



City of Newburgh Council Work Session

5:30 pm

October 4, 2012

AGENDA

1. Executive Session:
 - a. Pending Litigation
2. Procedural Items Related to the City Council Meeting of October 9, 2012
 - a. Approval of City Council work session minutes of September 20, 2012
 - b. Approval of City Council meeting minutes of September 24, 2012
 - c. Departmental Reports
3. Presentation:
 - a. Historic Hudson River Towns – Gennaro Faiella
 - b. Request for vacant parcel of land on Lake Drive - Doug Hovey, Executive Director of Independent Living, Inc.
 - c. Request for 12 Lutheran Street - Cathy Collins, Executive Director of Habitat for Humanity of Greater Newburgh
4. Community & Economic Development and Real Estate:
 - a. Mid-Broadway development agreement – Patrick Normoyle, Excelsior Housing Group
 - b. Acceptance of a gift of property located at 285 Grand Street and 285 Grand Street rear
 - c. Auction results
 - d. (Res. 175) Authorization for the removal of 34 Carter Street from the October 3, 2012 property auction.
5. Finance Department:
 - a. (Res. 170) Scheduling the public hearing regarding the 2013 Budget for November 13, 2012 at the Activity Center
 - b. (Res. 171) Award of a bid and the execution of an agreement with Otis Elevator for the repair and maintenance of 6 elevators located at various City facilities for a base bid amount
 - c. Agreement with the Collection Bureau of the Hudson Valley

6. Engineering:

- a. (Res. 172) Water Tank Improvement Project: Assuming lead agency status under State Environmental Quality Review (SEQRA), declaring the projects to be an unlisted action, adopting part 1 of the Environmental Assessment Form, issuing a negative declaration and authorizing the City Manager to execute all SEQRA related documents.

7. Discussion:

- a. (Res. 173) 21st Century Learning Center Grant: Authorizing a vendor service agreement with the Girl Scouts to provide leadership training to girls K-12 and a vendor service agreement with Madeline Torres-Diaz as the grant evaluator.
- b. (Res. 174) Agreement renewal with New York Communications Company, Inc. for service and equipment used by the City of Newburgh Police Department.
- c. Police Consultant Study – Scope of Services and practitioners
 - Police Assessment Resource Center
 - Carroll Buracker & Associates
 - Leonard Matarese, ICMA
- d. Emergency Communication Plan – Chief Ferrara and Chief Vatter
- e. Board Openings

City of Newburgh, Newburgh New York
Work Session of the City Council

Thursday, September 6, 2012

Members Present: Mayor Judy Kennedy
Councilwoman Regina Angelo
Councilman Curlie Dillard
Councilwoman Gay Lee
Councilman Cedric Brown

Also Present: Richard F. Herbek, City Manager
Michelle Kelson, Corporation Counsel

Call to Order: The meeting was called to order by City Manager Richard F. Herbek at 6:05 pm.

Adjournment: Upon consensus the Council adjourned the meeting noting the time as 8:00 p.m.

A regular meeting of the City Council of the City of Newburgh was held on Monday, September 24, 2012 at 7:00 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

The Prayer was led by Father Dustin Trowbridge of St. George's Episcopal Church and St. Thomas' Church in New Windsor.

The Pledge of Allegiance was performed in unison.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Dillard, Councilwoman Lee - 4

Absent: Councilman Brown - 1

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the September 6, 2012 Work Session and the September 10, 2012 City Council Meeting be approved.

Ayes- Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the City Clerk's Report and the Registrar of Vital Statistics Report for the month of August be approved and made available to the Press.

Ayes- Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the Civil Service Administrator's Report for the month of August be received and filed only.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

Councilwoman Angelo moved and Councilwoman Lee seconded that the Verified Notice of Claim and Notice of Claim be referred to Corporation Counsel with power to act.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

CARRIED

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Denise Ribble, Montgomery Street, asked if there could be a discussion regarding ordinance #6-2012. It seems that with some of the problems that have happened related to the Belt Filter Press she wants to understand what this is. Are we increasing the pH so we can discharge more acidic water into or from our sewage treatment system? In regard to resolution #165-2012, it looks like this is taking up almost all of the remaining CDBG money to demolish three properties and she thought that we were going to try to do ten. How were the properties chosen at those locations versus other properties that were recommended for demolition? How does it fit into the Land Bank and the City's overall goal of revitalizing a target neighborhood? She asked what resolution #166-2012 for vendor services are specifically for in terms of 21st Century. She added that resolution #167-2012 is a lot of money and she would really like to know where that money is coming from and exactly what it is going to be used for.

Barbara Smith, Powell Avenue, said that after reading resolution #166-2012 she is surprised that her City Council is not totally up in arms with regard to the allocation of these funds. There is nothing to show for the money that has gone in the past so what is it going to do in the future? How do you give \$8,676.05 to someone who teaches events? To her this is one of the degrees of what she would call obscenity. We have nothing to measure anything by. How many children will this support and what are these things? She wants something that tells her our children are taking our tax money to help with graduating from High School and then going on to College. She thinks that the Council needs to take a look at this and ask them to go back to the drawing board to come back with things that are far more productive for our children.

Kippy Boyle, Newburgh, said that she echoes Ms. Ribble's comments in regard to ordinance #6-2012 and she would like to know what the consequences are for raising the pH level and the amount of energy that will be required to do the outflow. In regard to resolution #165-2012, she is appalled that it is going to take approximately \$100,000.00 per building to demolish three buildings. 113 Washington Street is a shell that anyone could just blow down. There is nothing inside of it and it is completely empty so how could it take that much money to remove those bricks? She doesn't want to hear about asbestos and all of that because she believes that we could do that by ourselves. She originally heard that the demolition projects were supposed to be approximately \$60,000.00 per building which she thought was appalling and now it is up to \$300,000.00 and she doesn't see how that can be justified. Lastly, she also agrees with comments made on resolution #166-2012.

Janet Gianopoulos, City of Newburgh, said that in regard to resolution #166-2012 the questioning of the type of projects has already occurred but she also questions the expenditure which she would like an explanation for. It would be useful to know the methodology. How is that we are going to improve the graduation rate of our children? It has been discussed that there is no real measurement as far as the success of this program over the years but one thing we do know is that Nationally the possession of a Bachelors Degree in a tough economy works out at a 4% unemployment rate. The rate of unemployment goes up as one's education is lower. She believes that the goal of the expenditure of our tax money in this case should be more measured. Where is it going? How is it going to improve the outcome for our children that will enable them to proceed to employment and avoid unemployment?

Gail Fulton, Newburgh, asked in regard to resolution #168-2012 if this is a voluntary position or does this person get paid. Where is the Human Rights Commission located and how many members are on it?

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

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

The Council agreed to answer questions when voting on the resolutions.

RESOLUTION NO.: 161 - 2012

OF

SEPTEMBER 24, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A THE CONTRACT
WITH MALCOLM PIRNIE-ARCADIS FOR THE CONSTRUCTION PHASE
IN CONNECTION WITH THE WASTE WATER TREATMENT
PLANT WATER POLLUTION CONTROL PLAN EMERGENCY BACKUP
GENERATION AND SOLIDS HANDLING SYSTEMS PROJECT AT A COST
NOT TO EXCEED ONE HUNDRED EIGHTY THOUSAND NINE HUNDRED
DOLLARS

WHEREAS, this Council, by Resolution No.: 254-2011 of December 12, 2011, authorized the City Manager to enter into an agreement for professional engineering services with Malcolm Pirnie-Arcadis in connection with the Waste Water Treatment Plant Water Pollution Control Plant Emergency Backup Generation and Solids Handling Systems Project; and

WHEREAS, this Council, by Resolution No.: 108-2012 of June 18, 2012, authorized the City Manager to execute and amendment to the contract for professional engineering services with Malcolm Pirnie-Arcadis for detailed design services in connection with the Waste Water Treatment Plant Water Pollution Control Plant Emergency Backup Generation and Solids Handling Systems Project; and

WHEREAS, Malcolm Pirnie-Arcadis has completed detailed design services phase for the Waste Water Treatment Plant improvements; and

WHEREAS, it is now necessary for further services to begin the construction phase; and

WHEREAS, Malcolm Pirnie-Arcadis submitted a proposal for engineering services dated August 28, 2012, outlining the necessary scope and fee schedules related thereto; and

WHEREAS, referenced Project is subject to a New York State Department of Environmental Conservation Consent Order requiring the completion of said Project; and

WHEREAS, funding for such project shall be derived from HG1.8130.0200.8100; and

WHEREAS, this Council has determined that entering into such contract 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 a contract with Malcolm Pirnie-Arcadis for Construction Phase Services in connection with the Waste Water Treatment Plant Water Pollution Control Plan Emergency Backup Generation and Solids Handling Systems Project at an additional cost not to exceed One Hundred Eighty Thousand Nine Hundred Dollars.

City Manager, Richard Herbek, noted that we have been under a Consent Order from the DEC for quite a while. This is for the Belt Filter Press and other improvements required by the DEC. It is absolutely mandatory that we get this work underway to avoid a \$15,000.00 per day fine.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED



The Water Division of ARCADIS

Malcolm Pirnie/ARCADIS, Inc.
855 Route 146
Suite 210
Clifton Park
New York 12065
Tel 518 250 7300
Fax 518 250 7301
www.arcadis-us.com

Mr. Craig Marti, P.E.
City Engineer
83 Broadway
Newburgh, New York 12550

WATER

Subject:
WPCP Improvements
Proposal for Construction Phase Services

Date:
August 28, 2012

Dear Mr. Marti:

Contact:
Robert Ostapczuk

As discussed, Malcolm Pirnie, Inc, the Water Division of ARCADIS (Pirnie/ARCADIS), is pleased to provide the City of Newburgh (City) with this letter proposal for engineering services during construction for the Water Pollution Control Plant (WPCP) improvements. There is one milestone for completion of the backup generator prior to December 31, 2012 and final completion is anticipated to be 250 days after the issuance of a Notice to Proceed. Pirnie/ARCADIS's scope for construction phase services is generally outlined below:

Phone:
518.250.7305

Email:
robert.ostapczuk@arcadis-us.com

Scope of Services

Our ref:
04881003.0000

Task 1 Construction Administration

Pirnie/ARCADIS shall consult with and advise City and act as City's representative throughout the construction of the backup generator and solids dewatering system improvements. All of City's instructions to Contractor will be issued through Pirnie/ARCADIS who will have authority to act on behalf of City.

Pirnie/ARCADIS will prepare agreements for Contract Nos. 1, 2G, 2E and 2H for the City's execution with the Contractors. Pirnie/ARCADIS will issue Notices to Proceed to each Contractor in accordance with the Contract Documents. Pirnie/ARCADIS will schedule and conduct a pre-construction conference with all Contractors, representatives of the City, and any regulatory and/or funding agency representatives as required. Pirnie/ARCADIS will prepare and distribute meeting minutes.

Imagine the result

Pirnie/ARCADIS will issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare Change Orders for execution by City, if appropriate.

Pirnie/ARCADIS will review and approve (or take other appropriate action) Shop Drawings, samples, and other data which Contractor is required to submit. Such reviews shall be for conformance with the design concept of the Project as a functioning whole and compliance with the information given in the Contract Documents. Any approvals or other actions associated with the reviews shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Pirnie/ARCADIS limits reviews of shop drawings to two reviews for all shop drawings in total.

Pirnie/ARCADIS will evaluate and determine the acceptability of substitute or 'equivalent' materials and equipment proposed by Contractor.

Based on Pirnie/ARCADIS's on-site observations and on review of applications for payment and the accompanying data and schedules, Pirnie/ARCADIS will:

- Recommend in writing payments to Contractor. Such recommendations of payment will constitute a representation to City that the Work has progressed to the point indicated and that, to the best of Pirnie/ARCADIS's knowledge, information and belief, the quality of the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendations.
- In the case of unit price Work, include final determinations of quantities and classifications of the Work in the recommendations of payment, subject to any subsequent adjustments allowed by the Contract Documents.

Pirnie/ARCADIS shall not be responsible for the acts or omissions of the Contractor, or of any subcontractor or supplier, or any of the Contractor's or subcontractor's or supplier's agents or employees or any other persons (except Pirnie/ARCADIS's own employees and agents) at the site or otherwise furnishing or performing any of the Work. However, nothing contained herein shall be construed to release Pirnie/ARCADIS from liability for failure to properly perform the duties and responsibilities assumed by Pirnie/ARCADIS in the Contract Documents.

Task 2 Progress Meetings and Periodic Site Visits

Pirnie/ARCADIS will schedule and attend biweekly progress meetings at the site to facilitate coordination between Contractors, update construction schedules, discuss progress of the work, requests for information, and any proposed field or change orders. Pirnie/ARCADIS will make visits to the site at intervals appropriate to the various stages of construction, as Pirnie/ARCADIS deems necessary to observe, as an experienced and qualified design professional, the progress and quality of the Contractors' work.

Pirnie/ARCADIS will conduct an inspection to determine if the work is substantially complete, for each milestone, and a final inspection to determine if the completed Work is acceptable so that Pirnie/ARCADIS may recommend, in writing, final payment to Contractor. Pirnie/ARCADIS will prepare and distribute a punchlist prior to the final inspection.

Task 3 Construction Inspection

Pirnie/ARCADIS will perform part time inspection services on behalf of the City. The construction inspector will be Pirnie/ARCADIS's agent or employee and under Pirnie/ARCADIS's supervision.

The purpose of representation by the Construction Inspector at the site will be to provide for City a greater degree of confidence that the completed Work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor.

Pirnie/ARCADIS shall not, during such visits or as a result of observations or inspections of the Work in progress, supervise, direct or have control over the Work nor shall Pirnie/ARCADIS have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor furnishing and performing the Work. Pirnie/ARCADIS can neither guarantee the performance of the Work by the Contractor nor assume responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

During its visits, Pirnie/ARCADIS may disapprove of or reject the Work while it is in progress if Pirnie/ARCADIS believes that the Work will not produce a completed

Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

Pirnie/ARCADIS is providing part time inspection services, however a Construction Inspector will be on-site for the following construction activities:

- Installation of rebar;
- Concrete placement;
- Installation of steel pilings;
- Installation of buried piping and conduit;
- Installation of the belt filter presses;
- Installation of the metal building system (Sludge Truck Loading Building);
- Installation of standby engine generator;
- Installation of chemical systems;
- MCC Switchover;
- Tie in of mechanical piping;
- Installation of controls and;
- Start-up of all major equipment.

Pirnie/ARCADIS will have a Construction Inspector on site a minimum of one day a week depending on construction activities. The level of part time inspection will depend on the Contractor and the methods they employ.

Task 4 Special Inspections

Pirnie/ARCADIS will have authority, as City's representative, to require special inspection or testing of the work, and shall review all certificates of inspections, testing and approvals required by law or the Contract Documents to determine that both the content of the certificates and the certified inspection or test results comply substantially with such requirements. Testing required to complete special inspections has been specified and is required by to be provided by the Contractor, Malcolm Pirnie will be coordinating the inspections acting at the overall special inspector.

Task 5 Contractor's Completion Documents

Pirnie/ARCADIS will receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests, approvals, and record documents, which are to be assembled by Contractor in accordance with the Contract Documents. Such review is limited to determining that their content complies with the requirements of the Contract Documents. Pirnie/ARCADIS will transmit the documents to City with written comments.

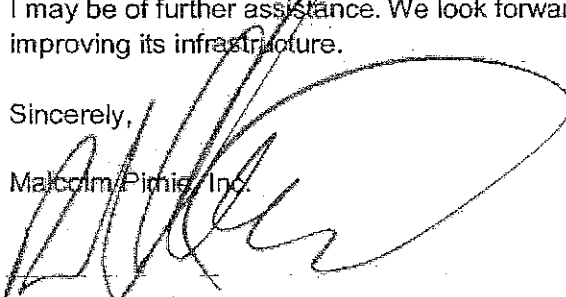
Fees

Malcolm Pirnie, Inc. is prepared to complete the following scope of services for a not to exceed fee of \$180,900. This includes a fee of \$85,900 for the construction administration portion of the project and a budget of \$95,000 for part time inspection. Please note that the level of effort to complete the project is based on a 250 day construction schedule and is based on a total number of man-hours required to complete the project. If there are delays due to unforeseen conditions, additional time and funds may be required to complete the project for construction inspection, or if additional inspection services are requested by the City. Please see the enclosed breakdown of hours and fees.

If you have any questions, please do not hesitate to call me at 518.280.7300, so that I may be of further assistance. We look forward to continuing working with the City in improving its infrastructure.

Sincerely,

Malcolm Pirnie, Inc.



Robert E. Ostapczuk, P.E., BCEE
Principal Engineer

Enclosures

Copies:

D. Loewenstein, Pirnie/ARCADIS

PROJECT BUDGET

City of Newburgh Water Pollution Control Plant Newburgh, New York WPCP Improvements

DESCRIPTION	12	10	9	8	7	6	Hours Per Task
Task 1 - Construction Administration	8	40	24	120	60	120	372
Task 2 - Progress Meetings and Periodic Site Visits	2	16	0	60	120	24	222
Task 4 - Special Inspection Coordination	2	4	0	0	16	24	46
Task 5 - Contractor's Completion Documents	2	2	0	0	16	32	52
TOTAL LABOR HOURS	14	62	24	180	212	200	692
TOTAL DIRECT LABOR COSTS	\$1,358	\$3,348	\$1,200	\$7,200	\$7,420	\$5,200	\$25,726

Title	Grade
Senior Vice President	12
Associate Vice President	11
Principal Engineer	10
Senior Engineer	9
Project Engineer	8
Staff Engineer	7
Engineer II	6
Engineer I	5
Admin/Tech IV	4
Admin/Tech III	3

Total Direct Labor: \$25,726
Overhead and Fee (2.0) \$51,452
Subtotal \$77,178
Expenses:
Computer \$2,408
Reproductions \$332
Mileage \$3,982
Misc. \$2,000
TOTAL \$85,900

PROJECT BUDGET

City of Newburgh
Water Pollution Control Plant
Newburgh, New York
WPCP Improvements

DESCRIPTION	12	10	9	8	7	5	Totals
Task 3 - Construction Inspection	0	0	0	80	80	840	1000
TOTAL DIRECT LABOR COSTS	\$0.00	\$0.00	\$0.00	\$3,200.00	\$2,800.00	\$21,000.00	\$27,000

Title	Grade
Senior Vice President	12
Associate Vice President	11
Principal Engineer	10
Senior Engineer	9
Project Engineer	8
Staff Engineer	7
Engineer II	6
Engineer I	5
Admin/Tech IV	4
Admin/Tech III	3

Total Direct Labor: \$27,000
 Overhead and Fee (2.0) \$54,000
 Subtotal \$81,000
 Expenses:
 Computer \$3,480
 Reproductions \$480
 Mileage \$10,040
 TOTAL \$95,000

RESOLUTION NO.: 162 - 2012

OF

SEPTEMBER 24, 2012

A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO NEWBURGH VENTURES CORP
TO THE PREMISES KNOWN AS 61 WILLIAM STREET
(SECTION 39, BLOCK 2, LOT 29)

WHEREAS, on June 22, 2011, the City of Newburgh conveyed property located at 61 William Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 39, Block 2, Lot 29, to Newburgh Ventures Corp.; and

WHEREAS, Mr. Pereira, a principal of Newburgh Ventures Corp., has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

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

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

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

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 61 William Street, Section 39, Block 2, Lot 29, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated June 22, 2011, from the CITY OF NEWBURGH to NEWBURGH VENTURES CORP., recorded in the Orange County Clerk's Office on July 7, 2011, in Liber 13196 of Deeds at Page 1300 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: _____, 2012

THE CITY OF NEWBURGH

By:

RICHARD F. HERBEK,
City Manager

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

On the _____ day of September in the year 2012, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, 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.

RESOLUTION NO.: 163 - 2012

OF

SEPTEMBER 24, 2012

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE TAX FORECLOSURE
OF 100 RENWICK STREET, SECTION 45, BLOCK 5, LOT 19**

WHEREAS, the City of Newburgh has commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2009-12857; and

WHEREAS, on June 16, 2011, the owner, served an Answer to such action in regard to the foreclosure of 100 Renwick Street, Section 45, Block 5, Lot 19; and

WHEREAS, the City received notification that the owner filed a bankruptcy petition October 28, 2011; and

WHEREAS, the bankruptcy was discharged and the property was sold to a subsequent owner; and

WHEREAS, the current owner has advised he would like to pay the taxes; 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 if all taxes, interest and penalties in the amount of \$16,493.58 are remitted to the City of Newburgh on or before September 30, 2012;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to withdraw the liens on the property located at 100 Renwick Street, Section 45, Block 5, Lot 19, in the City of Newburgh, from the Lists of Delinquent Taxes upon receipt of all taxes, interest and penalties in the amount of \$16,493.58, which amount must be remitted to the City of Newburgh on or before September 30, 2012.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

ORDINANCE NO.: 6 - 2012

OF

SEPTEMBER 24, 2012

AN ORDINANCE AMENDING SECTION 248-32
ENTITLED "LIMITATIONS ON WASTEWATER STRENGTH"
WITHIN THE CODE OF THE CITY OF NEWBURGH TO
INCREASE THE ALLOWABLE pH LEVEL TO 10.5 FOR DISCHARGES INTO
THE WASTEWATER COLLECTION AND TREATMENT SYSTEM
OF THE CITY OF NEWBURGH

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Section 248-32, entitled "Limitations on Wastewater Strength" within the Code of the City of Newburgh be and is hereby amended to read as follows:

Section 1. § 248-32. Limitations on wastewater strength.

B. No person shall discharge any wastewater:

(1) Having a temperature which will inhibit biological activity in the publicly owned treatment works resulting in interference, but in no case wastewater with a temperature at the introduction into the publicly owned treatment works which exceeds 114° F. (45.5° C.).

(2) Containing more than 100 milligrams per liter of oil or grease.

(3) Having a pH lower than 5.5 or higher than 10.5.

(4) Containing in excess of one milligram per liter phenolic compounds which cannot be removed by the City's wastewater treatment process.

Section 2. This ordinance shall take effect immediately.

City Manager, Richard Herbek, said that this was thoroughly explained at the Work Session by our City Engineer, Craig Marti. Currently the rate is 9.5 and it is a nominal change to 10.5. We have had an ongoing issue with Unitex Corporation who is a major player in the City of Newburgh and they

employ a lot of people. This change will not create any major problems to the Hudson River or the discharge into the Hudson River but it will substantially help the Unitex Corporation to be in compliance.

City Engineer, Craig Marti, said that they have done analytical testing throughout the system and they have done research throughout the State and Country with regard to similar ordinances. The change that is being proposed is consistent with the standards they found elsewhere.

Councilwoman Angelo moved and Councilwoman Lee seconded that the ordinance be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 164 - 2012

OF

SEPTEMBER 24, 2012

**A RESOLUTION REJECTING ALL BIDS RECEIVED IN CONNECTION
WITH THE PURCHASE OF TWO (2) SPORT UTILITY VEHICLES
FOR THE CODE COMPLIANCE DEPARTMENT**

WHEREAS, the City of Newburgh has duly advertised for bids in connection with the purchase of two (2) Sport Utility Vehicles ("SUV's) for the Code Compliance Department; and

WHEREAS, four (4) bids were received and opened; and

WHEREAS, upon review of the bids it has been determined that all bids received far exceeded the pre-bid estimate; and

WHEREAS, this Council has determined that rejecting all bids is in the best interests of the City of Newburgh and the project;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that all bids received in connection with the purchase of two (2) SUV's for the Code Compliance Department be and are hereby rejected; and

BE IT FURTHER RESOLVED, that City staff is hereby authorized to take the necessary and appropriate measures to advertise for the purchase of two (2) SUV's for the Code Compliance Department for re-bid.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 165 - 2012

OF

SEPTEMBER 24, 2012

**A RESOLUTION TO AUTHORIZE THE AWARD OF A BID AND
THE EXECUTION OF A CONTRACT WITH JACKSON DEMOLITION
SERVICE, INC. IN CONNECTION WITH THE CITY OF NEWBURGH
COMMUNITY DEVELOPMENT BLOCK GRANT BUILDING DEMOLITION
PROJECT AT A BASE BID COST OF \$295,000.00**

WHEREAS, the City of Newburgh has duly advertised for bids in connection with the Community Development Block Grant Building Demolition Project for the demolition of 159 Grand Street, 10 Dubois Street and 113 Washington Street; and

WHEREAS, three (3) bids were received and opened; and

WHEREAS, it has been determined that Jackson Demolition Service, Inc. is the lowest responsible bidder and is fully qualified and able to perform the work; and

WHEREAS, funding for such project shall be derived from Community Development Block Grant Funds; and

WHEREAS, this Council has determined that it is in the best interests of the City of Newburgh and its further development to enter into a contract for such demolition services;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the demolition of structures located at 159 Grand Street, 10 Dubois Street and 113 Washington Street, respectively, be and it hereby is awarded to Jackson Demolition Service, Inc. for the bid amount of \$295,000.00 and that the City Manager is hereby authorized to enter into a contract for such work in this amount.

Councilman Dillard said that this was talked about at the Work Session and he was somewhat uncomfortable because there was no guarantee in terms of local hiring.

City Manager, Richard Herbek, said that there is a Section 3 Plan for this.

Councilman Dillard said that we do have Section 3 but how do we know that the contractor will fulfill his obligation by hiring locally? He is still looking for something in writing.

Mayor Kennedy said that she actually knows someone that this contractor is working with in the City.

City Manager, Richard Herbek, said that we have a whole Section 3 Plan which is in writing.

Councilman Dillard said that he is talking demographics and numbers.

City Engineer, Craig Marti, said that the low bidder has indicated that he will comply with the Section 3 requirement. He has filled out the appropriate paperwork indicating that he anticipates two new hires from which he will consider local applicants in accordance with our Section 3 Plan. There are only five employees projected for the project and he is required under the Section 3 Program to consider hiring local applicants from the sources and the local agencies that can introduce him to Section 3 eligible employees. He is in compliance and he intends to comply with the program. That is as much as we can ask of a private business that is doing business in the City of Newburgh.

Councilman Dillard said that there will be five employees.

Corporation Counsel, Michelle Kelson, said that there are five employees projected for the job. This contractor who is the low bidder has told us that he projects two local hires as long as they qualify under all of the other requirements to do the job. They have to be properly trained and eligible to do the work. Out of the five employees two will be local hires if the local community can provide eligible employees. One of the other contractors wasn't going to hire anyone local and the other contractor, which was \$100,000.00 higher, projected possibly three. So you have the low bidder with two local hires.

Mayor Kennedy said that she understands that they are complying with the law and although she is planning to vote for this she is serious about us

finding another way to take down these buildings. This amount of money to take down three buildings is something she can hardly swallow. She noted that the building at 159 Grand Street is in serious trouble and we can't let it go through another winter. She feels like she is in between a rock and a hard place because some of these buildings have to come down but she is not happy about the fact that we are paying \$300,000.00 to take down three houses. She believes that there are some other ways to do this in the future by building our own teams which she wants to look into.

Councilwoman Lee asked for how long did we know that these buildings needed to come down.

City Engineer, Craig Marti, responded that these buildings have been put out to bid three times now. It went out for bid as a large package in the beginning of the Spring but the bids came in too high and there was lack of compliance with the Section 3 requirement. In an effort to make the Section 3 component more feasible, they broke it down into smaller projects and these three properties have been bid as a group of three twice now. The condition of the property on Grand Street and the brick building that is falling down on a neighboring building on Dubois Street has a large amount of overhead utilities in the way and a lot of hand work associated with being able to take the building down without damaging surrounding properties. In discussing this with the contractors and prior to bid, we understood that the one Dubois street property would push the price higher. 10 Dubois Street is probably the most expensive of the buildings that we will be demolishing under this program.

Councilwoman Lee said that on Thursday she asked that in the future by resolution we add to RFP's that these contractors have to hire locally and it is not an option for them.

City Manager, Richard Herbek, noted that all CDBG projects do have the Section 3 requirement.

Councilwoman Lee said that we don't always just use CDBG funding.

City Manager, Richard Herbek, said that he would prefer to just get this done and we can talk more about it later because it gets a little tricky when you are talking about Consent Order Projects where we are under either State or Federal mandates to do certain work.

Councilwoman Lee said that she understood that they were planning to hire locally.

City Manager, Richard Herbek, said that this does entail a Section 3 Plan and it is part of this particular job. Concerning future work they need to have a more lengthy discussion. He told Councilwoman Lee that he understands what she is saying but it gets a little tricky when you have work involving Consent Orders.

Councilwoman Lee said that she believes that was mentioned but it was also mentioned that Jackson Demolition would hire locally.

Mayor Kennedy said that they are hiring two out of five. You have to remember that any company that comes here is going to come in with their heavy equipment operators and restrictions with their insurance, etc. Where they have to have additional employees then we hire local.

Councilwoman Lee said that it is not all vendors it is just the ones who are receiving funding from Planning and Development. Jackson has agreed to hire locally because it is part of the agreement but everyone is not required to hire locally.

City Manager, Richard Herbek, said that they will talk about that in the future.

Councilwoman Angelo said that she is not one for demolition but asked how the choice was made that these three houses have to come down.

Corporation Counsel, Michelle Kelson, said that these are three of the most dangerous buildings that we identified. They are structurally unsound and they are a danger to neighboring properties. We have been over this list several times and we deemed these buildings a priority so they need to come down.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 166 - 2012

OF

SEPTEMBER 24, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE VENDOR SERVICE AGREEMENTS WITH
VARIOUS SERVICE PROVIDERS AT A COST NOT TO EXCEED \$63,118.55
IN CONNECTION WITH THE CURRENT REQUIREMENTS OF THE
TWENTY FIRST CENTURY GRANT PROGRAM**

WHEREAS, by Resolution No.: 181-2009 of November 23, 2009, the City Council authorized the City Manager to accept monies from the New York State Department of Education for the 21st Century Community Learning Centers Grant; and

WHEREAS, said grant was awarded in the spring of 2008 for a five (5) year period; and

WHEREAS, the City's 21st Century Community Learning Centers Program provides strengthening and expanding opportunities afterschool for children and youth; and

WHEREAS, it is necessary and appropriate to enter into vendor service agreements with the City's 21st Century Community Learning Centers Program with various service providers for the final fiscal year of said grant period beginning October 1, 2012 and ending on June 30, 2013 for the following amounts:

Daryle Ford	\$8,676.05	Sabrina Dolfinger	\$2,775.00
Michael Wisdom	\$3,562.50	Rochelle Whitted	\$4,675.00
Malinda Ware	\$11,880.00	Alexandria Meyers	\$9,325.00
Goldie Mercado	\$8,800.00	Pa Kwame Johnson	\$8,925.00
		Susan Aulogi	\$4,500.00

WHEREAS, the Council has reviewed the attached Agreements and has determined that it is in the best interest of the City of Newburgh and its residents to accept and expend such funds to enhance the community and strengthen afterschool services to Newburgh's children and youth;

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 Vendor Service Agreements with the service providers referenced herein above at a cost not to exceed \$63,118.55 in connection with the current requirements of the Twenty First Century Grant Program.

Councilwoman Angelo asked if they could have a list of what the children are going to be doing in this program.

City Manager, Richard Herbek, said that there is a detailed work plan for each particular contractor. Joy had those with her on Thursday night and went over them with the Council. We need to get the 21st Century Program running in an early October time frame. You have already approved the major partners and they are some of the individuals who will be doing the detail work on running the program. Joy went through the methodology. There was an RFP process. The success rate is very high and she went over that with the Council on Thursday night. She noted very specifically that the program has met the performance measurements over the last several years. This is Federal money and this is a Federal project which has been extremely useful to the City of Newburgh dating back to around the early 2000 time frame when it was run by the school district. Over the past several years it has been run by the City of Newburgh so we need to do this to get the program underway.

Mayor Kennedy said that when she first saw this proposal she asked questions too but she came to the understanding that we have a tutoring program going on and these other things that they are talking about doing is supposed to go to additional things for kids to have opportunities for cultural enrichment. She asked for measurements on how they were going to be successful and for more information because she was questioning what this was and she was provided with some measurement and performance indicators on the various programs.

Councilwoman Lee said that Joy answered all of her questions quite effectively and gave a long laundry list of requirements.

Councilman Dillard was satisfied because she had indicated and they met with the Board of Education that there are going to be some changes with the 21st Century Program. We are going to ask people in the community to come in and help make those changes too so that is why he is satisfied with the \$63,000.00 because it won't be there next time.

