceptable to SST, which obligations are incorporated by reference and made a part hereof. Unless the Statement of Work or other contract documents signed by SST allocates such obligations to SST expressly, customer shall be responsible for securing from premises owners or lessors all rights necessary to enter onto their premises to install sensors, and to place, operate and maintain such sensors on such premises. SST's duties, including warranty obligations to you shall be predicated and conditionedupon your timely performance of and compliance with your obligations set forth herein, and in the Purchase Documents.

C. You shall not permit any alteration, modification, substitution or supplementation of the SST Service or web portal, or the combining, connection, merging, bundling, or integration of the SST Service or web portal into or with any other system, equipment, hardware, software, technology, function or capability, without our prior written consent.

D. Unless otherwise expressly agreed in advance in writing by SST, you shall not resell, transfer, distribute or allow access to the Service or web portal or any portion thereof, to any person other than the specific end-user previously identified to SST in the Purchase Documents, and shall not authorize or appoint any contractors, subcontractors, original equipment manufacturers, value added integrators, systems integrators or other third parties to operate, have access to, or sublicense the Products.

E. Customer Must Have Internet Access. In order to use the Service, Customer must have or must obtain access to the World Wide Web to enable a secure https connection from the customers work station to SST's hosted services, either directly or through devices that access Web-based content. Customer must also provide all equipment necessary to make such (and maintain such) connection.

F. Passwords and Access. Customer may designate up to the number of users under Customer's account which corresponds to the access required by assigning unique passwords and user names. Customer will be responsible for the confidentiality and use of Customer's password and user names, and agrees that sharing passwords and/or user names with unauthorized users is prohibited.

G. You shall comply with all applicable laws, rules and regulations relating to the goods and services provided hereunder.

9. INTELLECTUAL PROPERTY RIGHTS; LIMITED LICENSE.

We or our licensors retain all ownership of all intellectual property rights in and to all data, software, computer programs, related documentation, technology, knowhow and processes embodied in or made available to you in connection with the Service, and Software, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. Your rights to install and use the Data and Software are limited, and shall be strictly in accordance with the License setforth in Section 2 hereof. Any and all rights not granted expressly in such License are hereby reserved.

10. EXPORT CONTROL.

You acknowledge that the ShotSpotter Flex System is the subject of a Commodity Jurisdiction determination by the United States Department of State, and has been determined to be a controlled commodity, software and/or technology subject to the United States Export Administration Regulations of the U.S. Department of Commerce. Accordingly, no part of the Data, Software, ShotSpotter Flex System or any GLS System component thereof may be transferred, consigned, shipped, delivered, received, exported or re-exported, nor may any technical data directly relating to any of the same or the underlying information or technology be disclosed, downloaded, uploaded, transmitted, received, furnished, or otherwise provided, to, by or through any person, government, country, or to any end-user, or for any end-uses, except in compliance with applicable U.S. export control laws administered by the U.S. Government, and any other applicable U.S. laws, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of your country. In this respect, no resale, transfer, or re-export of any ShotSpotter Flex System exported to you pursuant to a license from the U.S. Department of Commerce may be resold, transferred, or reported without prior authorization by the U.S. Government. Customer agrees not to export, re-export or engage in any "deemed export," or to transfer or deliver, or to disclose or furnish, to any foreign (non- U.S.) government, foreign (non-U.S.) person or end-user, or to any U.S. person or entity, any of the ShotSpotter Flex System, GLS System components, Data, Software, Services, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations, or without all necessary registrations, licenses and or approvals. Unless otherwise agreed and so specified in the Purchase Documents, you shall obtain and bear all expenses relating to any necessary determinations, registrations, licenses and/or exemptions with respect to its exportation, re- exportation or "deemed export" of the ShotSpotter Flex System, Data, Software or any GLS System Components or Services, as well as

with respect to the disclosure or furnishing of any technical data or other information and services relating to any of the same.

In addition to compliance with the foregoing, and without limiting the generality thereof, Customer shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any person or entity on the U.S Department of Commerce Bureau of Industry and Security's List of Denied Persons or Bureau of Export Administration's anti-proliferation Entity List; (b) any person on the U.S. Department of State's List of Debarred Parties; (c) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons; or (d) any other end-user or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

11. PROTECTION OF CONFIDENTIAL INFORMATION.

Unless either party (the "Receiving Party") obtains prior written consent from the other (the "Disclosing Party"), the Receiving Party agrees that it will not reproduce, use for purposes other than those expressly permitted herein, disclose, sell, license, afford access to, distribute, or disseminate any information: i) obtained from the Disclosing Party in connection with the System purchase, installation or operation, and designated by it from time to time as confidential; ii) the documentation, use and operations manuals; and output data created or compiled by the ShotSpotter Flex System; iii) your use of the ShotSpotter Flex System or technology, your deployment methodology, results, or related facts; iv) the contractual terms and payment terms applicable to the purchase of the ShotSpotter Flex System or technology, except as required by local law (collectively, "Confidential Information") Unless a section of the Purchase Document(s) specifically identifies the identity of Customer as Confidential Information, the fact that Customer is a customer of SST shall not itself be considered Confidential Information, nor shall the name of any city in which the ShotSpotter GLS System is deployed be considered confidential information. Recipient's obligations under this section shall not apply to any of Discloser's Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Recipient by Discloser through no fault of Recipient; (b) was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by such Discloser; (c) was developed by employees or agents of Recipient independently of and without reference to any of Discloser's Confidential Information; or (d) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any of Discloser's Confidential Information (a) in response to a valid order by a court or other governmental body; (b) as otherwise required by law; or (c) necessary to establish the rights of either party under this Agreement shall not be considered to be

a breach of this Agreement by such Recipient; provided, however, such Recipient shall provide prompt prior written notice thereof to such Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. Receiving Party shall use reasonable controls to protect the confidentiality of and restrict access to all such Confidential Information to those persons having a specific need to know the same for purposes expressly authorized herein, and render unreadable prior to discarding, all records containing our Confidential Information. In any event such controls shall not be less protective than those Receiving Party uses to secure and protect its own confidential, but not "Classified" or otherwise Government-legended, information.

