



CITY OF NEWBURGH COUNCIL MEETING AGENDA

October 22, 2012
7:00 pm

Mayor:

1. Prayer
2. Pledge of Allegiance

City Clerk:

3. Roll Call
4. Approval of the minutes of the October 4, 2012 Work Session meeting
5. Approval of the minutes of the October 9, 2012 City Council meeting

Presentation:

6. The Districting Committee will present the proposed map of the new wards

Comments from the public regarding the agenda:

Comments from the Council regarding the agenda:

City Manager's Report:

7. Resolution No. 180 – 2012
A resolution adopting the City of Newburgh Hazard Communication Policy.
8. Resolution No. 181 – 2012
A resolution to reject a bid made by Edith Rivera for City-owned property at public auction.
9. Resolution No. 182 – 2012
A resolution to confirm the sale of several City-owned properties at auction and to authorize the execution of deeds to the respective buyers. (3 votes)
10. Resolution No. 183 – 2012
A resolution to confirm the sale of a City-owned property at auction and to authorize the execution of a deed to the respective buyer. (4 votes)

11. Resolution No. 184 – 2012
A resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-Entry from a deed to Tanya Maisonet to the premises known as 93 Chambers Street.
12. Resolution No. 185 - 2012
A resolution authorizing the City Manager to execute an agreement with Collection Bureau Hudson Valley, Inc. to provide for collection services.
13. Resolution No. 186 - 2012
A resolution authorizing the City Manager to enter into an agreement with Computel Consultants to provide utility billing analysis services on behalf of the City of Newburgh.
14. Resolution No. 187 – 2012
A resolution of the City of Newburgh, New York the authorizing emergency reconstruction of the west trunk sewer main and related improvements in the City, stating the estimated total cost thereof is \$9,144,000, appropriating said amount therefor, and authorizing the issuance of not to exceed \$9,144,000 bonds of said City to finance said appropriation.
15. Resolution No. 188 – 2012
A resolution authorizing the City Manager or the Chief of Police as the Manager's designee, to execute an agreement with the County of Orange confirming the City of Newburgh's participation in the Stop DWI Program for the period of October 14, 2012 to January 1, 2013 providing the City with an amount not to exceed \$2,818.00.
16. Resolution No. 189 – 2012
A resolution authorizing the City Manager or the Chief of Police as the Manager's designee, to enter into an intermunicipal agreement between the County of Orange and the City of Newburgh in connection with the Stop DWI Program to accept an amount not to exceed \$1,000.00 which may be used solely for the purchase of equipment.
17. Resolution No. 190 - 2012
A resolution requesting an exemption from County Taxes for the City's reservoir and filter plant properties for the year 2014. (this request is always made one year in advance).
18. Resolution No. 191 - 2012
A resolution to implement a City-wide curfew for minors 16 years of age and under on October 30 and 31 from 9:00 p.m. until 6:00 a.m.

19. Resolution No. 192 - 2012

A resolution authorizing the execution of an amended license agreement extending the term for the use of the stadium located at Delano –Hitch Recreation Park by the Newburgh Hook Elite Boxing Club and EBC Sports Ministry.

20. Resolution No. 193 - 2012

A resolution of the City Council of the City of Newburgh assuming lead agency status under State Environmental Quality Review Act (SEQRA) for the West Trunk Sewer Improvements Project, declaring the project to be a Type II Action, adopting the Environmental Assessment Form, finding no significant adverse impact on the environment and authorizing the City Manager to execute all SEQRA documents.

21. Resolution No. 194 - 2012

A resolution authorizing the City Manger to execute on behalf of the City of Newburgh a land disposition agreement with Mill Street Partners, LLC for the redevelopment of City-owned properties known as the Mid-Broadway site.

22. Resolution No. 195 - 2012

A resolution to authorize the settlement in the matter of Teresa Garcia de Flores against the City of Newburgh in the amount of Twenty Thousand Dollars.

Old Business:

New Business:

Public Comments Regarding General Matters of City Business:

Further Comments from the Council:

Adjournment:

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

Thursday, October 4, 2012

Members Present: Mayor Judy Kennedy
Councilwoman Regina Angelo
Councilman Curlie Dillard
Councilwoman Gay
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 5:30 p.m.

Executive Session: At 5:35 p.m. a motion was made by Mayor Kennedy and seconded by Councilman Brown to enter into executive session regarding matters of pending litigation.

YES: 5
NO: 0
CARRIED

At 6:45 p.m. a motion was made by Councilwoman Lee and seconded by Councilwoman Angelo to conclude the executive session discussion.

YES: 5
NO: 0
CARRIED

Adjournment: Upon consensus, the Council adjourned the meeting noting the time as 8:55 p.m.

A regular meeting of the City Council of the City of Newburgh was held on Tuesday, October 9, 2012 at 7:00 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

The Prayer was led by Lillie Howard and the Pledge of Allegiance was performed in unison.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee - 5

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the September 20, 2012 Work Session and the September 24, 2012 City Council Meeting be approved.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

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 September be approved and made available to the Press.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

PROPOSED PUBLIC HEARING

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.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

There were no comments.

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Councilwoman Lee said that she would like to know why there is nothing on the agenda regarding the City Manager's contract because the public is asking questions. On September 27, 2012 the City Council voted to enter into Executive Session to discuss matters pertaining to the employment history of a particular person; matters leading to the appointment, employment, promotion, demotion, discipline, suspension, disapproval, removal of a particular person. She was unable to stay for the Executive Session but she would like to address questions that have been asked by members of the public regarding the retention of the City Manager. She doesn't understand how the content of the Executive Session became public. According to members of the public the Council decided to terminate Mr. Herbek. She noted that it is not the entire Council but members of the Council. It is her understanding that he was told, *"We are moving in another direction and therefore we are not continuing your contract. We would like you to resign tonight. Reduce your salary in the new Budget to \$80,000.00 and you can stay. If you don't resign, we will reduce your salary and force you out."* If this is true, then the Council may be in violation of the Open Meetings Law. Moving in another direction, the City Manager's salary and the Budget are all public information items. She would like to ask the Council to clear up this rumor. She is not aware of a new direction that the Council wishes to move in and it seems to her that terminating the City Manager would suggest that the Council is moving backwards. Past Practice has been to fire the City Manager without any plans of maintaining stability in the City, put the City at risk for lawsuits and hire people who have no municipal experience. She noted that the last City Manager just received \$350,000.00 for wrongful termination and Mr. Herbek's termination would be wrongful. Threatening to reduce the City Manager's salary seems an act of professional bullying and harassment. We as a Council have never suggested formally or informally that Mr. Herbek was not living up to our expectations. On the other hand, Mr. Herbek has repeatedly asked for direction with revenue generation initiatives that would ensure financial solvency. Most recently Mr. Herbek wrote a Budget Address that included and called for not-for-profits to make PILOT payments or Payments In Lieu Of Taxes to the City to defray some of the costs for public services but he did not receive support from the Council. She knows this to be factual because when she asked the head of St. Luke's Hospital to make a PILOT payment his response was, *"Over my dead body"* and the Council had no response then either. She is taking an opportunity to introduce a resolution to be voted on tonight that authorizes the City Manager to negotiate three agreements for Payments In Lieu Of Taxes by and among the City of Newburgh and Mt. St. Mary's College, St. Luke's Hospital and Orange County

Community College. At this juncture she expects the City Council to explain the validity of this as gossip or inform the public that decisions are being made to set us back ten years. Tell us what you think can be done with three votes because she doesn't think that it is appropriate to fire the City Manger without cause and without warning. She certainly doesn't think that it is appropriate to take him into Executive Session and threaten him. Her recommendation is that when they talk about the City Manager's contract that it should be done publicly. If the City Manager has done something to deserve having his contract terminated, he should have been told and the public should have been told too. She is not going to deal with at whim behavior or setting a new direction that she doesn't know about because the direction that we are going in so far is backwards. She recommended to Mr. Herbek that if he is forced to attend an Executive Session that he should do so with his Attorney. She noted again that Jean-Ann McGrane just received \$350,000.00 of the City's tax money because of wrongful termination and behavior like this. Tonight she expects that they will vote on allowing Mr. Herbek to enter into negotiations with Mt. St. Mary's, St. Luke's Hospital and Orange County Community College. If this passes then that's fine but if it doesn't pass then you will know who is pulling the strings telling some of the members of this Council how they should vote and what they should do and how they should push this man out of a job for no reason.

Councilman Brown told Councilwoman Lee that if she was at the Executive Session then she would have known exactly what was said.

Councilwoman Lee said that they should have been told that there was an Executive Session. You don't just walk in and say that you are having an Executive Session and then tell me when I say that I can't stay, *"well we don't need you"*.

Councilman Brown said that they didn't need her.

Councilwoman Lee said that she is not one of the staff that he thinks he can bully.

Councilman Brown added that Mr. Herbek's job is not in jeopardy at all. Mr. Herbek can stay but there will be a reduction in his salary next year and that is based on three votes because three votes control the Budget. Mr. Herbek can stay at a different salary because as far as he is concerned he has not seen \$150,000.00 worth of work out of Mr. Herbek this year.

Mayor Kennedy stated that this is something that needs to be discussed at a Work Session. It is not on the agenda.

Councilwoman Lee said that this has been discussed privately and they had no right doing that because the City Manager's salary is public.

Councilman Dillard said that this will be discussed at the next Work Session and everything will be laid out on the table.

Councilman Brown said that all of the changes to the 2013 Budget will be discussed at the next Work Session and there will be resolutions to be voted on at the next Council meeting. Anyone who would like to attend the next Work Session, please do so and you will hear all of the changes including the City Manager's salary and anyone else that might be affected by the Council's decision on the 2013 Budget. He asked Councilwoman Lee to please attend because they want her to be there.

Councilwoman Lee told Councilman Brown that she attends the City Council meetings and the Work Sessions unlike himself as he is the one who is absent most of the time.

Councilman Brown said that he is gainfully employed.

Councilwoman Lee told Councilman Brown that he new the schedule before he started working.

Mayor Kennedy said that this is not getting us anywhere. We need to move forward with this meeting. This is not a public debate. There are rumors flying all over this City and people don't know anything about what they are talking about until they hear what is actually happening. These are rumors about rumors and we will have that discussion at our next Work Session.

Councilwoman Lee said that they still violated the Open Meetings Law and she told Mr. Herbek to bring his Attorney because his salary doesn't get retroactively reduced. His contract is not up until January and his salary moving forward needs to stay the way it is. They had no right to have a secret meeting and then come back and tell us what they are going to do.

Mayor Kennedy said that there was no secret meeting and we are not telling anyone what they are going to do as it will all be on the agenda.

Councilwoman Lee said, *"When he sues make sure it is not your plan to run again because I am going to take these very issues and beat you over the head with them because I don't need to make this my career".*

Councilman Brown told Councilwoman Lee that she couldn't win if she had help from the President.

Mayor Kennedy said that this is not getting us anywhere and we need to stop this.

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

CITY MANAGER'S REPORT

City Manager, Richard Herbek, updated the Council on the emergency concerning the west trunk line. He thinks that this has been well reported by the media and they are continuing with the declaration of emergency. There is a resolution that we will get to tonight which is resolution #179-2012 which is transferring 1.2 million dollars from the sewer fund balance to the south interceptor Phase II to provide for the immediate emergency repairs that need to be done to the west trunk sewer line. He noted that we have gotten attention and cooperation from numerous state agencies and Governor Cuomo has been involved. He is well aware of the problem that we have which is an 1880's era fifty-four inch double brick lined major trunk line which directs all of the sewage from the Town and the City Newburgh to the Sewage Treatment Plant. It is estimated that about three million gallons per day flow along this trunk line. It is a combined system that we have so we have storm sewage and sanitary sewage that is being directed to the Sewage Treatment Plant. It is somewhat of a miracle that so much time has gone by and this is the first instance, that he knows of, where there has been a break in the west trunk line so the engineering and construction methods used in the 1880's were probably pretty good. We are at that particular point as many cities are where these older water and sewer lines are beginning to break. As everyone knows, we had a break about six or eight weeks ago further downstream from this area and we needed to build a bypass system for that break and do the repair work. This is a similar situation but it is a little more complicated and the repairs are probably going to be a little more expensive than the \$800,000.00 that we spent on the last break. When walking the line with the DEC Commissioner on Saturday, we could see some points upstream where we have more problems in the works. As he mentioned, we are getting a lot of cooperation from the Department of Environmental Conservation and the State Emergency Management Office so there is a lot of help being thrown our way and today they spent a lot of time on the phone with the Environmental Facilities Corporation. They provide funding to municipalities to undertake major work like this. Our latest estimate is that we may be looking at upwards of seven million dollars worth of work to this trunk line. It runs right along the Quassaick Creek so when there is a break everything flows into the Quassaick Creek which then flows into the Hudson River. They had the break repaired within twenty-four hours by utilizing again a bypass system. We are lucky that we had a contractor on the scene that was finishing the work from the first break so the sewage is now flowing back to the sewage treatment facility and the immediate problem has been solved. We will be working in the weeks ahead by making the repairs to the trunk line itself so that the bypass system can be eventually eliminated. He believes that this has been well covered by the Media and he has sent all of the Council members the latest information

but he did want to report back to them and the public as to where we are with the emergency and if they had any technical questions our City Engineer, Craig Marti, has been doing an outstanding job. Severn Trent has also been extremely helpful with people on the scene so a lot of people have been working on this issue. He said that they are hopeful that we are going to be put at the top of the list by the Environmental Facilities Corporation going forward and hopefully we will be engaging some engineering consultants to help us out with the overall evaluation of the trunk line so that we get this thing fixed permanently.

Mayor Kennedy complimented all of the people who worked on that. She went out there herself to investigate what was happening and talked with the DEC. Everyone who was responding to this emergency was on top of it. Declaring it an emergency helped put us in a place where we could get some help. Getting the Governor and everyone involved has put us in a favorable position she believes to get the help so she would like to compliment all of the various partners because there were several involved with that. Everyone was doing everything that they could to get this fixed as fast as they could and they put out public notices so everyone knew what was happening. This was handled as well as it possibly could have been done so she thanked everyone who worked on it.