Mayor Kennedy said that this is the last year of a five year program so any changes that we want to make in the way of the 21st Century Program we will have that opportunity next year and we may do that. We will start applying for the new program in the next few weeks.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 167 - 2012

OF

SEPTEMBER 24, 2012

A RESOLUTION AUTHORIZING THE AWARD OF A BID AND
THE EXECUTION OF A CONTRACT IN CONNECTION WITH THE
WATER POLLUTION CONTROL PLANT IMPROVEMENTS PROJECT
TO BLUE HERON CONSTRUCTION CO., LLC FOR GENERAL
CONSTRUCTION SERVICES IN THE AMOUNT OF \$2,140,791.00, HUDSON
VALLEY ELECTRICAL C&M, INC. FOR ELECTRICAL SERVICES IN THE
AMOUNT OF \$750,000.00,
AND DJ HEATING & AIR CONDITIONING, INC FOR HVAC
CONSTRUCTION SERVICES IN THE AMOUNT OF \$224,000.00

WHEREAS, the City of Newburgh has duly advertised for bids for the
Water Pollution Control Plant Improvements Project; and

WHEREAS, bids have been duly received and opened and it is necessary
and appropriate to enter into contracts with the lowest responsible bidder in each
category to retain such services; and

WHEREAS, the funding of the project is coming from the Bond
Resolution adopted on November 16, 2009 and Sewer Fund Balance
G.0000.0599.1000; and

WHEREAS, the distribution of such funds shall be derived from
HG1.8130.0200.8100;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of
Newburgh, New York that the following bids as submitted by the indicated
lowest responsible bidders be accepted, that contracts for same be awarded, and
that the City Manager be and he is hereby authorized to enter into such contracts
as being appropriate and necessary and in the best interests of the City of
Newburgh.

Lowest Qualified Bid Summary Amount		Bidder
General Construction	\$2,140,791.00	Blue Heron Construction Co., LLC
Electrical Construction	\$ 750,000.00	Hudson Valley Electrical C&M, Inc.
HVAC Construction	\$ 224,000.00	DJ Heating & Air Conditioning, Inc.

City Manager, Richard Herbek, noted that 42% of the funding is coming from the Town of Newburgh. The City issued a BAN for some of this money a year or so ago and some of it is coming from fund balance to finance the project. This is for the Belt Filter Press Project and other additional facility improvements and we are under a Consent Order to get this work done. If we don't, we will be in a \$15,000.00 per day penalty situation so this is quite important.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED



Mr. Craig Marti, P.E.
City Engineer
City of Newburgh
83 Broadway
Newburgh, New York 12831

Malcolm Pirnie, Inc.
855 Route 146
Suite 210
Clifton Park
New York 12065
Tel 518 250 7300
Fax 518 250 7301
www.arcadis-us.com

Water

Subject:
Water Pollution Control Plant Improvements
Bid Results and Recommendations
Contract No. 2G – General Construction
Contract No. 2E – Electrical Construction
Contract No. 2H – HVAC Construction

Date:
September 20, 2012

Contact:
Joshua LaPlante

Dear Mr. Marti:

Phone:
518.250.7300

On behalf of the City of Newburgh (City), Malcolm Pirnie, Inc., the Water Division of ARCADIS (Pirnie/ARCADIS), advertised Bid Documents for the Water Pollution Control Plant Improvements Project, Contract No.'s 2G, 2E and 2H. On September 18, 2012, the City received Bids and they were opened in accordance with the Bid protocol. A total of thirteen bids were received. The Bid results are summarized on the attached Bid Opening Reports.

Email:
joshua.laplante@arcadis-us.com

Our ref:
04881003.0000

The apparent low Bidder for the construction of each Contract is listed below:

- **Contract No. 2G** – Blue Heron Construction Co., LLC \$2,140,791.00
- **Contract No. 2E** – Hudson Valley Electrical C&M, Inc. \$750,000.00
- **Contract No. 2H** – DJ Heating & Air Conditioning, Inc. \$224,000.00

We have reviewed the Bids and have determined the Bidders to be responsive in accordance with the bid instructions, except for several informalities identified for each Bidder. The Bid informalities, identified below, are common in municipal bidding and many Bidders provide the information upon notification that they are the apparent low Bidder.

Imagine the result

Contract 2G – General Construction – Blue Heron Construction Co., LLC

- Pages 1 and 2 were missing from their Bid Form. Page 2 is where the Bidder is required to acknowledge receipt of Addenda. The Bidder was contacted and stated that the pages were left out in error. Attached is a letter from the Bidder stating that they did receive the addenda and they were incorporated into their Bid.
- In Article 4 – Basis of Bid, under Item No. 2 the Bidder mistakenly wrote square feet instead of linear feet. Attached is a letter from the Bidder stating that this was an error. This error does not change the Bid price or the conditions of the agreement.
- Bidder did not include evidence for a limited liability company to sign the Bid. Upon request, we received a copy of the corporate resolution providing the evidence to sign, it's attached to this letter.
- Bidder did not include a financial statement in their Bid package. Upon request, we have received a copy of the statement and it is attached.

Contract 2E – Electrical Construction – Hudson Valley Electrical C&M, Inc.

- Bidder did not include evidence for a corporation to sign the Bid. Upon request, we received a copy of the corporate resolution providing the evidence to of authority to sign and it's attached to this letter.

Contract 2H – HVAC Construction – DJ Heating & Air Conditioning, Inc.

- Bidder did not include evidence for a corporation to sign the Bid. Upon request, we received a copy of the corporate resolution providing the evidence of authority to sign and it is attached to this letter.
- Bidder did not include a financial statement in their Bid package. Upon request, we have received a copy of their financial statement.

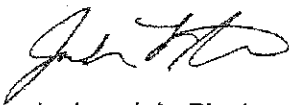
ARCADIS

Mr. Craig Marti, P.E.
Septemebr 20, 2012

Pirnie/ARCADIS suggests that the City Council consider awarding the Contracts to the apparent low Bidders identified previously. If you have any questions, please do not hesitate to call me at 518.250.7300.

Sincerely,

Malcolm Pirnie, Inc.



Joshua J. LaPlante
Staff Engineer

Attachments

Copies:

Michelle Kelson, Esq., City of Newburgh
Daniel Loewenstein, P.E., BCEE Pirnie/ARCADIS
Robert Ostapczuk, P.E., BCEE Pirnie/ARCADIS

RESOLUTION NO.: 168 - 2012

OF

SEPTEMBER 24, 2012

**A RESOLUTION APPOINTING KAREN MEJIA
TO THE CITY OF NEWBURGH HUMAN RIGHTS COMMISSION**

WHEREAS, the City of Newburgh has created the City Human Rights Commission pursuant to Section 239-q of the General Municipal Law; and

WHEREAS, this City Council deems it to be in the best interests of the City of Newburgh to appoint members to serve as Commissioners to fill vacancies and to carry on the important work of such Commission;

NOW, THEREFORE, BE IT RESOLVED, that the following person be and is hereby appointed to serve as a Commissioner of the City of Newburgh Human Rights Commission:

Karen Mejia, to complete the term of former member who resigned, which term shall expire on April 27, 2013; and

BE IT FURTHER RESOLVED, that said appointment shall take effect as of the date of this Resolution and be for the term stated hereinabove.

City Manager, Richard Herbek, noted that she is a volunteer as are all of the members so they do not get paid. He believes that there are nine members on this Commission and they meet here at City Hall. He believes that we are still short members for this Commission so they are still seeking additional members.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 169 - 2012

OF

SEPTEMBER 24, 2012

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF
REAL PROPERTY KNOWN AS 81 SOUTH STREET
(SECTION 19, BLOCK 1, LOT 5)
AT PRIVATE SALE TO STEPHANIE LANDELL

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, Stephanie Landell, the former owner of 81 South Street, being more accurately described as Section 19, Block 1, Lot 5 on the official tax map of the City of Newburgh, has requested to re-purchase the property at private sale; and

WHEREAS, by Resolution No.: 121-2012 of July 16, 2012 this Council authorized the sale of 81 South Street at public auction; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to allow the former owner to re-purchase this property, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against this property at the time the City of Newburgh took title in the tax foreclosure proceeding, provided that all taxes, interest and penalties owed are paid expeditiously; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to Stephanie Landell 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 all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, in the amount of Three Thousand Seven Hundred Sixty Two and 18/100 (\$3,762.18) Dollars no later than October 15, 2012; and

BE IT FURTHER RESOLVED, that the property located at 81 South Street, Section 19, Block 1, Lot 5, be and is hereby withdrawn from the October 3, 2012 City of Newburgh property auction list approved by Resolution No.: 121-2012 of July 16, 2012; and

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

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

CITY MANAGER'S REPORT

City Manager, Richard Herbek, said that he was pleased to give the City Council a report on the Section 108 Correction Action Verification which was just received today from the US Department of Housing and Urban Development. This relates to the Section 108 Loan Guarantee Program and this report is in response to the original audit issued in November of 2008 reviewing the program for both Marina Ops and Crystal Lake. The City had applied for those two loans back in the 1999 to 2001 time frame. The initial 2008 report from the Office of Inspector General identified four deficiencies. One was the failure to enforce loan agreement provisions adequately. The second was not ensuring that all funding sources were supported and documented. The third was unnecessary use of CDBG funds that we used to repay the loan and fourth was that the City overpaid the developer for duplicate costs. The purpose of this follow up was to review the City's subsequent program and to ensure that all of the deficiencies had been corrected. There was an auditor here for a six week period and this report verifies that all of the original audit recommendations were properly implemented or corrected. There were no further recommendations and he was told that this is only the second time that there has been a report like this with no recommendations. Courtney Kain, our Community Development Director, handled this with the Inspector General's Office when they were here and they were quite satisfied with all of our records and he would like to acknowledge that. This has haunted the City for many years and now it's over.

Councilwoman Gay Lee and Mayor Kennedy congratulated the City Manger.

OLD BUSINESS

Councilman Dillard said that they have been discussing Burton Towers and the sale of Burton Towers for the last couple of years. We are supposed to be getting money in October and he would like to know how that is coming. Will we get the money or not.

City Manager, Richard Herbek, said that we are going to get the money. They have already called for a clarification on the amounts and we will get the checks in a timely manner.

Councilman Dillard said that his question in terms of the 2012 and 2013 Budget is which side does that go on?

City Manager, Richard Herbek, said that it is primarily water and sewer.

Councilman Dillard said that it is a PILOT.

Corporation Counsel, Michelle Kelson, said that a portion of it is. The three payments that are due are municipal impact fees that will be set aside for certain types of projects related to improvements in and around the area where the building project is. The large chunk of the amounts due are delinquent water and sewer payments so those have to be applied to the water and sewer fund and apportioned according to bills that are outstanding. There is a portion of the funds that relate to the delinquent PILOT payments from the previous PILOT granted to the previous owner and that amount can be applied she believes to the General Fund.

City Comptroller, Cheryl Gross, said that it will be recorded as Receivable Due.

Councilman Dillard asked how much is the Receivable Due that will go toward the General Fund.

Corporation Counsel, Michelle Kelson, said that it is around \$272,000.00.

Councilman Dillard asked about the existing PILOT?

Corporation Counsel, Michelle Kelson, responded that they have already paid the existing PILOT for this year.

Councilman Dillard asked the Comptroller to please let the Council know when those funds come in.

PUBLIC COMMENTS REGARDING GENERAL MATTERS

Denise Ribble, Montgomery Street, submitted and read the attached comments. (copy attached)

Councilwoman Lee said that there are no conversations going on behind closed doors that she is aware of regarding housing and she doesn't know why Mr. Littman is talking to anyone but us. If the DEC had some kind of agreement, the City Council doesn't know anything about it. She told Ms. Ribble that she is absolutely offended by those remarks and she thinks that she should know that her information is wrong. Not only is it wrong it is insulting. We are not hiding anything and there are no projects going on behind closed doors that the public doesn't know about. She told Ms. Ribble that they miss her from the City Council meetings and perhaps if she were here she would know what is going on with the Mid Broadway Project

Brian Flannery, 5 Norton Street, submitted and read the attached comments. (copy attached)

Gayle Fulton, Newburgh, asked if we are going to get another traffic light put down on River Road/Martin Luther King Drive because it really needs to be there. A light also needs to be put in at the intersection of Mill Street and Ann Street. Do we have to wait for someone to get killed before you can put a couple of traffic lights in?

Omari Shakur, New Voters Movement, said in regard to resolution #165-2012 that he hasn't seen any new jobs created in the City of Newburgh but he always sees money going out. He would like to know who Jackson Demolition Service is, how they are going to go about hiring and when and where will they be hiring. For \$200,000.00 dollars he could have hired ten kids at \$10,000.00 a piece and he could have gotten rid of those three buildings for the City. It seems like everyone is coming to the City of Newburgh and getting money except the people who live here. He asked if Jackson Demolition Service is from Newburgh.

Mayor Kennedy responded that we didn't have any bidders from the City of Newburgh.

Mr. Shakur said he guesses that's because they didn't know about it.

Mayor Kennedy said that it was put out there.

Mr. Shakur added that he would like to know about this special investigator that we are supposed to be bringing to Newburgh. He would like

to know where we are at with that. Is one coming or was that just some smoke that was being blown.

Councilman Dillard said that it was not smoke. That was one of his campaign promises.

Mr. Shakur said that he would like to know the specifics of when, where and how.

Corporation Counsel, Michelle Kelson, said that they have identified three potential companies that can perform the services and we have to identify the scope of work that we want them to cover.

Mr. Shakur said that they were told that already two meetings ago. They would like to know when, where and how.

Corporation Counsel, Michelle Kelson said that they have to define a scope of services and that has not been done yet.

Mayor Kennedy said that these things take time. We have to get the vendors and everyone wants RFP's so we have to go through that process.

Mr. Shakur said that this is a very important issue because we have lives on the line. We have young people that have died so they would like to know when, where and how this special investigator is coming through. What is the procedure and how is the City Council going about this? He would like to see something on paper because this doesn't seem like a priority right now. It seems like they are trying to hope that everything dies down again but they would like to know when, where and how.

Kippy Boyle, Newburgh, said that she has heard many different versions of what the boundaries of the Land Bank are so she would like the City Council to show the residents a defined map that is explicit so there is no more doubt about these boundaries. It started out to be just a few areas but now she has heard that it has been expanded to include the entire City. She just wants to know the facts and see a defined map.

Mayor Judy Kennedy said that we do have a map that defines the boundaries. She believes that it is available on the website and it has been the same boundaries since the beginning as far as she knows.

Ms. Boyle added that she would like the Council to reaffirm to the residents that the terms of the Land Bank sales are going to be to taxable entities and not to non-profits. The whole purpose of the Land Bank was to

help us broaden our tax base. She noticed that probably few individuals would be able to afford the taxes on some of the properties in the sealed bid which means they will go to some sort of entity. She would like to know if on the sealed bids there is an upset price and if there is language that says the purchasers of these sealed bid properties, which might be in the Land Bank, have to be taxable entities otherwise she doesn't see what the point is. In regard to the grant to the Greater Newburgh Partnership, because it was a grant to a private entity they didn't have to go through an RFP process of selecting the consultant but isn't that the same consultant that was used for the Newburgh Local Area Transportation Study? She would like to know if that is the same consulting firm and if so, whatever happened to that study.

Virginia DiOrio, 17 Nott Place, said that her concern is the significant drug problem that we have here in the City of Newburgh. She noted that there are a couple of programs that can help us. One is that the Police Department has a day where they are collecting medications from anybody's home no questions asked. The last time that this was done it was extremely successful. People had medications in their home that were several years old. This will be held on September 29th in the City of Newburgh and if you can't make it on that day you can drop-off medications at any time in the Town of Newburgh. This will get it out of the house so you don't have to worry about kids getting a hold of it because a lot of drug use is coming from the medicine cabinet. She added that Team Newburgh has put out a poster called "Take Back the City" and it is about the drugs that are being sold legally in the Bodegas that kids are getting and smoking. These are substances that have yet to become illegal that kids are using that can cause significant problems to the brain. She said that if anyone sees this stuff being sold in these stores they have to know that it is really hurting our kids.

Councilwoman Angelo told Virginia that the Citizens Advisory meets on Thursday night and asked her to bring those posters with her.

Natasha Cotton, City of Newburgh, thanked Councilman Dillard for the 21st Century Grant. She came here tonight looking for Doyle Murphy because she hasn't seen anything positive in the paper about Newburgh yet. There are some great things going on in Newburgh that could be reported other than all the madness. She is tired of hearing about people getting shot and stabbed too and it is getting out of control. She would like to see a report on the gymnasts that are practicing all over the City. They went from a six member team to a thirty-two member team of participants from ages five to thirteen. They are in every Youth Parade and she hasn't seen a layout on these kids yet. They are usually practicing over at the Library because they don't have a Gymnasium so they use what they have and make the best of it. She doesn't support bad children so she is waiting for the parents to step up and get it right and stop

blaming everybody else. She pointed to Corporation Counsel, Michelle Kelson and told Mr. Herbek that she aggravates her with her disrespect to the City Council and the City Manager and anyone else in her path. Her sort of behavior should have been canned a long time ago.

Tammy, Newburgh, said that at the last Work Session she knows that they talked about Peddlers and Vendors and she would like to know if they have come to a conclusion. She would also like to find out when the events are given by the City of Newburgh and it brings in the vendors, for instance the Carnival that was just held, is all of the money received from that event put into the City's Budget? If not, who gets that money? How much do they get and why? She was away this weekend and someone called her about an incident at a club named Ole'. Someone held a party and it was a good event but when it was time to leave there were some men from out of town who had words with some of the City of Newburgh residents which turned into a big brawl. Her issue is that when there is mismanagement of City money and when there is misappropriation of funds and theft in a city where money is supposed to be sent to its residents for the low income and the poor, this is the result. It is money that should have given these kids earlier on opportunities and other ways to do things. Some of them could have gone to College, learned a trade or even started their own business. Now that we have an inferno of kids tearing this City up what are we going to do? This City owes our kids and opportunity to do a turn around and if not then they will have to deal with the consequences. Don't look at the parents. Look at those who took the money.

Sheila Monk, City of Newburgh, thanked the new City Council for what they are trying to do with the mess they came into. At the Work Session she learned a lot about the finance and the good that the City could have done but didn't do. The new Council has so much work they have to do. We need housing and jobs here. A lot of the jobs put in here are not for the City of Newburgh residents because people from New York City and Yonkers are getting these jobs. We have to start at home first. There is nothing for our children. Our youth ages twenty-one and twenty-two years have to get on Social Services because no one will hire them. There are kids out there robbing, stealing and selling drugs because they are playing the game of survival. We should make up a plan so that we can get these jobs for our kids because there is a lot going on in City Hall with money that we don't even know where it went. We have to put our priorities straight. There is a lot going on in the City of Newburgh that just gets pushed under the rug. The money has to be spread out to other people because Joy and the Churches can't do everything. Every time someone comes to City Hall and asks for help they are told that City Hall has no money but there is money and they give it to who they want to give it to. Enough is enough.

Juanita, City of Newburgh, said that Omari asked about an investigation earlier and her family from the beginning has searched for answers from the City Council. She has personally spoken with every Council member outside of here but since March 7th she has finally realized that they were just blowing smoke up her family's ass. That is what it boils down to because she listens week after week month after month to the same lies. Corporation Counsel just reaffirmed everything because she just said the same thing that she said three meetings ago. The City Council sat there and told her that these Officers would have desk duty indefinitely. She asked the Council where those Officers are now because if they say they are on desk duty it is a damn lie. They are back out on the streets and she knows this because she looks at them every day. Nothing the Council says will ever amount to anything with her family.

Timothy Hayes-el, City of Newburgh, said that we put a program together with Ms. Best and several people came and got certified for different things but still no one has a job. First we were hearing that they weren't qualified and now that they have the certifications they still can't get jobs. He told the Council that they voted them into Office expecting jobs and things to change. They expected the Council to represent the people here but it is not getting done and nothing has changed. Lack of jobs equals poverty and that equals crime. He said that he expected more out of this City Council.

Roxie Royal, City of Newburgh, said that at the last City Council meeting the City Manager reported that he hired four new Police Officers. She asked if he could tell the residents who he hired and what their ethnicity is. She believes that they need to see more of the ethnicity reflected in the police department of the community because sometimes culturally you know more of how to react to someone of the same culture.

Police Chief, Michael Ferrara, responded that there were four Officers hired off of the City list and all four are City residents. They are limited to hiring by score when the Civil Service test is taken and they have to hire from that list. If anyone has any questions regarding the ethnicity of the Officers in the Police Department, that is something that he keeps track of so if anyone is interested they can give him a call and he will go over that with them.

Mark Coolidge, Uncle of Michael Lembhard, said that everyone talks about him having had a lot of Warrants but no one acknowledges that he had these Warrants for not doing his Community Service. He has been trying to put together a non-profit organization called S.O.S. "Save Our Streets". He would like to work with the Courts to give him community workers so that they don't have to be sent to places where they don't want to work. Give them to him and he will get our streets cleaned and we will have a cleaner

Newburgh. He has three Churches ready to be involved in this but he received some blockers telling him that he has to have insurance to clean up garbage. He said that he has obtained the insurance and S.O.S., Save Our Streets for a cleaner Newburgh will be up and running within the next three weeks. He asked the City Council to get in touch with our Judges and get them to look at what he is offering and give these workers to him. He will make sure that they put their hours in and we will have a cleaner Newburgh. The streets won't be full of garbage and maybe we will start to look like Beacon, Middletown or Walden. These kids won't have to run and have stupid Warrants put on them. Many of them don't have jobs so they can't pay their fines and what happens then is they get a Warrant and they get scared and they run. Let's turn these small fines over to Community Service and let's clean our city. He again asked the Council to reach out to our Judges and make this happen. He does have the insurance so he will be running this program within the next three weeks. He has shirts and memos being made up and as they do this they will hang signs up stating "S.O.S. Cleaned Our Street - Please Keep This Block Clean".

Councilwoman Angelo asked Mr. Coolidge to see her after the meeting because she has some information for him.

Mayor Kennedy said that she just heard about this yesterday and she thinks that he is on to something.

Mr. Coolidge said that there is a Father who runs the house on Johnston and Third Street that has parolees and he is willing to give him all of these parolees to start this program. We will have a cleaner Newburgh and we won't have young guys running for not doing Community Service. His Nephew was Michael Lembhard so maybe he can save the next guy who won't have a Warrant for his arrest.

Councilwoman Lee told Mr. Coolidge that she asked his Niece to have him get in touch with her. She has also talked with George Garrison and she can write Judge Ramsey a letter but this is not her project it is his.

Mr. Coolidge said that he is doing it in memory of his Nephew.

Councilwoman Lee continued that this is his initiative and she didn't want to start talking to the Judge without him.

Mayor Kennedy said that she is very encouraged when people step up to the microphone and actually have a solution. She said that she is willing to support this in any way she can.

Mr. Coolidge said that there have been people reaching out even from the Police Department because there are a few Officers who also want to get involved. He added that when there was a report that a child was supposedly kidnapped by South Junior High School he had thirty people out there ready to start knocking on every door out there to find out who the parent of that child was. If S.O.S. can reach out to help the Police Department or anyone in the community, that is what we are going to try to help out for.

Julius Beckwith, Newburgh, said that Ms Royal asked a question about the Police Department and he would like to ask the Chief how active his recruitment program is to hire minorities. Back some years ago he was in litigation with the City of Newburgh and the State of New York where he sued both parties because they had a discriminating program against minorities in the City of Newburgh. He wonders if the Chief is aware that that Federal order is still in effect at this moment.

Police Chief, Michael Ferrara, said that he was here when that original order came out and he is fully aware of the Federal guidelines. He met with the NAACP just this afternoon and talked about future Civil Service tests for Police Officers and their participation in assisting in making future tests available with full information. He believes that in the future they will expand their minority recruitment. They do it every year with posters, through the schools and Colleges here in the City of Newburgh and also with Orange County Community College, Dutchess, Marist and Union College in Poughkeepsie. We can expand that and with the help of the NAACP they will expand on minority recruitment for future tests. He added that they have two Civil Service lists. One is a regular list for all applicants and the other is for just City residents.

Stacey Burks, City of Newburgh, said that he has been fighting for his family's property the last couple of years. By coming to City Council meetings he finds that there is a web that you have to find your way around to get what you want. He is asking the Council to make an amendment to resolution #242-2010 which was a resolution accepting and rejecting bids received at the City property Auction. At that time one of his family members bid on the property at the Auction and then the City rescinded most bids except for two. He did not know at that time that he could ask for an amendment to that resolution because it took him a while to figure it out but that is what he is asking for now and he is asking that the money that the City currently has also goes to that property so we can put an end to this because it has been going on for a very long time.

Councilman Dillard asked for the address of the property.

Mr. Burks said that the address is 34 Carter Street. His parents owned that house for over thirty some odd years.

Mayor Kennedy asked if he has made any offers to pay the back taxes.

Mr. Burks said that he did that even before the City took it.

Mayor Kennedy said that they probably have to call a special session to talk about that.

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

Congratulations on the Dyson Foundation award to redo the City's zoning. I just wanted to know how accurate the THR article was and if the Dyson Foundation stipulated that there should be no RFP to select the consultant or stipulated that AKRF had to be selected?

Speaking of RFP's – What's going on with the Mid-Broadway site? Are the Council and City Manager working "behind closed doors" on a development agreement for public housing to the exclusion of all other revenue enhancing, safety, job creation or tax base improving projects and no RFP. How is it that these very important concerns are not being addressed publically? Why are some property disposition discussions taking place in executive session and others in public?

Just a note of information – If the Council really wanted to promote affordable rental housing, they would pass a rent control ordinance. And if they wanted to be sure that people were living in decent housing they would make sure that all City of Newburgh housing that receives Section 8 funds are inspected and code compliant.

Now I would like to ask a couple of questions about revenue generation. How is the vacant and abandoned registry going? Are the owners of these properties paying their fees? Have the fees been changed to include a yearly increase? What other revenue generating items have been implemented? How many of the people who are losing their homes in this tax auction were given the opportunity to participate in the tax repayment program?

And speaking of revenue generation, what a great idea it would be for the Council to support the proposal from the IDA for the expansion of Littman's Lighting business at 5 Scobie Drive. Private money not asking for a PILOT, environmentally sound site remediation supported by the DEC and DOS (yes the site can be remediated), a quarter of a million dollars in taxes each year and a green (LED lighting) business expansion that is consistent with the recently submitted Northern Newburgh Brownfield Opportunity Area nomination study.

Also, let's not forget that this weekend the City of Newburgh is the featured community for the Open Art Studio tours event and the Hudson Valley ramble.

Brian Flannery, 5 Norton Street

This is a follow-up to my comments at the August meeting during the public hearing on the proposed tax exemption.

Two items:

First: When I asked during the public hearing how the proposed exemption compared with the exemption for improvements to one- and two-family buildings that former councilwoman Chris Bello championed, I was told that there's no such exemption in the city charter. That's incorrect. The exemption I'm referring to was adopted by the council on August 8 of last year.

From the City Charter:

CHAPTER 270 ARTICLE XI Exemption for Capital Improvements to Residential Buildings [Adopted 8-8-2011 by L.L. No. 8-2011]:

Purpose; authority.

The City Council of the City of Newburgh encourages property owners of single- and two-family residential dwelling to invest in improvements to one- and two-family buildings used solely for residential purposes by providing an exemption from general municipal taxes pursuant to § 421-f of the Real Property Tax Law of the State of New York.

Second Item: My other comment at the public hearing obliquely questioned the City's assertion that the proposed exemption, in addition to applying to conversions from multiple dwellings to one- and two-family buildings, would apply to improvements to existing one- and two-family buildings. According to the Assessor's Manual, issued by the NYS Department of Taxation and Finance, this exemption applies exclusively to the conversion of multiple dwellings. The instructions for the application form are even more explicit, stating the following. And I quote:

ELIGIBILITY FOR EXEMPTION:

Section 421-k sets forth several exemption criteria:

1. The property for which exemption is sought must be a former multiple dwelling converted to an owner-occupied one- or two-family residence.

As I'm not an expert in this area of the law, I leave it to city officials to explain the apparent contradiction between the state's interpretation of this exemption and the City's. However, I think it's important to resolve any doubt about this matter so that it doesn't come back to haunt the City at a later date.

Thanks

COMMENTS FROM THE COUNCIL

Councilwoman Angelo asked Chief Ferrara about the restaurant called Ole', formerly known as Hacienda, which is near her home. The former owner has taken it over again and there was quite a ruckus going on there the other night with State Troopers and Ambulances.

Police Chief, Michael Ferrara, said that they worked on the Ole' all day and he filed his formal report with the New York State Liquor Authority this afternoon.

Councilwoman Angelo said that they are starting to get calls from the neighbors again and next will be the Petitions. They did receive a very detrimental letter from a couple that lives over in the Foundry about Terrace Lounge. There is always something happening there and they are not good things. We aren't trying to put anyone out of business but there are quite a few tenants and landlords who live in that area who cannot sleep at night on the weekends.

Police Chief, Michael Ferrara, said that they are aware and they are watching them.

Councilwoman Angelo said she doesn't know if the New York State Liquor Authority will step in again or not.

Police Chief, Michael Ferrara, responded that they will.

Councilwoman Angelo said that she is sorry to see that happen. He is trying to conduct a business but the patrons are causing a problem and they are not teenagers. She announced that the Citizens Advisory will meet on Thursday at 7:00 P.M. at the Activity Center. It is open to the public and you can voice your opinions and complaints there. On the morning of October 6th there will be a ceremony to unveil the new bricks down at the waterfront with a brunch at Torches. On October 7th, Father Bill is holding a rededication of Columbus and a Mass and then we will head to the River Rose for a three hour tour and buffet. They met with Mr. Kaplan today and they are planning an Oktoberfest on October 14th on the Waterfront. Jimmy Sturr will be coming over with the Polka Band and they have a lot of nice things planned. With all the bad things happening we still try to plan some good things here in Newburgh. She added that they are also planning a Flea Market. The Ship called the *Lynx* is coming to Newburgh again for three or four days and we are going to try to tie a Flea Market with that. She thanked everyone for coming tonight.

Councilman Dillard stated that on August 29th he sent a package to the Ministers and friends and also gave this package to the City Manager and the Council. This package basically dealt with auditing of the Police Department; a review of the Police Department for past and present policies and procedures. Back in 2009 he felt that they needed to be reviewed. Thus far the City Manager and Corporation Counsel have identified three Auditors and he thinks that three should be enough to gather information. With this package he also listed the reasons why we should have the Auditor come in. Some of those reasons are: Use of excessive force, use of weapons, overtime scheduling, community relations, training, minority hiring, internal and external review and controls. He told the City Manager that this should have been acted upon.

City Manager, Richard Herbek, said that at the last Work Session each Council Member told him that they were going to give him a scope of services.

Councilman Dillard said the scope of services is in his package and the City Manager doesn't need one from every Council Member. He is asking for this and the Council agrees with him. This is very important and even the Police Chief agrees with it. This is an examination of policies and procedures which is needed every so many years.

Mayor Kennedy said that she believes the last one was done in 2005 or 2009.

Councilwoman Lee said that she was given a list as well and she also called and asked for the past project so that she could read that and it was just given to her on Thursday. She wanted to make sure that we weren't asking for some of the same issues to be reviewed and the reason she did that is because she is not confident that what we are looking for was addressed in any of those projects. She thinks that what we are looking for is something different. We are asking that the policies be reviewed not for the purposes of accreditation but reviewed to make sure that we don't have in the policy mechanisms that sanction use of excessive force. That is why she asked to read it and that is why she asked for it to be on the Work Session agenda.

Councilman Dillard said that any professional who does this type of work knows exactly what is needed.

City Manager, Richard Herbek, said that you need to be fairly specific because we are not looking for a \$500,000.00 study.

Councilman Dillard said that they are not looking for that. They are looking for someone to indicate what they can do and for how much.

City Manager, Richard Herbek, said that they have Councilman Dillard's list but there may be other things that the other members of the Council are looking for or in addition to.

Councilman Dillard said that he is not going to play this game like we did last year with goals. Last year the City Manager asked for everyone to list goals and not one of those goals has been reviewed.

City Manager, Richard Herbek, said that is not true. It has been less than a year and generally you don't do that until later in the year.

Councilman Dillard said that he has been on the City Council for nearly four years and every year he gets goals.

City Manager, Richard Herbek, noted that a lot has been accomplished.

Councilman Dillard said that he is not saying that. He is asking to accomplish this that's all. Let's get this moving.

City Manager, Richard Herbek, told Councilman Dillard that he hears him.