12. NOTICES.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing at such party's address or number or at such party's last known address or number. The party's addresses may be changed by written notice to the other party as provided herein.

13. FORCE MAJEURE.

In no event shall SST be liable for any delay or default in its performance of any obligation under this or any other agreement caused directly or indirectly by an act or omission of Customer, or persons acting under its direction and/or control, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of wireless, power, telecommunications, or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo or civil disturbance, breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond SST's reasonable control. At SST's option and following notice to Customer, any of the foregoing causes shall be deemed to suspend such obligations of SST so long as any such cause shall prevent or delay performance, and SST agrees to make and Customer agrees to accept performance of such obligations whenever such cause has been remedied.

14. DEFAULT; REMEDIES.

Upon the occurrence of any default by or breach of your obligations, we may at our option, effective immediately, either: (i) terminate our future obligations under this agreement, terminate your License to use the Service and Software, or (ii) accelerate and declare immediately due and payable all remaining charges for the remainder of the agreement and proceed in any lawful manner to obtain satisfaction of the same. In either case, you shall also be responsible for paying court costs and reasonable attorneys' fees incurred by or on behalf of us, as well as applicable repossession, shipping, repair and refurbishing costs.

15. LIMITATIONS ON LIABILITY.

In no event shall either party, or any of its affiliates or any of its/their respective directors, officers, members, attorneys, employees, or agents, be

liable to the other party under any legal or equitable theory or claim, for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

In any event, except for its IP infringement indemnity obligations under section 6 hereof, SST's cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this agreement) and regardless of the form of action or legal theory shall not exceed two times the amount paid to SST under this agreement, or the amount of insurance maintained by SST available to cover the loss, whichever is greater. The foregoing limitations shall apply without regard to any failure of essential purpose of any remedies given herein.

16. GENERAL PROVISIONS.

A. NO AGENCY.

Neither SST nor any of its employees is an agent or representative of Customer and the Customer is solely responsible for obtaining any requiredauthorizations from any governmental agency, body or commission and for compliance therewith.

B. COMPLIANCE WITH LAWS AND TAXES.

You shall comply with all applicable laws, statutes and regulations relating to the sale, distribution, and use of the Service and the performance of your duties and obligations hereunder. All prices are exclusive of all tariffs, customs duties, imposts, national, federal, provincial, state, and local VAT, excise, sales, use and similar taxes. You will be pay and be responsible for paying any and all such taxes and tariffs, when applicable.

C. EQUAL OPPORTUNITY CONTRACT CLAUSE.

SST is committed to the provisions outlined in the Equal Opportunity Clauses of Executive Order 11246, (41 CFR 60- 1.4), section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)), section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-250.5(a)), and, the Jobs for Veterans Act of 2003, (41 CFR 60-300.5(a)) as well as any other regulations pertaining to these orders.

D. SEVERABILITY AND INTERPRETATION.

If any provision, in whole or in part, of this Agreement and/or the Purchase Documents of which it is a part is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions, and there shall be substituted for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. No part or provision shall be interpreted in favor or against any party because such party or its counsel drafted

the relevant provision. No course of dealing, usage, custom of trade, or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement and Purchase Document(s).

E. INTEGRATION, AMENDMENT AND WAIVER.

This Agreement, and the Purchase Document(s) of which it is a part, together with any other exhibits or appendices thereto, constitute the entire understanding between SST and you. No other documents or representations shall be used in interpreting it. Any and all written or oral agreements heretofore existing between the parties are expressly cancelled and/or superseded. Any other document, proposal, specification, statement of work, marketing collateral, or representation which may vary, alter, amend or supplement these terms and conditions will not be binding unless agreed to in a writing signed by appropriate representatives of both SST and Customer. No modification, variance, amendment or waiver of any part of Agreement or Purchase Document(s) shall be binding upon either party, whether written, oral, or in any other medium, unless made in writing and signed by authorized representatives of both parties. All the parties' rights and duties are material and time is of the essence; no waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party; no waiver of either party's breach of any provision of this Agreement or Purchase Documents shall constitute a waiver of any prior or subsequent breach of the same or any other provision, and no failure to exercise, and no delay in exercising, any right(s) hereunder on either party's part shall operate as a waiver of any such right; all of the parties' rights are cumulative; and, no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

F. BENEFIT AND BURDEN; ASSIGNMENT.

Subject to the following provisions, this Agreement and the Purchase Documents of which they are a part shall be binding upon permitted successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns only. Notwithstanding that the Service and Software, and its output data may be used for law enforcement, military, public safety, and force protection purposes, there are no third party beneficiaries intended to benefit from these general terms and conditions of sale, or the agreement or order of which they are a part. Customer may not assign or transfer this Agreement and the Purchase Documents of which they are a part, or any of the rights granted therein, in whole or in part, by operation of law or otherwise, without SST's express prior written consent. SST may assign or transfer this Agreement and the Purchase Documents and/or SST's rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining Customer's consent. No assignee for the benefit of Customer's creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of Customer's assets or business, shall have any right to continue or to

assume or to assign these without SST's express consent.