Councilman Dillard asked City Engineer, Craig Marti, about the bypass that was installed and asked for an estimate in terms of longevity. How long will that hold?

City Engineer, Craig Marti, said that the bypass pumps and piping is still in place and it is being relocated and reconfigured so that it will allow us to make permanent repairs to portions of the line upstream from the break which show partial failure but not complete failure. The bypass pumping system will be left in place until we can make permanent repairs. The area where it broke this past week should be slip lined with a permanent liner by the end of next week. Liners have been ordered for the next two sections of pipe which are on a rush delivery and should be delivered within two to four weeks.

Mayor Kennedy said to be clear we are not using the bypass now. We have reconnected the main line and are using that right?

City Engineer, Craig Marti, said that is correct. The sewer is flowing by gravity through the normal pipe configuration. We will be bypassing on an intermittent basis in order to do TV inspections and further permanent repairs in the area of the break and areas where the pipe is in jeopardy upstream.

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.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED



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.

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.

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.

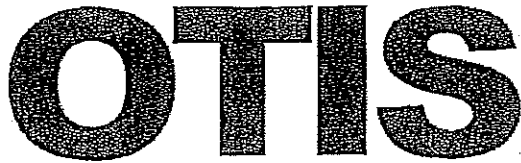
Software

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.



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 ^{three (3)} ~~five (5)~~ 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% <i>0.5</i>	☐	_____
Quarterly	3% <i>0.0</i>	☐	_____
Monthly	4% <i>0.5</i>	☐	_____

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

Otis Elevator Company
Approved by Authorized Representative

Date: _____

Date: _____

Signed: _____

Signed: _____

Print Name: _____

Print Name: Tony Belluscio

Title: _____

Title: Branch Manager

E-mail: _____

Name of Company: _____

☐ Principal, Owner or
Authorized Representative of Principal or Owner

☐ Agent

(Name of Principal or Owner)

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 or any or all of the products defined here in, shall constitute acceptance of all terms, conditions and requirements of the resulting agreement.

OTIS Elevator Company
Company Name:

41 Page Park Drive
Mailing Address:

Poughkeepsie, NY 12603
City, State and Zip Code:

13-6583389
Federal Employer Identification Number

For Clarification of this Offer, Contact:

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]
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

FOR THE CITY:

Richard F. Herbek, City Manager

Approved as to Form:

OTIS
Firm Name

Michelle Kelson, Corporation Counsel

41 Page Park Dr
Mailing Address

Approved as to Finances:

Poughkeepsie NY
City State Zip Code

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, 13

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.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

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

1. APPLICANT/SPONSOR City of Newburgh	2. PROJECT NAME Water Storage Tanks Improvements Project
3. PROJECT LOCATION: Municipality City of Newburgh County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) The Marne Avenue tank site is located along Marne Avenue, north of its intersection with Mandigo Place. The Brady Avenue tank is located along Brady Avenue, west of its intersection with Barton Street. The Ellis Avenue tank is located at the southernmost end of Ellis Avenue. Refer to attached location map for specific locations.	
5. PROPOSED ACTION IS: ☐ New ☐ Expansion ☒ Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: The Marne Avenue tank is proposed to be replaced in kind immediately adjacent to the existing tank. The work will include the installation of new tank and associated piping to connect to existing distribution system. Disturbance is anticipated to lie within the existing property lines. The Brady Avenue and Ellis Avenue tank improvements are limited to general repairs of the existing tanks and appurtenances. No site disturbances are anticipated for these two tanks.	
7. AMOUNT OF LAND AFFECTED: Initially >1 acres Ultimately >1 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? ☒ Yes ☐ No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? ☒ Residential ☐ Industrial ☐ Commercial ☐ Agriculture ☐ Park/Forest/Open Space ☐ Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? ☒ Yes ☐ No If Yes, list agency(s) name and permit/approvals: Orange County Department of Health will issue their approval. There is currently an application in for funding with the New York State Environmental Facilities Corporation.	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? ☐ Yes ☒ No If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? ☐ Yes ☒ No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

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? If yes, coordinate the review process and use the FULL EAF.
☐ Yes ☒ No

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.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

173-12

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.

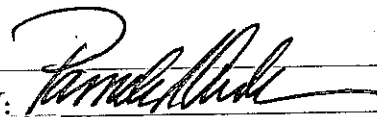
THE CITY OF NEWBURGH

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 ^{15,000.00} 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 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 ACCEPT AN OFFER TO GIFT TO THE CITY
PROPERTIES KNOWN AS 285 GRAND STREET
(SECTION 10, BLOCK 1, LOT 10) AND 285 GRAND STREET REAR
(SECTION 10, BLOCK 1, LOT 11) IN THE CITY OF NEWBURGH**

WHEREAS, an offer to gift properties located at 285 Grand Street (Section 10, Block 1, Lot 10) and 285 Grand Street Rear (Section 10, Block 1, Lot 11) has been received from Robert Rabinowitz of Blue Line Trading Corporation; and

WHEREAS, such offer has been reviewed by the involved City departments and it has been determined to be in the best interests of the City of Newburgh to accept;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a gift of properties located at 285 Grand Street (Section 10, Block 1, Lot 10) and 285 Grand Street Rear (Section 10, Block 1, Lot 11) in the City of Newburgh from Blue Line Trading Corporation to the City of Newburgh.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

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

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman
Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 176 - 2012

OF

OCTOBER 9, 2012

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL
PROPERTY KNOWN AS 205 LAKE DRIVE (SECTION 33, BLOCK 7, LOT 29.3)
AT PRIVATE SALE TO INDEPENDENT LIVING, INC.
FOR THE AMOUNT OF \$100.00**

WHEREAS, the City of Newburgh is the owner of real property known as 205 Lake Drive, more accurately described as Section 33, Block 7, Lot 29.3 on the official tax map of the City of Newburgh; and

WHEREAS, the City may sell real property owned by or in the control of the City of Newburgh through public or private transaction; and

WHEREAS, the City of Newburgh now desires to sell 205 Lake Drive to Independent Living, Inc. as a contribution to the development of Independence Square, a mixed-tenancy housing complex, which will further enhance the development of the City of Newburgh; and

WHEREAS, Independent Living, Inc. has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to Independent Living, for the amount of One Hundred (\$100.00) Dollars; and

WHEREAS, the prospective buyer shall combine the premises conveyed herein, identified as 205 Lake Drive, Section 33, Block 7, Lot 29.3, with the premises presently owned by Independent Living, Inc. known as 70 Lake Drive, Section 33, Block 7, Lot 24 on the official tax map of the City of Newburgh as one lot of record within one (1) year of the date of conveyance from the City of Newburgh to Independent Living, Inc.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt

of the indicated purchase price in cash, money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before February 5, 2012, being one hundred twenty (120) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
205 Lake Drive	33 - 7 - 29.3	Independent Living, Inc.	\$100.00

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

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 177 - 2012
OF
OCTOBER 9, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH
HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC.
TO PERMIT ACCESS TO CITY OWNED PROPERTY
LOCATED AT 12 LUTHERAN STREET (SECTION 29, BLOCK 8, LOT 10)
FOR THE PURPOSES OF PERFORMING CERTAIN PREDEVELOPMENT
ACTIVITIES**

WHEREAS, Habitat for Humanity of Greater Newburgh, Inc. has purchased property from the City of Newburgh known as 10 Lutheran Street, more accurately described as Section 29, Block 8, Lot 9 on the official tax map of the City of Newburgh; and

WHEREAS, Habitat for Humanity of Greater Newburgh, Inc. has requested that the City of Newburgh allow them access to 12 Lutheran Street more accurately described as Section 29, Block 8, Lot 10 on the official tax map of the City of Newburgh, for the purposes of continuing for performing certain predevelopment activities to determine whether to purchase 12 Lutheran Street; and

WHEREAS, such access to the properties requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Habitat for Humanity of Greater Newburgh, Inc., and their contracted agents to allow access to 12 Lutheran Street for the purposes of performing certain predevelopment activities.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and twelve by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC., a private business organization having an address of, 125 Washington Street, Newburgh, New York 12550, and their consultants and contractors as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor, on behalf of itself and its employees, agents and contractors, known as 12 Lutheran Street, and more accurately described on the official tax map of the City of Newburgh, New York as Section 29, Block 8, Lot 10.

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 12 Lutheran Street, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purposes of and to perform certain tasks on said property owned by Licensor, including but not limited to excavating, filling, boring, testing, sampling, restoration and any and all other work appurtenant thereto.

Second: Licensee 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.

Third: During the term of this Agreement, the parties mutually agree to release and indemnify each other for all claims, damages or expenses resulting from said party's own negligence. It is hereby acknowledged that Licensor is a self-insured municipality.

Fourth: Licensee will perform the subject work in connection with a site assessment and evaluation of a vacant residential property, including walk-through inspection, review of City of Newburgh and other records, review of governmental environmental records and data, and other measures relating to underground tanks, potential contamination issues, demolition of structures and related tasks. In the contract by which Licensee retains consultants and contractors, they shall name City as additional insured under insurance coverage concerning the performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: 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.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said work shall be performed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: _____
Richard F. Herbek, City Manager

HABITAT FOR HUMANITY OF GREATER
NEWBURGH, INC.

LICENSEE

By: _____
Cathy Collins, Executive Director

RESOLUTION NO.: 178 - 2012
OF
OCTOBER 9, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH
VIETNAM VETERANS OF AMERICA, HUDSON HIGHLANDS CHAPTER
537, TO ALLOW ACCESS TO CITY OWNED PROPERTY FOR THE
PURPOSE OF MAKING IMPROVEMENTS TO THE ORANGE COUNTY
VETERANS MEMORIAL**

WHEREAS, The City of Newburgh owns certain property located at or bounded by Balmville Road, Leroy Place and Grand Avenue, which serves as a memorial for Orange County residents who died in serving the United States in World War I, World War II, Korea and Vietnam; and

WHEREAS, the Vietnam Veterans of America, Hudson Highlands Chapter 537 has requested access to the Orange County Veterans Memorial for the purpose of making improvements thereto, including but not limited to removing a utility pole and replacing with underground wiring, installation of a stone wall surrounding flag poles, landscaping, blacktopping and related work, at no cost to the City of Newburgh; and

WHEREAS, the City Council of the City of Newburgh finds that permitting such access for the purpose of making such improvements to the Orange County Veterans Memorial 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 enter into a license agreement, in substantially the same form annexed hereto with such other terms and conditions acceptable to the Corporation Counsel, with Vietnam Veterans of America, Hudson Highlands Chapter to allow access to City owned property located at or bounded by Balmville Road, Leroy Place and Grand Avenue for the purpose of repairs, maintenance and improvements to the Orange County Veterans Memorial.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and twelve, by and between VIETNAM VETERANS OF AMERICA, HUDSON HIGHLANDS CHAPTER 537, a New York Corporation with an address of P.O. Box 123, Newburgh, New York 12551 as "LICENSEE; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following title:

Site Plan, Orange County Veterans Memorial

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at or bounded by Balmville Road, Leroy Place and Grand Avenue, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purposes of and to perform maintenance, repairs and improvements to property owned by Licensor and used as and for a memorial to Orange County residents who died in serving the United States in World War I, World War II, Korea and Vietnam as shown on the attached site plan and drawing; and to maintain, repair and enhance said property, including but not limited to removing a utility pole and replacing with underground wiring, installation of a stone wall surrounding flag poles, landscaping, blacktopping and any and all other work appurtenant thereto.

Second: Licensee shall install, use and maintain said improvements on said premises in such location and position and as to any such work upon or under property of Licenser in such manner as will be satisfactory to Licenser.

Third: Licensee agrees to install, use and maintain said improvements 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.

Fourth: Licenser acknowledges that the enhancements, improvements and repairs to the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the License granted hereunder.

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

Sixth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Seventh: 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.

Eighth: Without limitation to the general provisions of this Agreement, it is understood and agreed that said improvements shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on maps or plans hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, City Manager

**VIETNAM VETERANS OF AMERICA
HUDSON HIGHLANDS, CHAPTER
537**

LICENSEE

By:

Executive Officer

RESOLUTION NO.: 179 - 2012

OF

OCTOBER 9, 2012

**RESOLUTION AMENDING RESOLUTION NO: 238-2011,
THE 2012 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$1,200,000.00 FROM SEWER FUND BALANCE
TO SOUTH INTERCEPTOR PH II TO PROVIDE FOR EMERGENCY SEWER
REPAIRS TO THE WEST TRUNK SEWER LINE**

WHEREAS, major sewer trunk line failure occurred on a portion of the West Trunk Sewer Line, resulting in a spillage of raw sewage into the Quassaick Creek; and

WHEREAS, the discharge of raw sewage waste is a threat to the health and safety of the City's residents as well as an environmental threat to the Hudson River;

WHEREAS, the City Manager of the City of Newburgh has declared a state of emergency pursuant to Section 24 of the New York State Executive Law in order to facilitate immediate repairs to the West Trunk Sewer Line; and

WHEREAS, it is necessary for the City to undertake steps for the permanent repair of the West Trunk Sewer Line and to seek funding assistance from the Environmental Facilities Corporation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that City Manager is hereby authorized to retain the services of qualified engineering firms to evaluate the immediate stabilization of the West Sewer Trunk Line, prepare documents necessary to obtain funding through the Environmental Facilities Corporation and determine the scope of the necessary permanent repairs to the West Sewer Trunk Line and the Quassaick Creek Corridor; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that Resolution No: 238-2011, the 2012 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Sewer Fund Balance:		
G.0000.0599.1000	\$1,200,000.00	
South Interceptor PH II		
G.8120.0200.0001		\$1,200,000.00

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Councilwoman Lee said that she wanted to introduce resolution #180-2012.

Councilman Brown said that resolution #180-2012 is not on the agenda for tonight.

Councilwoman Lee told Councilman Brown to just vote no then and stop acting like this is an extension of his kitchen.

Mayor Kennedy said that they haven't had a chance to read through this.

Councilwoman Lee said that they will hear it and it is only five lines.

Mayor Kennedy told Councilwoman Lee that she was out of order.