Councilwoman Lee said that she asked on Wednesday to put that on the agenda. The reason that she wants to read the past study is because she doesn't want to give the same old test. She wants to know how the scoring was done, what was scored and if there is anything in this old report that needs to be in or taken out of the new report. She wants to make sure that what we are looking for is actually in our proposal. She thinks that this should be on the Work Session agenda every week. She also asked for the names of the companies so that she could do a Google search and look at them. She added that she thinks her efforts on this City Council have been to counteract the conspiracy to gentrify the City of Newburgh. She thinks that still right up under our noses there are efforts to gentrify the City of Newburgh to remove people from their place of residence and replace them with a more palatable, ritzy and perhaps more money savvy group. She still has a problem with that and she is very uncomfortable with the Land Bank. She is also uncomfortable with the Greater Newburgh Partnership. We have entities here who would like to make changes in the City but don't want to pay taxes and she is still disturbed by that. In terms of revenue generation, what she would like to see and she has been asking for this all along is that we send letters to these entities who would like to take over our property, tell us what to do in our City and walk around making believe that they are cleaning it up and help us by garnering funding that they would like to control so that they can make believe that they are doing something. She is absolutely sick of

the entire thing. In terms of Mr. Littman, she never said that that she didn't want him to bring a business here but that has somehow been spun out of control as are many things that we ask for from this Council seat by members of the public because there is a wave to sell you yet another bill of goods. She had asked for a copy of the plan and said that if he wants to clean up a Brownfield that the DEC says is useless, tell us how you are going to get the funding. This then got spun into Mr. Littman is going to bring jobs. She had never asked about jobs but since we are on the subject tell us how you are going to do that. One of the issues that she is constantly fighting with the public and the Council is that telling her about a wonderful idea doesn't amount to anything if you don't put it in writing. If you are going to bring two hundred jobs, tell her how. If Mr. Littman or anyone else would like to bring some jobs into this City, all they have to do is talk to us about it. Right now the only person that is bringing jobs into this City is George Garrison. He is the only one that actively looks to hire people in the City of Newburgh. It is frustrating and annoying but don't come to her with a poorly thought out plan and expect her to go along with it because then she is offended. She would like to think that she has a better education than that and when you talk to her with nothing in your hand and expect her to just agree with it then you must think she is stupid and she is offended when that happens. She told Mark Coolidge that S.O.S. is a great project. She knows that she could use her license and her skills to help iron out the kinks in this. This is probably the best project that has been talked about in terms of doing something with anti-gangs because these kids that are being arrested are typically part of gangs. If he has the blessing of the Police Department and Officers who want to help to guide this, she thinks that it is a wonderful project and it should be part of something to talk with Courtney Kain about because maybe she could help him to iron it out. It is a great idea and she hopes that he doesn't let it go.

Mayor Kennedy said that a lot was talked about tonight. To Virginia DiOrio she said that the drug paraphernalia in our Bodegas has been bothering her as well so she would like to see that on a Work Session agenda to talk about some ideas on what to do about that. Team Newburgh has been working on getting that paraphernalia out of the Bodegas so she would really like to do some creative thinking about what to do about that and do some brainstorming on how to control some of that. In regard to the Vendors, they haven't ironed that out yet but the Carnival money is put into a special account and the Carnival supports itself.

Councilwoman Angelo noted that we had two festivals this year with no security and no problems which is probably a record for the City of Newburgh.

Mayor Kennedy continued that when it comes to publicity you have to call them because the Press doesn't just show up. Whoever is organizing an event has to send out a Press Release and you have to invite the Press to come. They don't just show up at your event. We had this wonderful Basketball Tournament but forgot to call the Press to come in. It was a whole weekend with no issues but we missed a positive Press opportunity because we forgot to contact them. To Mark Coolidge she said that she is very pleased with his idea. Lastly she said that she has heard this idea of gentrification too. She hears it all over the streets so she wants to put it out on the line just exactly what people think gentrification is. When she was out campaigning she had people all through the area say that they were sick and tired of run down buildings filled with rodents and drug dealers and their neighborhoods looking like a trash dump and they asked her why she didn't do something about it. That has been going on for years in this City and many cities have not been able to manage all of these abandoned buildings. When gentrification happened forty some years ago, people were actually moved out of their houses and they lost their homes. The process that is going on right now has nothing to do with moving anybody out of any home.

Councilwoman Lee told Mayor Kennedy that she is talking about Urban Renewal.

Mayor Kennedy said that they hooked gentrification to it and she keeps hearing that work thrown around a lot. What is happening right now is that we have so many buildings that are not taxable. There are empty buildings all over this City and therefore our tax base is struggling. Right now the Land Bank is an idea that has been growing across the United States in order to improve properties in cities with urban blight. What we have been doing hasn't worked so we have to do something else. We are trying now to focus on one specific area which is Broadway to Gidney Avenue and from Grand Street to Dubois Street in order to make an impact. The idea here is to try to improve the properties and then find suitable owners so that it generates taxes. This City is struggling for taxes. We can't support it without a new tax base. That comes back around to jobs. This City government does not generate many jobs. We have two hundred employees so governments do not generate jobs. New businesses in this City will generate jobs. We are working on getting new businesses in this City but the one thing they ask is if it is safe. They want to know if it is safe to come here. We may think its safe but the outsiders read the bad Press so the one thing we can do to bring businesses here to provide jobs is to clean up this City and make it safe. If you can help do that then you will change the perception of the City of Newburgh and we have businesses who want to invest here. We need real jobs with real businesses. She wants everyone to understand that what they are trying to do is clean up the City and make it safe. Then we can do some real economic development in

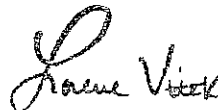
this City. We need to identify locations and go out and actively recruit businesses to come here. She wants to encourage business.

There being no further comments Councilwoman Lee moved and Councilwoman Angelo seconded to adjourn the meeting. All in favor the meeting adjourned at 9:00 P.M.

LORENE VITEK
CITY CLERK

Account#	Account Description	Fee Description	Qty	Local Share
	Marriage License	Marriage License	18	315.00
		Sub-Total:		\$315.00
1550	Bordatella Booster	Bordatella Booster	1	38.00
		Sub-Total:		\$38.00
A1255	Conservation	Conservation	8	62.12
		Sub-Total:		\$62.12
A12550003	Misc. Fees	Certified Copies - Marriage	20	200.00
		Sub-Total:		\$200.00
A12550008	Misc. Fees	Copies	35	8.75
		Sub-Total:		\$8.75
A12550012	Thumbprint Fee	Thumbprint Fee	1	5.00
		Sub-Total:		\$5.00
A15200001	False Alarms	False Alarms	1	875.00
		Sub-Total:		\$875.00
A1550	Public Pound	Public Pound	3	30.00
		Sub-Total:		\$30.00
A15500004	Dog Redemption	Redemptions	1	35.00
		Sub-Total:		\$35.00
A15500010	Vet Bill (rabies)	Vet Bill (Rabies)	3	84.00
		Sub-Total:		\$84.00
A21150012	Zoning Map 11x17	Zoning Map 11x17	1	10.00
		Sub-Total:		\$10.00
A2544	Dog Licensing	Female, Spayed	9	67.50
		Female, Unspayed	2	25.00
		Male, Neutered	4	30.00
		Male, Unneutered	5	62.50
		Sub-Total:		\$185.00
A25900008	Alarm Permit	Alarm Permit	2	200.00
		Sub-Total:		\$200.00
A25900012	Peddlers Permit	With Vehicle - Per Month	1	50.00
		Sub-Total:		\$50.00
A25900019	Taxi Application Fee	Taxi Application Fee	1	100.00
		Sub-Total:		\$100.00
A25900020	Taxi Drivers License	Taxi Drivers License	1	100.00
		Sub-Total:		\$100.00

Account#	Account Description	Fee Description	Qty	Local Share
<u>Total Local Shares Remitted:</u>				<u>\$2,297.87</u>
Amount paid to:	NYS Ag. & Markets for spay/neuter program			34.00
Amount paid to:	NYS Environmental Conservation			1,065.88
Amount paid to:	State Health Dept. For Marr. Licenses			405.00
<u>Total State, County & Local Revenues:</u>		<u>\$3,802.75</u>	<u>Total Non-Local Revenues:</u>	<u>\$1,504.88</u>



City Clerk

10/1/2012

Date



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

OCTOBER 3, 2012

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: REGISTRAR OF VITAL STATISTICS

I RESPECTFULLY REPORT THAT THERE HAS BEEN
RECEIVED IN THE OFFICE OF VITAL STATISTICS DURING THE MONTH
OF SEPTEMBER 2012 THE SUM OF \$3,994.00 AS FOLLOWS:

183 CERTIFIED COPIES OF BIRTH CERTIFICATES	\$1,830.00
216 CERTIFIED COPIES OF DEATH CERTIFICATES	<u>\$2,164.00</u>
TOTAL	\$3,994.00

IN ADDITION:

740 BIRTHS HAVE BEEN FILED IN THIS OFFICE TO DATE,
455 DEATHS HAVE BEEN FILED IN THIS OFFICE TO DATE,

LORENE VITEK

PERSONNEL REPORT
CIVIL SERVICE COMMISSION
SEPTEMBER 2012

ASSESSOR:

David Kohl
424 Carpenter Avenue
Newburgh, NY

Assistant Assessor P/T
Appt. Provisional
9/5/12 \$21,881

POLICE:

Christina Schluter
17 Berry Street
Wallkill, NY

Police Sergeant
Promoted 9/7/12
\$81,941

John Buckley
2 Park Place
Newburgh, NY

Detective I
Appt. Temporary
9/7/12 \$68,637

Brian Southworth
260 Carpenter Avenue
Newburgh, NY

Police Officer
Appointed 9/10/12
\$40,000

Alvaro Farias
32 Monument Street
Newburgh, NY

Police Officer (SS)
Appointed 9/11/12
\$40,000

Ricardo Rivera
195 Lake Drive
Newburgh, NY

Police Officer
Appointed 9/12/12
\$40,000

Charles Cruz
10A Dickson Street
Newburgh, NY

Police Officer (SS)
Appointed 9/13/12
\$40,000

DPW:

Michael Friedman
1130 Rt. 52
Walden, NY

Sanitation Worker
Resigned 9/6/12
\$42,635

Joecephous Smith Jr.
12 Bush Avenue
Newburgh, NY

Sanitation Worker
From Temp to Permanent
9/7/12 \$38,748

Sean Jones
186 Chambers St
Newburgh, NY

Sanitation Worker - Temp
from Temp Bldg. Maint. Worker
9/7/12 \$16/hr.

WATER:

Robert Gerdes
228 Clay Hill Rd.
Kerhonkson, NY

Heavy Equip Operator
End of Temp Assignment
9/26/12 \$47,113

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is dated as of _____, 20__ and entered into by the City of Newburgh (the "City"), a municipal corporation organized and existing under the laws of the State of New York, having its office at 83 Broadway, Newburgh, New York 12550, and Mill Street Partners, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at 853 Broadway, New York, New York 10003 (the "Developer").

RECITALS:

WHEREAS, in response to a Request for Qualifications (RFQ) solicitation by the City, the Developer was designated as the preferred developer to redevelop certain parcels of land commonly known as the Mid Broadway Redevelopment Opportunity located in the City of Newburgh; and

WHEREAS, the RFQ by the City sought proposals from private developers to create a dense, mixed use commercial and residential development which was sensitive to Newburgh's historic design aesthetic, environmentally sustainable, and which generated pedestrian use along Broadway; and

WHEREAS, such redevelopment is intended to include the acquisition, demolition and new construction of a mixed-use project consisting of housing and commercial components (the "Development") along Broadway, Johnston Street, and Lander Street in the City of Newburgh, New York; and

WHEREAS, the City desires that the Developer be formally designated as the Developer for the Development; and

WHEREAS, the City and the Developer acknowledge that the development of the Mid Broadway Redevelopment Opportunity is a public-private partnership whose success relies and depends upon the close coordination and collaboration between the City and the Developer to achieve the City's and Developer's redevelopment goals and objectives; and

WHEREAS, the parties intend for this Agreement to govern their relationship, and to set forth the respective roles and obligations of the parties with respect to the Development;

NOW, THEREFORE, in consideration of the foregoing recitals and underlying promises, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE I TERMS OF ENGAGEMENT

1.01 Agreement Term. This Agreement shall be effective as of the date hereof and shall expire on the date on which a valid permanent certificate of occupancy is issued for the Development (or phase thereof, if the project is phased), or upon an earlier termination of this Agreement in accordance with the terms hereof. The term of this Agreement may be extended upon the mutual agreement of the parties hereto. Any provisions of this Agreement that are expressly identified to survive a termination of this Agreement shall survive such termination.

1.02 The Development. The Development shall consist of a mixed-use project consisting of housing and commercial components along Broadway, Johnston Street, and Lander Street in the City of Newburgh, New York. The Development may be constructed in one phase (consisting of approximately 103 residential rental apartment units, together with a ground floor supermarket and/or other retail space and sufficient parking spaces) or may be constructed as a two-phase project [with the Phase 1 Project consisting of approximately sixty-seven (67) residential rental apartment units, together with a ground floor supermarket and/or other retail

space and sufficient parking spaces and the Phase 2 Project consisting of the new construction of approximately thirteen (13) two-family attached residential townhomes, together with sufficient parking spaces]. In either case, total residential development shall not exceed 105 residential units.

(b) Notwithstanding anything contained herein to the contrary, the City and the Developer reserve the right to revise the above development program in order to create a financially feasible project which achieves the City's and Developer's redevelopment goals and objectives. The approval of the City under such circumstances shall not be unreasonably withheld or delayed and, if so approved, the parties shall use good faith efforts to negotiate such amendment(s) to this Agreement as may be necessary or appropriate.

1.03 Exhibits. This Agreement contains the following Exhibits, which are attached hereto and incorporated as though fully set forth herein:

Exhibit A: List of City-Owned Parcels To Be Conveyed to Developer

Exhibit B: Development Schedule and Milestones

1.04 Cooperation. The City and the Developer shall each cooperate with one another in good faith to successfully consummate the Development. Such cooperation shall include reasonable efforts to respond to one another as expeditiously as possible with regard to requests for information or approvals required under this Agreement. With regard to materials or documents requiring the approval of one or more parties, if such materials or documents are not approved as initially submitted, then the parties shall engage in such communication as is reasonably necessary under the circumstances to resolve any issues so that approval may be given. A spirit of good faith and a mutual desire for the success of the Development, subject to

applicable financial constraints and regulatory limitations, shall govern the parties' relationship under this Agreement.

1.05 Communication. In connection with the Development, the following individuals shall serve as the primary points of contact for each party:

For the City: Richard F. Herbek, City Manager

For the Developer: Patrick Normoyle, Manager

In all cases in this Agreement where information, notices and documents, etc. are to be transmitted from, between or among the parties, such transmission shall be made through the contact persons described above or such other persons as the City or the Developer, as applicable may hereafter designate, so as to keep one another informed of all material events, information and communications relating to the Development.

1.06 Developer not an Agent. The Developer is hereby formally designated as the developer for the Development. Notwithstanding anything to the contrary contained in this Agreement, the City shall not have any liability nor duty to any person, firm, corporation, or governmental body for any act or omission or commission, liability, or obligation of the Developer arising from the action or inaction of the Developer under this Agreement.

1.07 Time of Performance. The Developer shall use its good faith efforts to complete the Development and meet all Developer Milestones and Milestone Deadlines (as described in Exhibit B), subject to and conditioned upon (i) acquisition of the development sites by the Developer in accordance with Section 5.04 below; and (ii) receipt of all financing necessary to complete the Development, including receipt of Public Funds (as hereinafter defined); provided, however, that notwithstanding the foregoing, upon the execution and delivery of this Agreement by all parties the Developer shall promptly commence initial planning, design and local

municipal approval activities related to the Development. The City shall diligently perform their obligations contained herein as and when required of this Agreement.

1.08 Quality of Work under this Agreement. The Developer shall perform the duties required to effectuate the Development described herein in a competent and professional manner. The Developer shall furnish the skill and judgment necessary to complete the Development in compliance with the Development Schedule and in an expeditious and efficient manner consistent with the terms and provisions of this Agreement.

ARTICLE II OVERALL DESIGN AND APPROVAL RESPONSIBILITIES

The Developer shall, at its sole cost and expense, have the authority and obligation, subject to and conditioned upon (i) acquisition of the development sites by the Developer in accordance with Section 5.04 below; and (ii) receipt of all financing necessary to complete the Development, including receipt of Public Funds, to:

2.01 Complete the Design of the Project. (a) The Developer will oversee and complete the design of all elements of the Development described in this Agreement, including the plans and specifications for each Project (the "Plans and Specifications").

2.02 Obtain Permits and Other Approvals. The Developer shall diligently and in good faith pursue such actions as may be reasonably necessary or appropriate to obtain all building and construction permits, licenses, easements, and local governmental approvals necessary to obtain, establish, or construct the Development, including necessary utilities, roads, and other infrastructure improvements contemplated by the construction documents for the Development (the "Construction Documents"). The City will provide reasonable assistance in obtaining these items, if and to the extent requested by the Developer.

2.03 Comply with Laws and Permits. The Developer shall cause the Development to be designed and constructed in compliance with all applicable Federal, state and local laws, codes, ordinances, rules and regulations.

2.04 Complete Construction. The Developer shall complete the construction of each Project in accordance with the Plans and Specifications.

2.05 Oversee Marketing. The Developer shall direct and oversee all marketing efforts for the Development in order to ensure that the residential units are leased and/or sold to qualified applicants and the commercial space is leased and/or sold to commercial tenants pursuant to leases or other agreements negotiated by the Developer.

ARTICLE III PROJECT FINANCING AND CLOSINGS

3.01 Public Funds. The Developer will seek to secure public funding including various grants, subsidies, private equity through various tax credit programs, and conventional financing sufficient to fund the project costs associated with the Development. The funding programs may include but not be limited to the following funding programs: Low Income Housing Tax Credit program (including both the "4%" and "9%" programs), New York State Housing Trust Fund program, New York State HOME program, New York State Affordable Home Ownership Development program, Orange County HOME program, Federal Home Loan Bank of New York Affordable Housing Program, and other relevant funding programs.

3.02 Designation as a Priority Project. To secure the completion of the Development in accordance with this Development Agreement, the City shall designate the Mid Broadway Redevelopment Project as a Priority Project of the City of Newburgh and shall cooperate with the Developer in securing the Public Funds needed to complete the Development.

The City shall issue letters of support, resolutions of support, and other evidence of the Development's designation as a Priority Project for the City of Newburgh. Given the importance that the sources of Public Funds place on local financial support, the City shall also prioritize the Mid Broadway project when awarding funding from the City's Community Development Block Grant (CDBG) program.

3.03 Payment in Lieu of Taxes (PILOT). In order to create a financially viable project, the City shall grant a PILOT to the Development. The term and level of payments for the Development will be determined within one hundred eighty (180) days of execution of the Development Agreement.

3.04 Closing. The City and the Developer will participate in one or more closings for the construction financing of the Development, at which time all of the documents as may be required by the lenders and investors for the construction of the Development (or phase thereof) will be executed (the "Project Documents").

ARTICLE IV DEVELOPER MILESTONES AND MILESTONE DEADLINES

4.01 Upon a good faith reasonable determination by the City of the achievement of any Completion Milestone described in Exhibit B and at the request of the Developer, the City shall issue a written Certificate of Completion with respect to such Milestone. Such Certificate of Completion shall constitute the City's confirmation that the Milestone has been completed in compliance with this Agreement. The City and the Developer agree to negotiate in good faith and determine such additional or different Milestones and/or Milestone Deadlines during the planning of the Development as may be necessary to effectively and efficiently complete the Development.

ARTICLE V
DUTIES AND RESPONSIBILITIES OF THE CITY

5.01 In General. The City shall promptly review any matter submitted by the Developer for approval hereunder and advise the Developer of approval or of why approval is being reasonably withheld. In connection with any request for approval of the Development, the City shall respond to any request within ten (10) business days.

5.02 Development Support. The City shall provide assistance for the Development with local governmental agencies and other similar applicable parties, and will consider reasonable requirements imposed on the Development by any lenders and equity investors lending to or investing in the Development. The City shall provide assistance reasonably requested by the Developer in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the Developer shall have the primary responsibility for obtaining such approvals and cooperation.

5.03 Specific Responsibilities. The City shall:

- A. Act reasonably and take all reasonable actions as are within its authority and as are reasonably necessary to complete the development and construction of each Project;
- B. Investigate the feasibility and advisability of approving requests by the Developer (or where the granting authority is another governmental entity, consider recommending that such entity approve such request of the Developer), including but not limited to the following:
 - i. adopting modifications to the City's Zoning Ordinance to permit the proposed Development;

- ii. authorizing (through a license agreement between the City and the Developer) the use of up to twenty-six (26) parking spaces in the Lander Street Parking Lot, to be used solely by the Development, in each instance subject to any applicable requirements of the City Code.

5.04 Acquisition and Conveyance of Development Sites. (a) The City hereby agrees to sell and convey the City owned parcels listed in Exhibit A to the Developer in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law. Insurable title to the development parcels shall be conveyed by the City to the Developer at or prior to closing of the construction financing for the Development (or phase thereof) subject only to such exceptions to title as the Developer (and its financing sources) may approve, which approval will not be unreasonably withheld.

(b) The purchase price for the City owned parcels shall be subject to and conditioned upon (x) an appraisal of the highest and best use prepared by a licensed appraiser in conformance with the Uniform Standards of Professional Appraisal Practice; (y) any additional requirements dictated by each Project's financing sources, including the sources of Public Funds; and (z) the Developer's receipt of all financing necessary, including receipt of Public Funds described in Section 3.01 above, sufficient to complete the Development as herein described.

(c) The closing of the transfer of title for the City owned parcels shall occur at or prior to the closing of the Developer's construction financing for the Development (or phase thereof). Any and all closings shall be held at the offices of the Developer's construction lender or such lender's counsel's office. At each such closing the City shall execute and deliver to the

applicable Owner Entity a bargain and sale deed in recordable form with covenants against grantor's acts. The City shall be responsible for all taxes, assessments and water and sewer rents accrued against the City owned parcels as of the date preceding the closing date for the conveyance of such parcels. The Developer shall be responsible for all taxes, assessment and water and sewer rents accruing against the conveyed parcels on and after the closing date for such parcels. The City, as applicable, shall pay and be responsible for any and all real property transfer and similar taxes.

ARTICLE VI

TERMINATION, DEFAULT AND REMEDIES

6.01 Events of Default. Any of the following shall constitute an "Event of Default" by the Developer under this Agreement, subject to the provisions of Section 6.02, if such event has a material adverse impact upon the Development:

- (a) failure of Developer to complete any Milestone by the applicable Milestone Deadline within sixty (60) days after receiving written notice of such failure by the City, subject to the provisions of Sections 6.02 and 6.04 below;
- (b) failure of the Developer to pay or perform any other material obligation of Developer under this Agreement, and such failure continues and remains uncured for a period of sixty (60) days after receiving written notice thereof by the City; provided, however, that if such failure cannot reasonably be cured within such sixty (60) day period, the Developer shall have a period of sixty (60) additional days to cure such failure, so long as the Developer diligently pursues such cure;

- (c) if any representation of Developer under this Agreement is or becomes untrue or inaccurate in any material adverse respect and is not cured or commenced to be cured within sixty (60) days after receiving written notice thereof by the City;
- (d) if (i) the Developer consents to the appointment of a receiver, trustee or liquidator for the Development or for any substantial part of its property, or (ii) a bankruptcy or similar proceeding is commenced by the Developer under the laws of any jurisdiction, or if any such proceeding is and such proceeding commenced against the Developer under the laws of any jurisdiction is not stayed or dismissed within ninety (90) days after its institution; or
- (e) the unilateral withdrawal by the Developer as the Developer of the Development.

If an Event of Default shall occur and continue beyond the expiration of any applicable notice and cure period, the City may terminate this Agreement with respect to the Development or phase thereof, whichever shall be the subject matter of such Event of Default, upon giving written notice thereof to the Developer, and may exercise all other rights or remedies available to it in law or in equity.

6.02 Force Majeure. If the Developer is delayed in achieving any Developer Milestone due to unforeseeable causes beyond the control of the Developer, then the applicable Developer Milestone shall be extended for a period of time corresponding to the period of delay, with a reasonable adjustment to any other applicable milestones affected by the delay. Such causes include, but shall not be limited to acts of God, war, terrorism or public enemy, acts of any governmental entity or agency in either its sovereign or contractual capacity (including the failure of any governmental entity or agency to timely issue any necessary permits or approvals), fires, floods, epidemics, strikes or labor disputes, freight embargoes, unusually severe weather,

delays of any subcontractor or supplier arising from unforeseeable causes beyond the control of the Developer, or litigation by third parties.

6.03 No Fault Termination. Notwithstanding the foregoing, Developer shall not be in default of this Agreement and this Agreement may be terminated by the Developer upon notice to the City and if, through no fault of the Developer, (a) one or more environmental, geophysical or similar conditions detrimental to the Development is discovered and the cost to be borne by the Developer is extraordinary and renders the Project infeasible, or (b) the Developer, through no fault of its own (including, but not limited to, due to rejection of an application to one or more applicable funding sources for a portion of the Public Funds), cannot obtain the necessary financing to complete the Development (or phase thereof). If this Agreement is so terminated, no party shall have any liability to the others hereunder with respect to the Development (or phase thereof), whichever shall be the subject matter of such termination.

6.04 Default by the City. In the event that the City materially fails to comply with the terms of this Agreement and such failure causes a delay in the development process or in the achievement of one or more Milestones, then the Developer shall be provided with an extension of the appropriate or affected Milestone Deadlines in order to allow additional time to complete the work affected by such default or, at the option of the Developer, the Developer may terminate this Agreement with respect to the Development, but only if the City fails to cure such default and comply with the terms of this Agreement within a period of sixty (60) days after receiving written notice thereof from the Developer. Upon such termination, the Developer may exercise any right or remedy available to it in law or at equity.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.01 Representations of the Developer. As of the date of this Agreement, the Developer represents that:

A. *Organization and Powers.* The Developer is a limited liability company, validly existing and in good standing under the laws of the State of New York. The Developer has the power and authority to own its assets and properties, to carry on its activities as now conducted by it, to execute, deliver and perform this Agreement.

B. *Authorization, Binding Agreement.* The execution, delivery and performance by the Developer of this Agreement have been duly authorized by all requisite action.

C. *Litigation.* There is no known action, suit or proceeding pending or, to the best knowledge of the Developer, threatened before any court or government or administrative body or agency which may reasonably be expected to (i) result in a material adverse change in the activities, operations, assets or properties or in the condition, financial or otherwise, of the Developer, or (ii) impair the ability of the Developer to perform its obligations under this Agreement.

7.02 Representations of the City. As of the date of this Agreement, the City represents that:

A. *Power, Binding Agreement.* The City has the power, authority and legal right to enter into and perform this Agreement, the execution, delivery and performance of which have been duly authorized by all requisite action.

B. *No Litigation.* There are no pending or, to the best knowledge of the City, threatened actions or proceedings before any court or administrative agency which would materially adversely affect the ability of the City to perform their obligations under this

Agreement, or any other agreement or instrument entered into by the City pursuant to this Agreement.

ARTICLE VIII INDEMNIFICATION

8.01 Indemnification by the Developer. The Developer shall indemnify, defend and hold the City and its respective officers, elected officials, employees and agents harmless from and against all claims, damages, demands, liabilities, obligations and causes of action of any kind whatsoever brought by third parties and suffered by the City (collectively "Claims"), including, but not limited to costs, expenses and reasonable attorneys' fees expended in settlement or defense of any Claim, if and to the extent caused by the fraud, gross negligence or willful misconduct of the Developer or any of its respective officers, directors, employees or agents.

8.02 Indemnification by the City. The City shall indemnify, defend and hold the Developer and its respective affiliates officers, directors, employees and agents harmless from and against all claims, damages, demands, liabilities, obligations and causes of action of any kind whatsoever brought by third parties and suffered by the Developer (collectively "Claims"), including, but not limited to costs, expenses and reasonable attorneys' fees expended in settlement or defense of any Claim, if and to the extent caused by the fraud, gross negligence or willful misconduct of the City or any of its respective officers, elected officials, employees or agents.

ARTICLE IX MISCELLANEOUS

9.01 Notices. All notices, requests, demands, approvals or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed

given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows:

If to City: City of Newburgh
83 Broadway
Newburgh, NY 12550
Attn: Richard F. Herbek

With copies to: City of Newburgh
83 Broadway
Newburgh, NY 12550
Attn: Michelle Kelson, Esq.

If to Developer: Mill Street Partners, LLC
853 Broadway
New York, NY 10003
Attn: Patrick Normoyle

With copies to: Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany NY 12207
Attn: Steve Heyman

9.02 Further Assurances. Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.

9.03 Assignment. This Agreement shall not be assignable by any party, without the prior written consent of the other parties; provided, however, that the Developer may, without such consent but with notice to the City per Section 9.01, assign or sub-contract this Agreement or any of its rights and responsibilities hereunder to an affiliate of the Developer or to an entity controlled by, or under common control with, the Developer, but no such assignment shall relieve the Developer of its obligations hereunder absent the prior written consent of the City.

9.04 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

9.05 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by all parties. This Agreement shall be construed, interpreted, and governed by the laws of the State of New York.

9.06 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

9.07 Final Agreement. Unless otherwise provided herein, this Agreement constitutes the final understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral.

9.08 Modification of Agreement. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby. This Agreement may not be altered, modified, rescinded, or extended orally.

9.09 Waivers. The failure of any party to insist in any one or more case upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any party of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the party to be charged. In addition to the other remedies herein provided, either party may restrain by injunction the violation or threatened violation of either parties obligations under this Agreement and may obtain specific performance by either party of its obligations under this Agreement.

9.10 Successors. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and assigns.

9.11 Certain Approvals. Unless otherwise stated, all approvals or consents required of either party hereunder shall not be unreasonably withheld, delayed, conditioned or denied.

9.12 References to this Agreement. All references to this Agreement shall include all documents and exhibits incorporated by reference.

9.13 Headings. The headings in this Agreement are inserted for convenience only and shall not be used to define, limit or describe the scope of this Agreement or any of the obligations herein.

9.14 Construction. Whenever in this Agreement a pronoun is used, it shall be construed to represent either the singular or the plural, either the masculine or the feminine, as the case shall demand.

9.15 Authority to Execute. The undersigned represent and warrant that they are duly authorized to execute and deliver this Agreement.

9.16 Resolution of Disputes. It is mutually agreed by and among the parties, that the respective parties hereto shall and they hereby do agree to resolve all claims, controversies, disputes and disagreements (collectively, a "Dispute") by submitting the Dispute to determination by mediation. In the event the parties are not able to resolve a Dispute through mediation, any party may bring an action in any Federal or New York State court of competent jurisdiction located within the City, County and State of New York.

9.17 Non Discrimination. The Developer covenants and agrees that it shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting

discrimination or segregation by reason of age, race, creed, religion, sex, color, national origin, ancestry, sexual orientation or affectional preference, disability, or marital status in the sale, lease or occupancy of the Phase 1 Project or Phase 2 Project, or any part thereof.

ARTICLE X ACCESS TO THE DEVELOPMENT PARCELS

10.01 Access to Development Parcels. From and after the date of this Agreement, the City hereby grants to the Developer and Developer's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon the City-owned parcels listed in Exhibit A and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary for the purposes of inspecting the property which inspections may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and evaluations as are reasonably required for an evaluation of the property and the prosecution of any applications for governmental approvals.

10.02 Compliance with Existing Laws. Developer agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

10.03 Indemnification and Hold Harmless. Developer hereby agrees to defend, indemnify and hold City harmless against any claims, actions and proceedings brought against City arising out of, in connection with and/or relating to Developer's use of the premises. Developer has posted evidence of and shall maintain public liability insurance naming the City as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Such insurance shall be maintained until either the City-owned parcels are conveyed to the Developer or this agreement is terminated subject to the terms of this agreement.

10.04 Third Party Contractors and Consultants. Developer may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Developer retains such agents, Developer and such agents shall name the City as additional insured under insurance coverage concerning Developer's performance of the tasks referenced herein.

10.05 Commencement. The license or privilege hereby given shall commence upon the execution of this development agreement between City and Developer.

10.06 No Vested Rights. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized signatories on or as of the date first written below.

CITY OF NEWBURGH

By:

Name: Richard F. Herbek
Title: City Manager

Date

MILL STREET PARTNERS, LLC

By:

Name: Patrick Normoyle
Title: Manager

Date

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

EXHIBIT B

DEVELOPMENT SCHEDULE

and

MILESTONES

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

SBL	Address	Assessed Value
30-3-24	132 Broadway	2,100
30-3-25	136 Broadway	2,100
30-3-26	138 Broadway	1,600
30-3-27	140 Broadway	1,300
30-3-28	142 Broadway	1,300
30-3-29	142A Broadway	500
30-3-30	144 Broadway	1,300
30-3-31	146 Broadway	1,500
30-3-32	148 Broadway	2,100
30-3-33	6 Johnston Street	1,000
30-3-34	10 Johnston Street	1,600
30-3-35	12 Johnston Street	1,600
30-3-37	16 Johnston Street	4,300
30-3-23	6 Lander Street	1,800
30-3-22	8 Lander Street	5,800
30-3-21	14 Lander Street	2,400

EXHIBIT B
DEVELOPMENT SCHEDULE AND MILESTONES *

The City and the Developer shall use good faith efforts to adhere to the following development schedule and to meet the development milestones noted below. All deadlines are based on execution of the final development agreement.