G. GOVERNING LAW AND DISPUTE RESOLUTION.

The validity, performance, and construction of this agreement shall be governed by the laws of the laws of the State of California, without giving effect to the conflict of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and shall not apply. If the parties disagree as to any matter arising under this Agreement or the relationship and dealings of the parties hereto, then SST and Customer shall promptly consult with one another and make diligent, good faith efforts to resolve the disagreement, by negotiation. Should the dispute not be resolved within a reasonable time after commencement of such negotiations, it shall be mediated before one or more mediators mutually acceptable to both parties. Costs of mediation will be allocated as part of the resolution in mediation, but absent such resolution, shall be paid equally by the parties. If such effort is unsuccessful, any controversy or claim arising out of or relating to this Agreement or the validity or breach of any of the provisions thereof, or the relationship, dealings, rights, and obligations of the parties, or use of the Service, shall be settled by binding arbitration, before three arbitrators, in or as near as possible to Newark, California, United States of America, or in such other location as the parties may agree, in accordance with the Commercial Rules of the American Arbitration Association in effect on the date of this agreement. Such arbitration shall be conducted before three arbitrators. The parties acknowledge and agree that this agreement involves a commercial transaction in commerce and that arbitration and award hereunder shall be governed by the federal Arbitration Act. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In addition to any other remedies to which it may be entitled, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs (including expert witness fees and costs) incurred in connection with enforcing its rights or defending itself.

All parties hereby irrevocably waive any and all rights they may have to a trial by jury in any judicial proceeding involving any claim relating to or arising under this agreement or any other agreement between the parties hereto.

EXHIBIT A – Reviewed Alert Service Levels

The ShotSpotter Flex System detects loud impulsive incidents, classifies them as gunfire, fireworks, or other, and sends them to the SST Incident Review Center. Within 15 seconds of receiving the incident audio download, SST review personnel will begin analysis of the incident, which will include observing sensor audio wave files and listening to sensor audio. The outcome of this review is intended to confirm or change the System's classification of the incident type, and, depending on the reviewer's confidence level that the incident is or may be gunfire, will result in an alert ("Reviewed Alert") sent to the Customer's **Alert Console**, based on the following criteria:

Incident Type	Action
High confidence incident is gunfire	Reviewed Gunfire Alert sent to Customer Alert Console
Uncertain if incident is gunfire or not	Reviewed Possible Gunfire Alert sent to Customer Alert Console
Low confidence incident is gunfire	**No alert will be sent**; incident available for customer review in the incident history available through the Customer Alert Console

Reviewed Alerts are sent to the Customer Alert Console. Information in a Reviewed Alert will include the location of the incident, the reviewer's qualitative assessment of the confidence level that the incident is or may be gunfire, along with other pertinent information and data.

Specifically, information provided in a Reviewed Alert may include any or all of the following:

- "Dot on the map" and closest parcel address denoting the location of the incident
- Qualitative Confidence that the incident is gunfire: High or Uncertain
- Qualitative Severity: Single shot, multiple shots, drive by shooting, full automatic
- Comments (if any)

The majority of incidents will be processed within 45 seconds of the System notifying the SST Incident Review Center of an incident and 90% of the incidents will be processed in less than 60 seconds. In the unlikely event that the review center loses connection to the hosting facility or the review center is unable

to process the incident within approximately 60 seconds for some reason, the system will automatically route unreviewed incidents directly to the customer based on the systems classification of the incident. In the event the reviewed incident data reveals information that will aid in responder situational awareness, SST may (but is not obligated to) include this information as Comments in the Reviewed Alert.

During major holidays such as in the case of New Years Eve, Independence Day, and Cinco de Mayo, most communities experience a large increase in firework activity. During these periods, usually at least 48 hours in advance of the holiday, during the holiday and 48 hours following the holiday, SST will put the system into fireworks suppression mode so that the reviewers can focus their response to incidents classified as gunfire. SST will inform the customer prior to the system being placed in fireworks suppression mode and when fireworks suppression mode is disabled. The actual timing of fireworks suppression mode being active is determined by the review center based on the level of fireworks being discharged. While in fireworks suppression mode, fireworks incident alerts are not sent to the reviewer nor the customer alert console, however all firework incidents continue to be stored in the data base should any of this information be needed at a later time.

The purpose of the Reviewed Alert Service is to provide incident data to the Customer, reviewed, analyzed and classified in the manner described above, in situations where the analyst's qualitative confidence that an incident is or may be gunfire meets the criteria set forth above. However, it is the sole responsibility of the Customer to interpret the data provided, and to determine any appropriate follow-up reaction or response, including whether or not to dispatch emergency responder resources based on a Reviewed Alert. SST does not undertake any obligation, duty or responsibility for reaction, response, or dispatch decisions, which are solely and exclusively the responsibility of Customer, or for the consequences or outcomes of any decisions made or not made by the Customer in reliance, in whole or in part, on any services provided by SST.

The Incidents & Reports Portal provides the Customer with full and immediate access to all incident history including the same information SST uses in its internal review process. This information includes, among other things, the initial incident classification and any reclassifications of an incident, incident audio wave forms, and incident audio files. This enables the Customer to perform its own incident reviews and run various reports. This data access is available as long as the Customer is under active subscription.

EXHIBIT B – System Configuration and Service levels

SST will deploy or have deployed a ShotSpotter Flex system over the agreed upon coverage area. The system will be designed to detect at least 80% of the unsuppressed outdoor gunfire, with a location accuracy to the shooter's location within 25 meters, after sensor calibration. These performance levels are predicated on the deployment of sensors at all such sites, otherwise the foregoing performance levels may be compromised.

The sensors send incident information to a server in a SST hosting facility via third party cellular, wireless or wired networks. SST is not responsible for outages on the third party networks. SST will be responsible for installation and maintenance of the sensors and cost of the sensor communications to the hosted location server. The hosted server infrastructure (exclusive of communications networks) shall be maintained at 99.9% application availability exclusive of scheduled maintenance that SST will make reasonable efforts to coordinate with the customer.