Councilwoman Lee said that you can go into Executive Session and threaten the City Manager but you can't take on an entity that is taking funding away from the City causing every homeowner in this City to pay increased taxes. Why can't you let the City Manager ask your cronies for a PILOT?

Mayor Kennedy thanked Councilwoman Lee for that tirade.

Councilwoman Lee said that she introduced resolution #180-2012 so it needs to be read and they can vote "no" and stop trying to take the cowardly way out. These are our taxpayers here waiting to hear us make a decision about raising revenue in this City which hasn't been done.

Councilman Brown said that they have not had an opportunity to read this resolution or look it over so she is more than welcome to put it on the next Work Session so they can talk about it.

Councilwoman Lee said that she can introduce a resolution from the floor and they are all just afraid.

Mayor Kennedy told Councilwoman Lee that she is out of order and they need to move on.

Councilwoman Lee said that they can't make a decision. We have all of these people here tonight for Newburgh Builds Newburgh wanting to know what we are doing. Did you tell them that you tried to kill it and take it off the agenda? Stop the games and stop the nonsense and let's get to the place where we are taking care of the people in our City and treating our staff with respect.

Mayor Kennedy said that she thinks we need an adjournment to get a Council Member under control.

Councilwoman Lee said to let the people get up and speak.

City Manager, Richard Herbek, told the Mayor that she can't adjourn just yet.

Councilman Brown told the City Manager that he could not speak right now. He has done his part.

City Manager, Richard Herbek, noted that he has to present the Proposed Budget tonight.

Mayor Kennedy asked if they could all be respectful here.

City Manager, Richard Herbek, said that the way the City Charter works is that tonight is the night he files the Manager's Proposed Budget so that has to happen tonight.

Mayor Kennedy said that they would continue with the meeting.

NEW BUSINESS

Mayor Kennedy said that she would like to have a special work meeting set up to discuss a strategic plan on how to get the City cleaned up and how to work with partners to do that and keep it clean. She would like to see this happen within the next month or so.

PUBLIC COMMENTS ON GENERAL MATTERS

Beatrice Pullyam, member of Community Voices Heard, said that she wanted to voice her support for the Newburgh Builds Newburgh program. She wanted to remind the City Council and residents about the work that Community Voices Heard has done to fight for Workforce Development here in the City of Newburgh. From what she understands there seems to be some misinterpretation of what Newburgh Builds Newburgh really is so she would like to clarify some points in the program. Newburgh Builds Newburgh came out of the need for jobs and training in the City. There were a number of development projects that were funded through CDBG and Section 108 money that never resulted in jobs for low income residents here in the City of Newburgh. After working for four years to pull this thing together with partners such as Unions, job training programs here in the City, community members, residents and the City Council the program was finally funded. The purpose of the program is to coordinate with the Union and job training programs to get people who are trained into jobs. It is not to create jobs. That is the work of the City. It is there for when these jobs finally come and there is a qualified pool of workers ready to go. We are finally making progress and we need your support to make sure that this program is continued. Please think about the possible consequences of defunding the only program that exists right now without anything like it to do this critical work as you move forward with decisions for this Budget year.

MaryAnn Prokosch, City of Newburgh, said that she hasn't been here in six months and nothing has changed. She came to talk about the Mid-Broadway Site because there was a proposal made prior to January of last year that came out of the Planner's Office in regard to moving our Public Safety Building there. To her that was the best idea she ever heard come to this City. It would move the Police Department into an area where their presence would be strongly appreciated and increase safety in that area. We also have a Public Safety Building that is aging and that we are going to have to start dumping money into. It sits on a valuable piece of property that can generate a lot of money in taxes. There was another idea proposed for a Supermarket but we had one on Broadway before that failed. Anyone that locates a Supermarket here in the City is going to have higher prices. They will not have the same prices as Shoprite or Walmart. People are better off paying for a cab to go to a Grocery Store outside of the City because it will still cost less than buying from a local store. Also if you go shopping for a family and you don't live right around the corner you are not going to carry all of those groceries home if you don't have access to a car. That proposal is also dependent on government money which there is not a lot of so we stand waiting for the development to happen. It will probably be ten years before we see anything happen with the

economy the way it is now. She thinks that this should be reconsidered and go back to look at this other proposal that two of the current Council Members wanted investigated further. It is the most viable and intelligent thing that could be done with that property.

Brian Flannery, 5 Norton Street, said that he was at the Work Session last Thursday listening to the discussion with the developers and he was very disturbed to hear them talking about a PILOT. He clearly remembers that in the RFQ issued for this project it stated that whatever was built there had to be taxable. The previous Council stressed that very strongly and Councilwoman Bell took the lead on that. The RFQ reads, *"Proposals that would be allowed to seek property tax exemptions and or payments in lieu of taxes are NOT desired"*. He was disturbed to see that the PILOT idea was written into the draft of the agreement with the developers. Those developers responded to the RFQ so they understood what the situation was.

Timothy Hayes-el, City of Newburgh, said that he supports Mr. Brown and he has all the confidence in the world in him. Newburgh Builds Newburgh was taken out of his mouth and Community Voices Heard got a hold of it and ran away with it. Ms. Best is getting it done because we have thirty to forty people who are qualified to do the work with no jobs. Trying to use the community to steal funding has to stop. Newburgh Builds Newburgh is dead. The brothers are doing the work and getting certified at Best Resource Center, 280 Broadway, so they are actually doing it. All of this talk and trying to con people out of money and trick the community is over.

Jose Servellon, 49 Concord Street, said that his nephew was deported two weeks ago and they are very frustrated with the Police Department here in the City of Newburgh because they didn't help them out. All they had to do was sign a simple form for him to stay in the United States. He is in Honduras now living with people that he doesn't know.

Katy Cuellar, 75 Liberty St., W.H., said that her brother was deported and he was a crime victim. The police knew that he was a crime victim and they didn't help him out. She speaks to her brother every day and he told her that he would prefer to be in immigration jail than in Honduras because in Honduras right now there are a lot of gangs that kill people when they get deported. If you left the Country when you were young and then come back later they consider that as losing your citizenship there. He has lived here since he was five years old and he is now thirty so they are very frustrated with the fact that the police couldn't help them out.

Usef Belford, City of Newburgh, asked what happened to men fighting each other fist to fist. There are too many gunshots going on here and too

many people getting killed. We are killing ourselves every day. We need to stop the crap and be men. As for Newburgh Builds Newburgh, we are all here in Newburgh. He told Councilman Dillard that he has seen him do miraculous things in Middletown with renovating and fixing houses. We here in Newburgh want to build our own city. We are tired of outsiders getting the money and building in our City. He asked Councilman Dillard to help with the Newburgh Builds Newburgh process and get this thing off the ground. We talk about all of these corporations, industries and businesses and we say that we are all about the same things but instead we are fighting each other so what is going on. We are getting nowhere. What do we have for ourselves? We have nothing. We always have to go to somebody else to get something and he is tired of it. This makes no sense whatsoever. We aren't doing anything but killing ourselves so let's stop this and get real.

Lillian West, 296 Grand Street, said that she and her sister are asking the Council to consider a sealed bid that that her family will propose for the property at 296 Grand Street. This house was purchased by her late grandmother more than forty years ago and the property has been in their family for three generations. Unfortunately the property has been managed by family members that did not pay the taxes nor do any upkeep to the house. Currently her family resides in the home and they have done so for the past thirty years. She and her sister, Shaniqua, are certified and licensed through New York State to provide therapeutic foster care at this property and they now have two kids with the potential of filling to their maximum capacity of five. She and her sister also run a licensed day care at this property where they provide low cost daycare to families in need within the community. They had three contractors look at the property to give them an estimate on repairing the building and each quote is for more than the current listing of the property. If they obtain the property, they would like to take a loan out for home repairs on the property. This is an older home in the Historic District and it will need extensive work to bring the plumbing, electrical and roofing up to code. Her family has been a part of this community since the early 1930's so they would like to continue to reside in the only community that they know. It is their dream to obtain the property at 296 Grand Street, rehab the building and continue serving the community. They want to know how to bid on the property when the renovations exceed the assessed value. They don't know what to bid so that their bid will be considered. She asked if there are any programs available in the City of Newburgh that help families remain in their homes that they could look into.

Paul Andrews, 11 Grand Street, said that he moved here from Kingston recently because he thinks that Newburgh has a chance. He asked why this is the only City between the Tappan Zee and the Rip Van Winkle Bridges that doesn't have a Trailways station. There is already one in Kingston so they

don't have a problem bringing people to and from the City to work. Couldn't we get some money together to get a Bus Station here and we could get the local people to build it.

Mark Coolidge, 142 Third Street, said that last Thursday night out on Rt. 32 another man died in the Town of Newburgh. He asked where our cameras are. We need to get cameras in our police cars to protect the citizens and the police officers. These cameras will serve both parties. Our Federal government needs to make sure that we get these cameras immediately because too many people are dying and our streets are falling apart. He said in regard to Save Our Streets that he hopes that he will be getting some workers soon for community service. He is asking everyone to get the Judges to give him these workers as he is looking forward to working with these young men. This could help turn the City around for starters by cleaning our streets. He wants the community to reach out too as he needs bags, gloves, rakes and shovels. He wants the community to stand up for themselves now and stop worrying about who can do what. We can do this ourselves so let's start by cleaning our streets and out in front of our houses. Everybody likes to be clean so let's start by cleaning our streets.

Rich Carrion, Sgt. with the City of Newburgh Police Department, said in response to the camera systems that they have looked into these systems for the cars themselves but they are basically for highway type incidents. They do have in their possession right now a body camera system that they are investigating with Corporation Counsel, Michelle Kelson. He has spoken with the Police Chief and has been authorized to try this as a sample system later this week. It basically clips to the epilate on the shoulder and it records audio and video. They are looking at getting twelve of these systems and they just have to figure out a policy as to how it is going to be safeguarded as there is chain of custody issues with regards to evidence. He said that they have heard the people in the community and they want to be able to provide this as a safeguard to them and the police department against malicious accusations of misconduct. He will be testing this system this week on patrol so they are trying to move forward with this to do what the community has been asking for.

Mayor Kennedy thanked Sgt. Carrion for that update.

Janet Gianopoulos, City of Newburgh, said that at the Work Session it was brought up again this possibility of leveraging two properties instead of looking at just one property and what some people think one property should be used for. It seems to her that we do have a valuable property which is currently located underneath our Public Safety Building and that we could go through an RFQ and then an RFP process to see if we can find a developer who

might be interested in letting us use those two properties as leverage so that this City can do some economic development. It could be a good property for a Hotel that would provide a lot of permanent jobs which we need here. In regard to the sewage line, the City of Beacon is going to be using CDBG funds in order to work on its infrastructure and sewer system and she thinks that we should consider doing the same.

Donovan James, said that what he saw earlier between the Council was embarrassing. He said that he came home four and a half years ago from Prison and he does what he wants. He came home and got scared but he grabbed his life back. Today he came here and he is scared again. He is not like everybody else and he is going to do what he wants. If he can't call 911 then who is he supposed to call? If he is running from someone who is going to help him? He is afraid to walk outside his door. He asked the Council if they feel the same things. Nobody is helping anyone. They say they are going to help but he came to this meeting tonight after two years and this is what he sees. He said that he would never conduct himself the way that the Council did tonight and he has been in Prison twice for ten and a half years. We need help before anything else. They have to show the residents that they genuinely care. He came to a meeting the other day and an employee gave him a paper to apply for a job with a reference. He has been here asking and begging for work and he did everything that was asked of him but he still doesn't have a job. He said that he will do this on his own because none of them can show anyone how to help.

Margaret, City resident, said that on June 4th she came to New York and on June 5th she was beaten by her daughter's father. She is still recovering from a concussion, dislocated jaw, back problems and several other health conditions. October 26th of this year will mark a year that her abuser violated the Order of Protection because he knew that she lived at 204 Lander Street. ~~She went to the Police Station and instead of having a professional attitude~~ and empathy for the situation the Officer told her to go back to the location where her abuser had just left from and to compose herself. For some reason his girlfriend found out where she lived and she doesn't know if that was a slip up by the Orange County Sheriffs Office or the Police Department in Newburgh or Middletown. In defense to two of the City of Newburgh Police Officers she said that they were professional, courteous and non-biased regarding the situation. To make her point she thinks that there is a lot going on within the Police Department and maybe they need more training. There needs to be more trust amongst the Police Officers to bridge the gap of communication so that we can work collectively together as a community versus stereotyping people.

Natasha Cotton, City of Newburgh, read a poem: *"Anger management you say about me but I'm watching what just happened with you. You have been influenced by the well dressed lie and not recognizing the truth. I stand strong, stand tall while watching others use manipulation to cause this whole City to fall and the hate perpetrated on excellence is what started the children to brawl because I had them dancing and singing. Angry you call me yet I will tell you the truth. Never have I robbed, stolen or sued my own home for no loot with proof. Never have I proposed a plan here with any group and not returned fruit. Never has my name been associated and not been of sound root. Or is it my tone of voice that doesn't suit some because some want to give my spot a try. I prefer you say that instead of on my character line. Say I like her style and don't instead always dulling the next one shines because Tash don't initiate that type of evil; I remove myself instead and say goodbye. That is not anger on my face City Council. I am under the bus and they didn't expect me to survive but candy man, candy man, candy man, when I return you can bet the culprits know why. Just like the little children in the streets there is a way you can make my heart and my trust in you cry because I have never been sly. Check my records, check my prints and then check everybody else's too like I did, Councilman Brown. See what we are really dealing with then turn the City of Newburgh into a straight up snake pit. Do the science, Chief Ferrara, and you will know why our children are really getting hit. Creeping and crawling around like life is well hid. Slandering Natasha yet Natasha ain't never did a bit. Never been on probation, never lost her well mannered kids and my angry self disabled ain't never, ever not had a nice crib. Let's examine this. People lying and stealing and everything in between, fronting and conniving for fame while the streets continue to bleed. Anger management, yes, I am pissed off indeed because the corruption of your corruption is threatening to murder my seed".*

Denise Ribble, City of Newburgh, said that there was a discussion at the Work Session where we had a presentation of a development agreement and she noticed that no one was bringing up any questions or concerns regarding protection of the City except for the Mayor. She finds it hard to believe that in this agreement we had no reverter clauses and no protection for the City in the event that they defaulted. How many times do we have to do these really lousy development agreements before we understand that we have to protect the citizens and the tax payers in the City of Newburgh? Secondly, at the Work Session, Councilman Dillard brought up the issue of the Safety Building and how unsafe it is and they discussed how much it is going to cost the tax payers to fix that building. There was a proposal to put that on the Mid-Broadway site and to get private development money instead of someone coming with their hand out looking for a PILOT and public funding to have this project work. She said that doesn't work for the tax payers of the City of Newburgh. It doesn't create affordable housing which that site was supposed to create with taxable entities. She feels that whole thing should be a do over

and instead of considering sale they should consider a land lease. The land lease should be for whatever the term of the PILOT is that they are asking for. She told Councilwoman Angelo that she gave a lot of thought to what she said at the end of the meeting about the Hudson River Group and she agrees with her. She thinks that it may be ok for the Waterfront businesses to think about marketing down there but we still have to think about what is happening for the public down at the Waterfront and how it will connect to the City of Newburgh. She thinks the City should consider moving ahead with some of the plans like Scenic Hudson's Plan for the South Street Park.