Milestone	Deadline**
Execute Development Agreement	October 10, 2012
Developer Commences Preparation of Preliminary Engineering and Site Plan	October 11, 2012
City Commences Preparation of Zoning Modifications to Permit Development	October 31, 2012
Developer submits applicable applications and/or petitions for project approvals within the jurisdiction of the City and its municipal boards ("City Approvals")	February 1, 2013
City Adopts Zoning Modifications to Permit Development	March 1, 2013
Developer Submits NYS HCR or NYS HFA Funding Application	NYS HCR: November 29, 2012 or NYS HFA: January 15, 2013
COMPLETION MILESTONE 1: Developer Obtains Financing Commitments	Sixty (60) days from receipt of written funding award from NYS HCR or NYS HFA
COMPLETION MILESTONE 2: Developer Secures All City Approvals	Ninety (90) days from receipt of written funding award approval
Developer Completes Plans and Specifications	One hundred fifty (150) days from receipt of written funding award approval
COMPLETION MILESTONE 3: Developer Obtains Building Permit	One hundred eighty (180) days from receipt of written funding award approval
COMPLETION MILESTONE 4:	Two hundred seventy (270) days from

Developer Closes on Project Financing	receipt of written funding award approval
Developer Commences Construction	Thirty (30) days from closing of project's construction financing
COMPLETION MILESTONE 5: Developer Completes Construction	Twenty one (21) months after commencement of construction

* If the Project is executed as two distinct phases, the above schedule will apply to the Phase 1 project. The Development Schedule and Milestones for the Phase 2 project will be determined after commencement of construction of the Phase 1 project.

** All deadlines assume, and are contingent upon, execution of the Development Agreement by the City and the Developer by October 10, 2012.

4b

Evans, Elizabeth

From: Robert Rabinowitz [robert@jhdarbie.com]
Sent: Wednesday, September 05, 2012 10:18 AM
To: Evans, Elizabeth
Ms. Evans –

Thank you for your time today.

We have land 285 grand street and 285 grand street rear –

SBL 10-1-10
SBL 10-1-11

We would like to donate it back to the city for the use of a park or anything of your choice.

It is owned by blue line trading.

Please let me know what is needed to facilitate this?

Thank you,
Robert Rabinowitz
CEO
JH Darbie & Co.
Financial Services
212-269-7271
Direct: 212-509-0809
robert@jhdarbie.com
www.jhdarbie.com
www.tradetheweb.com

Privileged Information: This message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed and may contain information that is legally privileged, confidential and/or restricted from disclosure. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please delete this message, along with any attachments, from your computer. Thank you.

9/27/2012

CITY OF NEWBURGH

Property Auction - October 3rd 2012

Property #	SBL	Address	Total Amount Due	BID Amount	Profit/(Loss)	Payment Type	Down Payment
1	34-3-9	359 Ann St	\$ 21,886.67	\$ 32,000.00	\$ 10,113.33	Credit Card	\$ 7,104.00
2	23-7-4	61 Campbell St	\$ 2,701.66	\$ 5,000.00	\$ 2,298.34	Credit Card	\$ 1,110.00
3	45-8-10	87 Carson Ave	\$ 37,441.19	\$ 9,500.00	\$ (27,941.19)	Credit Card	\$ 2,109.00
4	22-2-26	96 Carter St	\$ 29,767.25	\$ 7,500.00	\$ (22,267.25)	Cash	\$ 1,650.00
5	22-1-37	22 City Terr No	\$ 13,185.94	\$ 2,000.00	\$ (11,185.94)	Cash	\$ 1,000.00
6	29-5-27	33 City Terrace	\$ 3,071.42	\$ 1,000.00	\$ (2,071.42)	Cash	\$ 1,000.00
7	22-6-34	304 First St	\$ 4,729.53	\$ 54,000.00	\$ 49,270.47	Cash	\$ 11,880.00
8	21-2-15	360 First St	\$ 2,496.53	\$ 3,500.00	\$ 1,003.47	Cash	\$ 1,000.00
9	13-5-22	54 Fowler Ave	\$ 792.77	\$ 1,100.00	\$ 307.23	Cash	\$ 1,000.00
10	12-1-16	330 Liberty St	\$ 24,634.52	\$ 2,200.00	\$ (22,434.52)	Cash	\$ 1,000.00
11	10-1-31	374 Liberty St	\$ 31,418.63	\$ 22,500.00	\$ (8,918.63)	Credit Card	\$ 4,995.00
12	25-5-21	13 Locust St	\$ 25,888.36	\$ 13,000.00	\$ (12,888.36)	Credit Card	\$ 2,886.00
13	25-1-52	88 Maple St	\$ 1,664.68	\$ 7,500.00	\$ 5,835.32	Cash	\$ 1,650.00
14	7-7-18	255 Powell Ave	\$ 12,751.22	\$ 15,500.00	\$ 2,748.78	Cash	\$ 3,410.00
15	45-2-2	163 S William St	\$ 36,418.92	\$ 32,000.00	\$ (4,418.92)	Cash	\$ 7,040.00
16	19-1-3	81 South St	\$ 38,646.01	\$ 18,500.00	\$ (20,146.01)	Credit Card	\$ 4,107.00
17	11-3-21	162 South St	\$ 13,591.28	\$ 7,500.00	\$ (6,091.28)	Credit Card	\$ 1,665.00
18	14-3-9.1	545 South St	\$ 12,377.95	\$ 16,500.00	\$ 4,122.05	Cash	\$ 3,630.00
19	22-1-17	251 Third St	\$ 65,534.23	\$ 38,000.00	\$ (27,534.23)	Cash	\$ 8,360.00
20	29-6-3	7 Van Ness St	\$ 38,688.11	\$ 25,000.00	\$ (13,688.11)	Cash	\$ 5,500.00
20A	38-2-51	144 W Parmenter St	\$ 21,769.10	\$ 19,000.00	\$ (2,769.10)	Cash	\$ 4,180.00
21	38-1-15	190 W Parmenter St	\$ 13,553.30	\$ 12,000.00	\$ (1,553.30)	Credit Card	\$ 2,664.00
22	35-3-14	16 William St	\$ 2,708.31	\$ 6,000.00	\$ 3,291.69	Cash	\$ 1,000.00
23	38-2-36	50 William St	\$ 48,427.25	\$ 17,000.00	\$ (31,427.25)	Credit Card	\$ 332.00
24	38-2-36	50 William St	\$ 22,648.29	\$ 22,500.00	\$ (148.29)	Credit Card	\$ 3,774.00
25	39-2-23	79 William St	\$ 24,974.64	\$ 10,500.00	\$ (14,474.64)	Credit Card	\$ 4,995.00
26	39-2-21	85 William St	\$ 12,783.18	\$ 10,000.00	\$ (2,783.18)	Credit Card	\$ 2,220.00
27	39-2-20	87 William St	\$ 55,054.31	\$ 49,500.00	\$ (5,554.31)	Cash	\$ 10,890.00
28	44-3-17	122 William St	\$ 619,605.25	\$ 460,300.00	\$ (159,305.25)	Cash	\$ 104,482.00
29	13-5-10	135-137 Wisner Ave					
Grand Total			\$ 619,605.25	\$ 460,300.00	\$ (159,305.25)	\$	\$

CITY OF NEWBURGH

Property Auction - October 3rd 2012

Property #	SBL	Address	Total Amount Due	BID Amount	Profit/(Loss)	Payment Type	Down Payment
1	34-3-9	359 Ann St	\$ 21,886.67	\$ 32,000.00	\$ 10,113.33	Credit Card	\$ 7,104.00
2	23-7-4	61 Campbell St	\$ 2,701.66	\$ 5,000.00	\$ 2,298.34	Credit Card	\$ 1,110.00
3	45-8-10	87 Carson Ave	\$ 37,441.19	\$ 9,500.00	\$ (27,941.19)	Credit Card	\$ 2,109.00
4	22-2-26	94 Carter St	\$				
5	22-1-37	96 Carter St	\$ 29,767.25	\$ 7,500.00	\$ (22,267.25)	Cash	\$ 1,650.00
6	29-5-27	22 City Terr No	\$ 13,185.94	\$ 2,000.00	\$ (11,185.94)	Cash	\$ 1,000.00
7	29-4-16	33 City Terrace	\$ 3,071.42	\$ 1,000.00	\$ (2,071.42)	Cash	\$ 1,000.00
8	22-6-34	304 First St	\$ 4,729.53	\$ 54,000.00	\$ 49,270.47	Cash	\$ 11,880.00
9	21-2-15	360 First St	\$ 2,496.53	\$ 3,500.00	\$ 1,003.47	Cash	\$ 1,000.00
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17	19-1-5	81 South St	\$				
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26	39-2-21	85 William St	\$ 22,648.29	\$ 22,500.00	\$ (148.29)	Credit Card	\$ 4,995.00
27	39-2-20	87 William St	\$ 24,974.64	\$ 10,500.00	\$ (14,474.64)	Credit Card	\$ 2,331.00
28	44-3-17	122 William St	\$ 12,783.18	\$ 10,000.00	\$ (2,783.18)	Credit Card	\$ 2,220.00
29	13-5-10	135-137 Wisner Ave	\$ 55,054.31	\$ 49,500.00	\$ (5,554.31)	Cash	\$ 10,890.00
Grand Total			\$ 619,605.25	\$ 460,300.00	\$ (159,305.25)	\$	\$ 104,482.00

RESOLUTION NO. 175 - 2012

OF

OCTOBER 9, 2012

A RESOLUTION AUTHORIZING THE REMOVAL
OF THE PARCEL 34 CARTER STREET (SECTION 22, BLOCK 2, LOT 26)
NUNC PRO TUNC FROM THE OCTOBER 3, 2012
PROPERTY AUCTION

BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following parcel shall be removed Nunc Pro Tunc from the October 3, 2012 Property Auction:

34 Carter Street

22 - 2 - 26

RESOLUTION NO.: 170 - 2012

OF

OCTOBER 9, 2012

A RESOLUTION SCHEDULING A PUBLIC HEARING FOR NOVEMBER 13, 2012
TO RECEIVE COMMENTS CONCERNING THE ADOPTION OF THE
2013 BUDGET FOR THE CITY OF NEWBURGH

BE IT RESOLVED, by the Council of the City of Newburgh, New York that pursuant to Charter Section 8.15 a public hearing will be held to receive comments concerning the adoption of the 2013 Budget for the City of Newburgh; and that such public hearing be and hereby is duly set for a special City Council meeting of the Council to be held at 7:00 p.m. on the 13th day of November, 2012, at the Activity Center, 401 Washington Street, Newburgh, New York.

RESOLUTION NO.: 171 - 2012

OF

OCTOBER 9, 2012

**A RESOLUTION TO AUTHORIZE THE AWARD OF A BID AND
THE EXECUTION OF A CONTRACT WITH OTIS ELEVATOR
TO PROVIDE MAINTENANCE AND REPAIRS ON SIX (6) ELEVATORS LOCATED
AT VARIOUS CITY FACILITIES PROVIDING FOR A THREE (3) YEAR TERM
AT A BASE BID COST OF \$1,080.00 PER MONTH**

WHEREAS, the City of Newburgh has duly advertised for bids for the Elevator Maintenance and Repair Services Contract; and

WHEREAS, bids have been duly received and opened and Otis Elevator is the low bidder;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the Elevator Maintenance and Repair Services Contract be and it hereby is awarded to Otis Elevator, providing for a three (3) year term at a base bid cost of \$1080.00 per month, and that the City Manager be and he is hereby authorized to enter into the annexed contract for such work in this amount.



UNITED
TECHNOLOGIES
OTIS ELEVATOR

ACKNOWLEDGMENT

Thank you for your order

Please refer to our contract number in all correspondence. Address all inquiries to:

Otis Elevator Company

41 Page Park Drive
Poughkeepsie, NY 12603

Contract Number

Your Order Number
RWS - 208230981

Date Acknowledged
9/13/2012

Sold To
City of Newburgh

Job Location
City Hall – 83 Broadway;
City Courthouse – 300 Broadway;
Grand Street Courthouse – 123 Grand Street; and
Youth Bureau – 104 South Lander Street.

Thank you for allowing us the opportunity to do business with your company. Enclosed are 2 copies of our Agreement with you dated 9/13/2012. Our acceptance of this Agreement is conditioned by the following clarifications to its terms, whether specifically noted in the contract or as an additional document incorporated by reference or as a matter of law. It is also understood that our proposal dated 9/13/2012 is made a part of this Agreement and shall prevail over any contract specifications in conflict with the equipment to be furnished or our scope of work, and that the terms included herein will be deemed accepted by you upon our commencement of the Work.

We will accept the terms of the contract between the Owner and General Contractor, only to the extent that those terms do not add to, conflict with or otherwise change the provisions of the specifications, plans, our subcontract agreement, and our scope of work.

Request for Price Quote:

Section 6.0 Work Included Under the Contract

Otis is not required to alter, update, modernize or install new attachments to any units, whether or not recommended or directed by insurance companies or governmental authorities.

Otis will not be responsible for car enclosures (including but not limited to, wall panels, door panels, car gates, plenum chambers, hung ceilings, lighting, light diffusers, light tubes and bulbs, handrails, mirrors and floor coverings), rail alignment, when affected by building compression or shifting hoistway enclosures; hoistway gates, hoistway inserts and brackets, mainline disconnect switches, doors, door frames, sills, swing door hinges and closing devices, hydraulic cylinders, plungers, buried piping, escalator balustrades, lighting and wedge guards. Otis will also not be responsible for computer and microcomputer devices, such as terminal keyboards and display units, that are not exclusively dedicated to the elevator system, telephones, intercoms, heat or smoke sensors or communications or safety signaling equipment not installed by Otis, or instructions or warnings in connection with use by passengers.

Section 9.0 Damage to City Property

Delete the second sentence providing "Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City" and replace the same with "Contractor shall repair any damage caused by Contractor to the satisfaction of City at no cost to the City."

Section 11.0 Work Area Cleaning and Safety Requirements

Third paragraph delete the first sentence providing "The Contractor shall be responsible for providing and for the placement of barricades, safety cones, flag tape and any other safety control equipment required to protect employees, the public, surrounding areas, equipment and vehicles" and replace the same with "The Contractor shall be responsible for

This transaction is expressly made conditional upon the terms and conditions on the face and reverse side hereof being a part of the agreement with such terms superseding and conflicting terms in any other contract document. Buyer will be deemed to have assented to all the terms and conditions recited herein by permitting Otis to commence or continue work after receipt of this acknowledgment.

providing and for the placement of barricades, safety cones, flag tape and any other safety control equipment required to protect employees, the public, surrounding areas, equipment and vehicles during the performance of its work."

Request for Price Quote – General Terms and Conditions:

Section 5.0 Indemnification Clause

Notwithstanding any other provision to the contrary, we agree to indemnify you only for losses due to personal injury, or property damage to the extent caused by our negligent acts or omissions, or the negligent acts or omissions of our employees, agents and subcontractors during the performance of this contract, but not to the extent caused by others. Each party shall defend itself in the event of a lawsuit.

Section 6.0 Insurance Requirements

We are supplying the attached insurance certificate evidencing the insurance carried by us conditioned on the understanding that it represents full compliance with all insurance requirements applying to us on this project. Otis does not provide copies of its insurance policies, certified or otherwise. Coverage will be on an occurrence basis and in accordance with the coverage limits outlined in the contract documents. Renewal certificates will be provided during the term of the contract. In lieu of naming parties as additional insured, such parties shall be named insured on an Owner's and Contractor's Protective (OCP) Liability policy with a limit of \$2,000,000.

You shall maintain "All Risk" insurance upon the full value of our Work and material delivered to the job site, at no cost to Otis.

Section 9.0 Suspension or Debarment

FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (May 2008)

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that --
- (i) The Offeror and/or any of its Principals --
- (A) **ARE NOT** presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- (B) **HAVE**, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- (C) **ARE NOT** presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and
- (D) **HAVE NOT**, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

Note: Otis Elevator Company is a subsidiary of United Technologies Corporation (UTC). Between September, 1992 and September, 1998, the Department of Defense (DoD), acting through the Navy's Procurement Integrity Office (within the Office of the General Counsel), and UTC operated under an Administrative Agreement, which provided for the continuing oversight of UTC's compliance programs and matters of present responsibility. UTC continues to provide regular reports to the Navy, and the Navy continues to act as the focal point for review of UTC present responsibility matters. The Navy's Procurement Integrity Office is aware of the following matters:

As referenced in (a)(1)(i)(B) above, UTC's Pratt & Whitney Division (P&W) had a civil judgment rendered against it for \$7.09 million in the matter of U.S. v. United Technologies Corporation, Civ. No. C-99-093, decided August 1,

This transaction is expressly made conditional upon the terms and conditions on the face and reverse side hereof being a part of the agreement with such terms superseding and conflicting terms in any other contract document. Buyer will be deemed to have assented to all the terms and conditions recited herein by permitting Otis to commence or continue work after receipt of this acknowledgment.

2008. The trial court found that P&W violated the civil False Claims Act by not adhering to the methods of calculating major supplier costs and inflation indices stated in its proposal. The government alleged \$624 million in damages and penalties. The trial judge held that the government had not suffered any actual damages during the years of contract performance (1986-1991) because P&W had made significant price concessions in each of those years. In the absence of actual damages, the court applied the civil penalty of \$10,000 to each of the 709 invoices P&W submitted under the contract.

As referenced in (a)(1)(i)(C) above, UTC is a named defendant in a suit filed by a former employee under the civil False Claims Act, U.S. ex rel. Drake v. Norden Systems, Inc., and United Technologies Corporation, Civ. No. 394CV00963(PCD) D. Conn., filed June 14, 1994), which involves allegations that Norden improperly accounted for fixed assets (including charging state taxes and depreciation costs for assets that were not verified). Although this case was dismissed in its entirety on Feb. 19, 2003, the court's decision was partially reversed on appeal and this case was remanded to the trial court on July 14, 2004. UTC has been dismissed as a defendant;

Regarding (a)(1)(i)(D) above, Offeror has no knowledge presently of any disclosable unsatisfied delinquencies, but has approximately 300 corporate entities in the U.S. that may have been notified of delinquencies in various federal income, withholding, and/or excise or other taxes within the prior 3 years. Upon information and belief, no such delinquencies exceed the monetary threshold or remain unsatisfied after final judicial action.

(ii) The Offeror HAS NOT within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

Section 10.0 Termination for Convenience

Otis does not agree to termination for convenience purposes.

Section 11.0 Termination for Default

The Customer may, by written notice to Otis, terminate this Contract if Otis fails to perform any of its material obligations hereunder and does not cure such failure within thirty (30) days after receipt of written notice from the Customer specifying in detail such failure.

Section 15.0 Force Majeure

Notwithstanding any other provision in the contract to the contrary, neither party shall be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, theft, weather, natural or man-made disaster, civil commotion, mischief or act of God.

Section 18.0 Rights and Remedies of the City for Default

Contractor will provide union labor and will make reasonable efforts to ensure that they will work in harmony with others. To effect this, Contractor agrees to provide sufficient workers, equipment and materials for prompt and diligent prosecution of the work. Notwithstanding any language to the contrary contained in the contract documents, a work stoppage, whether caused by strikes, lockouts or other labor disputes, shall not constitute a breach of contract or an event of default.

Under no circumstances shall either party be liable for special, indirect, liquidated or consequential damages of any kind including, but not limited to, loss of goodwill, loss of business opportunity, additional financing costs or loss of use of any equipment or property.

In General:

Warranty

Otis' warranty is limited to the repair or replacement, at Otis' discretion, of defective materials and the correction of defective workmanship within a reasonable time for defects that are reported to Otis during the term of this contract. This warranty excludes damage due to external causes such as fire, water and weather, improper use, misuse, neglect or work by others. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Software

Otis shall provide its maintenance personnel with the appropriate (as determined by Otis in its sole discretion) tools to enable Otis to troubleshoot, diagnose and maintain the equipment as provided in this Agreement. These tools shall remain the property of Otis and nothing in this Agreement shall be construed to obligate Otis to give, disclose or in any manner transfer such tools to the Customer or any third party.

Any counters, meters, tools, remote monitoring devices, communication devices, resident software or other service equipment ("Otis Peripherals") which we may use or install to deliver service under this Contract remains our property, solely for the use of our employees. Otis Peripherals are not considered as part of the elevator. If this contract or subsequent maintenance service is terminated for any reason, we will be given access to the premises to remove the Otis Peripherals at our expense.

Safe Access

Customer agrees to provide Otis with unrestricted ready and safe access to all areas of the building in which any part of the Units are located and to keep all machine rooms and pit areas free from water, stored materials and excessive debris.

This transaction is expressly made conditional upon the terms and conditions on the face and reverse side hereof being a part of the agreement with such terms superseding and conflicting terms in any other contract document. Buyer will be deemed to have assented to all the terms and conditions recited herein by permitting Otis to commence or continue work after receipt of this acknowledgment.



DATE: 09/13/2012

TO:
City of Newburgh
83 Broadway, 4th Floor
Newburgh, NY 12550

FROM:
Otis Elevator Company
41 Page Park Drive
Poughkeepsie, NY 12603

EQUIPMENT LOCATION:

Multiple Buildings
Newburgh, NY 12550

Gregg Spinelli
Phone: (845) 452-3485 ext 12
Fax: (860) 353-7527

PROPOSAL NUMBER: RWS - 208230981

EQUIPMENT DESCRIPTION:

Number of Units	Manufacturer	Equipment Type	Machine Numbers
1	Otis Elevator Company	Hydraulic	478754
3	Schindler Elevator	Hydraulic	TBD
1	Otis Elevator Company	Hydraulic	356200
1	LULA	LULA-LIFT	D81286

OTIS MAINTENANCE

We propose to furnish Otis Maintenance on the equipment ("Units") described above. Otis Maintenance is a full preventive maintenance service intended to protect your investment, extend equipment life, and provide a high level of performance and reliability.

OTIS MAINTENANCE MANAGEMENT SYSTEMSM

We will use the Otis Maintenance Management SystemSM preventive maintenance program to deliver service tailored to your specific building needs. Equipment type, component life, equipment usage, and building environment will be taken into account by the OMMS[®] scheduling system, which will be used to plan maintenance activities in advance. The Units will be provided with devices to monitor equipment usage. We will use OMMS[®] standard work processes developed and continuously improved by Otis.

Under this Contract, we will maintain the Units on the following terms and conditions:

PERFORMANCE

MAINTENANCE

We will maintain the Units using trained personnel directly employed and supervised by us. The maintenance will include inspection, lubrication, adjustment, and, if conditions or usage warrant, repair or replacement of the following parts:

- Controller parts, selectors and dispatching equipment, relays, solid-state components, transducers, resistors, condensers, power amplifiers, transformers, contacts, leads, dashpots, timing devices, computer and microcomputer devices, steel selector tapes, mechanical and electrical driving equipment, signal lamps, and position indicating equipment.
- Door operators, car door hangers, car door contacts, door protective devices, load weighing equipment, car frames, car safety mechanisms, platforms, car and counterweight guide shoes including rollers and gibs, and emergency car lighting.
- Hoistway door interlocks and hangers, bottom door guides, and auxiliary door closing devices.

- Machines, worms, gears, thrust bearings, drive sheaves, drive sheave shaft bearings, brake pulleys, brake coils, contacts, linings, and component parts.
- Motors, motor generators, motor windings, rotating elements, commutators, brushes, brush holders, and bearings.
- Governor components, governor sheaves and shaft assemblies, bearings, contacts, governor jaws, deflector or secondary sheaves, car and counterweight buffers, car and counterweight guide rails, car and counterweight sheave assemblies, top and bottom limit switches, governor tension sheave assemblies, and compensating sheave assemblies.
- Pumps, pump motors, operating valves, valve motors, leveling valves, plunger packings, exposed piping, above ground plungers and cylinders, and hydraulic fluid tanks.
- Escalator handrails, handrail drive chains, handrail brush guards, handrail guide rollers, alignment devices, steps, step treads, step wheels, step chains, step axle bushings, comb plates, floor plates, tracks, external gearing, and drive chains.
- Escalator upper drives, upper drive bearings, tension sprocket bearings, upper newel bearings and lower newel bearings, demarcation lights, and comb lights.

In addition, we will replace all wire ropes or coated steel belts as often as necessary to maintain an appropriate factor of safety. As conditions, usage, or Code warrants, we will equalize the tension on hoisting ropes, resocket ropes for drum machines, and repair or replace conductor cables and hoistway and machine-room elevator wiring.

RELIABILITY

PARTS INVENTORY

We will during the term of this Contract maintain, either in the elevator machine room or as part of our examiner's mobile inventory, a supply of frequently used replacement parts and lubricants selected by Otis to meet the specific routine requirements of the Units. Any parts replaced under this Contract will be with new parts manufactured or selected by Otis or with parts refurbished to Otis standards. Replacement parts stored in the machine room remain our property until installed in the Units. We will furnish replacement parts in exchange for the parts replaced. We further agree to maintain a supply of routine replacement parts in our local parts warehouse inventory and/or the Otis Service Center, available for express delivery in case of emergencies.

MAJOR COMPONENT INVENTORY

We will maintain a supply of genuine Otis major components available for emergency replacement in our warehouse inventory. This inventory includes, but is not limited to, generator rotating elements, motor rotating elements, brake magnets, solid-state components, selector tapes, and door operator motors. Major components will be in our warehouse inventory or available from facilities located throughout North America.

QUALITY CONTROL

We will periodically conduct field audits of our personnel and the Units to maintain quality standards. Otis field engineers will provide technical assistance, technical information, and Code consultation to support our maintenance organization.

RESPONSIVENESS

24-HOUR DISPATCHING

We will, at your request, provide you with access to e*Service via Otis.com and our OTISLINE 24-hour, year-round dispatching service. In the event a Unit malfunction occurs between regular examinations, you will be able to place a service call on e*Service or through an OTISLINE customer service representative, who will, at your request, dispatch an examiner to perform service. In the event Otis receives an emergency call from the phone in the elevator and a passenger indicates a need for assistance, Otis shall attempt to contact a building representative for an assessment of the situation and authorization to respond to the call. If Otis is unable to reach a building representative, Otis shall respond to the emergency call from the phone in the elevator. The visit will be treated as a Callback. It is your responsibility to have a representative available to receive and respond to OTISLINE calls.

COMMUNICATION

CUSTOMER REPRESENTATIVE

As a service to you, and at your request an Otis representative will be available to discuss with you your elevator needs in the areas of modernization, traffic handling ability, recommendations and requirements of Code authorities, proper use and care of the Units, and the OMMS[®] program. There is no additional charge for this consulting service, but by making this service available to you, Otis does not assume any duty to warn.

REPORTS – e*SERVICE

We will use the OMMS[®] program to record completion of maintenance procedures. We will, at your request, provide you access to e*Service via Otis.com. You will be able to access twelve (12) months of repair, completed maintenance procedure and service call history for the Unit(s). You will be responsible for obtaining Internet access to use e*Service.

SAFETY AND ENVIRONMENT

SAFETY TESTS – TRACTION ELEVATORS

We will periodically examine safety devices and governors of the Units. We will conduct an annual no load test and perform at each fifth year a full load, full speed test of safety mechanisms, overspeed governors, and car and counterweight buffers. If required, the governor will be recalibrated and sealed for proper tripping speed, and elevator car balances will be checked.

As required by Code, or once every five years at a minimum, we will measure the coated steel belts for factor of safety using a method approved by the manufacturer.

SAFETY TESTS – HYDRAULIC ELEVATORS

We will conduct an annual no load test and annual pressure relief valve test.

SAFETY TESTS - ROPED HYDRAULIC ELEVATORS

We will periodically examine safety devices and governors of the Unit. We will conduct an annual no load test, annual pressure relief valve test, and perform at each fifth year a full load, full speed test of safety mechanisms, overspeed governors, and car buffers. If required, the governor will be recalibrated and sealed for proper tripping speed.

FIREFIGHTERS' SERVICE TEST

If the equipment has firefighters' service, you assume responsibility for performing and keeping a record of any Code required tests and for the maintenance and functioning of the smoke and/or heat detectors.

If during the initial firefighters' service test any elevator firefighters' service is found to be inoperable, the building will be responsible for all of the cost associated with the repairs necessary to bring the unit in compliance with the applicable Codes.

SAFETY TRAINING

We will instruct our personnel to use appropriate personal protection equipment and follow safe work practices.

ENVIRONMENTAL PROTECTION

Otis endeavors to reduce generation of waste materials, to minimize risks to the environment, customers, the general public and Otis employees, and to comply with all federal and state environmental laws and regulations. Material Safety Data Sheet (MSDS) Manuals are available for review at your request.

You assume responsibility for removal of wastes, including but not limited to hydraulic oil, spoils, asbestos, etc., as it is not part of this Contract.

MAINLINE DISCONNECTS

You agree to engage a qualified electrician to service at least once annually the elevator mainline disconnects located in the elevator equipment room.

WORK SCHEDULE

NORMAL HOURS

All maintenance procedures and repairs will be performed during our regular working hours of our regular working days for the examiners who perform the service. All lamp and signal replacements will be performed during regular examinations.

For purposes of this Contract, a Callback is a response by Otis to a request for service or assistance made (a) by the customer or customer representative, (b) by the building or building representative; (c) by emergency personnel; (d) through the ADA phone line, and/or (e) through REM[®] monitoring system, for service or assistance, on an as needed basis, excluding regularly scheduled maintenance.

Regular working hours: 8:00 AM – 4:30 PM.

Regular working days: Monday – Friday excluding holidays.

OVERTIME

Callbacks outside of regular working hours will be billed at standard overtime rates.

OWNERSHIP AND LICENSES

WIRING DIAGRAMS

You agree to provide us with current wiring diagrams reflecting all previously made changes for Units covered by this Contract to facilitate proper maintenance of the equipment. We shall maintain the wiring diagrams so that they properly reflect any changes made by Otis to the equipment. These diagrams will remain your property.

OTIS SERVICE EQUIPMENT

Any counters, meters, tools, remote monitoring devices, or communication devices which we may use or install under this Contract remain our property, solely for the use of Otis employees. Such service equipment is not considered a part of the Units. You grant us the right to store or install such service equipment in your building and to electrically connect it to the Units. You will restrict access to the service equipment to authorized Otis personnel. You agree to keep the software resident in the service equipment in confidence as a trade secret for Otis. You will not permit others to use, access, examine, copy, disclose or disassemble the service equipment or the software resident in the service equipment for any purpose whatsoever. If the service is terminated for any reason, we will be given access to your premises to remove the service equipment, including the resident software, at our expense.

OTIS SOFTWARE

Software owned by Otis may be embedded in parts or otherwise provided by Otis as part of this maintenance agreement. You have the right to use this software only for operation of the units for which the part was provided. You may also make a backup or archival copy of the software, provided you reproduce the copyright notice and any other legend of ownership on the copy. You may not otherwise copy, display, adapt, modify, distribute, reverse assemble, reverse compile, or otherwise translate the software. You will not transfer possession of the software except as part of a transfer of ownership of the Units and the assumption of the rights and obligations under this agreement by the transferee.

NON-OTIS SOFTWARE

You retain your rights to any software not provided by Otis contained in the Units and agree to allow Otis to make one backup or archival copy for you.

SERVICE TOOLS

You are responsible to secure our right to use any special service tools required to maintain your non-Otis equipment. These tools must be provided prior to us beginning maintenance on such equipment.

THE UNITS

It is agreed that we do not assume possession or control of the Units, that such Units remain yours solely as owner and operator, lessee, or agent of the owner or lessee, and that you are solely responsible for all requirements imposed by any federal, state, or local law, Code, ordinance or regulation.

CLARIFICATIONS

This Contract does not cover car enclosures (including, but not limited to, wall panels, door panels, car gates, plenum chambers, hung ceilings, lighting, light diffusers, light tubes and bulbs, handrails, mirrors and floor coverings), rail alignment, hoistway enclosures, hoistway gates, hoistway inserts and brackets, mainline disconnect switches, doors, door frames, sills, swing door hinges and closing devices, below ground or unexposed hydraulic cylinders and plungers, buried or unexposed piping, escalator balustrades, escalator lighting or wedge guards. Without affecting our obligation to provide service under this Contract, you agree to permit us to train our personnel on the Units. This Contract does not cover computer and microcomputer devices, such as terminal keyboards and display units, that are not exclusively dedicated to the elevator system. This Contract does not cover telephones installed by others, intercoms, heat sensors, smoke sensors, communications equipment, or safety signaling equipment, or instructions or warnings in connection with use by passengers.

We will not be required: (i) to make any tests other than that as specifically set forth herein, (ii) to make any replacements with parts of a different design or type, (iii) to make any changes in the existing design of the Units, (iv) to alter, update, modernize or install new attachments to any Units, whether or not recommended or directed by insurance companies or by governmental authorities, (v) to make repairs or replacements necessitated by failures detected during or due to testing of the Units or buried or unexposed hydraulic cylinders or piping and (vi) to make any replacements, renewals, or repairs necessitated by any obsolete or discontinued part of the Unit(s) or by reason of any cause beyond our control (except ordinary wear and tear) including, but not limited to, fire, explosion, theft, floods, water, weather, earthquake, vandalism, misuse, abuse, mischief, or repairs by others.