The connection between the reviewer's console and the Customer's Alert Console is secured using a secure message protocol over http connection, where individual messages are encrypted using the same Public Key Infrastructure ("PKI") as a secure VPN connection.

Providing local access to the internet for the Alert Console is the responsibility of the Customer, as is providing a work station with access to the internet. The Customer may choose to set up multiple sessions of Alert Consoles as a form of redundancy.

DEFEATED

RESOLUTION NO.: 13 - 2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PROJECT CAT, INC. FOR FERAL AND FREE-ROAMING CAT REMOVAL SERVICES IN AN AMOUNT NOT TO EXCEED $2,000.00

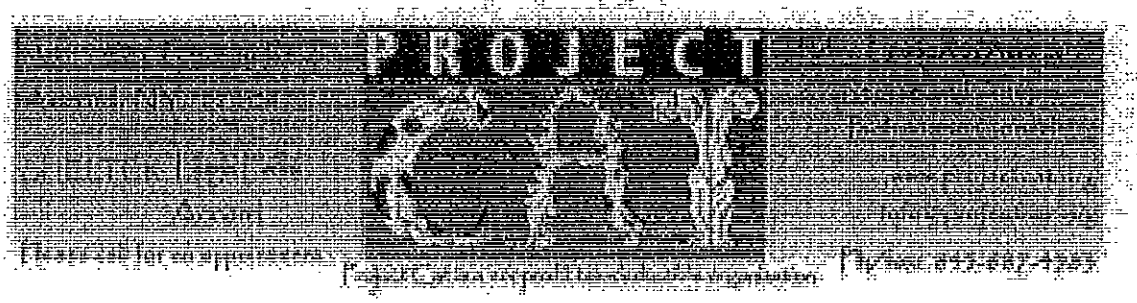
WHEREAS, the City of Newburgh has received complaints regarding feral and free-roaming cats on Van Cleft Avenue; and

WHEREAS, Project Cat, Inc. has submitted a proposal to provide removal services related to such cats which are unwanted and causing problems in the neighborhood; and

WHEREAS, the proposal includes a fee of $45.00 per cat that is live-trapped and removed and $45.00 per round trip per vehicle per day to set up and check live-traps with the funding for the cost of such services in an amount not to exceed $2,000.00 to be derived from A.3510.0448; and

WHEREAS, this Council has reviewed the proposal with Project Cat, Inc. and has determined that accepting such proposal would be in the best interests of the City of Newburgh, its citizens and the animals alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and enter into an agreement with Project Cat, Inc. to provide removal services in an amount not to exceed $2,000.00 related to feral and free-roaming cats causing problems in the area of Van Cleft Avenue in the City of Newburgh.



Funding Proposal to the City of Newburgh

Submitted by Project Cat, Inc **8 February 2016**
Gail Mihocko, Director
Ph/fx: 845-687-4983 cell: 845-750-5433

Purpose: To request funding from the City of Newburgh for providing a public service for removing feral and unowned free-roaming cats where they are unwanted or causing problems in neighborhoods.

Location: This request is specifically for the address of 14 Van Cleft Ave, Newburgh, NY and any adjoining neighboring properties onto which the cats are wandering and causing problems. It is our understanding that the cats in this area originated from this property.

Goal: To humanely live trap all of the feral and unowned free-roaming cats at 14 Van Cleft Ave and surrounding properties on which these cats wander and may have taken up residence.

Number of Cats: We don't know exactly how many cats are loose on the property. According to the home owner who currently feeds them there are approximately 40 cats. There may be more as some cats often stay on the perimeter and out of sight and only come out after dark. Initially we were told there may be as many as 70. We won't know until we start live-trapping. The cats that I saw when I visited 21 January 2016 with Lieutenant Richard Carrion did not have ear clips indicating they were not sterilized and therefore would be breeding at this time of year.

Amount Requested: We are requesting a donation fee of $45 per cat that we live-trap and remove from the property and $45 for each round trip per vehicle per day that we make to set up and check traps. Funding would help defray costs incurred to employees/volunteers for automobile expense/fuel, travel time, and costs for humane euthanasia and cremation. If we feel any cats might be healthy and adoptable we may take them into our shelter for adoption.

Sample Fee Structure:	12 traps set and 10 cats live trapped in one day:	10 x $45 = $450
	1 round trip/2 vehicles to set and check traps:	$ 90
	Total	$540

Plan of Action:

1. We will start humanely live-trapping as soon as we receive permission from the City of Newburgh.

2. Once we start live trapping we will continue to trap regularly to complete removal as quickly as possible. As we start to live-trap, some of the cats at 14 Van Cleft Ave may leave the property because of the disturbance and we may ask permission from neighbors to allow us to trap on their property as some of the cats move around.

3. We have met with the property owner and have permission to live trap on the property. We will consult with the property owner to withhold food from cats on days we are planning to live-trap and ask him to continue feeding cats on days we are unable to trap so as to keep the cats on the property and in the area.

Background on Project Cat: Project Cat was established in March 2002 as a nonprofit cat shelter to help with Ulster County's overwhelming stray and feral cat population. Our mission is to provide assistance to homeless cats and to ultimately find life-long homes for them or to provide humane euthanasia when there is no other option. We are located in High Falls/Accord.

Our organization is unique in that we travel into the community to pick up cats from people who have no transportation, are elderly, or otherwise have no means with which to bring cats to our shelter. Limited funding and employees limits the numbers of requests to which we can respond. We focus, therefore, on cases where cats are suffering due to neglect from improper care, lack of necessary medical assistance, situations where no action has been taken to spay or neuter resulting in uncontrolled breeding and hoarding cases where large numbers of cats are kept inhumanely in unsanitary and crowded conditions.