Sheila Monk, City of Newburgh, speaking on behalf of Tammy Hollins who could not attend today, said that she is tired of the City of Newburgh changing City Manager's. The City residents would like to see Rick stay in his position. We know that when he came into this position that there were a lot of things that he had to handle. We know what we have but we don't know what we are getting so the City residents will make some news if the Council is talking of removing him from his position. Also, what are they talking about putting Girl Scout cookies into an agreement. What inner city kids go to Girl Scouts in the City of Newburgh? Just like they had a program with the basketball in the City of Newburgh that they spent \$5,000.00 of CDBG money on and the Coaches were drunk. That money could have provided five jobs for our youth. She had two parents complain to her about that basketball program and the Mayor participated in it. She told the Mayor how dare she have our kids exposed to drunk Coaches. We have people in the City of Newburgh who are dying and the Council is acting like fools. They are sitting up there arguing while we have people dying. She said that this is a whole new ballgame and she is not playing. She is tired of Newburgh Community Voices Heard because no one is getting any houses or jobs except for Jenny. Since the Council doesn't want to do anything we will take our City back. They are having a meeting on Wednesday at Newburgh Community Action so now it is no more talk just action.

Michael Ferrara, City of Newburgh Police Chief, wished to respond to an earlier comment regarding a domestic violence case. He is not particularly familiar with that case but he can say that the Police Department handles a lot of violent calls and they handle a lot of domestic violence here in the City of Newburgh. Over the past three years he has made himself available and he is part of the Executive Board of the Orange County Domestic Violence Partnership. They have their meetings here in the City of Newburgh because of the high number of calls that they have involving domestic violence. It is a very serious call for service and it's very important that we protect our victim's identities. We have a protected policy and procedure that all of our Officers are familiar with and it is important to us that we follow this policy and procedure. If there are any complaints on any type of call for service, he needs

to know about it and hear about it. He listens to every single complaint and will investigate anything that comes his way. He hopes that the woman who spoke earlier is still here so that he can speak to her and find out what went wrong.

Lillie Howard, City of Newburgh, said that she hasn't gotten up to speak too often because she has two sons who work for the City of Newburgh and she finds that some things are going on regarding their positions so she is concerned about that. But she can't shut up because she was born to be a spokesperson for her people. When she says her people she is talking about everyone. Number one her concern is that she would like to know about selective enforcement of noise management. She knows that at the Hacienda on upper Broadway which is close to Councilwoman Angelo's house they seem to get involved but where she lives on Walsh Road there are shootings and loud noise so she can't get to sleep until four or five o'clock in the morning five nights a week. She has spoken with the Police Chief and she would like to know why nothing is done about that place. She added that she is sick and tired of the games being played here in the City of Newburgh. A lot of people are standing up and saying things but the real bottom line is how many are saying it genuinely from the heart and not because of closed door meetings where they feel they are going to be able to get trickled down money. Just like Mark Coolidge said, they are not asking for any money but they would like to clean up Newburgh. The people who want the money to benefit them personally are the ones who seem to get the money.

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

regard to the CDBG money, for years we have been treating that money like it is Monopoly money and it has to stop. Community Voices Heard comes in and talks about Newburgh Builds Newburgh but the only way that Newburgh is going to build Newburgh is if this Council puts something in place. He is tired of seeing construction money come into this City and leave this City and almost none of it is spent in this City but we can change that in this Budget right here. He has spoken with Councilman Dillard and the Mayor and he has an idea to create real long-term jobs with residents of this City. The only way we are going to do that is if we keep the money right here in this City so he will present that at the next Work Session and it will have something to do with the changes to this 2013 Budget. Lastly he said that in order for this Council to work we all need to work together. We all came on this Council thinking that we were going to create change and if anybody in this room can tell him what changes have been made from January 1st to date, then he needs to know about them. That's a push. It's the same game and the game has to change. He said that he is not a Politician. He is a businessman and the City is a Corporation. It is a business and it needs to be run like a business under Municipal Law. He thanked everyone for coming tonight.

Councilman Dillard said that Councilman Brown said it all and he supports him one hundred percent in this initiative. He thanked everyone for coming tonight and asked them not to forget to vote on November 6th because it is very important.

Councilwoman Lee said that in January, February and March she talked to the Council about bringing revenue into the City. She did it again in June because most of what we did as a Council between March and June the City was in crisis over the death of Michael Lembhard. Her point is that we have to bring three things to this City. We have to bring stability because we are not a stable City and no amount of terminating, transferring or kicking to the curb the City Manager is going to make us look stable. It looks like the same old business. We just paid Jean-Ann McGrane \$350,000.00 and we can't afford to do that again because of bad practices or because we are making a decision that sets us back. We haven't considered at all having organizations pay a PILOT. We have three large entities in this City and she came to this meeting tonight on the heels of another meeting where she was asked to back off because she is giving the Greater Newburgh Partnership a difficult time because she keeps saying that they are not paying taxes. Here is how it works. Everyone here who owns a home pays for public service and every time we have a crisis in this City and their cost goes up we have to figure out ways to keep the taxpayers cost from going up. There is nothing wrong with asking entities to pay taxes. Whether they do or not is not the issue but we can't be shy about asking them. We have to ask them and when someone sits in front of you and says, "Over my dead body, clean up your City but I am going to sit

on your Land Bank Board and I am going to ask CDBG for funds but I am not going to pay any taxes and I will hit you up for some cash every now and then". That needs to be looked at because the very money that you are asking about for jobs has been going to these other entities. We are just asking for a PILOT and if it ticked off someone so much that they had to come back and ask for this man to be terminated then that is a problem. Typically you reduce a person's salary by a few thousand dollars. Nowhere in this Country has anybody had their salary cut by \$70,000.00 when they still have a contract. You are ultimately going to pay for these bad choices. She doesn't care how much push back she gets because she knows that on this issue she is right unless every homeowner agrees to let us increase their taxes just two more times so that we can offset the Budget then you need to take a strong look at what we are not doing. What we are not doing is standing up and saying "no" if you want to play here, you are going to pay here. You are not going to just sit and collect our money and then tell us that you are providing a service but yet our people are unemployed. You are not hiring them, not because they don't qualify but because you have them pegged as shiftless and lazy and you have said that they don't want to work so they need a job training program. She is supporting WDI as much as she can but she knows in her heart that everyone of those people who are at CVH and Newburgh Builds Newburgh would walk from here to Kalamazoo if there was the promise of a job. We have opportunities right in this City and our people are not being hired. Some people here are professionals and there are no jobs for them either. If you want to give her your good business ideas then you better be giving her your good business money because she doesn't want to hear it otherwise. We have staff and no matter how much she thinks she might be right getting annoyed or frustrated with them she has no right to disrespect them because the first time one of them does it to her they are going to hear from her as well as Rick and everyone on this Council. She doesn't want to be disrespected under the guise of push back which she calls abuse. It is time that we agree to respect each other and stop going to entities where we sit here and enter into an agreement and then you go behind our back and try to broker an agreement which goes south and we are left sitting here wondering what happened. These things have to stop. We need some stability and we are not going to find a better City Manager than the one we have now because we don't know what to look for in a City Manager. She said that she is an Elected Official. She didn't apply for a job and get it because you voted for her and that says that anybody that she is working with has to be qualified to do their job. So when he was hired he had to know more than we know. The Comptroller went on vacation but she sat here for an hour working on the Budget and she knew the answer to every question. It's time to stop playing this game and act like we are doing what we are supposed to be doing which is to bring money into this City. Just because she can read and write and say that something isn't working doesn't mean that she is bringing any kind of funding into this City.

The problem is that the Council hasn't directed him or given him the tools to go after these PILOT's to bring money into this City so that you could have jobs. That is the problem and that is going to stand no matter who comes into this City. We have had five or six City Managers in seven years and that is outrageous. She never expected that resolution to be approved tonight and she came here expecting to have to fight for it. She expected the Council to tell her that they couldn't vote on it tonight or they didn't read it yet but the reason they didn't vote on it is because they are scared. You have to be able to look people in their face and say yes or no. We need some assistance and if these major entities can't give us any funding because they want to and if we can't get it legally then she has absolutely no use for them because people are not going to want to talk to her if she tells them that their taxes are being raised 80%. Don't sit there and act like what she is saying is a little bit off the wall and maybe it shouldn't happen but taxes are going to be raised if they don't start developing the mindset that their job is to bring money into this City. No matter how much you look at it or try to cut it you can't do anything with nothing. We need to leave it where it is, continue fixing it and move forward and that is how you show Washington and Albany that you are stable. She thanked everyone for coming tonight.

Mayor Kennedy said that there are all kinds of things going on and she got into this job because of the high taxes here. One of her jobs is to help get these taxes under control. She is very focused on Budget items and how to keep the tax cap in place. There are things going on that we need to make sure of not only this year but in years coming as there are a lot of issues here that need to be laid out and dealt with and they will try to do that in some kind of reasonable and sensible way. She knows that early in the year Councilwoman Lee suggested that she was writing a proposal to bring money into the City but she has yet to see that proposal. One of the things that we need to understand is that there are non-profit organizations all across America that have tax exemption status so to discriminate against three of them and say that they will pay PILOT's but the rest of them don't is a practice in discrimination. If we are going to have PILOT's then all of the non-profits in the City need to have a PILOT schedule. If we want to have that conversation then we need to have it across the board and not pick out the ones that some particular person doesn't like or want to deal with. We need to start talking about how you fairly distribute it. Secondly, PILOT's are not what is going to pull this City out of this hole. Jobs and business development is going to bring this City out of the hole. We need real economic development in this City and that is going to happen by bringing new business into the City. This City has struggled for nearly fifty years and every time some business wants to come in someone challenges them. IBM wanted to come here in the 1960's and a lot of people were upset about it but we can see what happen across the river because of that. That same fear that someone is going to come here from outside the City

has stopped this City over and over again. If anyone thinks that we are going to develop this City all by ourselves, then why hasn't it already happened? We can't develop it all by ourselves because we need partnerships, help, other people and outside money. People don't just come here to hand over money. They come here because a business makes money. They have to be profitable or they don't stay here. We better get business focused and help so everyone here gets the jobs that they are looking for. She said that there are several businesses that want to work with us but they want the City to be safe and clean. They also want to know that we will work with them and not create a year and a half process that they have to go through. We have been working on streamlining our City processes and that is one thing that has happened this year that is really positive. We also have to work on holding the line on taxes. Our pension payments are going to go up. Health insurance is going to go up this year and every year so we have to get creative about how we are going to manage this City. We may have to dissolve organizations and a lot of things because cities across America are in trouble. If we just keep rearranging the deck chairs while the boat is sinking, it is not going work. We really have to get some out of the box thinking to get things turned around here. In regard to CDBG money, as far as she knows no CDBG money has gone to the Greater Newburgh Partnership. In fact, the Grater Newburgh Partnership has donated money, work and labor to clean up lots all over this City. That is the kind of partnership we are trying to create with people across the City. She has heard a lot of negative things about Land Banks but Councilman Dillard has sat on that Land Bank Board from the get go and she has attended every meeting so nobody is trying to take property away from people. In fact, she sat with Madeline Fletcher from Pathstone and they are working on a process right now on how we can help people in this City own those properties. All these fear tactics that someone is putting out there that we are taking homes away and creating all this chaos is not happening. In terms of Newburgh Builds Newburgh, nobody is trying to sabotage this job process. ~~We are trying to evaluate what that program is doing to make sure~~ that we actually deliver jobs. It is not about more training because we have already provided the training. Now we need people to get real jobs out of that training so that is being evaluated. We are working on it and we just had a meeting today with Councilwoman Lee so she knows exactly what we are doing here. Newburgh Builds Newburgh is not an organization it is a concept and it is a great concept. In terms of the City Manager and breaking contracts, not one person sitting at this Council table that she is aware of has suggested that we break any contract. That contract is good until January 23rd and we intend to honor that contract to its fullest. Nobody has suggested that we break a contract or that we fire the City Manager. It is absolute hearsay to say it and it is not what is on the table here. She wants to make sure that everyone understands that the City has been moving forward. There are a lot of people who are coming forward to do things. In City Hall we haven't made that many

changes but in the City itself people are working hard to make all kinds of changes. Just like this Save Our Streets Program people are working hard to do something that is positive and great in this City. We are not standing still and things are moving. In February, we passed a resolution allowing our residents to make payments on their back taxes which they couldn't do before. We are working very hard to try to keep people in their houses. We just pulled a property off of one of our sales because we are trying to work something out to get someone back into their home. We had another meeting just last week so someone else could get back in their house so we have been working hard to do that. She doesn't want to take property from anyone because that hurts her to the core. In terms of not putting things on the agenda, it frustrates her when people put their ideas into her mouth. She did not say anything about being afraid to address an issue and she doesn't believe that anyone else here said that either. It is frustrating to be handed a document and to be pushed and bullied into doing something that she hasn't had a chance to read or think about. That is absolute bullying and she is not going to stand for it for one minute so she is not going to be forced into something like that. She added on a positive note that Unico Park was very nicely done with DPW helping Councilwoman Angelo plant all of those flowers but then they had people go over there and pull out the flowers and destroy what someone else put a lot of hard work into and that is not right. If you want to help keep this City clean and neat you can partner with everyone to protect the work that is being done so that we don't have to keep doing it over and over again. They need to put together a strategic plan on how to really work with our partners and DPW on putting together a plan to keep this City clean. She thanked everyone for being here and supporting them tonight.