You assume responsibility for the cost of correcting all Elevator Code violations existing on the date we enter into this Contract. If such Code violations or other outstanding safety violations are not corrected in accordance with this Contract, Otis may with respect to the equipment not meeting Code requirements cancel this Contract without penalty by providing thirty (30) days written notice.

Neither party shall be liable for any loss, damage or delay due to any cause beyond our reasonable control including, but not limited to, acts of government, strikes, lockouts, other labor disputes, fire, explosion, theft, floods, water, weather, earthquake, riot, civil commotion, war, vandalism, misuse, abuse, mischief, or acts of God.

We shall indemnify and hold you harmless from damages or losses sustained by you due solely to personal injury or property damage occurring during the performance of the Work and only to the extent directly caused by our negligence or the negligence of our employees, agents or subcontractors. We shall maintain worker's compensation and employers' liability insurance covering our liability for injury or death sustained by our employees, and comprehensive general liability insurance. You shall insure that all risk insurance upon the full value of the Work and material delivered to the job site is maintained at no cost to us. If either party so requires, in writing, the other party shall furnish certificates of insurance evidencing the above

insurance coverages.

Notwithstanding any other agreement or provision to the contrary, under no circumstances will either party be liable for any indirect, special or consequential damages of any kind.

You agree to provide us unrestricted ready and safe access to all areas of the building in which any part of the Units are located, to keep all machine rooms and pit areas free from water, stored materials, and debris, to provide a safe work place for our personnel, to remove and remediate any waste or hazardous materials in accordance with applicable laws and regulations, and to provide a grounded, 3-prong electrical system and proper lighting in the machine rooms and pits. We shall not be obliged to perform until such unsafe condition has been remedied.

If any Unit is malfunctioning or is in a dangerous condition, you agree to notify us as soon as possible using the 24-hour OTISLINE® service. Until the problem is corrected, you agree to remove the Unit from service and take all necessary precautions to prevent access or use.

You will provide written notice within twenty-four hours after occurrence of any accident in or about the elevator (s) and/or escalator(s) to us and if required by law, to any local authorities. You further agree to preserve replaced parts.

Escalator Units are designed only for transporting passengers. For escalator Units, you agree to take all necessary measures to prevent other items from being conveyed, so that features designed to protect passengers and prevent property damage are not damaged. When stationary, escalators are to be properly barricaded and not to be used as steps.

You agree to properly post, maintain, and preserve any and all instructions or warnings to passengers in connection with the use of any Units.

ALTERATIONS

If you allow others to make alterations, additions, adjustments, or repairs to the equipment, we will not be responsible for such nor for any repairs or maintenance claims, or accidents arising out of the same.

SPECIAL PROVISIONS

Overtime Repairs

Overtime repairs are included as part of the Contract.

CONTRACT PRICE AND TERM

CONTRACT PRICE

One thousand eighty dollars (\$1,080.00) per month, payable ^{monthly} ~~annually~~

PRICE ADJUSTMENT

The Contract Price will be adjusted on the effective date of any labor rate adjustment under Otis' contract with the International Union of Elevator Constructors (IUEC Contract) to reflect increases or decreases in material and labor costs.

A. Material

One hundred eight dollars (\$108.00) of the original Contract Price will be increased or decreased by the percent increase or decrease shown by the index of "Producer Commodity Prices for Metals and Metal Products" published by the U. S. Department of Labor, Bureau of Statistics for the price adjustment month compared with the index on 07/01/2012 which was 215.400.

B. Labor

Nine hundred seventy-two dollars (\$972.00) of the original Contract Price will be increased or decreased by the percent increase or decrease in the straight time hourly labor cost under the IUEC contract on 01/01/2012 which was 80.080. The phrase "straight time hourly labor cost" means the sum of the straight time hourly labor rate plus the hourly cost of fringe benefits paid to elevator examiners in the locality where the equipment is to be maintained.

TERM

The Commencement Date will be 10/1/2012.

The Term of this Contract unless modified under the extended term below, will be for ~~five (5)~~ ^{three (3)} years beginning on the Commencement Date. ~~The Contract will automatically be renewed at each fifth anniversary for an additional five (5) year term unless terminated by either party by giving written notice to the other party at least ninety (90) days, but no more than 120 days prior to the end of the then current five (5) year term.~~

EXTENDED TERM

The Term of this Contract will be extended as selected below, and we will apply the corresponding discount to the net billing amount.

<u>Extended Contract Term</u>	<u>Extended Term Discount</u>	<u>Selection</u>	<u>Initial</u>
Ten (10) Years	3%	☐	_____
Fifteen (15) Years	5%	☐	_____
Twenty (20) Years	7%	☐	_____

In the event a customer chooses an extended term, the Contract will automatically renew at the expiration of the Extended Contract Term for successive periods equal to the initial Extended Contract Term. Either party may terminate the Contract at the end of the initial Extended Contract Term or at the end of any subsequent Extended Contract Term by giving the other party at least ninety (90) days written notice prior to the end of the then current Term.

At the end of the initial Extended Contract Term, or at the end of any subsequent Extended Contract Term, you may elect to have the subsequent terms reduced to five (5) year periods by giving us at least ninety (90) days written notice prior to the end of the then current Term. If such notice is given, the Extended Term Discount will be discontinued upon the subsequent automatic renewal date of this agreement.

In the event the contract is terminated for any reason prior to the expiration date of the selected Extended Term or any subsequent Extended Term, you agree to pay us the amount of the full Extended Term Discount you received during the Extended Term or any subsequent Extended Term. This is in addition to and not in lieu of any other rights or remedies we may have.

In the event that you sell the building or your interest is terminated prior to the expiration of the Contract, you agree to assign the Contract to the new owner or successor and to cause the new owner to assume your obligations under this agreement. If the new owner or successor fails to assume your obligations under the Contract, then you agree to pay to Otis all sums due for the unexpired Term.

Nonperformance

You may by written notice to Otis, terminate the Contract if we materially fail to perform any of the substantive obligations under the Contract, and do not cure such failure within ninety (90) days after receipt of such written notice specifying in detail such failure.

PAYMENTS

Beginning on the Effective Date, payments will be due and payable on or before the first day of the contract year in which services are rendered beginning on the Commencement Date.

If an alternate payment plan is selected other than the standard annual payment, the following additional cost will be applied to the net billing amount:

<u>Billing Frequency</u>	<u>Add to Contract Price</u>	<u>Selection</u>	<u>Initial</u>
Semiannual	1% 0.5%	☐	_____
Quarterly	2% 0.5%	☐	_____
Monthly	4% 0.5%	☐	_____

The method of payment will be by check.

The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law. In addition to the agreed price, you shall pay to us any future applicable tax imposed on us, our suppliers or you in connection with the performance of the work described.

You agree to pay a late charge from the date such sums become due of one and one-half percent (1.5%) per month, or the highest legally permitted rate, whichever is less, on any balance past due for more than thirty (30) days, together with all costs (including, but not limited to, attorneys' fees) incurred by us to collect overdue amounts.

Failure to pay any sum due by you within sixty (60) days will be a material breach. We may at our option declare all sums due or to become due for the unexpired term immediately due and payable as liquidated damages, and until the same are paid be discharged from further obligations under the contract.

ACCEPTANCE

This proposal, when accepted by you below and approved by our authorized representative, will constitute the entire and exclusive contract between us for the services to be provided and your authorization to perform as outlined herein. All prior or contemporaneous oral or written representations or agreements not incorporated herein will be superseded. Any purchase order issued by you in connection with the services to be provided will be deemed to be issued for your administrative or billing identification purposes only, and the parties hereto intend that the terms and conditions contained herein will exclusively govern the services to be provided. We do not give up rights under any existing contract until this proposal is fully executed. This Contract may not be changed, modified, revised or amended unless in writing signed by you and an authorized representative of Otis. Further, any manual changes to this form will not be effective as to Otis unless initialed in the margin by an authorized representative of Otis

THIS QUOTATION is valid for ninety (90) days from the proposal date.

Submitted by: Gregg Spinelli

Title: Account Manager

Accepted in Duplicate

CUSTOMER

Approved by Authorized Representative

Date: _____

Signed: _____

Print Name: _____

Title: _____

E-mail: _____

Name of Company: _____

☐ Principal, Owner or
Authorized Representative of Principal or Owner

☐ Agent: _____
(Name of Principal or Owner)

Otis Elevator Company

Approved by Authorized Representative

Date: _____

Signed: _____

Print Name: Tony Belluscio

Title: Branch Manager

OTIS MAINTENANCE



REQUEST FOR PRICE QUOTE
ELEVATOR MAINTENANCE AND REPAIR SERVICES
RFPQ No. 8-12 FOR CITY OF NEWBURGH, NEW YORK

OFFER AND ACCEPTANCE

OFFER TO THE CITY OF NEWBURGH:

The undersigned hereby offers and agrees, if this offer is accepted within ninety (90) calendar days from the date of submittal, to furnish the requested services, at the prices set forth in this quotation, at the designated location(s) within the time specified herein and subject to the terms and conditions of this request for price quote. In the event of contract award pursuant to this request, performance by the vendor of any or all of the services, or delivery of any or all of the products defined here in, shall constitute acceptance of all terms, conditions and requirements of the resulting agreement.

For Clarification of this Offer, Contact:

OTIS Elevator Company
Company Name:

41 Page Park Drive
Mailing Address:

Poughkeepsie, NY 12603
City, State and Zip Code:

13-5583389
Federal Employer Identification Number

Gregg Spinelli
Name (Print)

Account Manager
Title (Print)

(845) 452-3485 Ex-12
Phone Number

gregg.spinelli@otis.com
E-Mail

New York State Registrar of Contractors
Licensed Contractors Name

License Number and Expiration Date

Signature of Person Authorized to Sign Offer:


Signature (must be signed in blue ink)

Anthony Belluscio
Printed Name
Branch Manager

Title

518-330-1791
Phone Number

tony.belluscio@otis.com
E-mail

☐ **No Quote** We are not submitting a Written Quotation at this time but request our name to (circle one) remain / be removed from the City's list for future solicitations. REASON FOR NOT SUBMITTING AT THIS TIME: _____



REQUEST FOR PRICE QUOTE
ELEVATOR MAINTENANCE AND REPAIR SERVICES
RFPQ No. 8-12 FOR CITY OF NEWBURGH, NEW YORK

ACCEPTANCE OF OFFER

This offer is hereby accepted.

The Contractor is now bound to provide the materials, equipment or services listed by the attached contract and based upon the Solicitation, including all terms, conditions, specifications, statement of work, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Agreement No. RFPQ 6-12 - Elevator Maintenance and Repair Services.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives a formal Notice to Proceed, Purchase Order, or is otherwise directed to do so in writing by the City's Authorized Representative.

This Agreement is entered into this _____ day _____, 2012.

CONTRACTOR:


Authorized Signature (blue ink)
Anthony Belluscio

Branch Manager
Printed or Typed Signature and Title

OTIS
Firm Name

41 Page Park Dr
Mailing Address

Poughkeepsie NY
City State Zip Code

FOR THE CITY:

Richard F. Herbek, City Manager

Approved as to Form:

Michelle Kelson, Corporation Counsel

Approved as to Finances:

Cheryl A. Gross, City Comptroller



REQUEST FOR PRICE QUOTE
ELEVATOR MAINTENANCE AND REPAIR SERVICES
RFPQ No. 8-12 FOR CITY OF NEWBURGH, NEW YORK

NON-COLLUSION AFFIDAVIT

STATE OF New York)
County of Rensselaer) SS:

I, Anthony Belluscio of the (Town, Village, City) of
Brunswick in the County of Rensselaer and the State
of New York of full age, being duly sworn according to law on my oath
depose and say that:

I am Anthony Belluscio, an officer of the firm of OTIS Elevator
the bidder making the Proposal for the above named work, and that I
executed the said Proposal with full authority to do so; that said bidder has not, directly or
independently, entered into any agreement, participated in any collusion, or otherwise in connection
with the above named work; and that all statements contained in said Proposal and in this affidavit
are true and correct, and made with the full knowledge that the City of Newburgh as Owner relies
upon the truth of the statements contained in said Proposal and in the statements contained in this
affidavit in awarding the contract for said work.

I further warrant that no person or selling agency has been employed or retained to solicit or
secure contract upon an agreement or understanding for a commission, percentage, brokerage or
contingent fee, except bonafide employees or bonafide established commercial or selling agencies
maintained by (Contractor's Name) OTIS Elevator

Subscribed and sworn to

Anthony Belluscio
Branch Manager

(Signature above in blue ink, also type or print name and title of affiant next to signature)

before me this 13th day

of August 2012

Kerrie Joiner-Burger
Notary Public of

Notary Seal
KERRIE JOINER-BURGER
Notary Public, State Of New York
No. 01JO6059392
Qualified in Rensselaer County
My Commission Expires May 29, 15

My commission expires May 29 2015

THIS AFFIDAVIT MUST BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH QUOTE

RESOLUTION NO.: 172-2012

OF

OCTOBER 9, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY
REVIEW ACT (SEQRA) FOR WATER STORAGE TANK IMPROVEMENT PROJECT,
DECLARING THE PROJECT TO BE AN UNLISTED ACTION,
ADOPTING PART I OF THE ENVIRONMENTAL ASSESSMENT FORM,
ISSUING A NEGATIVE DECLARATION AND AUTHORIZING THE CITY MANAGER
TO EXECUTE ALL SEQRA DOCUMENTS

WHEREAS, by Resolution No. 252-2011 of December 12, 2011, the City Council of the City of Newburgh (the "City") awarded a bid to Barton And Loguidice, P.C. for professional services in connection with the repair or replacement of City of Newburgh water storage tanks; and

WHEREAS, the City is proposing improvements to three of its water storage tanks, which will include repairs to the 1MG Brady Avenue and 2MG Ellis Avenue water storage tanks, the construction of a new 1.5MG water storage tank immediately adjacent to the existing 1.5MG Marne Avenue water storage tank and the decommissioning of the existing Marne Avenue water storage tank. The proposed projects are located in the City of Newburgh, Orange County, New York (the "Project"); and

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

WHEREAS, pursuant to the SEQRA Regulations, the City has considered the significance of the potential environmental impacts of the Project by (a) using the criteria specified in Section 617.7 of the SEQRA Regulations, and (b) examining the short EAF for the Project, including the facts and conclusions on Page 1 and 2 of the EAF, together with other available supporting information, to identify the relevant areas of environmental concern and wishes to establish itself as Lead Agency for the Project.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. The City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6;

2. the Project constitutes an "unlisted action", as the quoted term is defined in the SEQRA Regulations;
3. adopts Part I of the Environmental Assessment Form;
4. determines that the Project will not have a significant adverse environmental impact, will not require the preparation of a Draft Environmental Impact Statement and issues a Negative Declaration with respect thereto;

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. As a consequence of such findings and declaration and in compliance with the requirements of SEQRA, the City of Newburgh, as lead agency, hereby directs the City Engineer to prepare a Negative Declaration in accordance with 6 NYCRR § 617.12 and to file a copy of the Negative Declaration for the Project in accordance with the SEQRA regulations; and
2. The City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary to complete the SEQRA process for the Project.

SHORT ENVIRONMENTAL ASSESSMENT FORM

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? ☐ Yes ☒ No	If yes, coordinate the review process and use the FULL EAF.
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency. ☐ Yes ☒ No	
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible) C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly: Disturbance at the Marne Avenue tank will be less than an acre. The tank will be replaced in kind and therefore no new impacts are expected. Temporary impacts are associated with construction. C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly: The NYS State Historic Preservation Office's online tools were used to determine that no significant impact would be seen at the project location. Supporting documentation is attached. C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly: The NYS Natural Heritage Program's online tools were used to determine that no significant impact would be seen at the project location. Supporting documentation is attached. C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly: The Marne Avenue tank will be replaced in kind and therefore no impacts are anticipated. C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly: The Marne Avenue tank will be replaced in kind and therefore no impacts are anticipated. C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly: The Marne Avenue tank will be replaced in kind and therefore no impacts are anticipated. C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly: The Marne Avenue tank will be replaced in kind and therefore no impacts are anticipated.	
D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)? ☐ Yes ☒ No If Yes, explain briefly:	
E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? ☐ Yes ☒ No If Yes, explain briefly:	

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.	☒ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.
Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from responsible officer)

State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Project Number 1352.002

Date:

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The City of Newburgh as lead agency, has determined that the proposed action described below will not have a significant adverse environmental impact and a Draft Impact Statement will not be prepared.

Name of Action:

Newburgh Water Storage Tanks Improvements Project.

SEQR Status: Type 1 ☐
 Unlisted ☒

Conditioned Negative Declaration: ☐ Yes
 ☒ No

Description of Action:

The Water Storage Tanks Improvements Project includes improvements to three of the City's water storage tanks: Repairs will be made to the 2MG Ellis Avenue and 1MG Brady Avenue tanks. The 1.5MG Marne Avenue tank will be replaced in kind immediately adjacent to the existing tank. The existing 1.5MG Marne Avenue tank will be decommissioned once the proposed tank construction is complete.

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

Ellis Avenue, Brady Avenue and Marne Avenue within City of Newburgh city limits, map attached.

Reasons Supporting This Determination:

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

The City Council for the City of Newburgh has reviewed the Short EAF and criteria contained in Subdivision C of section 617.7 NYCRR part 617 and other supporting information to identify the relevant areas of environmental concern. It has been determined that the proposed action will have little environmental effect on surrounding areas.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication in the ENB)

For Further Information:

Contact Person: Craig Marti, City Engineer

Address: 83 Broadway, Newburgh, New York 12550

Telephone Number: (845) 569-7300

For Type 1 Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:

Chief Executive Officer, Town / City / Village of

Other involved agencies (If any)

Applicant (If any)

Environmental Notice Bulletin, 625 Broadway, Albany NY, 12233-1750 (Type One Actions only)

RESOLUTION NO.: 173 - 2012

OF

OCTOBER 9, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A VENDOR SERVICE AGREEMENT WITH
GIRL SCOUTS HEART OF THE HUDSON IN CONNECTION WITH THE
CURRENT REQUIREMENTS OF THE TWENTY FIRST CENTURY GRANT PROGRAM
AND A VENDOR SERVICE AGREEMENT WITH MADELINE TORRES-DIAZ AS THE
TWENTY FIRST CENTURY GRANT EVALUATOR
FOR A TOTAL AMOUNT NOT TO EXCEED \$21,000.00**

WHEREAS, by Resolution No.: 181-2009 of November 23, 2009, the City Council authorized the City Manager to accept monies from the New York State Department of Education for the 21st Century Community Learning Centers Grant; and

WHEREAS, said grant was awarded in the spring of 2008 for a five (5) year period; and

WHEREAS, the City's 21st Century Community Learning Centers Program provides strengthening and expanding opportunities afterschool for children and youth; and

WHEREAS, it is necessary and appropriate to enter into vendor service agreements with the City's 21st Century Community Learning Centers Program with various service providers for the final fiscal year of said grant period beginning October 1, 2012 and ending on June 30, 2013 for the following amounts:

Girl Scouts Heart of the Hudson	\$ 6,000.00
Madeline Torres-Diaz	\$15,000.00

WHEREAS, the Council has reviewed the attached Agreements and has determined that it is in the best interest of the City of Newburgh and its residents to accept and expend such funds to enhance the community and strengthen afterschool services to Newburgh's children and youth;

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 a Vendor Service Agreement with Girl Scouts Heart of the Hudson in connection with the current requirements of the Twenty First Century Grant Program and a vendor service agreement with Madeline Torres-Diaz as the Twenty First Century Grant Evaluator for a total amount not to exceed \$21,000.00.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Girl Scouts Heart of the Hudson, 2 Great Oak Lane, Pleasantville, NY 10570 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

Any and all reports, documents, charts, ~~graphs, maps, designs, images, photographs,~~ computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to VENDOR or to third parties. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual

property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. VENDOR agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$5,000.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than one (1) year after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are

subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right

to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary

information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 16. TERMINATION

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

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part

for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manager of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____

RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____

PAMELA ANDERSON
VENDOR CEO, GSHH, Inc

DATE: _____

DATE: _____

8/29/12

SCHEDULE A
SCOPE OF SERVICES

Leadership development organization for girls in grades K-12.

SCHEDULE B
FEES AND EXPENSES

Contract amount: \$6,000.00 (not to be exceeded)

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the CITY OF NEWBURGH, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Madeline Torres-Diaz, a firm with principal offices at 29 Chestnut Avenue, Middletown, NY 10940, hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to VENDOR or to third parties. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual

property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. VENDOR agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning July 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of ^{15,000.00}~~\$11,231.00~~ has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than one (1) year after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are

subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right

to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary

information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publicly or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 16. TERMINATION

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

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part

for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manger of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____

RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____

Madeline Torres Diaz
MADELINE TORRES-DIAZ
CONSULTANT

DATE: _____

DATE: 09-04-2012

SCHEDULE A
SCOPE OF SERVICES

Scope of Work:

Staff Development and Training (topics to vary)
Collect and Respond to Data
Two official site visits to ensure compliance
Two Facilitator a self-assessment of total program
Development of program evaluation and corrective action steps
Annual Performance Report assistance and readiness
Research sustainability

SCHEDULE B

FEES AND EXPENSES

Contract Duration: July 1 2011-June 30, 2012

Contract Amount: ~~\$11,231.00~~ \$15,000 (mtl)

RESOLUTION NO.: 174-2012

OF

OCTOBER 9, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LEASE RENEWAL NUNC PRO TUNC
WITH NEW YORK COMMUNICATIONS COMPANY, INC.
TO PROVIDE FOR COMMUNICATIONS EQUIPMENT AND THE SERVICE OF
THE COMMUNICATIONS EQUIPMENT FOR THE CITY OF NEWBURGH
POLICE DEPARTMENT AT A COST OF \$2,608.00 PER MONTH
FOR 84 MONTHS

WHEREAS, the City of Newburgh Police Department's agreement with New York Communications Company, Inc. ("NYCOMCO") for equipment and service of its communications equipment has expired; and

WHEREAS, the Police Department has received the renewal service and lease agreement; and

WHEREAS said renewal agreement is being provided at a monthly cost of \$2,608.00 for 84 months; and

WHEREAS, such funding has been appropriated within the Police Department budget; and

WHEREAS, a copy of such renewal is annexed hereto and made a part of this resolution; and

WHEREAS, the City Council has examined such lease agreement and determined it to be in the best interests of the City of Newburgh to enter into such agreement,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the annexed agreement nunc pro tunc with NYCOMCO for communications equipment and the service of the communications equipment at a monthly rate of \$2,608.00 for 84 months for the City of Newburgh Police Department.



NEW YORK COMMUNICATIONS COMPANY, INC.

REMIT TO:
 53 West Cedar Street 134 Bracken Road
 Poughkeepsie, NY 12601 Montgomery, NY 12549
 (845) 471-5520 Fax (845) 486-4123 (845) 452-5800 Fax (845) 457-5733
 WWW.NYCOMCO.COM

LEASE ORDER: 267812-00
 DATE: 7/10/12
 SALESREP: WILLIAM TUTHILL
 LEASE #: 14660 -SLE-01
 EXPIRATION DATE:

Bill To: 14660
 NEWBURGH PD CITY
 55 BROADWAY
 NEWBURGH NY 12550

Fax: 845-565-5662
 CUSTOMER CONTACTS: Chief Michael Ferrara PHONE: 845-561-3131
 SGT PAUL HORAZ PHONE: 569-7579

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
2	905-0381	ZETRON MAX PRO WORKSTATION BUNDLE WITH CPU, MEDIA DOCK, 2 SPEAKERS, POWER SUPPLY AND LICENSES. 23" TOUCH SCREEN MONITORS 2-SHURE DESKTOP MICROPHONES 4-MAX RADIO GATEWAYS 1-MAX MANAGER 1-BLOCK OF 10 RADIO LICENSES 1-REDUNDANT POWER SUPPLY 1-12VDC POWER DISTRIBUTION PANEL 4-DUAL UNIT RACK MOUNT OTION 2-24-PORT SWITCH-CISCO 2-FOOT SWITCH 1-77" CABINET ENCLOSURE MAX SETUP AND PROGRAMMING INSTALLATION 7 YEAR LEASE COVERAGE	905.00 /MO	1,810.00 /MO
3	EXISTING MAHG-N8MXX	EXISTING HARRIS M7100 CONTROL STATIONS WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. 1-PATROL 1-ANI 1-WATCH COMMANDER	40.00 /MO	120.00 /MO
2	MAMW-SDMXX	HARRIS M7300 EDACS CONTROL STATION WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. EDACS SCAN BASE-1 EDACS SCAN BASE-2 PROGRAMMING AND INSTALLATION 7 YEAR LEASE COVERAGE	80.00 /MO	160.00 /MO
1	TK-7180HK-U	KENWOOD TK-7180 HB BASE STATION-USED.		
Continued on Next Page . . .				

NEW YORK COMMUNICATIONS COMPANY, INC.



REMIT TO:
 53 West Cedar Street
 Poughkeepsie, NY 12601
 (845) 471-5520 Fax (845) 486-4123
 134 Bracken Road
 Montgomery, NY 12549
 (845) 452-5800 Fax (845) 457-5733
 WWW.NYCOMCO.COM

LEASE ORDER: 267812-00
 DATE: 7/10/12
 SALESREP: WILLIAM TUTHILL
 LEASE #: 14660 -SLE-01
 EXPIRATION DATE:

Bill To: 14660
 NEWBURGH PD CITY
 55 BROADWAY
 NEWBURGH NY 12550

Fax: 845-565-5662
 CUSTOMER CONTACTS: Chief Michael Ferrara PHONE: 845-561-3131
 SGT PAUL HORAZ PHONE: 569-7579

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
5	TK-790HBK-U	WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. WATCH COMMANDER PROGRAMMING AND INSTALLATION 7 YEAR LEASE COVERAGE KENWOOD 150MHZ 110W BASE STATION-USED WITH POWER SUPPLY, EXISTING ANTENNA SYSTEM, CABINET ENCLOSURE, INTERFACE TO RTL, PROGRAMMING AND INSTALLATION. 2-ARMORY 2-DOWNING PARK 1-FIRE DEPARTMENT 7 YEAR LEASE COVERAGE	40.00 /MO	200.00 /MO
1	EXISTING SXHMCX	HARRIS MASTR III 150 MHZ REPEATER WITH EXISTING ANTENNA SYSTEM LOCATED AT CRONOMER HILL. 7 YEAR LEASE COVERAGE	248.00 /MO	248.00 /MO
1	NYCOMCO CPU	NYCOMCO COMPUTER FOR ANI SYSTEM WITH 2-23" MONITORS. 7 YEAR LEASE COVERAGE	35.00 /MO	35.00 /MO
1	NYANI	NYCOMCO ANI SOFTWARE PACKAGE 7 YEAR LEASE COVERAGE	35.00 /MO	35.00 /MO
TOTAL:				2,608.00 /MO

AUTHORIZED SIGNATURE

PRINT NAME

TITLE

Richard F. Herbert
 Richard F. Herbert
 City Manager

NEW YORK COMMUNICATIONS COMPANY INC.

53 WEST CEDAR STREET - POUGHKEEPSIE, NY 12601

845-471-5520 or 1-800-NYCOMCO

WWW.NYCOMCO.COM

Lease No. 14660SLE01

LEASE AGREEMENT

New York Communications Company, Inc. as Lessor hereby agrees to lease to the undersigned as Lessee subject to the terms and conditions of the face and on the reverse side hereof, the following equipment:

[illegible]

Location of Equipment: 55 Broadway, Newburgh NY

The lease rate \$2,608.00 per month for 84 months for a period of Seven (7) years (called herein the lease term) commencing on the first day of the month following the date of installation of the equipment. Lessee agrees to pay an annual rental of Thirty one thousand two hundred and ninety six dollars and no cents (\$31,296.00) for a period of Seven (7) years from the effective date of the contract. The first monthly rental shall be due on the first day of the new lease term and the succeeding month until all said number of monthly rentals shall have been paid. In the event any payment remains unpaid for a period of sixty (60) days or more after becoming due, Lessor may declare Lessee to be in default by notice in writing, and Lessor may retake possession of any or all of the leased equipment with or without process of law, and without demand or further notice. Lease payment \$2,608.00/mo

Lessor will install the equipment approximately 60 days after the date of this agreement, or after Lessor receives notice of FCC approval, if applicable. Shipment shall be f.o.b. Lessor's plant, and Lessor shall not be liable for delays in delivery or failure to manufacture or deliver (1) due to causes beyond its reasonable control or (2) to acts of God, acts of the Lessee, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages, or (3) inability due to causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of installation shall be extended for a period equal to the time lost by reason of the delay.

SIGNED: New York Communications Company Inc.
(Lessor)

BY: Richard M. Lacouette
President

EFFECTIVE DATE:

END DATE:

NAME: City of Newburgh Police Department
(Lessee)

ADDRESS: 55 Broadway
Newburgh, NY 12550

SIGNED: Richard A. Kirk

EFFECTIVE DATE: 9/20/19

IT IS FURTHER AGREED BY THE PARTIES:

(1) **ASSIGNMENT.** (a) The Lessor may assign the equity interest of the equipment described in this lease to a bank or financial institution. The Lessor will continue to collect the monthly payments due under this lease and will continue to provide service and maintenance of the equipment for the Lessee. No obligation is imposed upon the bank or financial institution to which the equity value of the equipment may be assigned to perform or fulfill any obligations of the Lessor under this lease. The Lessee acknowledges that any claim it may have under this lease shall be asserted against the Lessor only and not against an assignee of the equity value of the equipment

(b) The Lessee may not assign this lease or any right to or use of the equipment described herein without the written consent of the Lessor first obtained. Notwithstanding an assignment, the Lessee will remain fully obligated under this lease unless specifically released by the Lessor and any person or company which takes over the rights or obligations under this lease will have all of the rights and will be obligated to keep all of the promises and agreements made herein.

(2) **DEFAULT.** If the Lessee be adjudicated a bankrupt or there is filed against it a petition under the bankruptcy laws, or if any insolvency proceedings is initiated by or against the Lessee, or if the equipment or any part thereof is encumbered, pledged, or attached, seized or taken under any judicial process, the Lessor or its assignee may at any time terminate this lease agreement and enter any premises or vehicles where the leased equipment may be located, without process of law, and remove all said equipment, without prejudice to any other rights or remedies of the Lessor or its assignee.

(3) **SERVICE.** The performance of equipment and the liability of the Lessor under the service provision is contingent upon maintenance by a qualified communications technician, employed and certified by NYCOMCO. This maintenance is the liability of NYCOMCO and is included in the lease charges.

(4) **PATENT INDEMNITY.** The Lessor will defend any suit or proceeding brought against the Lessee so far as based on a claim that any leased equipment, or any part thereof, constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information, and assistance (at the Lessor's expense) for the defense of same, and the Lessor shall pay all damages and costs awarded therein against the Lessee.

(5) **OPTION TO RENEW.** The Lessee shall have the option to renew this lease agreement at a monthly rental to be determined at or before the expiration of the lease term, by written notice prior to expiration of the lease term by execution of a renewal form.

(6) **LESSEE'S OBLIGATIONS.** The Lessee shall

(a) keep the equipment described herein at the location designated and shall not move it elsewhere without prior written authorization from the Lessor;

(b) notify the Lessor of the name and mailing address of any party having a right or interest in any motor vehicle not unconditionally owned by the Lessee in which any of the equipment listed herein is installed;

(c) at the expiration of this lease agreement, return to the Lessor in good condition except for normal wear and tear all leased equipment, together with all parts and accessories added to or installed in the leased equipment;

(d) keep the label reading "Property of New York Communications Company, Inc." affixed to all leased equipment at all times, and make equipment available for Lessor's inspection at reasonable times upon reasonable notice;

(e) be responsible during the lease term for loss or theft of all portable radios listed herein and maintain adequate insurance thereon payable to the Lessor and Lessee as their interests may appear;

(f) arrange for access by the Lessor or any person acting in its behalf to the location where the leased equipment is to be installed.

(7) **LIMITATION OF LIABILITY.** In no event shall the Lessor be liable for special or consequential damages. The Lessor's liability on any other claim for loss of liability, arising out of or connected with this lease, or the use of any equipment covered by this lease (including, but not limited to, loss or liability arising from breach of contract) shall in no case exceed the prorated total monthly rental then paid on the particular unit involved in the claim, except as provided in the paragraphs entitled "SERVICE" and "PATENTS".

(8) **GOVERNMENT AUTHORIZATIONS.** Neither the Lessor nor any of its employees is an agent or representative of the Lessee and the Lessee is solely responsible for obtaining any required authorizations from the Federal Communications Commission and for compliance therewith. If this lease includes the furnishing of a tower and installation, the Lessee shall have the sole responsibility for obtaining all necessary Federal, State and Local permits or authorizations pertaining thereto. The Lessor will comply with all other applicable Federal, State or Local laws and specifically represents that any goods to be delivered hereunder shall be produced in compliance with the Fair Labor Standards Act of 1938 as amended. Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the lease and not for the benefit of any other person.