We work throughout Ulster County with a focus on the southern part of the county as there are no other shelters providing help in this area. We are funded solely by private donations, fundraisers, adoption fees, small grants from Community Foundations of the Hudson Valley and the private Bea Binger foundation. When our help is requested we are sometimes reimbursed for costs incurred but often times not and we incur the cost which can be a burden.

All the towns in Ulster County have Animal Control Officers however, they are only obligated to respond to calls about dogs. None provide any cat control despite the numbers of cats far exceeding the numbers of dogs. Ulster County has no municipal shelter that accepts all stray animals and the work and burden of costs to help cats fall on private shelters or individuals who themselves have no obligation to help and can pick and choose their cases.

Domestic cats are a controversial and world-wide issue

The domestic cat, *Felis catus*, is a much beloved pet world wide. However, it is a domesticated animal meaning it is not native to any habitat and is therefore an introduced species and has now become an invasive species in most habitats. Lax regulations, no mandatory spaying/neutering laws, no licensing requirements, allowing cats to wander freely outdoors and irresponsible pet ownership have led to a world-wide cat overpopulation with compounding problems. This overpopulation has led to millions of cats being euthanized at shelters annually in the United States alone.

In an effort to reduce euthanasia rates, shelters are abandoning euthanasia as a means of population control and becoming "no-kill" shelters without having an alternative *effective* plan in place. In place of euthanasia, a multitude of "rescue" organizations have sprouted to take in cats (and dogs) that are turned away at shelter doors. These rescues and "no-kill" shelters take part in cat programs such as Trap-Neuter-Release/Trap-Neuter-Return (TNR), as well as other forms of TNR including Shelter-Neuter-Return (SNR), Return-To-Field (RTF), barn cat 'programs' and 'community cat' management which allows the cats to be re-abandoned after neutering so they don't continue to reproduce.

All of these programs are fraught with problems. It is impossible to sterilize all the free-roaming cats and as a result the ones that are not captured continue to reproduce at a rapid rate. The programs still continue to allow homeless or feral cats to live outdoors where they suffer from fleas and flea allergies, ticks, ear mites, intestinal parasites, upper respiratory viruses, urinary tract infections and blockages to name a few. They will eventually succumb to an unpleasant death by car hits, dog attacks, disease, infection, exposure, poisoning, cruelty by humans and so many other tragedies that await the outdoor cat.

Cats are responsible for spreading a multitude of diseases and parasites. As their numbers increase outdoors so does the spread of zoonotic organisms such as rabies, toxoplasmosis (spread via cat feces in soil) and Bartonella (cat scratch fever spread by fleas) to name a few. These affect not only human but other domestic and wild animals also. Contagious diseases like feline leukemia, feline aids (FIV) and FIP are specific to cats but are usually fatal and cause great distress.

In addition, cats are predators and instinctually hunt small mammals, birds, reptiles and any small creature that moves and entices them. They hunt regardless of their being fed by humans. With our need to protect and revitalize habitat to which humans have caused so much damage including introducing the domestic cat, it is up to us to remedy the problem and do what is necessary to protect our environment and native wildlife species all of which are crucial for the health of the planet.

No other domestic animal, including dogs, are granted this status of being allowed to roam freely with no laws to restrict their movement to private property or to be leashed, contained indoors or monitored through licensing.

With the practice of more and more organizations nationwide redefining themselves as "no-kill" shelters the numbers of cats that are turned away by shelters because they are over-filled with cats is increasing and the situations such as at Van Cleft Ave are becoming more numerous, out of control and difficult to keep up with.

New York State TNR Bill vetoed by Governor Cuomo

On 27 October 2015, Governor Cuomo courageously vetoed a bill that would have diverted state funds away from low cost spay/neuter meant to assist with family owned pets to neutering and releasing cats into the wild. This was a victory for anyone concerned for the welfare of feral and free-roaming cats and for the health of our environment.

The following is the veto from Governor Cuomo:

VETO MESSAGE - No. 203

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 2778, entitled:

"AN ACT to amend the agriculture and markets law, in relation to community based initiatives for the purpose of trapping, neutering, vaccinating and returning feral cats to the area from which they were trapped"

This bill would allow for the diversion of up to twenty percent of the State's Animal Population Control Program Fund (APCPF) to be used for community-based initiatives to trap, spay, neuter, vaccinate, and return feral cats to the area where they were found. Such programs are referred to as Trap Neuter and Release (TNR) programs.

Although the goal of this bill is laudable, it is problematic for several reasons. First, I cannot support diverting APCPF funds from existing programs that have already proven effective for humanely controlling feral cat populations. Second, a central tenant of TNR programs is the release of feral cats into the wild. However, that conflicts directly with Agriculture and Markets Law section 374(5), which makes the release of such animals a misdemeanor offense, and would create uncertainty as to the legality of releasing trapped animals. Third, the prevailing science suggests that TNR programs are not guaranteed to reduce feral cat populations, and, even if they do, may take many more years to do so than existing programs. Finally, the return of feral cats to the wild must be balanced against the impacts these cats can have on wildlife, including on threatened and endangered species, habitats, and food sources for native predators. I am therefore constrained to veto this bill.

The bill is disapproved. (signed) ANDREW M. CUOMO

Funding Proposal to the City of Newburg (page 4)

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The bill is disapproved. (signed) ANDREW M. CUOMO

Additional sources of information

There is a wealth of information and discussions actively taking place worldwide and am including just a very few that have good overall facts.