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

City Manager, Richard Herbek, presented the proposed 2013 Budget to the Council.



CITY OF NEWBURGH

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Richard F. Herbek, City Manager
ICMA-CM

October 9, 2012

Newburgh City Council
City Hall
83 Broadway
Newburgh, NY 12550

Re: 2013 Proposed Budget

Honorable Members of the City Council:

I hereby submit the 2013 Manager's Proposed Budget to you following our budget review meetings during September.

I am very pleased to report to you that as we approach 2013, the City of Newburgh is in a much more stable financial situation than when I became City Manager in September 2009. We still face major challenges, but we have charted a financially prudent and stable course.

The City will need to operate within the confines of a 2% state-mandated property tax cap (unless the Council chooses to override it), and adhere to the provisions of the Newburgh Fiscal Recovery Act, which mandates a structurally balanced budget and enterprise funds, subject to review by the Office of the State Comptroller (OSC).

2013 Budget Considerations

In preparing this budget, I have provided realistic and achievable revenue estimates and have tried to pare down departmental expenditures to the leanest possible levels while continuing to provide basic and essential services to the residents and taxpayers of the City of Newburgh.

As has been the case in previous years, there are a number of mandated increases in the 2013 proposed budget which the City cannot control. Health insurance costs are increasing by \$601,448 or 9.65%. The Employees Retirement System costs are increasing by \$138,212 or 2%. The Police and Fire Retirement System costs are increasing by \$380,563 or 3.1%. Mandated contract increases for employees are \$287,868. The impact of just these four items is \$1,408,091.

Tax Cap Effect on Property Tax Levy

Subject to review by the OSC, the permitted increase in the property tax levy within the limits set by the tax cap is \$ 838,281 or 4.37 %, which increases the tax levy limit from \$ 19,179,197 in 2012 to \$ 20,017,478 in 2013.

Attached to this message as Exhibit A is a schedule showing the details of how the total permitted property tax levy of \$20,017,478 was calculated under the provisions of the property tax cap legislation.

Newburgh Fiscal Recovery Act Effect on Budgets

The Newburgh Fiscal Recovery Act, for which we successfully petitioned our legislators and the Governor in 2010, authorized the City to borrow up to \$15,000,000 in order to continue daily operations. In August 2010 the City issued \$12,000,000 in one year Bond Anticipation Deficit Notes to finance the projected accumulated deficit through December 31, 2010. Fortunately the actual deficit ended up being a little over \$6,000,000 which we have now bonded through the issuance of serial bonds.

As a result of being permitted to issue deficit bonds, the City was able to start afresh with a zero-based starting point for fiscal year 2011. In November 2010 the City Council adopted a structurally balanced budget for 2011 with revenues equaling expenditures. Through aggressive budgetary controls the city finished fiscal year 2011 with an un-appropriated fund balance of \$1,184,000. In November 2011 the City Council adopted a structurally balanced budget for 2012 and thus far into the fiscal year we should end the year with revenues equaling expenditures and hopefully another fund balance.

2013 Proposed Budget

The general fund 2013 projected expenditures are \$ 42,172,589. A comparison to the 2012 adopted budget is as follows:

	2013	2012	Increase	Percentage
Expenditures	\$42,172,589	\$40,900,545	\$1,272,044	3.11
Revenues:				
Tax Levy	\$19,736,657	\$19,483,461	\$ 253,196	1.30%
Other	22,435,932	21,417,084	1,018,848	4.76%

The City's total taxable assessed valuation has continued to decline, this year by 10.67% for the Homestead rate and 3.54% for the Non-Homestead rate. As a result the tax rates for 2013 are currently projected as follows:

- The Homestead Rate will be \$17.64 per \$1000 of assessed valuation, compared to \$15.63 in 2012. After considering the 10.67% decline in the Homestead assessments of minus 10.67% the actual Homestead tax rate increase will be 2.20%.

- The Non-Homestead Rate will be \$22.86 per \$1000 of assessed valuation compared to \$21.65 in 2012. After considering the decline in Non-Homestead assessments of 3.54% the actual Non-Homestead tax rate increase will be 2.07%.

Water/Sewer Funds – Revenue in both funds has decreased this fiscal year. Revenue percentage through July should be 58.31% on average. At the end of July, the Water Fund revenue was \$2,725,772 or 45%. This figure excludes the \$480,718 in sales to the Town of New Windsor as that is onetime revenue. Sewer Fund revenue is \$2,464,002 or 39%. The one factor that could have precipitated this change is the allowance of partial payments. During the budgeting process, we must rely on collection rates to predict the following year's fiscal revenue. The City has appropriated \$1,296,342 or 53% of the Water Fund Balance and \$2,406,376 or 30% of the Sewer Fund Balance for current projects.

Unfortunately previous City Councils did not act in a timely manner and waited until the enterprise funds reached negative balances before addressing rate increases. Although the Water and Sewer Funds had increases in fund balance for the 2011 fiscal year, we need to plan for emergency system failures that can quickly lower fund balances. The City must continue on the pro-active track that this Council has initiated by maintaining adequate fund balances in these accounts in order to undertake needed capital improvements to our water and sewer system infrastructure. Taking all of this into consideration, we are recommending a 10% increase in fees which will balance the 2013 budget and assure the necessary fund balances needed to continue being able to upgrade our water and sewer facilities and infrastructure.

Sanitation Fund – The Sanitation Fund decreased at the end of 2011 and we do not foresee an adequate fund balance by the end of the 2012 fiscal year. Revenue is at 72% or \$2,209,732 for 3 billing cycles and we need to restore an adequate fund balance. A 10% increase in sanitation rates will balance the 2013 budget and hopefully provide a sufficient fund balance at the end of fiscal year 2013.

Bond Anticipation Note – Attached to this budget message is a list of vehicles and equipment which the City needs to continue to provide essential services efficiently and effectively. The General Fund BAN is in the amount of \$1,623,627.60 and the Enterprise Sanitation Fund BAN is in the amount of \$222,000. These are not incorporated into the operating budget and will not have an impact on the 2013 budget. This will however require the issuance of a bond anticipation note to fund these purchases and we recommend the authorization of the BAN at the same time that the City Budget is adopted by the City Council.

Reinvention and Downsizing of City Government

Over the past three years there has been a 36% reduction in city staff. The reductions have affected all departments, with DPW, Police and Fire suffering the greatest loss of staff. We are now down to 207 full time positions from 320 positions which were funded in the 2009 City Budget. This reduction in personnel continues to strain our workforce as we have asked all City department heads and their remaining staff to continue to provide all the essential services and manage with less.

With regard to union contracts, we have current agreements with the PBA through December 31, 2012, and with Local 589 of the International Association of Firefighters through December 31, 2014. An agreement with the Police Superior Officers Association which represents Sergeants and Lieutenants ended on December 31, 2008 and still needs to be negotiated. The Civil Service Employees Association contract ended on December 31, 2010, and although negotiations last year resulted in a signed memorandum of agreement, the union membership did not ratify it. Both CSEA and PBA have indicated they would like to begin new negotiations which will commence on Oct. 11.

The City has a very dedicated work force. We have excellent department heads that work very hard and put in extraordinary hours on many City issues during the course of the year. I would like to express my thanks to them and to all our employees for their efforts to move the City forward and for continuing to provide quality services to the residents of Newburgh under very difficult circumstances.

Summary

As stated many times before, what the City really needs is another major revenue stream. We have talked about a payroll tax or income tax but the prospects of obtaining approval for such from the New York State Legislature are highly unlikely. Only the City of New York and the City of Yonkers has such a tax. It is really unfair to our taxpayers that thousands of people come to work in the City and benefit from City services but they do not contribute in any financial way towards the cost of these services.

We have sought voluntary PILOT payments from our major not-for-profit corporations i.e., Mount Saint Mary College, SUNY Orange and St. Luke's Cornwall Hospital, as has been done in other cities in New York State such as Schenectady and Syracuse. A contribution of \$500,000 from each institution would not dramatically impact their budgets but would significantly help the City of Newburgh.

Given these unsuccessful attempts to bolster revenue, we must redouble our efforts to attract new businesses to the City, to address quality-of-life issues and negative publicity which deter investment in the City, and to diligently seek ways to cut costs without impacting essential services.

A bright spot is that we are pleased to be able to announce that four new Police Officers, City of Newburgh residents, will be trained and on the streets in January of 2013. The other good news is the long-awaited approval of the Administrative Parking Tribunal by the State, which is expected to be a significant revenue generator.

In addition, debt service costs for principal and interest payments in 2013 decreased by \$1,042,657, or 21% to \$3,809,061. This debt service requirement represents 9.1% of the 2013 total budgeted expenditures.

Timetable

Under the City Charter, the City Council is required to adopt the 2013 budget by November 26, 2012. As required by the Newburgh Fiscal Recovery Act, this proposed budget will be sent to

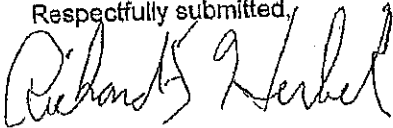
the State Comptroller for his review and comments. The State Comptroller must submit such recommendations as he deems appropriate no later than 10 days before the budget vote. The City Council is mandated by this Act to approve a budget which is structurally balanced taking into consideration any recommendations received from the State Comptroller. In addition the City Council has to hold a public hearing on the budget and a separate public hearing if it elects to increase the tax levy above the authorized cap. Both hearings can be held the same date, currently scheduled for November 13.

In summary, the budget schedule will be as follows:

- October 9 – Manager proposed budget submitted to City Council and State Comptroller.
- November 13 – Public hearing(s) scheduled (Budget – Tax Levy)
- November 15 – City Council work session to address State Comptroller's recommendations, and regular work session
- November 26 – City Council adopts 2013 budget.

Thank you for your dedication and commitment to the City.

Respectfully submitted,



Richard F. Herbek
City Manager

EXHIBIT A

PROPERTY TAX CAP

FORMULA FOR DETERMINING TAX LEVY LIMIT

2012 Tax Levy	\$19,483,461
Tax Base Growth Factor	<u>1.0040%</u>
Based on State Tax and Finance determination of "quantity change," such as new construction, newly taxable status of existing property, or measurable improvements to taxable property within Newburgh.	
Plus PILOTs receivables in 2012	<u>\$ 218,243</u>
Allowable Levy Growth Factor	<u>1.02%</u>
Lesser of 1.02% or Inflation factor (percent change in CPI for the 12 month period ending 6 months before the start of the coming fiscal year over the prior 12-month period), but not lower than 1.00%.	
Less PILOT receivables in 2013	<u>\$ (280,369)</u>
	\$19,894,861
Plus expenditures from court orders, judgments arising from tort actions in excess of 5%	\$ 0
Plus Increases to the average actuarial contribution rate of pension funds in excess of 2%:	
Employees Retirement System	\$ 0
Police and Firefighters Retirement System -- Excess 1.10%	<u>\$ 122,617</u>
<u>Total Tax Levy Limit for 2013</u>	<u>\$20,017,478</u>

2013 BAH Request Detailed Summary by Department

Group		(All)	TYPE
FUND	Dept Name	200 Description	2013 BAH
General Fund		4 New Computers	\$ 4,300.00
	City Clerk		\$ 4,300.00
	City Clerk Total		\$ 4,300.00
		4 New Computers	\$ 4,300.00
	Corporation Counsel		\$ 683.00
		1 New Printer	\$ 4,983.00
	Corporation Counsel Total		\$ 3,600.00
		3 New Computers	\$ 12,000.00
	Data Processing		\$ 25,000.00
		Software License Backup	
		Camera Equipment to Stream Live Stream	
		Meetings live via Internet	
	Data Processing Total		\$ 40,600.00
		Hand Radio	\$ 450.00
	DPW		\$ 64,000.00
		2 New Pick up trucks to replace older ones	\$ 80,000.00
		Flatbed towtruck	\$ 144,450.00
	DPW Total		\$ 4,169.00
		Asst Engineer computer and software	\$ 4,169.00
	Engineering		\$ 2,150.00
	Engineering Total		\$ 1,400.00
		2 New Computers	\$ 3,550.00
	Executive Office		\$ 400,000.00
		1 Laptop	\$ 65,000.00
	Executive Office Total		\$ 150,000.00
		New Pumper Truck	\$ 25,000.00
	Fire Department		\$ 140,000.00
		2 SUV - Fire Prevention & New Chief Vehicle	\$ 3,500.00
		New Firefighter Gear	\$ 3,000.00
		New Radio Equipment	\$ 786,500.00
		Self-Contained Breathing Apparatus	
		Fire Hose Tester	
		4 gas multi meter	
	Fire Department Total		\$ 1,075.00
		1 New PC	\$ 300,000.00
	Records Management		\$ 301,075.00
	Program		\$ 25,000.00
		Electronic Document Management System	
	Records Management		\$ 53,750.00
	Program Total		\$ 24,000.00
		Prisoner Van	\$ 6,000.00
	Police		\$ 5,577.00
		Replace Computers Software and Licenses	\$ 4,400.00
		K-9 Car	\$ 4,098.60
		Animal Control Van	\$ 3,705.00
		2 Beanbag rifles	\$ 1,375.00
		TASER Guns - 200- X-26 15' (Yellow door)	\$ 1,020.00
		Cartridges	\$ 1,750.00
		4 New Guns	\$ 1,200.00
		TASER Guns - 3 Taser International model X-26 taser with 4 year warranty	\$ 525.00
		TASER Guns - 50 X-26 25' XP (Green door)	\$ 50,000.00
		Cartridges	\$ 12,000.00
		Cartridges	\$ 9,600.00
		SWAT - S-Surefire M300A Mini Scout LED - Weapon Light	\$ 30,000.00
		SWAT - S-MSA Advantage 1000 Full Masked Respirator	\$ 234,000.00
		SWAT - S-Streamlight TLR-1 Rail Mounted Tactical Pistol Light	\$ 100,000.00
		Mobile Data Terminals - New Computers to replace old	
		On Officer Taser Cameras for Incident review	
		Taser Camera upload Service-Evidence.com service for 20123	
		CSU Analysis software	
	Police Total		\$ 222,000.00
		Parking Meters	\$ 222,000.00
	Traffic Control		\$ 100,000.00
	Traffic Control Total		\$ 1,623,627.60
General Fund Total			\$ 222,000.00
Enterprise-Sanitation	Public Works - Sanitation		\$ 222,000.00
	Department	Sanitation Truck	\$ 222,000.00
	Public Works - Sanitation		\$ 222,000.00
Enterprise-Sanitation Total			\$ 1,845,627.60
Grand Total			

**CITY OF NEWBURGH
2013 PROPOSED BUDGET
PERSONNEL NUMBERS**

As of October 9, 2012

GENERAL FUND

	Current Personnel	2013	
		<u>Proposed</u>	<u>Increase/Decrease</u>
Police	79.5	79.5	0.0
Fire/Codes	67.0	67.0	0.0
DPW	20.0	20.5	0.5
Recreation	1.5	1.5	0.0
Total Services	168.0	168.5	0.5
General Gov't(1)	38.5	41.5	3.0
Total	206.5	210.0	3.5

ENTERPRISE FUNDS

Water	18.0	18.0	0.0
Sewer	7.0	7.0	0.0
Sanitation	18.0	18.0	0.0
Total	43.0	43.0	0

GRANT FUNDS

Grants (2)	11.5	11.5	0.0
Total	11.5	11.5	0.0

Combined Total	249.5	253.0	3.5
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(1) General Government includes Council, City Manager, Assessor, City Clerk, Corporation Counsel, Finance, Data Processing, Civil Service, City Engineer and Tax Collector departments.