(9) **AMENDMENTS.** This lease agreement (and any amendments attached hereto and signed by both parties) contains the entire understanding between the parties concerning the subject matter hereof and any representation, promise, modification or amendment shall not be binding upon either party unless reduced in writing and signed on behalf of each by a duly authorized representative.

**City of Newburgh Police Department
Lease Equipment List/Price**

Customer Name	Cont	Item	Serial No	Description	Contract Exp	LID	Unit/Loc	Monthly Current	Monthly New
NEWBURGH PD CITY	50700	TDM-150	1824	CONSOLE-EXISTING	4/30/2009	0	CONSOLE		
NEWBURGH PD CITY	50700	T5-9417D17	311004	ORBACOM TDM-150 CONSOLE	4/30/2009	0			
NEWBURGH PD CITY	50700	T5-9417D17	311006	TDM-150 T5 TRAY	4/30/2009	0			
NEWBURGH PD CITY	50700	CPU	BFWD31	ORBACOM DESKTOP POSITION	4/30/2009	0		\$ 1,800.00	
NEWBURGH PD CITY	50700	CPU	4TV-DOHJ	ORBACOM DESKTOP POSITION	4/30/2009	0			
NEWBURGH PD CITY	50700	CPU	43A-AN40	ORBACOM DESKTOP POSITION	4/30/2009	0			
NEWBURGH PD CITY	50700	CPU	8FWDP31	ORBACOM DESKTOP POSITION	4/30/2009	0	POLICE HQ		
NEWBURGH PD CITY	50700	T5-404W	TDM-OP405	NETWORK CARD	4/30/2009	0	CONSOLE	\$ 10.00	
NEWBURGH PD CITY	50700	ET1725L	Z0132670	ELO 17" TOUCHSCREEN MONITOR	4/30/2009	0	ANI MONITOR		
NEWBURGH PD CITY	50700	E326261	726472900C	ELO 17" TOUCHSCREEN MONITOR	4/30/2009	0	DESK OFFICER ANI	\$ 110.00	
NEWBURGH PD CITY	50700	MAHG-N8MXX	9071782	M7100IP 806-870 MHZ MOBILE	4/30/2009	4353	C/S-ANI		
NEWBURGH PD CITY	50700	MAHG-N8MXX	9068037	M7100IP 806-870 MHZ MOBILE	4/30/2009	4354	C/S-LOCAL 1	\$ 40.00	
NEWBURGH PD CITY	50700	MAHG-N8MXX	9072907	M7100IP 806-870 MHZ MOBILE	4/30/2009	4355	C/S-LOCAL 2	\$ 40.00	
NEWBURGH PD CITY	50700	D2HMCX-U	1484734	ORION HB 50WATT MOBILE	4/30/2009	0	FIRE HOUSE-MRD	\$ 40.00	
NEWBURGH PD CITY	50700	D2HHCX-U	1264283	M/A-COM (USED)ORION 150MHZ	4/30/2009	0	ARMORY-MRD	\$ 40.00	
NEWBURGH PD CITY	50700	D2HHCX-U	1265760	M/A-COM (USED)ORION 150MHZ	4/30/2009	0	ARMORY-SW	\$ 40.00	
NEWBURGH PD CITY	50700	D2HHCX-U	1445992	M/A-COM (USED)ORION 150MHZ	4/30/2009	0	DOWNING PARK-MRD	\$ 40.00	
NEWBURGH PD CITY	50700	D2HHCX-U	1445993	M/A-COM (USED)ORION 150MHZ	4/30/2009	0	DOWNING PARK-SW	\$ 40.00	
NEWBURGH PD CITY	50700	SXHMCX	9873847	MASTR III 150MHZ BASE/REPEATER	4/30/2009	0	CRONOMER HILL	\$ 248.00	
NEWBURGH PD CITY	50700	MAHG-N8MXX	9069825	M7100IP 806-870 MHZ MOBILE	4/30/2009	4357	C/S P/B	\$ 40.00	
NEWBURGH PD CITY	50700	NPH20-U	8165920	MVS (USED) 150MHZ MOBILE	4/30/2009	0	C/S P/B		
NEWBURGH PD CITY	50700	MAHG-N8MXX	9071284	M7100IP 806-870 MHZ MOBILE	4/30/2009	4356	PATROL C/S RACK MT	\$ 40.00	
								\$ 2,528.00	
				CONSOLE-ZETRON MAX				Current	New
NEWBURGH PD CITY	50700	905-0381		ZETRON MAX 2 POSITION CONSOLE	4/30/2009	0	CONSOLE		\$ 1,810.00
NEWBURGH PD CITY	50700			23" TOUCHSCREEN MONITOR	4/30/2009	0	ANI MONITOR		\$ 35.00
NEWBURGH PD CITY	50700			23" TOUCHSCREEN MONITOR	4/30/2009	0	DESK OFFICER ANI		\$ 35.00
NEWBURGH PD CITY	50700	MAHG-N8MXX	9071782	M7100IP 806-870 MHZ MOBILE	4/30/2009	4353	C/S-ANI	\$ 40.00	
NEWBURGH PD CITY	50700	MAHW-SDMXX		M7300 806-870 MHZ MOBILE	4/30/2009	4354	C/S-LOCAL 1	\$ 40.00	
NEWBURGH PD CITY	50700	MAHW-SDMXX		M7300 806-870 MHZ MOBILE	4/30/2009	4355	C/S-LOCAL 2	\$ 120.00	
NEWBURGH PD CITY	50700	TK-790HBK		KENWOOD TK-790HBK 150MHZ	4/30/2009	0	FIRE HOUSE-MRD	\$ 40.00	
NEWBURGH PD CITY	50700	TK-790HBK		KENWOOD TK-790HBK 150MHZ	4/30/2009	0	ARMORY-MRD	\$ 40.00	
NEWBURGH PD CITY	50700	TK-790HBK		KENWOOD TK-790HBK 150MHZ	4/30/2009	0	ARMORY-SW	\$ 40.00	
NEWBURGH PD CITY	50700	TK-790HBK		KENWOOD TK-790HBK 150MHZ	4/30/2009	0	DOWNING PARK-MRD	\$ 40.00	
NEWBURGH PD CITY	50700	SXHMCX	9873847	KENWOOD TK-790HBK 150MHZ	4/30/2009	0	DOWNING PARK-SW	\$ 40.00	
NEWBURGH PD CITY	50700	MAHG-N8MXX	9069825	MASTR III 150MHZ BASE/REPEATER	4/30/2009	0	CRONOMER HILL	\$ 248.00	
NEWBURGH PD CITY	50700	TK-7180HK		M7100IP 806-870 MHZ MOBILE	4/30/2009	4357	C/S P/B	\$ 40.00	
NEWBURGH PD CITY	50700	MAHG-N8MXX	9071284	KENWOOD TK-7180HK RRE 150MHZ	4/30/2009	0	C/S P/B		
NEWBURGH PD CITY	50700			M7100IP 806-870 MHZ MOBILE	4/30/2009	4356	PATROL C/S RACK	\$ 40.00	
								\$ 2,608.00	
				ZETRON MAX-3RD POSITION				\$ 2,528.00	
NEWBURGH PD CITY	50700	905-0381		ZETRON MAX 1 POSITION CONSOLE				\$ 530.00	
								\$ 3,058.00	
				ZETRON MAX-LAPTOP POSITION					
NEWBURGH PD CITY	50700	905-0382		ZETRON MAX LAPTOP POSITION				\$ 470.00	
								\$ 3,528.00	
							Less P/B Control Stations	\$ (40.00)	
								\$ 3,488.00	

City of Newburgh

Scope of Work for Police Consultant Study

SCOPE OF WORK

Culture and Community Relations

- Assess the culture, ethnic makeup and minority hiring practices of the NEWBURGH Police Department.
- Determine the current perception of the NEWBURGH Police Department by the general public, including staffing, response times and public interaction.
- Does it meet the expectation of NEWBURGH residents and neighborhoods served?
- How does the NEWBURGH Police Department focus on promoting safety and preventing crime, and how are they prioritized given current staffing levels
- How are quality of life violations addressed?

Training/Equipment/Facilities

In addition to compliance with POST academy training requirements, determine the adequacy of training regarding:

- policies, procedures, reporting and review of all incidents involving use of force;
- escalation and de-escalation of use of force;
- handling of special events, large crowds and demonstrations;
- use of lethal and less lethal force equipment/weapons; conduct of investigations;
- diversity; cultural awareness and sensitivity awareness

Does the training that is provided prepare officers to meet the requirements of policing in an urban and diverse, environment?

Are facilities and equipment adequate to meet the Department's responsibilities?

Use of Lethal and Less Lethal Force

Review departmental policies, procedures, practices and tactics regarding use of force including:

- escalation and de-escalation;
- use of lethal and less lethal force;
- equipment selection, deployment and reporting;
- monitoring of use of force and any other policies and procedures relevant to this issue.

Determine if policies and procedures are comprehensive and current (reflecting best practices); comply with legal requirements; and are effective in guiding and governing a professional, well-regarded and trusted police department.

Internal / External Reviews and Controls

Review the quality of internal investigatory capability and practices for fairness, objectivity and thoroughness. Assess whether supervision is adequate and effective in monitoring performance so that officers are properly carrying out their responsibilities and providing professional, courteous service. Are outcomes used in ways that provide "early warning" or otherwise detect performance problems and provide effective intervention? Please comment on NEWBURGH Police Department internal affairs investigation practices compared to "industry practice." What external review and analysis should be considered, including the concept of a Police Civilian Review Board and/or Police Community Relations Advisory Board

Overtime Scheduling

How is overtime determined and how is overtime scheduled? What are the ways to reduce the occurrence of overtime? This should include an analysis of the current PBA and PSOA contracts and recommendations to reduce overtime and other costs. Analyze the current schedule and provide an analysis of different schedules to include a 12 hour shift.

Context and Background

The final report should include a basic description of the organizational structure of the Department, the chain of command and responsibilities at each level of supervision/management.


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Professionals engaged in police oversight and city and police leaders seeking to institute reforms can benefit greatly from PARC's expertise. PARC can help oversight professionals, city and county officials, police leaders, jail administrators, community and civil rights groups, and business owners by:

- assessing and strengthening citizen oversight agencies;
- implementing or reviewing early warning systems;
- evaluating use-of-force incidents, including supervision, tactics, and subsequent investigations;
- assessing internal police investigations;
- helping police leaders develop and implement management strategies that promote accountability at all levels;
- assisting police and city officials responsible for complying with consent decrees or memoranda of agreement to implement reforms;
- supporting monitors in assessing compliance with settlements requiring reforms;
- tracking community satisfaction with particular police agencies;
- putting a department's practices and policies in context by comparing them with those of similar jurisdictions;
- recommending practices and policies to one jurisdiction by providing examples of successes in similar jurisdictions elsewhere;
- exploring a department's exposure to litigation and developing procedures to learn from past lawsuits;
- identifying steps to take to avoid federal "pattern or practice" inquiries;
- helping police and sheriff's departments manage the risk of misconduct in the jails they operate; and
- providing expert services and advice to businesses on racial profiling, false arrest, and relevant topics.

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Examples of Services Provided by PARC:

- In 2002, PARC was hired by the City of Portland to conduct a review of officer-involved shootings and in-custody deaths that had occurred in the city. The comprehensive report included detailed findings, and 89 recommendations, regarding the Portland Police Bureau's training, tactics, policies, investigations, and review of deadly force cases. Following the release of PARC's initial report in August 2003, Portland retained PARC to conduct five follow-up reports over a five-year period that would review subsequent officer-involved shootings and in-custody deaths, as well as to track implementation of the initial report's recommendations. According to Portland Police Chief Derrick Foxworth: "Overall, it was

painful at first for the organization [the Portland Police Bureau], but it was good.... [I]t pushed us to change. Sometimes, you need that outside audit from someone with a fresh perspective looking at the organization." (*Denver Post*, March 17, 2005)

- In the Town of Wallkill (New York), PARC served from 2001 to 2006 as staff to the court-appointed monitor, Providence Police Chief Dean Esserman, assessing Wallkill's compliance with a consent decree requiring reforms. PARC has established a close working relationship with the Wallkill police chief who has relied upon PARC's expertise to help him comply with the consent decree. Police Chief Robert Hertman has stated, "I've worked closely with PARC staff and value the group's expertise, neutrality, and practical recommendations. Without their help, turning around the department would have been much more difficult." The Wallkill Town Board retained PARC in 2006 to continue to monitor the police department on a voluntary basis following the conclusion of the consent decree.
- Working on two separate projects with two unrelated corporations, PARC helped their managements to take steps to avoid possible liability in relation to the businesses' security policies and practices. PARC assisted with the crafting of better approaches to avoid the reality or perception of racial profiling of customers.
- In Eugene (Oregon), PARC was hired by the city's police commission to produce a report identifying different types of civilian police oversight models around the country for consideration by the commission and city leaders. PARC produced a first-of-its-kind, comprehensive report identifying the positive and negative aspects of the oversight models. In November 2005, Eugene residents voted to change the current oversight system and adopt a hybrid model that includes a police auditor and a citizen review board.

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Consistent with its nonprofit status, PARC's fees are moderate and reasonable.

For more information about PARC's services and how PARC can help you, please contact Executive Director Merrick Bobb at merrickbobb@parc.info

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Carroll Buracker & Associates, Inc. (CBI) is a corporation licensed in the State of Virginia. The firm, organized in 1985, specializes in efficiency and management studies of police departments, sheriffs' departments, fire departments, emergency medical services departments, public safety communications/dispatch and security consulting services for municipal, state, private sector and federal agencies. In addition, hospitals, corporations, nonprofit foundations and downtown improvement districts have retained the firm to evaluate public safety and security services.

The corporation has been retained for public safety consultant services by more than 160 local and state governments and the federal government. Several municipal governments in various regions include Seattle, Tacoma, Salt Lake City, Los Angeles, Fremont, San Francisco, Oakland, Oxnard, Chandler, Apache Junction, Maricopa, El Mirage, Gillette, Billings, Fort Collins, Olathe, Lawton, University Park, Port Arthur, St. Paul, Milwaukee, Chicago, Kalamazoo, Cleveland, Allentown, Canandaigua, Rye Brook, Greenwich, Stamford, Hartford, Waterbury, Boston, Springfield (MA), Princeton, Bergen County (NJ), Perth Amboy, Annapolis, Queen Anne's County (MD), Hampton, Chesterfield County (VA), Virginia Beach, Sunny Isles Beach, Parkland and Fort Lauderdale.

The law enforcement staff of Carroll Buracker & Associates, Inc. includes former police chiefs, computer systems managers, planners and fiscal officers. The fire/EMS staff includes former paid and volunteer fire chiefs, emergency medical services (EMS) chiefs, private ambulance directors and fire/EMS training directors. The security staff includes former security directors of major corporations.

The firm was selected by the U.S. Department of Housing & Urban Development (HUD) for five major projects: 1) to conduct the first and only study of policing in public housing by city police and public housing police in seven major cities; 2) to develop a "Model Contract" with performance measurements for use in allocating drug elimination funds and assuring accountability; 3) to upgrade/accredit 10 public housing police departments in major cities; 4) to develop a police/security system for the Vidor, Texas, public housing development after minorities were forced out of the development by an extremist group; and, 5) to upgrade police/security in several East Texas public housing developments to comply with the findings in a federal suit.

The firm has evaluated public safety communications and dispatch systems in every region of the U.S. and for communities of all sizes. For example, the City of Chicago selected CBI to conduct a "Close-Out Study" of its new \$215 million emergency dispatch systems, facilities and infrastructure. The City of

Los Angeles selected CBI to redo an emergency dispatch system study that had been conducted for the Los Angeles Fire Department by another consulting firm. The Township of Princeton, New Jersey, selected CBI for a dispatch consolidation study.

CBI developed a "Service Standard Index," which has been implemented by cities and police departments to establish suitable benchmarks in determining staffing in patrol and criminal investigations.

Two CBI staff members have managed public safety communications and dispatch centers as practitioners in progressive counties. Five CBI staff members have participated as police chiefs/fire chiefs in managing responses to regional disasters.

CBI has been retained to develop standalone Emergency Preparedness Plans, which include Homeland Security response criteria; moreover, emergency preparedness is addressed in public safety plans for seamless services by police and fire/EMS departments, especially the interoperability issues in emergency communications.

Carroll Buracker served as the project manager and executive producer for the first nationwide community policing training video, "Beyond the Badge." This video, produced for a federal agency, highlights "best practices" and was distributed in every region of the nation. Universities, colleges, police academies and federal law enforcement academies are utilizing this video as part of training/education in contemporary policing.

Forty-two municipal governments, three state governments and a federal agency have retained the corporation for multiple projects.

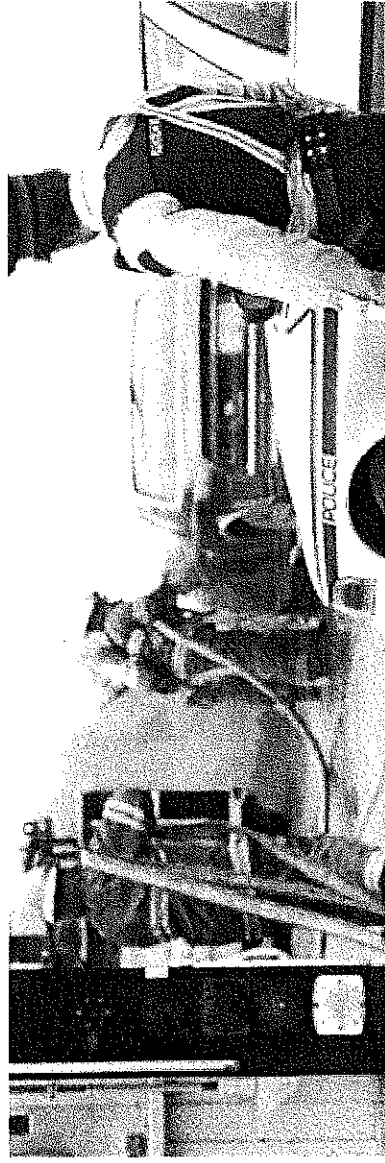
Six members of the corporation have worked as a "team" on public safety studies for 10 years.

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GENERAL ORDER NO. A-008

ISSUE DATE: 09/02/03	EFFECTIVE DATE: 09/15/03	NEW ORDER	LAST REVIEWED: 08/20/03
SUBJECT: USE OF FORCE			
DISTRIBUTION: SWORN PERSONNEL	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 20.1, 20.4, 20.5, 20.6, 20.7, 21.1, 21.2, 51.1	PAGE 1 OF 7
ISSUING AUTHORITY: CHIEF WILLIAM M. BLOOM			

I. PURPOSE:

This order explains the law and Department policy regarding the use of force by police officers, so that force is used only to the extent reasonably necessary to accomplish lawful objectives. Understanding the law and Department policy will allow officers to perform their duties confidently and wisely, without subjecting themselves to criminal or civil liability. The Department will not tolerate excessive force.

II. DEFINITIONS:

A. DEADLY AND NON-DEADLY FORCE.

The law distinguishes between deadly force and non-deadly force. Deadly force means force plainly likely to cause serious physical injury or death. Non-deadly force is any other physical force. A baton and similar objects normally are non-deadly force, but they can constitute deadly force, depending on the manner of use.

B. "REASONABLY NECESSARY".

Force may be used only to accomplish lawful objectives and only to the extent reasonably necessary in light of the circumstances confronting the officer.

Force is reasonably necessary only if lesser force would not likely lead to safe control of persons and situations.

C. "SERIOUS PHYSICAL INJURY".

A serious physical injury is one, which creates a substantial risk of death, serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

III. STATEMENT OF AUTHORITY:

A. NON-DEADLY FORCE

1. Subject to the provisions of sub-paragraph B (below), an officer may use force upon another person only when that force is, or reasonably appears, to be necessary:

- a. To prevent escape from custody or to affect an arrest or an investigative detention of a person whom he reasonably believes (or reasonably suspects, in the case of investigative detention) has committed a criminal offense.
- b. To defend himself or a third person from what he reasonably believes to be the use of physical force while effecting or attempting to effect an arrest or an investigative detention, or while preventing or attempting to prevent an escape.

2. LESS THAN LETHAL DEVICES AND SUBSTANCES

- a. The use of oleoresin capsicum (O.C.) or the Advanced Taser M26 EMD is an alternative force in those situations where the potential for injury to an officer, or a third party exists. The use of O.C. or the Taser will be limited to that degree of force that is reasonably necessary to provide protection for the officer and/or a third party, in preventing an escape of a person from custody, and/or to effect a legal arrest.
- b. The use of the police baton may be used as an alternative force in those situations where potential for injury to an officer or third party exists, but where the application of deadly physical force would be considered extreme. The use of the police baton will be limited to that degree of force that is reasonably necessary to provide protection for the officer and/or a third party, in preventing an escape of a person from custody, and/or to effect a legal arrest.

B. DEADLY FORCE

An officer may use deadly force upon another person only when that force is, or reasonably appears, to be necessary:

1. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

2. To affect an arrest or to prevent the escape from custody of a person whom he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of serious injury or death to others unless apprehended without delay.
- C. **ANY USE OF FORCE THAT IS NOT REASONABLY NECESSARY IN LIGHT OF THE CIRCUMSTANCES CONFRONTING THE OFFICER IS PROHIBITED.**

Nothing in this policy shall be construed to permit, excuse or justify the use of unreasonable or excessive force. Officers may be individually **Criminally Liable** or **Civilly Liable** for the **unauthorized or excessive use of force** under Federal and State Law. When assessing the need to use force, officers should consider the nature and extent of any threat posed by the subject, as well as all other circumstances of the encounter, including, but not limited to the following:

1. The severity of the crime;
2. The degree to which the subject resists arrests or detention;
3. Any attempts made by the subject to evade arrest by flight.

IV. **LIMITS ON FORCE:**

- A. **WARNING SHOTS** may not be fired under any circumstances.
- B. **FIRING AT OR FROM MOVING VEHICLES** is prohibited except where the officer reasonably believes that there is an imminent threat of death or serious physical injury to himself or third party if the officer does not do so and that it is the only reasonable means of protecting himself and/or a third party.
- C. **STRANGLE AND CHOKE HOLDS** and other similar holds which choke or restrict the ability to breathe or the flow of blood to the brain are prohibited except when the officer reasonably believes there is an imminent threat of serious physical injury or death to himself or a third person if he does not do so and that it is the only reasonable means of protecting himself and/or a third party.
- D. **HEAD BLOWS WITH IMPACT TOOLS.** The use by an officer of any inanimate object to strike a blow to a persons head is prohibited except when the officer reasonably believes there is an imminent threat of serious injury or death to himself or a third person and that he has no other reasonable alternative for defending himself or a third person. Depending on the method of use and other circumstances, a flashlight, gun, baton, or similar object used as a club to strike a head blow could be considered use of deadly force.

- E. **OFF-DUTY ACTIONS.** Off-duty officers should refrain from taking forcible police action except in circumstances that seriously threaten life, valuable property, or public order. In other circumstances, the most appropriate police action is to request the assistance of an on-duty officer at the first opportunity. Before taking any action while off duty, officers should carefully consider the risks to themselves and to others that may be caused by sudden confrontation with armed criminals or suspects. If it is feasible, the off-duty officer should identify himself as a law enforcement officer before taking any action.

No unarmed off-duty officer will be subjected to disciplinary action for failure to take action if that action would reasonably require being armed.

- F. **DISPLAY AND BRANDISHING OF WEAPONS.** Officers shall not display or brandish any weapon in a threatening or intimidating fashion unless it is reasonably necessary to do so in order to prevent, or attempt to prevent, an attack on the officer or third party.
- G. **WEAPONS AND DEVICES PERMITTED.** Officers may carry and use only those weapons and control devices that have been issued by the Department or which have been specifically approved in writing by the Chief of Police or his designee.
- H. **SHOTS TO DESTROY ANIMALS** may be fired only when it is reasonably necessary to do so in order to defend the officer or third party against a threat of significant physical injury or to save a badly injured animal from great suffering.

[Note: Before destroying a badly injured domestic animal, the officer shall make reasonable efforts to notify the animal's owner and/or any appropriate agencies or authorities (Humane Society, nearby veterinary office, State Conservation Officer, etc.) in order to involve more appropriate persons in the decision and action. If such notification cannot be swiftly accomplished, the officer is permitted to go forward with the destruction of the animal. No shot shall be fired to destroy any animal, wild or domestic, unless such shot can be fired safely in respect to human life and other property.]

V. PROCEDURE FOLLOWING THE USE OF FORCE

A. DOCUMENTATION/REPORTING/SPECIAL PROCEDURES

1. **USE OF FORCE REPORT.** Use of force by officers shall be documented and reported in an Incident Report and a Use Of Force Report form. The purpose of filling out the reports is to immediately document the use of force so that, should any questions arise concerning the force incident, the pertinent facts will be readily available. The reports will also be used to assist in identifying training and equipment needs. The number of Use Of Force Reports and Incident Reports that exist concerning an officer cannot be used in the officer's performance evaluation or as the basis for disciplinary action. Force that is justified is permissible, regardless of the

number of usages. Not every touching by an officer requires completion of the Use Of Force Report or notification of a supervisor. Normal authorized use of handcuffs and shackles on a compliant arrestee is not use of force, but unusual circumstances such as physical force used during an arrestee resisting arrest are subject to reporting procedures. Decisions regarding what force requires notification and reporting shall be made by reference to other portions of this policy and to other Department training communications.

2. PERSON IN NEED OF ASSISTANCE. If any person on whom an officer used force needs medical attention, the officer shall assist such person where appropriate and contact a supervisor. The supervisor shall order or otherwise arrange transportation of such person to a place where necessary medical care can be obtained. If the officer is in doubt as to the necessity of medical treatment, the officer shall seek guidance from a supervisor. In no event shall apparently necessary medical attention be unreasonably delayed in order to notify or obtain guidance from a supervisor or for any other reason.
3. NOTIFICATION OF SUPERVISOR. An officer who uses force on a subject shall notify his immediate supervisor at once. He shall also complete a Use Of Force Report form and Incident Report and forward it to his supervisor by no later than the end of the tour of duty in which the force was used. The officer's supervisor shall conduct appropriate investigation and complete, or cause to be completed, a Supplemental Investigative Report. If the officer's immediate supervisor is unavailable, the officer shall notify and submit the matter to the next higher supervisor in the officer's chain of command who shall assure appropriate investigation of the matter and completion of the Report. Off-duty officers involved in use of force situations are subject to the same reporting procedures as on-duty officers. When an off-duty officer uses force, he shall notify an on-duty supervisor immediately.
4. EXAMPLES OF SITUATIONS THAT REQUIRE SUPERVISORY NOTIFICATION AND COMPLETION OF THE REPORT.
 - a. An officer exercising police authority uses force which causes any visible or apparent physical injury, or which results in the subject saying that he or she was injured.
 - b. An officer exercising police authority uses any object, including baton, flashlight, hand, fist, or foot, to strike a blow to a subject.
 - c. An officer exercising police authority uses force, which in any manner results in a subject suffering a blow to the head.
 - d. An officer exercising police authority bodily removes or drags a struggling subject from one place to another.

- e. An officer uses the Advanced Taser M26 EMD.
 - f. An officer uses any aerosol irritant or inflammatory agent.
 - g. **An officer discharges his firearm:**
 - i. Regardless of duty status.
 - ii. Regardless of whether the discharge was accidental or intentional.(Exceptions: approved firearms range activity, other lawful and safe target practice).
 - h. An officer exercising police authority uses force during or after which a subject loses consciousness.
 - i. An officer points a gun at anyone.
5. **PHOTOGRAPHS OF INJURIES.** With the consent of the injured person, the police supervisor notified shall have photographs taken of the injuries. Officers and third parties with visible injuries shall also be photographed.
6. **CHARGING FOR RESISTANCE AND ASSAULT.** If an officer exercising police authority encounters resistance that clearly justifies charges of resisting arrest and/or assaulting an officer, these charges will be made immediately. This does not eliminate the need for the officer to file the Use of Force Report and supervisory notification.
7. **CUSTODY OF FIREARMS DISCHARGED DURING USE OF FORCE.** The supervisor of any officer who has discharged a firearm during a use of force transaction will take custody of the weapon that has been discharged and will maintain the weapon in the same condition in which it was received. The chain of custody and preservation of evidence procedures will be followed in all cases. The supervisor will hold the weapon until such time as it can be turned over to Department authorities charged with the responsibility of investigating the discharge. At the discretion of the Chief of Police or his designee, officers will be given a replacement weapon. Privately owned weapons will not be replaced, but will be returned as soon as practical after the necessary investigation is finally concluded.

B. REVIEW OF USE OF FORCE

1. When an officer while exercising police authority has to use force, he/she will document the incident in a report by the end of his tour of duty. The report will be forwarded to his immediate supervisor. The supervisor will commence a preliminary investigation of the incident and document in writing and/or photos any injuries the person and officer(s) may have sustained during the incident.

2. Upon completion of the supervisor's preliminary investigation, he/she shall forward a copy of all associated reports to the Deputy Police Chiefs and Police Chief. The original Use Of Force Report form will be forwarded to the Police Chief and copies forwarded to the Deputy Police Chiefs. The Deputy Police Chief will investigate the incident and verify that the force was used within the guidelines of State Laws and Department policies. The Deputy Police Chief will forward his findings of the incident to the Police Chief with any recommendation of disciplinary action to be taken if warranted.
3. The Police Chief will determine if the force was necessary and warranted. Unnecessary and unjustified use of force findings may be forwarded to the District Attorney's office and will result in Departmental disciplinary action.
4. All use of force incidents will also be reviewed for the purpose of training.

VI. PROCEDURE FOLLOWING USE OF DEADLY FORCE

- A. **PSYCHOLOGICAL SERVICES.** In all cases where any person has been injured or killed as a result of a firearm discharge by an officer, the involved officer may be required to undergo a debriefing with a department provided psychologist as soon as possible within 24 hours of the incident and will be required within seven (7) days of the incident. The purpose of this debriefing is to deal with the emotional and/or psychological after-effects of the incident. The debriefing shall not be related to any department investigation of the incident.
- B. **ADMINISTRATIVE LEAVE.** Any officer involved in a deadly force incident shall be placed on Administrative leave directly upon his preliminary report of the incident. This leave shall be without loss of pay or benefits pending the results of the investigation. The assignment to Administrative leave shall not be interpreted to imply or indicate that the officer acted improperly. While on Administrative leave, the officer shall remain available at all times for official department business, including interviews and statements regarding the shooting incident and any and all legal proceedings, including but not limited to the prosecution of a crime, civil proceedings, and administrative or internal police department protocols. The officer may be recalled to duty at any time. Upon returning to duty, the officer may be assigned to Administrative Duty for a period of time deemed appropriate by the officer, his psychologist, and the Chief of Police.

William M. Bloom
Chief of Police



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GENERAL ORDER NO. A-007

ISSUE DATE: 09/02/03	EFFECTIVE DATE: 09/15/03	NEW ORDER	LAST REVIEWED: 08/20/03
SUBJECT: FIREARMS POLICY			
DISTRIBUTION: SWORN PERSONNEL	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 6.2, 20.1, 20.4, 20.5, 20.7, 21.1, 21.2, 32.3, 33.2, 33.3	PAGE 1 OF 8
ISSUING AUTHORITY: CHIEF WILLIAM M. BLOOM			

PURPOSE:

The purpose of this General Order is to establish a policy for the use of firearms that is within the limits established by Article 35 of the New York State Penal Law, and consistent with the training given by this department. It is the responsibility of each member of this department to be aware of the requirements of Article 35 and to guide his actions based upon the law and department policy on the use of deadly physical force using a firearm.

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard of care in an evidentiary sense with the respect to third party claims.

Violations of this directive will only form the basis for departmental administrative sanctions. Violations of the law will form the basis for civil and criminal sanctions in a recognized judicial setting.

The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders must at all times be subservient to the protection of life. The officer's responsibility for protecting life must include his own.

I. DEFINITIONS:

Definitions of terms in this order are consistent with the definitions as set forth in Article 10 and elsewhere in the New York State Penal Law when applicable.

II. FIREARMS POSSESSION:

- A. All firearms shall be in a secure and safe location when the officer is not carrying the firearm.
- B. All officers shall secure the firearm as follows:
 - 1. Upon reaching their residence or any other time the firearm is removed from the officer's person, the firearm shall be unloaded in a safe manner.
 - 2. The firearm shall be either locked in a secure cabinet or safe, or taken apart in such a manner as to make the firearm inoperable.
 - 3. Ammunition shall be stored separately and the keys to the cabinet or safe shall be secured from access by unauthorized persons.
- C. All officers are encouraged to secure all firearms they possess in the manner above.
- D. Officers are prohibited from surrendering their firearms to any individual not authorized to possess the firearm.
- E. With the exception of the Patrol Watch Commander's vehicle, all department shotguns will be kept secured in the Armory room when not in use. When the shotguns are in use they are to be kept secured in the locked shotgun rack or vehicle's trunk while in the vehicle.
- F. A complete inventory of all department firearms will be kept on file in the Administrative Deputy Chief's Office.
- G. Ammunition will be kept secure in the either the Identification Division office, Identification Evidence room or the Armory.