I have included the following as PDF attachments:

Nuisances and welfare of free-roaming cats in urban settings and their association with cat reproduction.pdf

Zoonotic Disease Associated With Free-roaming Cats Gerhold2013.pdf

Impacts Of Free-Ranging Domestic Cats.pdf

These are web addresses that can be accessed for more information:

http://www.takepart.com/article/2014/03/31/sorry-cat-lovers-trap-neuter-release-flat-out-doesnt-work

http://www.tnrfactcheck.org/

http://tnrrealitycheck.com/

RESOLUTION NO.: 14 -2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION REGARDING THE TAX FORECLOSURE OF 55 CARPENTER AVENUE (SECTION 29, BLOCK 2, LOT 6)

WHEREAS, the City of Newburgh has commenced proceedings for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2014-8858; and

WHEREAS, property owner TDR Funding Corporation has advised that they would like to pay the delinquent taxes by entering into an installment payment agreement; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its further development to settle this matter by collecting the delinquent taxes if all such taxes, interest and penalties are remitted to the City of Newburgh in the form of an installment payment agreement;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Director of Finance and Enforcing Officer be and she is hereby authorized to withdraw the liens on the property located at 55 Carpenter Avenue, Section 29, Block 2, Lot 6, in the City of Newburgh, from the List of Delinquent Taxes upon the owner remitting to the City of Newburgh the required down payment in the amount of Nine Thousand Fifty-Seven And 82/100 ($9,057.82) Dollars and duly entering into an installment payment agreement for the full payment of all taxes, interest and penalties for delinquent taxes on or before January 31, 2016; and thereafter satisfying said installment payment agreement in full.

RESOLUTION NO.: 15 -2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION REGARDING THE TAX FORECLOSURE OF 57 CARPENTER AVENUE (SECTION 29, BLOCK 2, LOT 5)

WHEREAS, the City of Newburgh has commenced proceedings for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2014-8858; and

WHEREAS, property owner TDR Funding Corporation has advised that they would like to pay the delinquent taxes by entering into an installment payment agreement; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its further development to settle this matter by collecting the delinquent taxes if all such taxes, interest and penalties are remitted to the City of Newburgh in the form of an installment payment agreement;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Director of Finance and Enforcing Officer be and she is hereby authorized to withdraw the liens on the property located at 57 Carpenter Avenue, Section 29, Block 2, Lot 5, in the City of Newburgh, from the List of Delinquent Taxes upon the owner remitting to the City of Newburgh the required down payment in the amount of Sixteen Thousand Six Hundred Seventy-Two And 45/100 ($16,672.45) Dollars and duly entering into an installment payment agreement for the full payment of all taxes, interest and penalties for delinquent taxes on or before January 31, 2016; and thereafter satisfying said installment payment agreement in full.

RESOLUTION NO.: 16 - 2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION REGARDING THE IN REM TAX FORECLOSURE OF LIENS FOR THE YEAR 2014 RELATIVE TO 263 LIBERTY STREET (SECTION 18, BLOCK 5, LOT 14)

WHEREAS, The City of Newburgh commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2014-8858; and

WHEREAS, the property owner, by his attorney, served an Answer to such action in regard to the foreclosure of 263 Liberty Street (Section 18, Block 5, Lot 14); and

WHEREAS, the attorney has advised the City that they are prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its further development to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer be and she is hereby authorized to withdraw the liens on the property located at 263 Liberty Street (Section 18, Block 5, Lot 14), City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Twenty Two Thousand Nine Hundred Forty-Three And 10/100 ($22,943.10) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes, water, sewer and sanitation charges, are all paid in full by certified or bank check on or before January 31, 2017.

RESOLUTION NO.: 17 - 2017

OF

JANUARY 9, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AMENDMENT WITH REPRESENTATIVE SEAN PATRICK MALONEY FOR A PORTION OF THE SECOND FLOOR OF 123 GRAND STREET FOR A TERM OF TWO YEARS IN THE AMOUNT OF $2,000.00 PER MONTH

WHEREAS, by Resolution No. 12-2013 of January 14, 2013, the City Council of the City of Newburgh authorized the City Manager to execute a lease agreement with Representative Sean Patrick Maloney Committee for a portion of the second floor of 123 Grand Street; and

WHEREAS, by Resolution No. 6-2015 of January 12, 2015, the City Council of the City of Newburgh authorized the City Manager to execute a renewal lease agreement with Representative Sean Patrick Maloney for a portion of the second floor of 123 Grand Street; and

WHEREAS, Representative Sean Patrick Maloney has expressed an interest in renewing said lease to continue the use of said premises as a Congressional District Office; and

WHEREAS, the renewal term of the lease shall be two years and the rent shall be two thousand ($2,000.00) per month as set forth in the amendment of lease, a copy of which is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such lease and finds that entering into the same would be in the best interests of the City of Newburgh and the community alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached lease amendment agreement with Representative Sean Patrick Maloney for a portion of the second floor of 123 Grand Street on the terms and conditions contained in the subject lease.

District Office Lease Amendment – Instructions

NO LEASE AMENDMENT OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE ADMINISTRATIVE COUNSEL.

The term for a District Office Lease Amendment for the 115th Congress may not commence prior to January 3, 2017.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 115th Congress, leases should end on January 2, 2019, not December 31, 2018.

A. Section 1 has three blank lines to be filled in:
   1. the term of the previous lease that is being amended or extended;
   2. street address of office being leased; and
   3. city, state and ZIP where office is being leased.

B. Section 2 requires the new ending date (if the lease is going to be extended), which must be on or before January 2, 2019. If the lease is not going to be extended, write "N/A" in the space provided.

C. Section 3 requires the monthly rent amount for the extended term, and if any other provision is changed, the blank space beneath Section 3 is provided for any changes or additions. If there are no other changes to your existing lease write "NONE" in the space provided.