(2) Grants includes 21st Century, CDBG, Police Impact.

CITY OF NEWBURGH
TOTAL EXPENDITURES \$ IN MILLIONS

GENERAL FUND

	2012	2013	
	<u>Adopted</u>	<u>Proposed</u>	<u>Increase/Decrease</u>
Police	\$ 12.8	\$ 14.1	\$ 1.3
Fire/Codes	\$ 9.8	\$ 10.6	\$ 0.8
DPW	\$ 4.1	\$ 4.4	\$ 0.3
Recreation	\$ 0.4	\$ 0.5	\$ 0.1
Total Services	\$ 27.1	\$ 29.6	\$ 2.5
General Gov't(1)	\$ 6.2	\$ 6.4	\$ 0.2
Self Insurance	\$ 2.5	\$ 2.4	\$ (0.1)
Debt	\$ 5.1	\$ 3.8	\$ (1.3)
Total	\$ 40.9	\$ 42.2	\$ 1.3

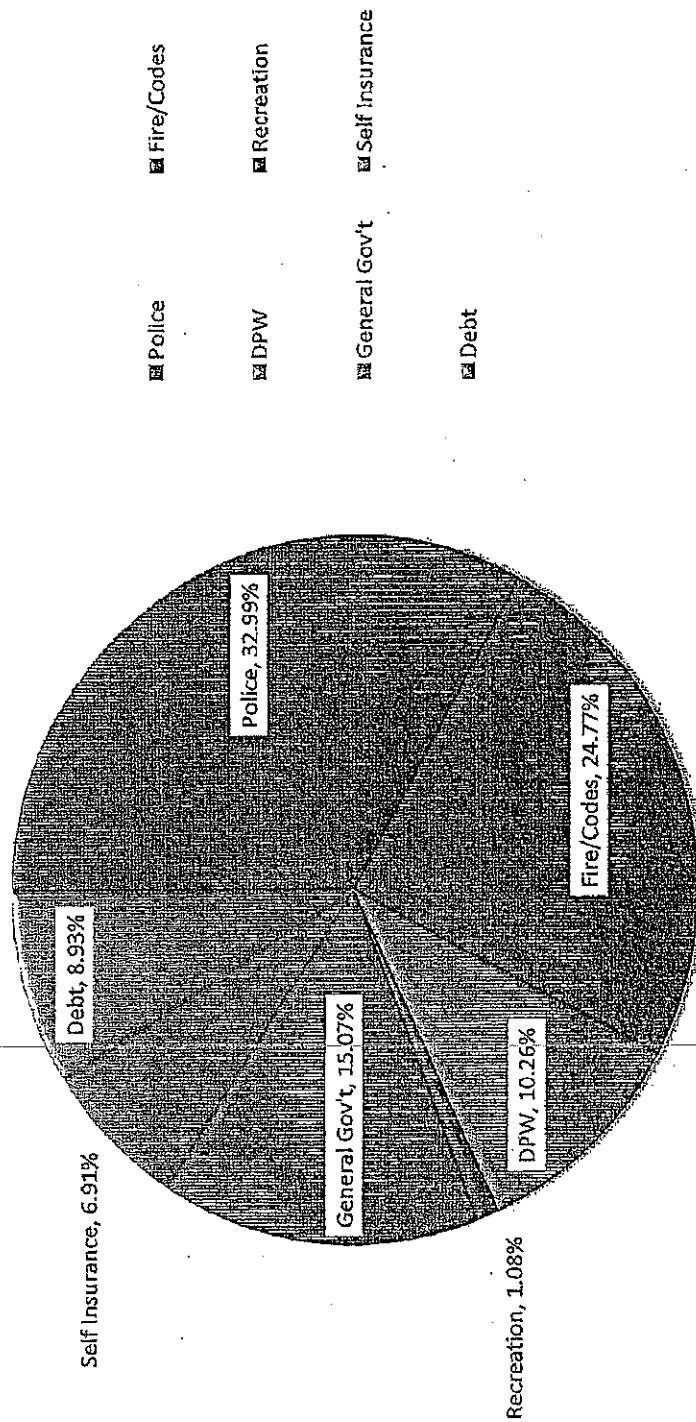
ENTERPRISE FUNDS

Water	\$ 6.1	\$ 6.4	\$ 0.3
Sewer	\$ 6.3	\$ 6.3	\$ -
Sanitation	\$ 3.0	\$ 3.2	\$ 0.2
Total	\$ 15.4	\$ 15.9	\$ 0.5

Combine Total	\$ 56.3	\$ 58.1	\$ 1.8
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(1) General Government includes Council, City Manager, Assessor, City Clerk, Corporation Counsel, Finance, Data Processing, Civil Service, City Engineer and Tax Collector departments.

Dept Exp % of Total Proposed Budget



CITY OF NEWBURGH
2013 PROPOSED BUDGET
PROPERTY TAX LEVY

As of October 9, 2012

	<u>PROPOSED 2013</u>	<u>ADOPTED 2012</u>	<u>PERCENT CHANGE</u>
PROPERTY			
TAX LEVY	<u>\$19,736,657</u>	<u>\$19,483,461</u>	<u>1.30%</u>
ASSESSMENTS:			
HOMESTEAD	\$607,974,483	\$680,576,170	-10.67%
NON-HOMESTEAD	<u>\$393,974,612</u>	<u>\$408,441,911</u>	<u>-3.54%</u>
	<u>\$1,001,949,095</u>	<u>\$1,089,018,081</u>	<u>-14.21%</u>
TAX RATES (PER \$1,000):			
HOMESTEAD	\$17.6480	\$15.6358	12.87%
NON-HOMESTEAD	\$22.8622	\$21.6483	5.61%

There being no further business to come before the Council the meeting
adjourned at 9:00 P.M.

LORENE VITEK
CITY CLERK

RESOLUTION NO.: 180 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION ADOPTING THE CITY OF NEWBURGH
HAZARD COMMUNICATION POLICY**

BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby adopts the City of Newburgh Hazard Communication Policy, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

CITY OF NEWBURGH
HAZARD COMMUNICATION PROGRAM
(Employee Right To Know)

PURPOSE

The purpose of this program is to ensure that the City of Newburgh is in compliance with the OSHA Hazard Communication Standard (HCS) 29 CFR 1910.1200 regarding hazardous materials in the workplace.

SCOPE

This program establishes requirements for the use of hazardous material labels and other hazard warning methods, Material Safety Data Sheets (MSDSs), hazardous materials evaluations, annual inventories, and employee information and training on hazardous materials. The program will ensure that:

- All employees have proper training and awareness of hazardous materials in the workplace.
- Material Safety Data Sheets (MSDS) are on file for employee access.
- Proper posting and container labeling are accomplished.

RESPONSIBILITIES

This Program applies to all employees, including contract employees, who may come into contact with or be exposed to hazardous materials at the workplace while performing their normal duties or during emergency conditions. It also applies to those who are involved in the purchase, transportation, or storage of hazardous materials.

Management Shall:

- A. Provide training, keep records of training, and provide copies of those records to appropriate supervisors.
- B. Ensure a list is maintained of all hazardous materials in the workplace.
- C. Ensure that MSDSs are readily available and the locations of MSDS information are identified to employees.

- D. Evaluate the hazard potential of new hazardous materials being introduced into the workplace and recommend safer alternatives, if available.
- E. Provide guidance for labeling of hazardous material containers.
- F. Ensure workplace inspections include evaluations of hazardous material safe handling and storage practices.

Supervisors Shall:

- A. Identify the hazardous materials normally associated with jobs under their supervision and make sure their employees receive the appropriate Hazard Communication training (both general and specialized) before they begin any work assignment involving hazardous materials.
- B. Notify management regarding the use of new hazardous materials. Whenever possible, the least hazardous substance will be procured.
- C. Notify management regarding new uses for existing hazardous materials.
- D. Ensure personnel employ the protective measures prescribed by MSDSs and local operating instructions when working with hazardous materials.
- E. Ensure personnel use, transport, and store hazardous materials in a safe manner.
- F. Ensure hazardous material containers are labeled properly (including portable containers).
- G. Ensure current MSDSs are available for the hazardous materials used.

Employees Shall:

- A. Familiarize themselves with hazard warnings, hazard labels, and MSDSs so they can use this information where needed.
- B. Employ the protective measures prescribed by MSDSs and local operating instructions when working with hazardous materials.

Contractor Requirements:

Contractors are required to have their own Hazard Communication Program. However, the City of Newburgh must provide the contractors with information specific to City operations. The contractors must, in turn, convey this information to their employees.

TRAINING**A. Initial Training**

For employees whose duties require them to work around hazardous materials, initial training shall be provided by Management before they begin their work assignment. This training will cover the following topics:

1. A summary of the standard and a copy of the written program.
2. Operations in the work area where hazardous materials are present.
3. How to read warning labels and identify the presence or release of hazardous materials.
4. Emergency procedures for spills/accidents, including fire hazards, first aid, clean-up, and disposal.
5. Location and availability of this Hazard Communication Program, including hazardous materials lists and MSDSs.
6. How to read an MSDS and use it to identify (at a minimum):
 - (a) Physical and Health Hazards
 - (b) First Aid Procedures
 - (c) Protective Measures
 - (d) Storage and Handling Procedures
 - (e) Spill Response Procedures

B. Training for Non-Routine Tasks

Periodically, employees are required to perform non-routine tasks which may involve hazardous materials. Before starting work on such projects, affected employees shall be given information by their supervisor about the hazards to which they may be exposed.

C. Specialized Training

Specialized training shall also be provided on an as-needed basis as new hazards are introduced into the workplace and for hazards that are newly discovered (e.g., from revised MSDS information).

D. Recurring Training

On-going training will be provided to employees. The frequency of this training is designed to maintain a heightened level of hazardous material awareness. Hazardous Material awareness training should be conducted at least annually.

HAZARDOUS MATERIAL INFORMATION

- A. All purchases of hazardous materials must include the MSDS with delivery.
- B. A list of workplace hazardous materials can be found in MSDS binders/files.
- C. Workplace MSDSs are located in the Right to Know Station in every department and shall be readily available to all employees.
- D. All MSDSs must be fully completed and received either prior to or at the time of the first shipment of any potentially hazardous chemical is purchased from a vendor.

WARNINGS & LABELING

A. All containers of hazardous materials are to be labeled with the following information:

- (1) Complete identity of the material.
- (2) Appropriate hazard warning and safety precautions.
- (3) Name and address of the manufacturer or other responsible party.

B. If a secondary container is used, it must be labeled with either a copy of the original label or with appropriate generic labels.

C. All warnings and labels must be legible, in English, and prominently displayed on containers, or readily available in the work area throughout each work shift.

ADDITIONAL INFORMATION

Further information on this written program, the Hazard Communication Standard, and applicable Material Safety Data Sheets is available at the 845- 569-7340.

Date Adopted: _____

RESOLUTION NO.: 181 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION TO REJECT A BID MADE BY EDITH RIVERA
FOR CITY OWNED PROPERTY AT PUBLIC AUCTION**

WHEREAS, this Council did, by Resolution No.:122-2012, of July 16, 2012, authorize the sale of several properties at public auction; and

WHEREAS, said public auction was duly held on October 3, 2012; and

WHEREAS, Edith Rivera, the high bidder for Parcel No.: 20, 251 Third Street, Section 22, Block 1, Lot 17, has submitted a written request for the purchase to be cancelled and the deposit made at the auction be refunded; and

WHEREAS, this Council has determined that rejecting the bid is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the bid received for Parcel No.: 20, 251 Third Street, Section 22, Block 1, Lot 17, at the City of Newburgh October 3, 2012 property auction be and is hereby rejected; and

BE IT FURTHER RESOLVED, that the City Comptroller be and she is hereby authorized to refund the deposit and buyers premium paid by Edith Rivera.