III. DUTY FIREARMS:

- A. All on duty officers shall be armed with a department-approved firearm. Such weapons shall not be altered or modified from factory condition without the approval of the Chief of Police or his designee. All authorized firearms are to be kept clean and in good working order.
- B. The primary handgun for on duty officers must be approved by the department and will be loaded ONLY with department issued ammunition.

- C. A secondary (back-up) handgun is authorized, but only upon meeting specific departmental approval and proficient qualifications. Such weapon shall be worn in a secure fashion and kept out of public view.
- D. Officers should also carry in their vehicles a department shotgun. The shotgun is to be secured in the vehicle when not in use and may only be loaded with authorized ammunition.
- E. Department approved firearms are:
 - 1. Primary handgun; department issued or department approved,
 - 2. Secondary and/or off duty handgun must have a minimum capacity of five (5) rounds.
 - 3. Shotgun, department issued.
 - 4. Any other special use, department issued or department approved firearm.
- F. Authorized ammunition for department approved firearms:
 - 1. Primary handgun; ONLY department issued ammunition.
 - 2. Secondary/off duty handgun; only departmental issued or approved ammunition.
 - 3. Shotgun; 00 buck, rifle slug, (or only to destroy a small animal, Birdshot.)
 - 4. Any other special use, department issued ammunition.
- G. All department-approved handguns must be carried in a holster that has been approved by the Chief of Police or his designee and the officer must qualify with all firearms and holsters at the firing range before authorization will be given to carry them.
- H. All City of Newburgh Police Department owned firearms not currently issued to sworn personnel will be kept secure in the police department's Armory, Identification Division office or evidence room.
 - 1. Inventory control of all the City of Newburgh Police Department owned weapons will be done annually by an Identification Detective and the inventory list will be kept on file with the Administrative Deputy Chief or his designee.
 - 2. An Identification Detective will be responsible for issuing City of Newburgh Police Department firearms with the authorization from the Chief of Police or his designee.

3. SWAT unit special purpose weapons will be secured in the City of Newburgh Police Department's Armory and will be utilized by ONLY SWAT members during a SWAT activation or SWAT training. The SWAT unit supervisor or his designee will be responsible for annual inventory control and the inventory list will be kept on file with the Administrative Deputy Police Chief or his designee.

IV. OFF DUTY FIREARMS:

- A. Officers are encouraged, but not mandated, to carry a handgun while off duty.
- B. An officer who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he could have taken police action if he/she were armed.
- C. Off duty officers operating a department vehicle shall be armed with a department-approved handgun.
- D. Off duty officers should not carry a firearm if the officer anticipates consuming alcoholic beverages or consuming impairing prescription medications.

V. TRAINING AND QUALIFICATIONS:

- A. All officers must be certified in the legal, moral, and ethical aspects of firearm use, and in the safe handling and proficiency of firearm use under the instruction of a Certified Firearms Instructor before they are authorized to possess or carry any firearm.
- B. All officers will qualify at least once annually in the safety and proficiency of authorized firearms use and at least annually in the legal aspects of the use of deadly physical force.
- C. Officers who fail to meet firearms certification standards during the scheduled firearms training session will be granted a ten (10) day grace period. Within the ten-day grace period the officer must, on his own time, make arrangements with the Certified Firearms Instructor for remedial training and re-certification.
- D. Officers who fail to achieve firearm certification after the remedial training shall be placed on administrative duties until qualifications duties are met.
- E. Certified Firearms Instructors shall be those personnel that have successfully completed a course in instructing firearms offered by or that meet and exceed the standards of the Division of Criminal Justice Services / Office of Public Safety or the Federal Bureau of Investigation.

VI. FIREARM USAGE:

- A. The responsibility for any use of a firearm shall in all cases, is borne by the officer who fires the weapon.

- B. Any unauthorized or careless handling of a firearm by any member of this department is prohibited and may be cause for disciplinary action.
- C. Except for general maintenance, inspection or authorized training, officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with this order.
- D. The discharging of a firearm by a police officer is authorized only when permitted to use deadly physical force according to the provisions stated in General Order A-008; Use of Force, Section III, Subdivision B; Deadly Force.
- E. In the event of an unintentional discharge, the officer involved MUST undergo an immediate re-certification training session prior to returning to duty.
- F. Firearms shall be utilized solely for its intended purpose, the shooting of a projectile.
- G. Police Officers are **PROHIBITED** from discharging a firearm:
 - 1. When it appears that a **reasonable danger exists** of striking an innocent person.
 - 2. As a **warning shot** to halt a fleeing subject.
 - 3. **At a fleeing subject**, unless the officer reasonably believes that the fleeing subject poses an immediate threat of death or serious physical injury to another person or officer if not immediately halted.
 - 4. **At or from a moving vehicle**, except where the officer reasonably believes that there is an imminent threat of death or serious physical injury to himself or third party if the officer does not do so and that it is the only reasonable means of protecting himself and/or a third party.
 - 5. By **shooting blindly** through doors or walls.

VII. FIREARMS REVIEW BOARD:

- A. The Firearms Review Board shall consist of the following: at least one certified Firearms Instructor, the Deputy Police Chief of the employee(s) involved and a Supervisory Officer not involved in the incident. The Deputy Police Chief shall be the Chairperson of the Review Board.
- B. With the exceptions of firearms qualifications and test firing or ballistic examinations, **each and every time an officer discharges a firearm it constitutes the USE OF DEADLY PHYSICAL FORCE**. Regardless of the outcome of the use of such force, (injury, death or neither) the incident shall be investigated by this department, as follows:

1. Whenever an officer discharges a firearm, either unintentionally or officially, on duty or off duty (except during training, or off duty practice) the officer discharging the firearm shall complete a written report of the incident and a Use Of Force Report form pursuant to guidelines in General Order A-008.
2. Whenever an officer discharges a firearm, either unintentionally or officially, on duty or off duty, (except during training, off duty practice, or to destroy an animal) **the officer discharging the firearm shall immediately notify the shift supervisor**, and the shift supervisor shall notify the Chief of Police or his designee.
3. The officer discharging the firearm shall protect his weapon for investigation, and not alter its condition. As soon as possible after the incident the officer shall complete a detailed report of the incident.
4. The shift supervisor shall proceed immediately to the scene and begin a preliminary investigation. If the shift supervisor is below the rank of sergeant, he shall secure the scene and notify the Detective Sergeant or Lieutenant, who shall respond and start a preliminary investigation.
5. If the discharge was unintentional and not caused by a criminal incident, the supervisor shall conduct an investigation into the circumstances of the firearms discharge and prepare a detailed report, determining the cause of the discharge and submit the report to the Chief of Police and the Firearms Review Board within twenty-four (24) hours of the incident.
6. If the firearm was discharged while the officer was investigating a criminal incident, regardless whether anyone was injured or killed, the officer shall secure the weapon, not altering it, nor add/remove any ammunition. The shift supervisor shall immediately proceed to the scene and secure it. The shift supervisor shall immediately notify the Chief of Police or his designee and other investigative personnel needed.
7. The Firearms Review Board shall have the responsibility of determining if the firearm discharge was within the provisions of department policy and New York State Penal Law and may choose to delay its investigation pending the completion of an investigation by another agency.
8. The Firearms Review Board shall have the responsibility to review all circumstances and facts to determine if the firearm was used correctly, to evaluate the need for further training and to determine the adequacy of the firearm and ammunition used for the incident.
9. The Firearms Review Board shall submit a report detailing its findings with a non-binding recommendation, as to whether the firearm was discharged within the provisions of department policy and New York State Penal Law.

- C. Any officer directly involved in a shooting incident in which death or injury occurs will be placed on administrative leave or duty for a period of time as determined by the Chief of Police or his designee. This assignment to administrative leave shall not be interpreted to imply or indicate that the officer has acted improperly.
- D. While on administrative leave the officer shall remain available at all times for official department interviews and statements regarding the shooting incident, and shall be subject to recall to duty at any time.
- E. Officers involved in a shooting incident shall not discuss the incident with anyone except a investigating member of the District Attorney's office, departmental personnel assigned to investigate the incident or the officers own attorney, psychologist, clergy or spouse. All such discussions shall take place within the bounds of confidentiality as provided by law.
- F. In all cases where any person has been injured or killed as a result of firearm discharge by a police officer, the involved officer will be required to undergo an emotional debriefing with a department furnished psychologist within seven (7) days of the incident. The debriefing shall not be related to any departmental investigation of the incident and nothing discussed in the debriefing will be reported to the department.

VIII. CITY OF NEWBURGH POLICE DEPARTMENT IN-DOOR FIRING RANGE

A. Authorized Use:

- 1. ONLY City of Newburgh Police Department Sworn Personnel may use the range unless written authorization is first obtained from the Chief of Police or his designee.
 - a. Non-sworn personnel from the City of Newburgh Police Department must submit a City of Newburgh Police Range waiver and application to be approved by the Chief of Police or his designee.
 - b. The Chief of Police or his designee will designate a City of Newburgh Police certified Firearms Instructor to be present and supervise the range usage.
- 2. The range may only be used with the supervision of a City of Newburgh Police certified Firearms Instructor present and supervising the personnel using the range.
- 3. The range usage is ONLY for:
 - a. Firearms training with approved on-duty, off-duty or special purpose weapons.
 - b. Firearms qualifications with approved on-duty, off-duty or special purpose weapons.

- c. Firearms target shooting with firearms approved by the Chief of Police.
 - d. To test fire an evidentiary firearm to certify operability of that evidentiary firearm.
 - e. Any other special purpose authorized by the Chief of Police or his designee.
- 4. Under NO circumstances will the firing range be utilized without a safety observer being present in the range.
- 5. Ammunition will be supplied by the City of Newburgh Police Department for:
 - a. Firearms qualifications with on-duty and approved off-duty firearms.
 - b. Firearms training with on-duty and approved off-duty firearms.
 - c. Off – premise target shooting with department issued firearms or approved firearms.

B. Authorized Access:

- 1. Range / Armory key locker access:
 - a. The Watch Commander's duty key ring.
 - b. The SWAT unit supervisor.
 - c. The Chief of Police and his designees.
 - d. All certified Firearms Instructors.
 - e. The Administrative Deputy Police Chief and his designees.
- 2. To sign out shotguns by any qualified City of Newburgh Police Sworn Personnel for patrol and/or detective division.
- 3. To obtain SWAT gear or special purpose weapons by SWAT Unit members ONLY.

William M. Bloom
Chief of Police

D. Employees working the 4-2 schedule shall celebrate the actual historical day itself; and those employees working the 5-2 schedule and the special officer units working the flexible schedule shall celebrate the holiday as established by the State or Federal Government if the City fails to declare such holiday. If, however, a holiday is established by the State or Federal Government for a Saturday or Sunday, or if there is no holiday established by the State or Federal Government and the historical date occurs on a Saturday or Sunday, then the employees working the 5-2 schedule and the special officer units working the flexible schedule shall be given the preceding Friday or succeeding Monday, in the Chief's discretion, as their day on which to celebrate the holiday.

E. Specialists enumerated in Article VII, Section A Scheduling, shall not work the actual holiday, if it occurs weekdays, unless specifically directed to the contrary by the Chief of Police or his designated representative.

ARTICLE VI – RETIREMENT

A. The City shall continue to participate in Section 384-D of the New York State Police and Fire Retirement System, consistent with the System's Rules and Regulations.

B. Retirement Benefit – Each employee has the right of selection of the following option: Upon proper notification, an employee of the department may elect to add his clothing allowance to his taxable income for retirement benefits after seventeen (17) years of continuous service provided that there is no conflict with the Laws of the State of New York. If an employee makes such an election, he will still be responsible to conform to the Police Department standards so far as uniforms and appurtenances for police work as outlined in the regulations of the Department.

C. All applications for participation in the Retirement System shall be processed by the City within sixty (60) days of the employment date.

ARTICLE VII – SCHEDULING

A. Identification officers, detectives and youth officers, Court liaison/warrant apprehension unit officers, lobby desk officers, training officers and any other special

officer position identified in the future shall work eight (8) hours per day, the same hours as the day watch. Persons working a five (5) day on two (2) day off schedule, under such eight (8) hour daily schedule, shall work either from 8:00 a.m. to 4:00 p.m. or from 9:00 a.m. to 5:00 p.m., Monday through Friday.

B. 1. The Chief of Police shall have the discretion to reschedule the Detective who is assigned as the stand-by Detective to work the 4:00 p.m. to 12:00 midnight tour for the five work days during the Detective's stand-by week. The Chief of Police shall provide sixteen (16) calendar days' notice to the Detective of the decision to reschedule to the 4:00 p.m. to 12:00 midnight work tour. If the Detective actually works the 4:00 p.m. to 12:00 midnight work tour(s), he shall be compensated in accordance with Article VIII section D "Stand-By Compensatory Time."

B. 2. The Police Chief shall have the right to assign a second Detective (in addition to the Detective currently assigned and who works stand-by (hereafter "stand-by Detective") to work the 4:00 p.m. to 12:00 midnight tour for the five work days that would normally be the Detective's day tour. The 4:00 p.m. to 12 midnight tour for the Detectives shall be known as the "detective afternoon shift."

The assignment of Detectives to the afternoon shift shall be done on a rotational basis among the "case detectives" coordinated to provide that a Detective is not assigned to the afternoon shift in successive weeks and for as large an interval between afternoon shift assignments to the extent possible and practical. The Detectives assigned to the afternoon shift shall not include the Detectives assigned as the Warrant Detective, Intelligence Detective, the ID Detective and the Narcotics Detective. The second Detective assigned to the afternoon shift will not be assigned to the stand-by schedule and shall not be compensated for "Stand-By Compensatory Time." (Only one afternoon shift Detective will be assigned to the stand-by schedule and thereby compensated for "Stand-By Compensatory Time.")

The second Detective assigned to the afternoon shift (not the stand-by Detective) shall not use vacation time off during the period assigned to the afternoon shift and shall not use more than one day per week of compensatory time and one day of personal leave during the period assigned to the afternoon shift. The Department will permit the second Detective to exchange tour times with a Detective not assigned to the

afternoon shift (i.e., arrange a "mutual") on a single day basis from among all Detectives employed by the Department (not just "case detectives"); the practices in the Department regarding mutual exchanges of tour times shall not be otherwise modified by this provision.

C. The President of the Association shall be assigned to a five days on, two days off work schedule as set forth in subsection "A" above.

D. Any of those personnel previously enumerated, or the Chief of Police, whichever the case may be, may approach the President of the Association or his/her duly authorized representative(s) in this regard to request the working of a flexible schedule, for business or for personal reasons, and the President or his/her duly authorized representative(s) in this regard shall convey said request to the Chief or the officer, whichever the case may be, and report the answer to the requestor. Such flexible schedule(s) shall only occur with the full concurrence of the President of the Association or his/her duly authorized representative(s) in this regard, the Chief of Police, and the officer involved. These flexible schedules shall not conflict with any of the provisions of Section 971 of the Unconsolidated Laws of the State of New York or any of its successors.

E. 1. All others, police officers and police officers assigned to communications shall work fixed shifts. The "fixed shift" schedule shall consist of one of the following tour schedules.

- a. A police officer assigned to patrol may be scheduled to work on a steady and continuous basis the 7:45 a.m. to 4:00 p.m. tour for four days on, followed by two days off; then again work the 7:45 a.m. to 4:00 p.m. tour for four days on, followed by two days off; then again work the 7:45 a.m. to 4:00 p.m. tour for four days on, followed by two days off; and continue in this same rotation of days scheduled for work and days off. This schedule shall be referred to as the "day tour."
- b. A police officer assigned to patrol may be scheduled to work on a steady and continuous basis the 3:45 p.m. to 12:00 midnight tour for four (4) days on, followed by two days off; then again work the 3:45 p.m. to 12:00 midnight tour for four days on, followed by two days off;

then again work the 3:45 pm. To 12:00 midnight tour for four days on, followed by two days off; and continue in this same rotation of days scheduled for work and days off. This schedule shall be referred to as the "afternoon tour."

- c. A police officer assigned to patrol may be scheduled to work on a steady and continuous basis the 11:45 p.m. to 8:00 a.m. tour for four (4) days on, followed by two days off; then again the 11:45 p.m. to 8:00 a.m. tour for four (4) days on, followed by two days off; then again work the 11:45 p.m. to 8:00 a.m. tour for four days on, followed by two days off; and continue in this same rotation of days scheduled for work and days off. This schedule shall be referred to as the "night tour."

E. 2. A fixed shift tour schedule shall be assigned on a six (6) month basis by seniority. The City has the right to reassign an employee from a fixed shift tour schedule to a different fixed shift tour schedule (e.g., reassign from night tour to day tour) in the event of an unforeseen or unforeseeable loss of manpower on a shift, whether due to injury, illness or vacancies in the department, such reassignment shall be on a minimum of 30 day notice to the police officer(s) to be reassigned. Reassignments shall be made by seniority. The number of police officers assigned to each tour shift shall be determined by the City. Such determination shall be made 30 days prior to the 6 month picking of shifts.

E. 3. The Police Chief shall have the right to schedule the fixed shift tour start times for a patrol squad(s) an hour before the current tour start times, for purposes of creating an "overlap" of tours. The scheduled start of a tour time shall apply to all members of a squad. The scheduled tour time shall be stated in the posted patrol schedule promulgated pursuant to Article VII. The parties agree that implementation of an overlap of tours as provided in this provision shall not increase or decrease the total number of scheduled hours of work for an officer assigned to patrol that would be provided if an overlap of tours was not implemented.

F. The following special officer units are hereby created: street crimes unit and the crime detection and prevention units. Officers shall be assigned to these units on a voluntary basis and may discontinue their service in said unit at any time at their

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election. However, it is hereby understood that they shall serve therein at all times at the pleasure of the Chief of Police. The work schedule to be followed by the employees of each unit shall be flexible and shall be established by the City on a weekly basis within the following parameters:

1. No officer shall work in excess of forty (40) hours per week.
2. An officer shall not work more than eight (8) hours in any consecutive twenty-four (24) hour period.
3. An officer's furlough days shall be consecutive.
4. An officer transferring to any one or more of said units shall retain the salary schedule commensurate with his/her rank as set forth in Article III of the contract. Newly created special officers shall not be assigned responsibilities heretofore assigned to patrol officers.

G. Neighborhood Patrol Unit (NPU) -- In connection with receipt by the City of a grant from the State of New York for a Community Police Program (CPOP) which is being used to establish a Neighborhood Patrol Unit (NPU), the parties agree that the following conditions will apply while the City is in receipt of said grant funds:

1. Those officers assigned to work in the NPU will work a 4-day on, 2-day off work schedule.
2. Those officers already assigned to the NPU on the 8:00 a.m. to 4:00 p.m. shift shall only be assigned to that shift. Those officers assigned to the NPU on the 4:00 p.m. to midnight shift shall only be assigned to that shift.
3. With respect to the agreement of a "Mutual Exchange" regarding officers working for other officers, this shall remain as is under contract.
4. Any additional cost for equipment and/or uniforms for an officer assigned to the NPU shall be borne by the City.
5. The area of the NPU Patrol shall be expanded from its present boundaries, thusly: East to include Water Street, West to include Dubois Street, North to include Clinton Street;
6. For those officers assigned to regular patrol, not in the NPU, the following will apply.

A. There will be a minimum of four (4) police officers assigned to motor patrol at all times. Those officers assigned to either desk officer or dispatcher are not to be counted in this minimum number.

B. For purposes of this paragraph 6 only, the following will be considered to be a Police Officer:

- i. Any New York State Municipal Police Training Council (MPTC) Certified Police Officer who has completed his/her supervised field training;
- ii. Any officer not assigned to the NPU Unit or any other special unit;
- iii. Any member of the Police Department not above the rank of police officer.

7. In the interest of maintaining a reasonable level of manpower in the Patrol Division, the City will make a best faith effort to fill vacancies in the event manning falls below the appropriated level. The City is unable to commit to a definite timeframe for filling such vacancies due to outside influences beyond the City's control such as the availability of an eligible list from the Civil Service Commission and/or timely scheduling of a Police Academy. The scheduling of a Civil Service Examination, if necessary, is also not within the power or discretion of the City of Newburgh.

8. The PBA shall hold the City harmless with respect to any future issue in regard to "minimum manpower levels."

The parties agree that the terms of this NPU clause shall be deemed null and void and are not subject to the terms of Civil Law Section 209-a.1.e when and if the NPU Unit is no longer functioning.

H. Those personnel who actually work the 12:00 midnight to 8:00 a.m. shift on the last Sunday in the month of October (or on whatever other day the State of New York assumes the time schedule known as Eastern Standard Time whereby all official clocks are turned back one hour) shall be paid at straight time rates for one additional hour relative to that shift; and an employee who actually works the 12:00 midnight to 8:00 a.m. shift on the last Sunday of April (or whatever other day on which the State of New York assumes the time schedule commonly known as "Daylight Savings Time"

whereby all official clocks are turned ahead one hour) shall in fact work from 12:00 midnight to 9:00 a.m. on that day for no additional salary.

I. All newly assigned police officers, prior to receiving New York State certification may be required to work forty (40) hours in any manner consistent with the City's statutory obligations. The specific schedule of each officer will be approved by the Chief of Police and shall contain two (2) consecutive days off in any seven (7) consecutive days.

J. Police officers who exchange shifts with another officer shall be responsible for the shift which they accept. No mutual exchange will be allowed without the express written approval of the affected supervisor.

K. 1. As part of each officer's schedule, (s)he shall receive training, at straight time pay, in the amount of forty (40) hours, and the Chief shall have the discretion to schedule up to an additional twenty (20) hours of training which an officer shall be required to attend and such additional twenty (20) hours (or part thereof) of training attended by the officer shall be paid at the rate of one and one-half the officer's hourly rate. Effective January 1, 2012, training, at straight time pay, shall be reduced from forty (40) hours to twenty-one (21) hours. Training shall be scheduled thirty (30) days in advance in three (3), four (4) or five (5) hour increments. To the extent possible, the Department will continue the practice of scheduling two sessions for each training program. The Department will make every effort to schedule training sessions equally throughout the calendar year. All personnel will be required to attend either one session or the other unless (s)he has a contractual leave of absence. All personnel on duty on the 5-2 work schedule will receive no additional compensation for training that might occur during the employees' work schedule.

K. 2. All training sessions, with the exception of firearm training sessions, shall be scheduled to begin at 8:00 a.m. and shall be scheduled in three (3), four (4) or five (5) hour blocks.

ARTICLE VIII – OVERTIME-COMPENSATORY TIME

A. Call Back Time

1. All employees shall receive a minimum of two (2) hours pay when called in for or who voluntarily accept additional duty and they will be paid overtime at the rate of one and one-half (1-1/2) of their hourly rate, such hourly rate to be computed at 1/40th of their weekly salary.

2. Any employee engaged in lay over time, including the first half hour of such lay over time, will be compensated at the rate of one and one-half (1-1/2) of their hourly rate. Layover may be required in non-routine circumstances consistent with the past practices of the parties.

3. Subject to the approval of the supervisor, any officer who fails to receive his/her lunchtime shall be entitled to compensatory time at straight time rates; and this compensatory time shall not be convertible to cash.

B. Compensatory Time – All compensatory time earned in any given month shall be repaid to the employee no later than the last day of the next calendar month. If time off cannot be given in this period, then the employee is to be paid in cash ten (10) days after the above deadline.

C. Compensatory Time Waiver – Any employee desiring to accrue compensatory time beyond the thirty (30) day limit may sign a waiver whereby that employee agrees to take compensatory time at a subsequent date in lieu of cash payment.

D. Stand-by Time – A member of the bargaining unit assigned to stand-by duty shall receive eight (8) hours compensatory time for every one hundred twenty-eight (128) hours of actual stand-by time. The Detective scheduled to work the 4:00 p.m. to 12:00 midnight shift shall receive eight (8) hours compensatory time for every 88 hours of actual stand-by time for the week he is assigned stand-by and works the 4:00 p.m. to 12:00 midnight work tour. Any on duty hours shall not count toward actual stand-by time; provided however, call back time that occurs within the stand-by period shall count as actual stand-by time. In addition, effective January 1, 2012, officers assigned to

stand by duty will be paid an additional two hours at straight time after 56 hours of actual stand-by time.

E. Fair Labor Standards Act – The provisions of Article VII and VIII as they pertain to overtime practices and any present practice concerning overtime shall be applied consistent with those requirements of the Fair Labor Standards Act which apply to the Police Department.

ARTICLE IX – HOSPITALIZATION

A.1. Each employee shall receive coverage under the New York State Empire Plan health insurance program fully paid by the City. Such coverage shall be extended to each employee's spouse and children in accordance with the New York State Empire Plan. Such coverage shall continue following retirement from the Department.

A.2. Notwithstanding the foregoing, an employee hired on or after January 1, 2003 must have fifteen (15) years of continuous employment by the City as a police officer to be eligible for health insurance coverage upon retirement. An employee shall be credited with one year of continuous employment for every two years of membership in the New York State Police and Fire Retirement System based on employment as a police officer in a police agency other than the City of Newburgh Police Department, up to a maximum of five years of credited service for employment in such other police agenc(ies). The City Manager may waive or modify the prior service requirement for employees hired on or after January 1, 2006.

B.1. An employee hired on or after July 1, 1986 shall contribute ten (10%) percent of the cost of the health insurance premium as described above for each year while the employee is at the Police Officer Start salary level through and including the Police Officer Second Year salary level (i.e., until the employee reaches the Police Officer Third Year salary level).

B.2. Effective January 1, 2003, an employee hired on or after January 1, 2003 shall pay ten percent (10%) of the cost of the health insurance coverage elected by the employee (and coverage for the employee's dependents, if applicable) during the first five years of employment with the City.

State deferred compensation plan as soon as practicable after implementation of the terms of the 1999-2001 contract. The City's participation in the deferred compensation plan is subject to terms, conditions and approvals required by State and federal law and by the rules and regulations of the deferred compensation board established pursuant to State Finance Law section 5.

ARTICLE VII - WORK SCHEDULE

A.1. Supervisors such as operation commanders, patrol commanders, administrative commanders, detective commanders, staff administrative supervisor(s), and any other supervisory position identified in the future shall work eight (8) hours per day, the same hours as the day watch. Persons working a five (5) day on two (2) day off schedule, under such eight (8) hour daily schedule, shall work either from 8:00 a.m. to 4:00 p.m. or from 9:00 a.m. to 5:00 p.m., Monday through Friday.

2. Any of those personnel previously enumerated, or the Chief of Police, whichever the case may be, may approach the president of the Association or his duly authorized representative(s) in this regard to request the working of a flexible schedule, for business or for personal reasons, and the president or his duly authorized representative(s) in this regard shall convey said request to the chief or the officer, whichever the case may be, and report the answer to the requestor. Such flexible schedule(s) shall only occur with the full concurrence of the president of the Association or his duly authorized representative(s) in this regard, the Chief of Police, and the officer involved. These flexible schedules shall not conflict with any of the provisions of Section 971 of the Unconsolidated Laws of the State of New York or any of its successors.

3. The aforesaid flexible schedule(s) shall also be available to the president of the Association, subject only to the mutual concurrence of the president and the Chief of Police, and his flexible schedule(s) shall also not conflict with any of the provisions of Section 971 of the Unconsolidated Laws of the State of New York or any of its successors.

B. PATROL SCHEDULE.

A patrol supervisor (i.e., a sergeant or lieutenant), assigned to the patrol division shall be assigned to a fixed shift schedule. The "fixed shift" schedule shall consist of one of the following tour schedules.

1. A police supervisor may be scheduled to work on a steady and continuous basis the 6:00 a.m. to 2:00 p.m. tour for four days on, followed by two days off; then again work the 6:00 a.m. to 2:00 p.m. tour for four days on, followed by two days off; then again work the 6:00 a.m. to 2:00 p.m. tour for four days on, followed by two days off; and continue in this same rotation of days scheduled for work and days off. This schedule shall be referred to as the "day tour".
2. A police supervisor may be scheduled to work on a steady and continuous basis the 2:00 p.m. to 10:00 p.m. tour for four (4) days on, followed by two days off; then again work the 2:00 p.m. to 10:00 p.m. tour for four days on, followed by two days off; then again work the 2:00 p.m. to 10:00 p.m. tour for four days on, followed by two days off; and continue in this same rotation of days scheduled for work and days off. This schedule shall be referred to as the "afternoon tour".
3. A police supervisor may be scheduled to work on a steady and continuous basis the 10:00 p.m. to 6:00 a.m. tour for four (4) days on, followed by two days off; then again the 10:00 p.m. to 6:00 a.m. tour for four (4) days on, followed by two days off; then again work the 10:00 p.m. to 6:00 a.m. tour for four days on, followed by two days off; and continue in this same rotation of days scheduled for work and days off. This schedule shall be referred to as the "night tour".

A patrol supervisor shall be assigned to a fixed shift tour schedule on a six (6) month basis by seniority. The Department has the right to reassign a police supervisor from a fixed shift tour schedule to a different fixed shift tour schedule (e.g., reassign from night tour to day tour) in the event of an unforeseen or unforeseeable loss of manpower on a shift, whether due to injury, illness or vacancies in the department, such

reassignment shall be on a minimum of 30 day notice to the police supervisor(s) to be reassigned. Reassignments shall be made by seniority. The rank and number of police supervisors assigned to each tour shift shall be determined by the City.

Effective November 1, 2006, the Police Chief shall have the right to schedule the fixed shift tour start times stated above within a one hour period consisting of one-half hour before and one-half hour after the above stated tour start times for purposes of creating an "overlap" of tours.

C. SHIFT DIFFERENTIAL.

A police supervisor assigned to the patrol division who works the fixed tour shift of 10:00 p.m. to 6:00 a.m. tour (the night tour) shall be paid a shift differential of \$2.00 per hour for each hour actually worked between 10:00 p.m. and 6:00 a.m. This night tour shift differential shall be paid only for hours actually worked between 10:00 p.m. and 6:00 a.m. and shall not be paid for any other hours worked or apply to any other pay an officer may receive (e.g., vacation leave, sick leave, injury leave, etc.).

A police supervisor assigned to patrol who works the fixed tour shift of 2:00 p.m. to 10:00 p.m. tour (the afternoon tour) shall be paid a shift differential of \$1.50 per hour for each hour actually worked between 2:00 p.m. and 10:00 p.m. This afternoon tour shift differential shall be paid only for hours actually worked between 2:00 p.m. and 10:00 p.m. and shall not be paid for any other hours worked or apply to any other pay an officer may receive (e.g., vacation leave, sick leave, injury leave, etc.).

Effective November 1, 2006, a police supervisor assigned to patrol who works the fixed tour shift of 2:00 p.m. to 10:00 p.m. tour (the afternoon tour) shall be paid a shift differential of \$2.00 per hour for each hour actually worked between 2:00 p.m. and 10:00 p.m. This afternoon tour shift differential shall be paid only for hours actually worked between 2:00 p.m. and 10:00 p.m. and shall not be paid for any other hours worked or apply to any other pay an officer may receive (e.g., vacation leave, sick leave, injury leave, etc.).

Effective November 1, 2006, a police supervisor assigned to the patrol division who works the fixed tour shift of 10:00 p.m. to 6:00 a.m. tour (the night tour) shall be paid a shift differential of \$2.50 per hour for each hour actually worked between 10:00

p.m. and 6:00 a.m. This night tour shift differential shall be paid only for hours actually worked between 10:00 p.m. and 6:00 a.m. and shall not be paid for any other hours worked or apply to any other pay an officer may receive (e.g., vacation leave, sick leave, injury leave, etc.).

D. Members of the bargaining unit who exchange shifts with other members shall be responsible for the shift which they accept. No mutual exchanges will be allowed without the express written approval of the affected supervisor.

E. As part of each officer's schedule, he shall receive training, at straight time pay, in the amount of forty (40) hours. Training shall be scheduled thirty (30) days in advance in four (4) hour increments to be scheduled twice. All members will be required to attend either one session or the other unless they have a contractual leave of absence. Members on duty on the 5-2 work schedule will receive no additional compensation for training that might occur during their work schedule.

F. DETECTIVE STAND-BY. Effective November 1, 2006, the Chief of Police shall have discretion to schedule a supervisor assigned to the Detective Division to work stand-by duty for tours during which a supervisor is not regularly scheduled to work in the Detective Division. The stand-by duty shall be assigned on a seven day basis. The supervisor assigned to stand-by duty shall receive eight (8) hours compensatory time for every one hundred twenty-eight (128) hours of actual stand-by time. A supervisor who is called in to work during stand by duty shall be compensated in accordance with the contractual provisions regarding call back. Any on duty hours shall not count toward actual stand-by time; provided however, call back time that occurs within the stand-by period shall count as actual stand-by time.