D. **The Member/Member-Elect is required to <u>personally</u> sign the documents.**

E. A District Office Lease Attachment for the 115th Congress must accompany this District Office Lease Amendment ("Amendment").

F. **Prior to either party signing an Amendment, the Member/Member-Elect must submit the proposed Amendment, accompanied by a copy of the District Office Lease Attachment for the 115th Congress, to the Administrative Counsel for review and approval.** If the proposed terms and conditions of the Amendment are determined to be in compliance with applicable law and House Rules and Regulations, the Administrative Counsel will notify the Member/Member-Elect that (s)he may proceed with the signing of the Amendment. Please submit the proposed Amendment and District Office Lease Attachment either by e-mail in PDF form (leases@mail.house.gov) or fax (202-225-6999).

G. Once signed by both parties, the Amendment and District Office Lease Attachment must be submitted to the Administrative Counsel for final approval. They may be sent by email in PDF form or faxed to 202-225-6999.

H. If approved, Administrative Counsel will send them to Finance so that payment can begin. If there are errors, you will be contacted and required to correct them before the Amendment is approved.

I. If you have any additional questions about District Office Leases, please contact the Office of the Administrative Counsel by e-mail (leases@mail.house.gov).

U.S. House of Representatives
Washington, D.C. 20515

District Office Lease Amendment

(Page 1 of 2 – 115th Congress)

1. **Prior Lease Term.** The undersigned Landlord ("Lessor") and Member of the U. S. House of Representatives ("Lessee") agree that they previously entered into a District Office Lease ("Lease") (along with the District Office Lease Attachment), which covered the period from 1/3/2015 to 1/2/2017 for the lease of office space located at 123 Grand Street, 2nd Floor in the city, state and ZIP of Newburgh, NY 12550.

2. **Extended Term.** If applicable, the above referenced Lease is extended through and including January 2, 20 19. (This District Office Lease Amendment ("Amendment") may not provide for an extension beyond January 2, 2019, which is the end of the constitutional term of the 115th Congress.)

3. **Rent and Any Other Changes.** The monthly rent for the extended term of the Lease shall now be $2,000.00. All other provisions of the existing Lease shall remain unchanged and in full effect, except for the following additional terms, which are modified as indicated in the space below [If no additional terms are to be modified, write the word "NONE" below].

   NONE

4. **District Office Lease Attachment for 115th Congress.** This Amendment shall have no force and effect unless and until accompanied by an executed District Office Lease Attachment for the 115th Congress and the District Office Lease Attachment for the 115th Congress attached hereto supersedes and replaces any prior District Office Lease Attachment.

5. **Counterparts.** This Amendment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

6. **Section Headings.** The section headings of this Amendment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

[*Signature page follows.*]

U.S. House of Representatives
Washington, D.C. 20515

District Office Lease Amendment

(Page 2 of 2 – 115th Congress)

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Amendment as of the later date written below by the Lessor or the Lessee.

City of Newburgh	Sean Patrick Maloney
Print Name of Lessor/Landlord/Company	*Print Name of Lessee*
By: _____	_____
Lessor Signature	*Lessee Signature*
Name:	
Title:	
_____	_____
Date	*Date*

This District Office Lease Amendment must be accompanied with an executed District Office Lease Attachment.

District Office Lease Attachment- Instructions

The District Office Lease Attachment must accompany *every* Lease or District Office Lease Amendment that is submitted for a Member/Member-Elect's District Office.

NO LEASE, AMENDMENT OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE ADMINISTRATIVE COUNSEL.

The term of a District Office Lease or Amendment for the 115th Congress may not commence prior to January 3, 2017.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 115th Congress, leases should end on January 2, 2019, not December 31, 2018.

A few things to keep in mind:

A. **The Member/Member-Elect is required to personally sign the documents.**

B. **The Member/Member-Elect must indicate in Section A ("Lease Amenities") of the Attachment whether the proposed leased space will serve as a flagship district office.**

C. **The Lessor must complete the amenities checklist in Section A ("Lease Amenities"), unless the checkbox at the top of the amenities checklist is marked to indicate that amenities are listed elsewhere in the Lease.**

D. Broadband/cable availability can be confirmed by visiting www.broadbandmap.gov and entering the address of the proposed leased space.

E. **Section B ("Additional Terms and Conditions") of the Attachment SHALL NOT have any provisions deleted or changed.**

F. Even if rent is zero, an Attachment is still required.

G. **Prior to either party signing a Lease or Amendment, the Member/Member-Elect must submit the proposed Lease or Amendment, accompanied by a copy of the Attachment, to the Administrative Counsel for review and approval.** If the Administrative Counsel determines that the proposed terms and conditions of the Lease or Amendment are in compliance with applicable law and House Rules and Regulations, the Administrative Counsel will notify the Member/Member-Elect that (s)he may proceed with the execution of the Lease or Amendment. Please submit the proposed Lease or Amendment and Attachment either by e-mail in PDF form (leases@mail.house.gov) or by fax (202-225-6999).

H. Once signed by both parties, the Lease or Amendment and the Attachment must be submitted to the Administrative Counsel for final approval. The Attachment should be submitted at the same time the Lease or Amendment is sent to the Administrative Counsel. They may be sent by email in PDF form or faxed to (202-225-6999).

I. Without a properly signed and submitted Attachment, the Lease or Amendment cannot be approved and payments will not be made. The parties agree that any charges for default, early termination or cancellation of the Lease or Amendment which result from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and are not reimbursable from the Member's Representational Allowance.