RESOLUTION NO.: 182 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION TO CONFIRM THE SALE OF SEVERAL
CITY OWNED PROPERTIES AT AUCTION AND
TO AUTHORIZE THE EXECUTION OF DEEDS
TO THE RESPECTIVE BUYERS**

WHEREAS, this Council did, by Resolution No.:121-2012, of July 16, 2012, authorize the sale of several properties at public auction; and

WHEREAS, said public auction was duly held on October 3, 2012;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following properties to the indicated purchasers be and hereby is confirmed and the City Manager is hereby authorized and directed to execute and deliver a deed to said purchasers upon receipt of the indicated purchase price in cash, money order or bank check, made payable to **THE CITY OF NEWBURGH**, on or before December 3, 2012, subject to the annexed **Terms and Conditions of the Auction**.

<u>Property</u>	<u>S - B - L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
359 Ann Street	34 - 3 - 9	Greca, Inc.	\$32,000.00
61 Campbell Street	23 - 7 - 4	Kathryn Zambito	\$ 5,000.00
87 Carson Avenue	45 - 8 - 10	Steven Rice	\$ 9,500.00
96 Carter Street	22 - 1 - 37	Kareem Earle	\$ 7,500.00
22 City Terrace	29 - 5 - 27	Cristhian Castro	\$ 2,000.00
304 First Street	22 - 6 - 34	Ivan Miller	\$54,000.00
360 First Street	21 - 2 - 15	Vincent Browne	\$ 3,500.00
54 Fowler Avenue	13 - 5 - 22	Cristhian Castro	\$ 1,100.00

<u>Property</u>	<u>S - B - L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
330 Liberty Street	12 - 1 - 16	Percy Smith, Jr.	\$ 2,200.00
374 Liberty Street	10 - 1 - 31	Kathryn Zambito	\$22,500.00
13 Locust Street	25 - 5 - 21	Richard Massimi	\$13,000.00
88 Maple Street	25 - 1 - 52	Cristhian Castro	\$ 7,500.00
255 Powell Avenue	7 - 7 - 18	C. L. Dexter Properties, LLC	\$15,500.00
163 S. William Street	45 - 2 - 2	Jorge A. Arias	\$32,000.00
162 South Street	11 - 3 - 21	Redzep Prelvukic	\$18,500.00
545 South Street	14 - 3 - 9.1	Kathryn Zambito	\$ 7,500.00
7 Van Ness Street	29 - 6 - 3	Fredy Arias	\$38,000.00
144 W. Parmenter Street	38 - 2 - 51	Edith Rivera	\$25,000.00
190 W. Parmenter Street	38 - 1 - 15	Raymond LaChance & Gordon LaChance	\$19,000.00
16 William Street	35 - 3 - 14	Newburgh Property Realty	\$12,000.00
50 William Street	38 - 2 - 36	Chris Schenk	\$ 6,000.00
79 William Street	39 - 2 - 23	All Go To Guys Management, LLC	\$17,000.00
85 William Street	39 - 2 - 21	Agnieszka Pogorzelska	\$22,500.00
87 William Street	39 - 2 - 20	Francisco Mendoza	\$10,500.00
122 William Street	44 - 3 - 17	Monique Bowman	\$10,000.00
135 Wisner Avenue	13 - 5 - 10	Edith Rivera	\$49,500.00

Terms and Conditions of the Auction

DATE: October 3, 2012

TIME: 11:00 A.M.

**LOCATION: Homewood Suites
Newburgh N.Y. 12550**

STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and most of all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture, except for these properties not acquired by in rem tax foreclosure as follows: 33 City Terrace, Section 29, Block 4, Lot 16 and 251 Third Street, Section 22, Block 1, Lot 17.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2009-2010, 2010-2011 and 2011-2012 school taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the public auction.
4. The properties are sold subject to unpaid school taxes for the tax years of 2009-2010, 2010-2011 and 2011-2012, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2009-2010, 2010-2011 and 2011-2012, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.**

For all properties other than 16 William Street, the deed will contain provisions stating that the purchaser is required to either: a) both obtain a building permit within twelve (12) months of the date of the deed and to rehabilitate any existing building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed, or b) complete demolition of such building within twelve (12) months of the date of the deed. Within such eighteen (18) month rehabilitation period, the purchaser must either: i) obtain a Certificate of Occupancy for all buildings on the property, or ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy. The deed shall also require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. The deed shall also require that the property may not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued for rehabilitation of the building or demolition of the building is completed. Failure to comply with any of the requirements in the deed shall cause the title to the property to revert to the City of Newburgh. A written request made to the City Manager for an extension of the twelve (12) month building permit period or the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to obtain a building permit or rehabilitate of up to, but not to exceed, three (3) months.

Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.

For 16 William Street, a Certificate of Appropriateness has been issued by the Architectural Review Commission to permit demolition of the existing building located thereon. The deed to such property shall require that demolition of such building be completed within six (6) months of the deed, and shall also provide that the property may not be conveyed to any other person before demolition of the building is completed; otherwise, title shall revert to the City of Newburgh.

6. A property with no existing building and which is substandard in size under zoning, purchased by an adjoining property owner must be merged with the adjoining property at title closing.
7. Properties identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8 shall be sold as a package. The deed shall contain a provision that the successful bidder shall combine the premises herein, identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8, as one lot of record within one (1) year of the date of conveyance.
8. All informational tools, such as slides, tax maps, deeds, photos, auction listings, auction catalogs, auction signs, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. THE CITY, THE AUCTIONEER, AND THE BROKER MAKE NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.
9. The City of Newburgh reserves the right, in its sole discretion, to withdraw from the auction any of the properties listed on the schedule of real property.
10. Notice is hereby given that the properties identified as 61 Campbell Street, Section 23, Block 7, Lot 4; 87 Carson Avenue, Section 45, Block 8, Lot 10; 146 Chambers Street, Section 18, Block 5, Lot 29; 22 City Terrace, Section 29, Block 5, Lot 27; 33 City Terrace, Section 29, Block 4, Lot 16; 279 Liberty Street, Section 18, Block 5, Lot 8; 330 Liberty Street, Section 12, Block 1, Lot 16; 374 Liberty Street, Section 10, Block 1, Lot 31; 163 S. William Street, Section 45, Block 2, Lot 2; 162 South Street, Section 11, Block 3, Lot 21; 81 South Street, Section 19, Block 1, Lot 5; 251 Third Street, Section 22, Block 1, Lot 17; 7-9 Van Ness Street, Section 29, Block 6, Lot 3; 16 William Street, Section 35, Block 3, Lot 14; 50 William Street, Section 38, Block 2, Lot 36; 122 William Street, Section 44, Block 3, Lot 17; 79 William Street, Section 39, Block 2, Lot 23; 85 William Street, Section 39, Block 2, Lot 21; and 87 William Street, Section 39, Block 2, Lot 20 lie within the East End Historic District as designated upon the zoning or tax map. These parcels are being sold subject to all provisions of law applicable thereto and it is the sole responsibility of any bidder to redevelop such parcel so designated in accordance with same. In addition to the foregoing, 16 William Street has been issued a Certificate of Appropriateness by the Architectural Review Commission to permit demolition of the existing building located thereon.
11. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
12. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
13. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchasers shall be responsible for the correction of such conditions when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Bidder acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Bidder also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

AT THE AUCTION

14. All bidders are required to register and provide suitable personal identification, such as a driver's license and passport, at registration. Auctioneer reserves the right to decline registration if identification is not sufficient. Individuals, other than lawyers, acting on behalf of others, not in attendance at the auction, must produce a "Power of Attorney" duly executed and notarized. Incorporated entities, (Inc. , Corp., LLC, etc.) are required to provide a corporate resolution with a corporate seal affixed where applicable, authorizing the purchase of real property, prior to the transfer of title, and are encouraged to provide same at registration,
15. All bidders are required to use the bidder number issued to them for all purposes associated with the auction. A bidder may not bid on behalf of a party who is on the prohibited bidder list. A party will be added to such list if he has defaulted in payment of a purchase price or taxes following a purchase. Previously defaulting parties are not allowed to bid.
16. The former owner of the property, or his agent, shall not be permitted to bid on the property or purchase same at the public auction, unless the amount exceeds the amount of tax arrears. If the former owner reacquires the property, all liens existing prior to the foreclosure, will be reinstated and the purchaser (former owner) must sign an agreement to reinstate the liens.
17. The auctioneer's decision regarding any disputes is final, and the auctioneer reserves the right to reject any bid that is not an appreciable advancement over the preceding bid.
18. The Successful Bidder will execute an Offer to Purchase form at the auction for each property he/she is the successful bidder on. The approval of each bid by Resolution of the Newburgh City Council will bind the bidder only and will not constitute a Contract of Sale and the City reserves the right to reject any bid prior to the closing of title and the recording of the deed.
19. The Successful Bidder shall provide information necessary to complete and shall execute the necessary forms and documents required for recording the deed in the Orange County Clerk's Office. The bidder executing the auction terms and conditions of sale may not assign or otherwise transfer his right to complete the bid, unless the City agrees in writing. The deed prepared will be in the name of the successful bidder (and spouse) only. No third party bidding will be accepted, unless the bidder identifies that he is bidding as an agent for a disclosed principal, or unless the bidder is a lawyer.
20. The Successful Bidder shall be responsible for the payment of an eleven percent (11%) buyer's premium (1% buyer's premium discount for cash and other guaranteed funds) in addition to the accepted purchase price, an advertising fee of 1.5% of the bid price, and the closing fees/costs. The "buyer's premium" is the fee/commission earned by the auctioneer. Accepted purchase price is the amount of the bid by the highest bidder, which has been approved by the Newburgh City Council.
21. All required deposits must be paid in full for all successful bids immediately upon being declared the successful bidder. Any successful bidder, who fails to tender the deposit, will be forbidden to participate in this or any other auction. Any parcels which the City did not receive deposits for, per these terms and conditions, will be considered to be defaulted, and the bidder will be disqualified from further bidding. Furthermore, upon a default in payment for any one parcel, either during the auction or subsequent thereto, the bidder shall not be permitted to purchase any other parcel(s) bid on, and any deposit monies paid thereon will be forfeited to the City. Additionally, if a declared high bidder at the auction leaves the auction without making the required down payment, he/she will be prohibited from participating at future auctions held by NYSAuctions.com, Haroff Auction & Realty, Inc., Absolute Auctions & Realty, Inc., and the City of Newburgh reserves the right to take legal action against this high bidder.
22. The terms "bidder", "highest bidder" and "successful bidder" shall all have the same meaning.
23. \$1,000.00 or 20% of the total contract price (total contract price is the combination of the high bid and the buyer's premium, as defined in Section 23 of these terms and conditions), whichever is higher, shall be paid as a down payment on the day of the auction upon execution of an Offer to Purchase Form. Total contract prices selling for less than \$1,000.00 must be paid in full at auction, including all closing costs will be paid with the down payment on the day of the auction for each parcel; to wit; (a) New York State Transfer Tax [\$2.00 for each \$500.00 of the purchase/bid price]; (b) Filing Fee for the Real Property Transfer Report [\$125.00 for residential and \$250 for commercial]; (c) Filing Fee for combined Gains Transfer Tax Affidavit [\$5.00]; and (d) all fees required by the Orange County Clerk for recording of the deed [\$40.00 to record one page deed; \$5.00 for each additional page; and \$.50 for any cross reference]. *Closing costs may be subject to an increase in fees as required by law, without notice. All*

recording costs and transfer taxes shall be paid by the purchaser. **All deposits must be made in credit/debit card (Master Card or VISA), cash or guaranteed funds (bank checks/tellers checks/cashiers check) made payable to the "City of Newburgh Comptroller" and drawn on banks insured by the Federal Deposit Insurance Corporation (FDIC). No exceptions. Wire transfers will not be accepted. The City Comptroller may refund overage of a deposit made in excess of the total contract price plus closing costs/fees once the funds have cleared, or apply said sum to the balance owing on the purchase price.**

AFTER THE AUCTION

24. All bids shall be subject to approval by the Newburgh City Council, which shall have the right, in the Council's sole discretion, to reject any bid for any reason whatsoever.
25. The entire balance of the accepted purchase price, the buyer's premium as defined in Section 19 of these terms and conditions, and all closing costs/fees must be paid by cash or guaranteed funds to the City of Newburgh Comptroller's Office on or before December 3, 2012. *The City of Newburgh does not accept credit card payments for the balance of the purchase price, buyer's premium and closing costs/fees after the date of the auction.* **The City is not required to send notice of acceptance or any other notice to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the deposit shall be forfeited.** The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should any bidder fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the bidder. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
26. Previously defaulting parties from prior auctions or other sales of city property are not allowed to bid. If a purchaser owes any outstanding and delinquent taxes to City of Newburgh, those delinquent taxes must be paid in full prior to closing on any purchases made at this auction. Failure to comply with this provision will be grounds for default and forfeiture of any deposits paid.
27. If the successful bidder fails to tender such amount due by the close of business on December 3, 2012, then, the City may, but is not obligated to offer any unsold property to the second highest bidder. All terms and conditions for the sale set forth herein above shall apply to the second highest bidder and/or any other purchaser.
28. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchasers agree that they shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
29. All sales shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty arising from this sale.
30. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
31. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

32. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
33. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
34. The successful purchaser on each auction parcel must remove the auction sign within seven (7) days after the recording of the deed.
35. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 183 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION TO CONFIRM THE SALE OF A
CITY OWNED PROPERTY AT AUCTION AND
TO AUTHORIZE THE EXECUTION OF A DEED
TO THE RESPECTIVE BUYER**

WHEREAS, this Council did, by Resolution No.:122-2012, of July 16, 2012, authorize the sale of several properties at public auction; and

WHEREAS, said public auction was duly held on October 3, 2012;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is hereby authorized and directed to execute and deliver a deed to said purchaser upon receipt of the indicated purchase price in cash, money order or bank check, made payable to **THE CITY OF NEWBURGH**, on or before December 3, 2012, subject to the annexed **Terms and Conditions of the Auction**.

<u>Property</u>	<u>S - B - L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
33 City Terrace	29 - 4 - 16	Cristhian Castro	\$ 1,000.00

Terms and Conditions of the Auction

DATE: October 3, 2012

TIME: 11:00 A.M.