ARTICLE VIII - OVERTIME-COMPENSATORY TIME

A. Call Back Time

1. Each member of the bargaining unit shall be paid overtime for time actually worked at the rate of one and one-half (1-1/2) of his hourly rate when called in or when he voluntarily works additional duty. Such hourly rate shall be computed at the rate of 1/40th of the member's weekly salary.
2. Each member of the bargaining unit engaged in lay-over time will be compensated at the rate of one and one-half (1-1/2) of his hourly rate.

3. Subject to the approval of the supervisor, any officer who fails to receive his/her lunchtime shall be entitled to compensatory time at straight time rates; and this compensatory time shall not be convertible to cash.

B. Compensatory Time - All compensatory time earned in any given month be repaid to the members no later than the last day of the next calendar month. If time off cannot be given in this period, then the employee is to be paid in cash ten (10) days after the above deadline.

C. Compensatory Time Waiver - Any member of the bargaining unit desiring to accrue compensatory time beyond the thirty (30) day limit may sign a waiver whereby such member agrees to take compensatory time at a subsequent date in lieu of cash payment.

D. Those members of the bargaining unit who actually work the 10:00 p.m. to 6:00 a.m. shift on the last Sunday in the month of October (or on whatever other day on which the State of New York assumes the time schedule known as "Eastern Standard Time" whereby all official clocks are turned back one hour) shall be paid at straight time rates for one additional hour relative to that shift; and those members of the bargaining unit who actually work the 10:00 p.m. to 6:00 a.m. shift on the last Sunday in the month of April (or on whatever other day on which the State of New York assumes the time schedule commonly known as "Daylight Savings Time" whereby all official clocks are turned ahead one hour) shall in fact work from 10:00 p.m. to 7:00 a.m. on that day for no additional salary.

E. Training - When an employee who works a tour of duty that ends at 6:00 a.m., as provided in Article VII, Section B above, is scheduled by the Department for training that will commence within a two hour period after the end of the tour, i.e., on or before 8:00 a.m., the employee may extend his tour of duty and continue to work for up to two hours until the start of the training, and be paid overtime for the period the tour is extended.

ARTICLE IX - HOSPITALIZATION

A. Each member of the bargaining unit shall receive New York State Empire Plan health insurance coverage fully paid by the City of Newburgh. Such coverage shall be extended to each member's wife and children in accordance with the Empire Plan



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GENERAL ORDER NO. A-012

ISSUE DATE: 09/02/03	EFFECTIVE DATE: 09/15/03	NEW ORDER	LAST REVIEWED: 08/20/03
SUBJECT: COMMUNITY RELATIONS			
DISTRIBUTION: ALL	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 29.1, 29.2, 29.3	PAGE 1 OF 2
ISSUING AUTHORITY: CHIEF WILLIAM M. BLOOM			

PURPOSE:

The purpose of this General Order is to provide a means of identifying and addressing a variety of issues and concerns that may arise in the relationship that this department has with the community it serves.

I. COMMUNITY RELATIONS OBJECTIVE:

The objective of the City of Newburgh Police Department is to be responsive to the needs of our community in terms of the effective and efficient delivery of police services. Our goals are to preserve the civil and constitutional rights of all individuals; protect life and property, prevent and deter criminal activity; to maintain order, and to arrest and successfully prosecute those who violate the law; and to improve the quality of life through an involvement with our community which promotes safe and secure neighborhoods. The City of Newburgh Police Department will cooperate and participate with other community relations programs as the need arises.

II. COMMUNITY RELATIONS COORDINATOR:

- A. This department is often called upon, usually through speaking engagements, to advise, assist and inform the public about various topics, such as crime prevention, personal safety and police activities. In order to coordinate the department's efforts, all requests for such assistance to the public will be forwarded to the Public Information Officer (PIO), who will coordinate these activities. (Refer to General Order # A-014, "Public Information and Press Guidelines").
- B. The Public Information Officer however, may delegate the request to different units according to specialty assignments to meet the public requests.

III. COMMUNITY RELATIONS RESPONSIBILITIES:

All personnel in the department, both sworn officers and civilians, should project a positive image and become involved in community needs. The conduct of each employee reflects on the agency as a whole, and the burden of achieving the agency's community relations' objectives should be shared. Every employee must be aware of the different programs that the agency has so that they can inform the community.

IV. COMMUNITY RELATIONS AND CRIME PREVENTION:

- A. All personnel, both sworn officers and civilians, have a responsibility to assist the public in protecting themselves against criminal acts.
- B. All police department employees are crime prevention officers while assisting our community or investigating crime. They should refer citizens to the community relation's coordinator for specialized crime prevention needs.

William M. Bloom
Chief of Police



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GENERAL ORDER NO. A-018

ISSUE DATE: 09/02/03	EFFECTIVE DATE: 09/15/03	NEW ORDER	LAST REVIEWED: 08/21/03
SUBJECT: RECRUITMENT, SELECTION AND APPOINTMENT OF SWORN PERSONNEL			
DISTRIBUTION: SUPERVISORS, DETECTIVES and CIVIL SERVICE	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 11.1, 11.2, 11.3, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8, 12.9	PAGE 1 OF 4
ISSUING AUTHORITY: CHIEF WILLIAM M. BLOOM			

PURPOSE:

The purpose of this General Order is to ensure that the best-qualified candidates are selected to become police officers in the City of Newburgh and that the selection process is valid, job-related and non-discriminatory. It shall be the responsibility of the Chief of Police or his designee to coordinate selection activities.

I. RECRUITMENT:

- A. Entry level police officer positions will be advertised in the community through City of Newburgh Civil Service announcements and will include, but not limited to, the following components:
 - 1. A description of the duties associated with the position.
 - 2. Requirements that must be met in order to qualify including, but not limited to:
 - a. Age span requirement for entry level candidates which must conform to New York State Civil Service Law, Section 58, and/or current applicable law.
 - b. Physical fitness.
 - c. Medical and Psychological examinations.

- d. Education requirements.
 - e. License requirements.
 - f. Good Citizenship requirements (i.e. – no prior felony convictions).
3. Information about the application process.
 4. Notice that the City of Newburgh is an Equal Opportunity Employer.

II. SELECTION:

- A. To be eligible for appointment as a police officer all candidates must meet all prescribed standards set forth by the New York State Bureau for Municipal Police and the City of Newburgh Civil Service Commission. All written examinations and oral interviews used in the selection process are administered, scored, evaluated and interpreted in a uniform nondiscriminatory manner.
- B. Candidates may be hired by the following means:
 1. From a list established by the City of Newburgh Civil Service Commission based on an open competitive written exam taken by each candidate in accordance to New York State Civil Service standards. **Or**
 2. Transfers from another civil service police agency, according to the applicable Civil Service requirements.
- C. Candidates for police officer will be required to satisfactorily pass a physical fitness examination administered and supervised by the City of Newburgh Civil Service Commission. The standards for this physical examination are established in the "Medical and Physical Fitness Standards and Procedures for Police Officer Candidates" by the Municipal Police Training Council and/or applicable law.
- D. All police officer candidates will be required to be fingerprinted and photographed for a Criminal History check and background investigation.
- E. All police candidates must complete and submit a written Authorization For Release of Information – Applicant form and a City of Newburgh Police Department Application For Employment packet. Upon completion and return of the form and application packet the Chief of Police or his designee will assign a City of Newburgh Police Detective to commence and complete a thorough background investigation of each police officer candidate. The assigned Detective will complete a standardized Applicant Investigation packet and checklist documenting in writing the thorough background investigation conducted which will include, but not be limited to, the investigation of the candidate's:
 1. Family background.
 - a. Personal data.
 - b. Marital status.
 2. Residences.
 3. Employment record.

4. Education.
 5. Military records / Selective Service.
 6. Department of Motor Vehicles information and records.
 7. Financial record.
 8. Handgun information.
 9. References (minimum of four).
 10. Social companions and contacts (minimum of four – not references).
 11. Police Department acquaintances.
 12. Criminal History (BCI, NYSDCJS, FBI).
 13. Orange County Family Court.
 14. New York State Department of Mental Hygiene Report.
 15. County records such as liens and judgments.
 16. New York State organizations and affiliations.
- F. A licensed physician or practitioner in accordance with the standards prescribed by the NYS Municipal Police Training Council (MPTC) will conduct a medical and physical examination on each candidate prior to the candidate's permanent appointment. The licensed physician or practitioner will use the standards that meet or exceed MPTC standards to give valid, useful and non-discriminatory procedures for all medical and physical examinations to each of the examined candidates.
- G. All new candidates will be required to submit to a drug test prior to appointment.
- H. Oral interviews will be given to candidates that meet the above requirements. Oral interviews will employ a set of uniform questions and the results obtained will be recorded on standardized forms. The recorded results will be kept on file for a minimum of one year after appointments resulting from any series of interviews. The City Manager and the Chief of Police and/or his designee(s) will give the interviews.
- I. Psychological screening test will then be given to all eligible candidates to ensure a level of emotional stability and psychological fitness compatible with the position of police officer. A qualified professional will evaluate these screening tests.

III. APPOINTMENT:

- A. At the conclusion of the selection process, the City Manager, as the appointing authority of the City of Newburgh, will make the appointments to the position of Police Officer.
- B. Prior to the commencement of their official duties, the appointee will take an oath of office to enforce the law and uphold the Constitution of the United States and the Constitution of the State of New York. The City Clerk will administer this oath.
- C. All newly appointed police officers from the civil service list will have a probationary period of fifty two (52) weeks from the hiring date. The Chief of Police may lengthen this time by the amount of time spent in the basic police academy or for a newly appointed police officer's lengthy leave of absence (e.g.- Military Leave, On the Job Injury, etc.).

- D. All newly appointed police officers by means of a lateral transfer from another civil service police agency may be placed on probation for a period determined by the Chief of Police but such period may not exceed fifty two (52) weeks.
- E. The newly appointed probationary officer will be periodically evaluated at least three (3) times during his/her probation period in order to adequately assess the officer's development and progress. These written evaluations will be kept in that officer's permanent personnel file.
- F. Records of all appointed officers will be maintained permanently after the duration of their employment. These records shall include, but not limited to:
 - 1. Written exam results.
 - 2. Physical agility test results.
 - 3. Medical exam results.
 - 4. Oral interview results.
 - 5. Emotional stability psychological findings.
 - 6. Background investigations.
 - 7. Performance Evaluations.
- G. The confidentiality of all records shall be maintained as provided by New York State Law.

William M. Bloom
Chief of Police



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GENERAL ORDER NO. A-015

ISSUE DATE: 09/02/03	EFFECTIVE DATE: 09/15/03	NEW ORDER	LAST REVIEWED: 08/21/03
SUBJECT: INTERNAL AFFAIRS INVESTIGATIONS			
DISTRIBUTION: ALL	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 25.1, 25.2, 25.6, 25.8	PAGE 1 OF 5
ISSUING AUTHORITY: CHIEF WILLIAM M. BLOOM			

PURPOSE:

The purpose of this General Order is to ensure that the integrity of this agency is maintained through a system where objectivity, fairness and justice are assured by impartial, intensive investigations and review of alleged misconduct by department members.

POLICY:

It will be the policy of this police department is to encourage citizens to bring forth legitimate complaints regarding misconduct and/or inadequate police service. These allegations shall be received courteously and without delay. Members of the department are to assist and cooperate in the impartial processing of citizen complaints consistent with established procedures.

I. RESPONSIBILITIES FOR INVESTIGATIONS:

- A. Watch Commanders or Division Supervisors shall have the responsibility for investigating less serious complaints against employees under their command. Complaints of this type include, but are not limited to: inadequate police service, tardiness, rudeness and insubordination.

- B. The Chief of Police or his designee shall investigate or supervise an investigation of more serious complaints including, but not limited to: sexual harassment, corruption, brutality, death or serious injury, criminal misconduct and breach of civil rights.
- C. Any employee assigned to an internal affairs investigation shall have the authority to report directly to the Chief of Police or his designee.

II. INVESTIGATIVE PROCEDURES:

Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.

- A. Administrative Interviews: If the Chief of Police or his designee wishes to compel an employee to answer questions directly related to his or her official duties and the Chief or his designee is willing to forgo the use of such answers in a criminal prosecution, the Chief of Police or his designee shall advise the employee of the following:
 - 1. The purpose of the interview is to obtain information, which may determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
 - 2. The employee shall be notified in writing that he or she has the right to representation by his or her certified or recognized employee organization.
 - 3. Any questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
 - 4. No answer given or any information obtained by reason of such statements may be admissible against the employee at any criminal proceeding.
 - 5. Officers have the protection of the "Bill of Rights" as stated in any contractual agreements.
 - 6. The employee shall read or have read to them the following:

"I wish to advise you that you are being questioned as part of an official investigation of the police department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the constitution of the United States, including the right not to be compelled to incriminate yourself.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges, which could result in your dismissal from the police department. If you do answer neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges."

7. In an interview for administrative purposes, no Miranda rights are required. Further the foregoing rules are inconsistent with Miranda in that employee's statements cannot be used as evidence. Further, as the interview does not serve criminal prosecution the employee has no 6th Amendment right to counsel.
- B. Criminal Interviews: If the Chief of Police or his designee believes criminal prosecution is a possibility and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he or another interviewer shall:
 1. Give the employee Miranda rights.
 2. Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
 3. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
 4. Note that Miranda includes the provision that a lawyer may be present at an interview. Although technically the employee has no right to counsel until the employee has been criminally charged or his or her freedom of action has been deprived, the department wishes the employee to have the option. The department wishes no possibility to arise in which its actions may be construed coercive.

III. CENTRAL COMPLAINT FILE FOR INTERNAL INVESTIGATIONS:

- A. The office of the Chief of Police or his designee shall be responsible for:
 1. Record or register or cause to be recorded or registered the internal investigation.
 2. Maintain confidential records of internal investigations.
 3. Insure that the investigation is conducted according to established policies and procedures.
 4. Maintain close liaison with the district attorney in investigating alleged criminal conduct.
 5. Pursuant to New York State Civil Rights Law Section 50-a protecting the confidentiality of the employees personnel records, informing the complainant that their complaint against the police department or department employee:
 - a. Will be investigated.
 - b. Is being investigated.
 - c. The incident was handled administratively.

IV. RECEIVING A CITIZEN COMPLAINT

- A. Citizen Complaints made in Person:
 1. Complainant is issued a blank Citizen Complaint Form.

2. Citizen must complete form as accurate as possible and properly sign the form.
3. A Supervisor ONLY is to receive the completed Citizen Complaint Form and will then log the complaint into the Citizen Complaint Logbook.
4. The complainant is given a photocopy of their Citizen Complaint Form.
5. The original Citizen Complaint Form is sealed in an envelope and turned over to the Chief of Police or his designee.
6. The Chief of Police or his designee will commence an investigation in accordance to this General Order.

B. Citizen Complaints received via Mail, Telegram or E-mail:

1. The Citizen Complaint Form shall be completed with a copy of the mail, telegram or E-mail and logged in the Citizen Complaint Logbook by the Chief of Police or his designee.
2. The Chief of Police or his designee will commence an investigation in accordance to this General Order.

C. Citizen Complaints received via Telephone:

1. The Supervisor while speaking with the citizen making the complaint will complete the Citizen Complaint Form with accurate information.
2. The Supervisor will then log the complaint into the Citizen Complaint Logbook.
3. The original Citizen Complaint Form is sealed in an envelope and turned over to the Chief of Police or his designee.
4. The Chief of Police or his designee will commence an investigation in accordance to this General Order.

D. Citizen Complaint Forms received from City Manager's Office:

1. Received by the Chief's Secretary via interdepartmental mail. Upon receipt, the Chief's Secretary shall:
 - a. Record the complaint number as it appears on the form.
 - b. Record the date and time the complaint is received by the Police Department.
 - c. Record the date the complaint is due back at the City Manager's Office as it is recorded on the complaint form.
 - d. Present the complaint form to the Chief of Police or his designee.
2. The Chief of Police or his designee will commence an investigation in accordance to this General Order.
3. The Chief of Police or his designee will notify the City Manager by the due date of the action taken on the complaint.

4. Complaints that cannot be resolved by due date:
- a. City Manager's office supplies the Outstanding Complaint Form to the Chief's secretary.
 - b. Person assigned case shall completely complete form and forward it via the Chief's Secretary to the City Manager's office.
 - c. As soon as the action is completed, the original complaint form shall be completed and processed.
 - d. If the complaint has not been resolved within twenty-five (25) days after the original due date on the complaint form, the assigned person shall contact the complainant and explain the reason for the continued delay.

William M. Bloom
Chief of Police



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GENERAL ORDER NO. A-025

ISSUE DATE: 09/02/03	EFFECTIVE DATE: 09/15/03	NEW ORDER	LAST REVIEWED: 08/21/03
SUBJECT: RULES OF CONDUCT			
DISTRIBUTION: ALL	RE-EVALUATION DATE	NYS ACCREDITATION STANDARD NUMBER(S): 14.1	PAGE 1 OF 7
ISSUING AUTHORITY: CHIEF WILLIAM M. BLOOM			

I. PURPOSE:

The purpose of this General Order is to establish guidelines specifying the rules of conduct and appearance for all City of Newburgh Police sworn personnel and civilians (referred to hereafter as "employee"). The following standards are directed at specific areas of conduct, behavior and productivity. These directives do not form an exhaustive list of all directives, standards or expectations of employees and others do exist. Additionally, not all directives or expectations are in written form. A supervisor's order is an example of a verbal directive.

Employees are required at all times to exercise ordinary common sense in situations not governed by specific directives and behave in a socially acceptable manner. The goal is to promote a harmonious work relationship with other employees, a positive public image and to ensure our mission, goals and objectives are achieved.

Employees are responsible for contacting a supervisor for clarification on standards they do not understand. It will not be an acceptable defense to claim ignorance of a standard if the employee has made no reasonable effort to seek an explanation.

II. POLICY:

1. Employees shall conduct themselves in their private and professional lives in such a manner as to avoid bringing themselves or the department into disrepute.

2. Employees shall exercise ordinary common sense and strive to find ways in every contact with the public to promote our values as expressed in our standards (such as the mission statement, code of ethics, goals and objectives, these standards of conduct, and other lawful directives and legitimate expectations). For purposes here, ordinary common sense will be defined as that level of knowledge that a common person with average capabilities and life experiences possesses.
3. Employees shall treat superior officers, subordinates and associates with respect, being courteous and civil in their relationship with one another at all times. When on duty, and in the presence of other officers, civilians, and the general public, officers shall conform to the normal standards of courtesy and refer to each other by title or rank. Officers above the rank of sergeant may be addressed as "Sir" or "Ma'am", in lieu of above.
4. It is the policy of the department that all employees shall strive to gain public support and win friendly citizen cooperation with the department's programs and procedures in order to facilitate the accomplishment of the department's objectives.
5. Employees shall be courteous and efficient in their dealings with the public. In non-restrictive situations, the attitude of each officer should be pleasant and personal; and on occasions calling for regulation and control, the attitude should be firm and impersonal, but avoiding an impression of rudeness. They shall perform their duties in such a manner as to avoid harsh, violent, profane, or insolent language and shall remain calm regardless of provocation to do otherwise.
6. All employees shall maintain a completely impartial attitude toward all persons coming to the attention of the department, regardless of an individual's race, sex, creed, or other personal status or condition.
7. Since violations of the law are as such against the People of the State, and not against the individual officer or victim, and since all persons are guaranteed equal protection under the law, exhibiting partiality for or against any person shall be considered conduct unbecoming an officer. Similarly, unwarranted interference in the private business of others when not in the interest of justice is also prohibited.
8. Because loyalty to the department and to associates is an important factor in departmental morale and efficiency, employees shall maintain a loyalty to the department and their associates, which is consistent with the law.
9. Employees shall not consume intoxicants while off-duty to the extent that evidence of such consumption is apparent when reporting for duty or to the extent that ability to perform duty is in any way impaired. The odor of alcohol on the breath shall not be permitted at roll call or during any period when the employee is on duty, or in uniform or otherwise identified as a police officer.

10. Officers in uniform shall not consume intoxicants whether on or off-duty, without permission of the Chief of Police or his designee.
11. Employees of the department shall not use habit-forming drugs, addicting narcotics or any controlled substance unless properly prescribed by a physician for an illness or injury, and then only as prescribed.
12. Employees are prohibited from engaging in the following activities while on duty with the exceptions noted herein:
 - a. Sleeping.
 - b. Recreational reading.
 - c. Conducting private business.
 - d. Carrying or purchasing of groceries, sundries, and other articles, except in the performance of a police duty.
 - e. Drinking of intoxicating beverages and gambling except in the performance of a police duty or under the specific direction of the Chief.
 - f. The shooting of pool or billiards.
 - g. Using departmental equipment for personal use and/or gain.
13. Employees shall avoid actions, which give the appearance of impropriety. Activities on or off duty engaged in by department personnel that indicate instability of character or personality shall subject the officer to disciplinary action.
14. Employees shall not under any circumstance solicit any gift, service, gratuity, loan, discount, fee or anything of value where there is any direct connection or the appearance of same between the solicitation and their department membership and/or the performance of their duties.
15. Employees shall not accept either directly or indirectly any gift, service, gratuity, loan, fee, discount or anything of value arising from or offered because of police employment or any activity connected with said employment. Employees shall not accept any gift, service, gratuity, loan, fee or anything of value, the acceptance of which might tend to influence directly or indirectly the actions of said employee or any other employee in any matter of police business or which might create the appearance of same; or which might tend to cast an adverse reflection on the department or any employee thereof (See also General Order A-023, Off-Duty Employment).
16. Employees shall not accept any gift, gratuity, or reward in money or other consideration for services rendered in the line of duty to the public or to any person, business, or agency except that authorized by the Chief of Police.
17. Any unauthorized gift, gratuity, loan, fee, reward, service, or other thing falling into any of these categories coming into possession of any employee shall be reported in writing immediately to the office of the Chief of Police. The Chief's Office shall make all reasonable attempts to return the item to the donor.

18. Every employee is prohibited from buying or selling any service or thing of value from or to any complainant, suspect, witness, defendant, prisoner or other person involved in any case which has come to the attention or which arose out of the departmental employment except as may be specifically authorized by the Chief of Police or his designee.
19. Employees on or off-duty shall not solicit or accept free or reduced admission to theaters, places of entertainment, sports arenas or other activity or place where admission is charged for them or others when the free or reduced admission is in connection with or could appear to be related to the performance of duty.
20. Sworn personnel of the Department shall be charged with the enforcement of all Federal, State and local laws and ordinances; the preservation of the public peace; the protection of life and property; the prevention of crime; the detection, apprehension, and prosecution of violators of the law.
21. Sworn personnel on duty shall be constantly alert, observing everything that takes place within their sight and hearing, and shall keep a vigilant watch for needed police services.
22. Sworn personnel shall patrol their areas and perform their assigned duties in proper fashion, and according to the orders and procedures of the Department.
23. All sworn personnel shall employ every lawful means at their disposal in the investigation, arrest and prosecution of any person observed or known to be violating or to have violated any statute or any ordinance pertaining to criminal matters, traffic offenses, or activities in violation of the law.
24. All employees of the department shall perform those specific duties and responsibilities assigned to them. They shall perform all such other duties as may be required of them by competent authority.
25. Employees assigned to specialized duties or assignments are not relieved from taking proper action outside the scope of their specialized assignment when necessary.
26. It shall be the responsibility of every employee of the department to be thoroughly familiar with the rules, regulations, orders, and policies of the department and to conform to and abide by the same. Each employee must have a working knowledge of all laws and ordinances in force. Employees shall observe all such laws and ordinances and render service to the City with enthusiasm, courage, discretion and loyalty.
27. An employee, when assigned to duty with other employees of the department shall be jointly responsible for compliance with rules and regulations and the proper performance of duty.

28. Employees shall discharge their duties in a firm, impartial and efficient manner. Employees shall act together and assist and protect each other in the maintenance of law and order.
29. All sworn personnel are required to take prompt and appropriate police action toward aiding another officer exposed to danger or in a situation where danger might be impending.
30. Employees shall conduct themselves in a manner that will foster the greatest harmony and cooperation between each other and between other governmental departments or agencies.
31. Any employee of the department who shall, in the performance of their official duties, display reluctance to properly perform their assigned duties or who acts in a manner tending to bring discredit upon himself or the department, or who fails to assume responsibility or exercise diligence, intelligence and interest in the pursuit of his duties, or whose actions or performance in a position, rank or assignment are below acceptable standards, may be deemed incompetent and shall be subject to disciplinary action.
32. Employees of the department shall have regular hours assigned to them for active duty, and when not so engaged shall be considered off-duty.
33. Employees of the department shall be punctual in reporting for duty at the time and place designated by their superior officers. Habitual failure to report promptly at the time directed shall be deemed neglect of duty.
34. Unless otherwise directed, sworn personnel shall report to daily roll call at the time and place specified, properly uniformed and equipped. There, they shall give careful attention to orders and instructions for the day.
35. All employees shall remain at their assignment and on duty until properly relieved by another employee or until dismissed by a supervisor.
36. Lunch breaks on department property shall be taken in suitable rooms not in public view. Unless there is no other facility reasonably available, on-duty sworn personnel shall not take meals, snacks or beverages in premises where alcoholic beverages are sold or dispensed as their principal commodity.
37. Although emergency calls take precedence, all calls shall be answered as soon as possible, consistent with normal safety precautions and vehicle laws. Failure to promptly answer a call for police assistance without justification shall constitute cause for disciplinary action. Except under the most extraordinary circumstances, or when otherwise directed by competent authority, no officer shall fail to answer any radio call directed to them.
38. Employees taking any property into custody in connection with their official duties shall, as soon as practicable, record such property in accord with the department policy and place such property in the designated location consistent

with department regulations. Chain of custody records shall be carefully and accurately maintained as an essential component of the prosecution of a crime.

39. Arresting Officers, Detectives, and Supervisors shall promptly take any person in their custody before competent medical authority whenever there is any visible or reasonable evidence of the need for medical attention or where the prisoner claims to be in need of such attention.
40. Employees shall not obtain or attempt to obtain any information from department files, sources or reports other than that to which they are entitled in accordance with their duties and assignment. Any such information improperly acquired shall not be passed on to other parties within or outside of the department.
41. Employees shall not use for their own private purposes information received or acquired during the course of employment or duty.
42. Information from Department records, files, or sources shall not be passed on to other parties within or outside of the department except as required by law, duty or assignment.
43. Employees are prohibited from associating on a social basis with individuals whose character, reputation, or background are such to bring discredit upon the employee or department or which could reasonably create the appearance of impropriety.
44. Business relationships with such individuals must be avoided unless it can be demonstrated that such business dealings are absolutely necessary, legal, ethical, and cannot be made with some other party.
45. Employees are prohibited from visiting, attending, entering, or patronizing, other than strictly in the line of duty, any premises or establishment where illegal activities are known, believed or suspected to take place.
46. Employees shall accept full responsibility for their attitudes, behaviors and the results of their behaviors on duty as well as off duty. Attitudes and behaviors that may not be considered wrong in private employment could be wrong in the public sector because of the need to gain and maintain the public's confidence and trust.
47. Employees shall not unlawfully commit acts or behave in such a manner that has the potential for endangering or injuring themselves, property, or another person.
48. Employees shall not create conflicts of interest or potential conflicts of interest with the duties and obligations of their positions. Employees and officers are required to be familiar and to comply with the provisions of General Municipal Law – Article 18. (Refer to General Order A-023, Section II, Subdivision D.

49. Employees are required to seek affirmatively ways to cooperate and work with other employees, other public officials, and members of any organization with whom there is a need to have a good working relationship in order to achieve the mission, goals and objectives of the Department.
50. Employees shall not lie, give misleading information or half-truths, or falsify written or verbal communications in official reports or in their statements or actions with supervisors, another person, or organization when it is reasonable to expect that such information may be relied upon because of the member's position or affiliation with this organization. Officers shall always be accurate and truthful when filling out official reports and documents, when testifying under oath, when giving a statement or account to another governmental employee or agency, and when communicating to a fellow or superior officer.
51. Employees shall give a full day's work for a full day's pay and not establish patterns of nonproductive work time.
52. Employees shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices. Employees shall also subordinate their personal preferences and work priorities to lawful verbal and written rules, duties, policies, procedures and practices as well as to the lawful orders and directives of supervisory personnel.
53. Employees shall make affirmative and consistent efforts to observe and comply with the lawful directives and expectations (e.g., work rules, policies, procedures, practices, traditions) established for the effective, efficient, and safe operations. The term "affirmative effort" means to self-initiate acceptable ways to comply with a lawful directive. In other words, the member is expected to actively seek and find proper ways to comply with a directive and not dwell on reasons why the directive should not or cannot be performed.
54. Employees are accountable for the proper use and care of any property or equipment assigned to them, used by them, or under their direct or constructive care. Constructive care means caring for equipment not being used or equipment found unattended or unsupervised. All employees are accountable for assuming the care for such equipment and are required to take action affirmatively to return it to its place of proper storage. Property means tangible and intangible ownership of goods, rights, or privileges conveyed. Equipment is the tool by which we are able to accomplish our objectives and represents a capital investment of public resources.

Violations of this General Order may result in disciplinary action taken against the employee.

William M. Bloom
Chief of Police

Board Vacancies as of October 4, 2012

1. Community Development Block Grant (CDBG) Advisory Board:

2 vacancies - City Council Appointment (one community member and one professional practitioner)

9 members
2-year terms

This board reviews and makes recommendations to the City Council on adoption of the required Consolidation Plan, promotes neighborhood participation in identifying needs and priorities for funding, and advises on expenditure of CDBG funds. They also advise on the City's annual program submission to the Department of Housing and Development (HUD) and participate in the development of the 5-year comprehensive plan and other documents required by HUD.

The requirements are:

- Four community members, at least two of which represent the low income community, with a knowledge and interest in housing, homeless needs, disability rights, youth services, seniors and social services.
- Three professional practitioners with the expertise as referenced above
- One City Council member
- One staff member from the Department of Planning & Development

2. Housing Loan Advisory Committee:

2 vacancies – City Council Appointment (one real estate representative and one community member)

5 members
2-year terms

Requirements:

- Two banking representatives
- Two real estate representatives and/or not for profit representatives
- One community representative

3. Waterfront Advisory Committee:

1 vacancy – City Council Appointment

7 members
3-year term

The Waterfront Advisory Committee is tasked with reviewing and making recommendations to appropriate agencies regarding a proposed action's consistency with the policy standards and conditions of the Local Waterfront Revitalization Plan (LWRP).

4. Board of Ethics:

5 vacancies – City Council Appointment

5 members

2-year term

The Board of Ethics gives advisory opinions with respect to ethical questions concerning officers and employees of the City of Newburgh pursuant to § 808 of the General Municipal Law. They make recommendations with respect to the drafting and adoption of a Code of Ethics or amendments thereto, whether upon the request of the City Council or City Manager or upon its own initiative.

The Board receives and reviews all annual letters of disclosure required of City officers, officials and employees and following review and/or investigation, conveys them to the City Clerk's office as official repository.

The Board of Ethics is empowered to investigate any circumstance involving City officers or employees which reasonably justifies an inquiry into its ethical propriety. They have the power to issue subpoenas and require the appearance of witnesses to testify under oath, and to require that physical evidence be produced. Following their investigation, they make recommendations to the City Council, City Manager, Corporation Counsel and/or other appropriate public officer or agency as to such further action, discipline or other measures as the Board deems fitting and proper.

5. Human Rights Commission:

4 vacancies – City Council appointment

9 members

The commission is formed to foster mutual understanding and respect between and among all the residents of the city, and to receive complaints and investigate incidents of tension and conflict based upon differences of race, religion, ethnicity, culture, sexual orientation, or another basis of discrimination. The purpose is to "to peacefully resolve such conflicts and alleviate such tensions and facilitate improved tolerance and understanding in the community.

6. Shade Tree Commission

1 vacancy – City Manager Appointment

9 members

The Shade Tree Commission was formed in 1998 to protect and encourage street tree health, maintenance and beauty. It also sustains the city's designation as *Tree City USA* by the National Arbor Day Foundation.

7. Industrial Development Agency

1 vacancy – City Council appointment

7 members

The Newburgh Industrial Development Agency is a state regulated local public authority whose mission is to assist in the development and financing of economic development and community revitalization projects in the City of Newburgh that promote job creation, industrial development, and commercial development that improves the quality of life of its citizens. The IDA will measure the impact of its work through:

- The number and quality of businesses retained and attracted to the City of Newburgh through the IDA's activities;
- The number of jobs it helps create;
- The direct and indirect economic impact of its programming on the city's overall economic well-being and other quality of life indicators; and
- The reduction of blight and abandonment through the promotion of infill development consistent with smart growth principles and the City of Newburgh's master plan as promoted through the IDA's activities.

The IDA's activities will advance the city's overall economic development by working closely with key stakeholders in the private, nonprofit and public sector; providing tax and other fiscal incentives for businesses in the City of Newburgh; and improving the quality and quantity of jobs available for residents in the City of Newburgh.