J. **Lessor shall provide a copy of any assignment, estoppel certificate, notice of a bankruptcy or foreclosure, or notice of a sale or transfer of the leased premises to the Administrative Counsel by e-mail in PDF form (leases@mail.house.gov).**

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Washington, D.C. 20515

District Office Lease Attachment

(Page 1 of 5 – 115th Congress)

SECTION A
(Lease Amenities)

Section A designates whether the leased space will be the Member/Member-Elect's flagship (primary) office and sets forth the amenities provided by the Lessor to be included in the Lease. Except as noted below, the amenities listed are not required for all district offices.

To be completed by the Member/Member-elect:

☐ The leased space will serve as my flagship (primary) District Office.
☐ The leased space will NOT serve as my flagship (primary) District Office.

To be completed by the Lessor:

□ Amenities are separately listed elsewhere in the Lease.
(The below checklist can be left blank if the above box is checked.)

The Lease includes (please check and complete all that apply):
(*Items marked with an asterisk and in bold are **required** for all flagship offices of Freshman Members of the 115th Congress.*)

☑ * **Broadband and/or Cable Access to the Leased Space (e.g. Comcast, Cox, Verizon, etc.).**
(*Verify broadband access by entering the address of the leased space at www.broadbandmap.gov*)
☑ * **Interior Wiring CAT 5e or Better within Leased Space.**
☐ Lockable Space for Networking Equipment.
☑ Telephone Service Available.
☑ Parking. ☑ ____ Assigned Parking Spaces
☐ ____ Unassigned Parking Spaces
☑ General Off-Street Parking on an As-Available Basis
☑ Utilities. Includes: water, sewer and electricity
☑ Janitorial Services. Frequency: 1x per week - common area including kitchen
☑ Trash Removal. Frequency: 1x per week - common area including kitchen
☐ Carpet Cleaning. Frequency: _____
☐ Window Washing. ☐ Window Treatments.
☐ Tenant Alterations Included In Rental Rate.
☑ After Hours Building Access.
☐ Office Furnishings. Includes: _____
☐ Cable TV Accessible. If checked, Included in Rental Rate: ☐ Yes ☐ No
☑ Building Manager. ☐ Onsite ☑ On Call Contact Name: George Garrison
Phone Number: 845-565-3297 Email Address: ggarrison@cityofnewburgh-ny.gov

Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D.C. 20515.
Copies may also be faxed to 202-225-6999.

Print Form | Save Form | Clear Page

U.S. House of Representatives
Washington, D.C. 20515

District Office Lease Attachment

(Page 2 of 5 – 115th Congress)

SECTION B
(Additional Terms and Conditions)

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-Elect of the U.S. House of Representatives) agree that this District Office Lease Attachment ("Attachment") is incorporated into and made part of the Lease ("Lease") and, if applicable, District Office Lease Amendment ("Amendment") to which it is attached.

2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (the "House") nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (the "CAO") to Lessor to satisfy Lessee's rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.

3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO ("Administrative Counsel") must review and give approval of any amendment to the Lease prior to its execution.

4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until the Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing the last page of this Attachment.

5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance of the House at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.

6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.

7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and shall not be paid by the CAO on behalf of the Lessee.

8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a)

terminate the Lease by giving thirty (30) days' prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee's successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-Elect before taking office. Should the Member-Elect not take office to serve as a Member of the 115th Congress, the Lease will be considered null and void.

10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, O'Neill Federal Building, Suite 3220, Attn: Levi Matthews, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.

11. **Assignments.** Lessor shall not have the right to assign (by operation of law or otherwise) any of its rights, interests and obligations under the Lease, in whole or in part, without providing thirty (30) days prior written notice to Lessee, and any such purported assignment without such notice shall be void. Lessor shall promptly file a copy of any such assignment notice with the Administrative Counsel by e-mail at leases@mail.house.gov.

12. **Sale or Transfer of Leased Premises.** Lessor shall provide thirty (30) days prior written notice to Lessee in the event (a) of any sale to a third party of any part of the leased premises, or (b) Lessor transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Lessor shall promptly file a copy of any such sale or transfer notice with the Administrative Counsel by e-mail at leases@mail.house.gov.

13. **Bankruptcy and Foreclosure.** In the event (a) Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily), (b) the leased premises is foreclosed upon, or (c) of any similar occurrence, Lessor agrees to promptly notify Lessee in writing. Lessor shall promptly file a copy of any such notice with the Office of Finance, U.S. House of Representatives, O'Neill Federal Building, Suite 3220, Attn: Levi Matthews, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.

14. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall require the review of the Administrative Counsel, prior to Lessee signing the estoppel certificate. Lessor shall promptly provide a copy of any such estoppel certificate to the Administrative Counsel by e-mail at leases@mail.house.gov.

District Office Lease Attachment

15. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.

16. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.

17. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 15 and 16.

18. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.

19. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.

20. **Limitation of Liability.** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.

21. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.

22. **Electronic Funds Transfer.** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.

23. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.

24. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.

Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D.C. 20515.
Copies may also be faxed to 202-225-6999.

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Washington, D.C. 20515

District Office Lease Attachment

(Page 5 of 5 – 115th Congress)

25. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.

26. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).

27. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.

28. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

29. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

City of Newburgh	Sean Patrick Maloney
Print Name of Lessor/Landlord	*Print Name of Lessee*
By: _____	_____
Lessor Signature	*Lessee Signature*
Name:	
Title:	
_____	_____
Date	*Date*

From the Member's Office, who is the point of contact for questions?
Name_____ Phone (____) _____ E-mail _____@mail.house.gov

This District Office Lease Attachment and the attached Lease or Amendment have been reviewed and are approved, pursuant to Regulations of the Committee on House Administration.

Signed _____ Date _____, 20____.
(Administrative Counsel)

Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D.C. 20515.
Copies may also be faxed to 202-225-6999.