**LOCATION: Homewood Suites
Newburgh N.Y. 12550**

STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and most of all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture, except for these properties not acquired by in rem tax foreclosure as follows: 33 City Terrace, Section 29, Block 4, Lot 16 and 251 Third Street, Section 22, Block 1, Lot 17.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2009-2010, 2010-2011 and 2011-2012 school taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the public auction.
4. The properties are sold subject to unpaid school taxes for the tax years of 2009-2010, 2010-2011 and 2011-2012, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2009-2010, 2010-2011 and 2011-2012, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.**

For all properties other than 16 William Street, the deed will contain provisions stating that the purchaser is required to either: a) both obtain a building permit within twelve (12) months of the date of the deed and to rehabilitate any existing building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed, or b) complete demolition of such building within twelve (12) months of the date of the deed. Within such eighteen (18) month rehabilitation period, the purchaser must either: i) obtain a Certificate of Occupancy for all buildings on the property, or ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy. The deed shall also require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. The deed shall also require that the property may not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued for rehabilitation of the building or demolition of the building is completed. Failure to comply with any of the requirements in the deed shall cause the title to the property to revert to the City of Newburgh. A written request made to the City Manager for an extension of the twelve (12) month building permit period or the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to obtain a building permit or rehabilitate of up to, but not to exceed, three (3) months.

Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.

For 16 William Street, a Certificate of Appropriateness has been issued by the Architectural Review Commission to permit demolition of the existing building located thereon. The deed to such property shall require that demolition of such building be completed within six (6) months of the deed, and shall also provide that the property may not be conveyed to any other person before demolition of the building is completed; otherwise, title shall revert to the City of Newburgh.

6. A property with no existing building and which is substandard in size under zoning, purchased by an adjoining property owner must be merged with the adjoining property at title closing.
7. Properties identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8 shall be sold as a package. The deed shall contain a provision that the successful bidder shall combine the premises herein, identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8, as one lot of record within one (1) year of the date of conveyance.
8. All informational tools, such as slides, tax maps, deeds, photos, auction listings, auction catalogs, auction signs, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. THE CITY, THE AUCTIONEER, AND THE BROKER MAKE NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.
9. The City of Newburgh reserves the right, in its sole discretion, to withdraw from the auction any of the properties listed on the schedule of real property.
10. Notice is hereby given that the properties identified as 61 Campbell Street, Section 23, Block 7, Lot 4; 87 Carson Avenue, Section 45, Block 8, Lot 10; 146 Chambers Street, Section 18, Block 5, Lot 29; 22 City Terrace, Section 29, Block 5, Lot 27; 33 City Terrace, Section 29, Block 4, Lot 16; 279 Liberty Street, Section 18, Block 5, Lot 8; 330 Liberty Street, Section 12, Block 1, Lot 16; 374 Liberty Street, Section 10, Block 1, Lot 31; 163 S. William Street, Section 45, Block 2, Lot 2; 162 South Street, Section 11, Block 3, Lot 21; 81 South Street, Section 19, Block 1, Lot 5; 251 Third Street, Section 22, Block 1, Lot 17; 7-9 Van Ness Street, Section 29, Block 6, Lot 3; 16 William Street, Section 35, Block 3, Lot 14; 50 William Street, Section 38, Block 2, Lot 36; 122 William Street, Section 44, Block 3, Lot 17; 79 William Street, Section 39, Block 2, Lot 23; 85 William Street, Section 39, Block 2, Lot 21; and 87 William Street, Section 39, Block 2, Lot 20 lie within the East End Historic District as designated upon the zoning or tax map. These parcels are being sold subject to all provisions of law applicable thereto and it is the sole responsibility of any bidder to redevelop such parcel so designated in accordance with same. In addition to the foregoing, 16 William Street has been issued a Certificate of Appropriateness by the Architectural Review Commission to permit demolition of the existing building located thereon.
11. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
12. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
13. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchasers shall be responsible for the correction of such conditions when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Bidder acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Bidder also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

AT THE AUCTION

14. All bidders are required to register and provide suitable personal identification, such as a driver's license and passport, at registration. Auctioneer reserves the right to decline registration if identification is not sufficient. Individuals, other than lawyers, acting on behalf of others, not in attendance at the auction, must produce a "Power of Attorney" duly executed and notarized. Incorporated entities, (Inc., Corp., LLC, etc.) are required to provide a corporate resolution with a corporate seal affixed where applicable, authorizing the purchase of real property, prior to the transfer of title, and are encouraged to provide same at registration,
15. All bidders are required to use the bidder number issued to them for all purposes associated with the auction. A bidder may not bid on behalf of a party who is on the prohibited bidder list. A party will be added to such list if he has defaulted in payment of a purchase price or taxes following a purchase. Previously defaulting parties are not allowed to bid.
16. The former owner of the property, or his agent, shall not be permitted to bid on the property or purchase same at the public auction, unless the amount exceeds the amount of tax arrears. If the former owner reacquires the property, all liens existing prior to the foreclosure, will be reinstated and the purchaser (former owner) must sign an agreement to reinstate the liens.
17. The auctioneer's decision regarding any disputes is final, and the auctioneer reserves the right to reject any bid that is not an appreciable advancement over the preceding bid.
18. The Successful Bidder will execute an Offer to Purchase form at the auction for each property he/she is the successful bidder on. The approval of each bid by Resolution of the Newburgh City Council will bind the bidder only and will not constitute a Contract of Sale and the City reserves the right to reject any bid prior to the closing of title and the recording of the deed.
19. The Successful Bidder shall provide information necessary to complete and shall execute the necessary forms and documents required for recording the deed in the Orange County Clerk's Office. The bidder executing the auction terms and conditions of sale may not assign or otherwise transfer his right to complete the bid, unless the City agrees in writing. The deed prepared will be in the name of the successful bidder (and spouse) only. No third party bidding will be accepted, unless the bidder identifies that he is bidding as an agent for a disclosed principal, or unless the bidder is a lawyer.
20. The Successful Bidder shall be responsible for the payment of an eleven percent (11%) buyer's premium (1% buyer's premium discount for cash and other guaranteed funds) in addition to the accepted purchase price, an advertising fee of 1.5% of the bid price, and the closing fees/costs. The "buyer's premium" is the fee/commission earned by the auctioneer. Accepted purchase price is the amount of the bid by the highest bidder, which has been approved by the Newburgh City Council.
21. All required deposits must be paid in full for all successful bids immediately upon being declared the successful bidder. Any successful bidder, who fails to tender the deposit, will be forbidden to participate in this or any other auction. Any parcels which the City did not receive deposits for, per these terms and conditions, will be considered to be defaulted, and the bidder will be disqualified from further bidding. Furthermore, upon a default in payment for any one parcel, either during the auction or subsequent thereto, the bidder shall not be permitted to purchase any other parcel(s) bid on, and any deposit monies paid thereon will be forfeited to the City. Additionally, if a declared high bidder at the auction leaves the auction without making the required down payment, he/she will be prohibited from participating at future auctions held by NYSAuctions.com, Haroff Auction & Realty, Inc., Absolute Auctions & Realty, Inc., and the City of Newburgh reserves the right to take legal action against this high bidder.
22. The terms "bidder", "highest bidder" and "successful bidder" shall all have the same meaning.
23. \$1,000.00 or 20% of the total contract price (total contract price is the combination of the high bid and the buyer's premium, as defined in Section 23 of these terms and conditions), whichever is higher, shall be paid as a down payment on the day of the auction upon execution of an Offer to Purchase Form. Total contract prices selling for less than \$1,000.00 must be paid in full at auction, including all closing costs will be paid with the down payment on the day of the auction for each parcel; to wit; (a) New York State Transfer Tax [\$2.00 for each \$500.00 of the purchase/bid price]; (b) Filing Fee for the Real Property Transfer Report [\$125.00 for residential and \$250 for commercial]; (c) Filing Fee for combined Gains Transfer Tax Affidavit [\$5.00]; and (d) all fees required by the Orange County Clerk for recording of the deed [\$40.00 to record one page deed; \$5.00 for each additional page; and \$.50 for any cross reference]. *Closing costs may be subject to an increase in fees as required by law, without notice.* All

recording costs and transfer taxes shall be paid by the purchaser. **All deposits must be made in credit/debit card (Master Card or VISA), cash or guaranteed funds (bank checks/tellers checks/cashiers check) made payable to the "City of Newburgh Comptroller" and drawn on banks insured by the Federal Deposit Insurance Corporation (FDIC). No exceptions. Wire transfers will not be accepted. The City Comptroller may refund overage of a deposit made in excess of the total contract price plus closing costs/fees once the funds have cleared, or apply said sum to the balance owing on the purchase price.**

AFTER THE AUCTION

24. All bids shall be subject to approval by the Newburgh City Council, which shall have the right, in the Council's sole discretion, to reject any bid for any reason whatsoever.
25. The entire balance of the accepted purchase price, the buyer's premium as defined in Section 19 of these terms and conditions, and all closing costs/fees must be paid by cash or guaranteed funds to the City of Newburgh Comptroller's Office on or before December 3, 2012. *The City of Newburgh does not accept credit card payments for the balance of the purchase price, buyer's premium and closing costs/fees after the date of the auction.* **The City is not required to send notice of acceptance or any other notice to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the deposit shall be forfeited.** The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should any bidder fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the bidder. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
26. Previously defaulting parties from prior auctions or other sales of city property are not allowed to bid. If a purchaser owes any outstanding and delinquent taxes to City of Newburgh, those delinquent taxes must be paid in full prior to closing on any purchases made at this auction. Failure to comply with this provision will be grounds for default and forfeiture of any deposits paid.
27. If the successful bidder fails to tender such amount due by the close of business on December 3, 2012, then, the City may, but is not obligated to offer any unsold property to the second highest bidder. All terms and conditions for the sale set forth herein above shall apply to the second highest bidder and/or any other purchaser.
28. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchasers agree that they shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
29. All sales shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty arising from this sale.
30. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
31. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

32. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
33. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
34. The successful purchaser on each auction parcel must remove the auction sign within seven (7) days after the recording of the deed.
35. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 184-2012

OF

OCTOBER 22, 2012

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO TANYA MAISONET
TO THE PREMISES KNOWN AS 93 CHAMBERS STREET
(SECTION 23, BLOCK 3, LOT 8)**

WHEREAS, on May 5, 1999, the City of Newburgh conveyed property located at 93 Chambers Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 23, Block 3, Lot 8, to Tanya Maisonet; and

WHEREAS, the law firm of Sweeney, Gallo, Reich & Bolz, LLP, on behalf of their client and current property owner Fannie Mae a/k/a Federal National Mortgage Association has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files 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 and 4 of the aforementioned deed.

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 93 Chambers Street, Section 23, Block 3, Lot 8, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3 and 4 in a deed dated May 5, 1999, from the CITY OF NEWBURGH to TANYA MAISONET, recorded in the Orange County Clerk's Office on March 16, 2001, in Liber 5480 of Deeds at Page 133 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 October 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.: 185 -2012

OF

OCTOBER 22, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH
COLLECTION BUREAU HUDSON VALLEY, INC. ("CB/HV")
TO PROVIDE FOR COLLECTION SERVICES**

WHEREAS, the City of Newburgh wishes to enter into the attached Collection Agreement with Collection Bureau Hudson Valley, Inc. ("CB/HV"); and

WHEREAS, this agreement will authorize CB/HV to commence collection procedures against debtors submitted for collection; and

WHEREAS, the fee for the agreement will be Thirty (30%) Percent of all monies collected; and

WHEREAS, this Council has reviewed such agreement and has determined it to be in the best interest of the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute the attached agreement to provide for collection services with Collection Bureau Hudson Valley, Inc. in the general form attached hereto, with such other terms and conditions as may be required by Corporation Counsel and the City Manager, same as being in the best interest of the City of Newburgh.



Collection Bureau Hudson Valley, Inc

155 North Plank Road • P.O. Box 831 • Newburgh, NY 12550-0831 • Phone 845 561-6880 • 800 745-1395 • Fax 845 913-7403

COLLECTION AGREEMENT

We (Client) hereby authorize Collection Bureau Hudson Valley, Inc. (CBHV) to commence collection procedures against all debtors submitted for collection. Client will submit a copy of an invoice or statement for each account along with the corresponding debtor information.

CLIENT _____

ADDRESS _____

CITY _____ **STATE** _____ **ZIP** _____

TELEPHONE NO. _____ **CONTACT PERSON** _____

FEE SCHEDULE: The commission on all accounts will be 30% of all monies paid regardless of size, age or legal action taken on account.

- CBHV normally acknowledges receipt of your accounts with in five working days
- CBHV will provide all periodic, on-demand and custom reports at no charge
- CBHV never charges you unless we collect

In the event legal action is brought against the client (The City of Newburgh) do to the actions of Collection Bureau of the Hudson Valley Inc., the client would be covered under CBHV's Errors and Omissions/Professional Liability.

CBHV will maintain a \$2,000,000 E & O policy.

Client hereby authorizes CBHV to employ an attorney to represent the Client. The client expressly authorizes CBHV to act in place of the Client when dealing with the attorney and authorizes CBHV to receive any remittance less attorney fees. If CBHV files suit on your accounts, CBHV will advance all legal fees, and is entitled to all monies over and above the principal amount sued for. On accounts requiring legal action, Client will receive written notice for authorization to litigate.

Client hereby authorizes CBHV to endorse for deposit in Clients name and on its behalf remittances received on all accounts. All checks, notes, drafts or other for payment will be deposited into CBHV's trust account. CBHV will remit all monies due client by the end of the month, along with an itemized statement.



Collection Bureau Hudson Valley, Inc

155 North Plank Road • P.O. Box 831 • Newburgh, NY 12550-0831 • Phone 845 561-6880 • 800 745-1395 • Fax 845 913-7403

It is understood that upon acknowledgement, CBHV is to receive our commission on all monies collected by us, paid to you or any other agent, by debtor or third party. Upon acknowledgement, accounts shall remain with CBHV for 12 months unless a mutual agreement is made to return an account to Client prior to that time.

Unless otherwise expressly provided herein, all notices required or permitted under the Trial Services Agreement or this Addendum shall be in writing and shall be transmitted by hand or by U.S. Postal Service or an overnight express service, addressed as follows:

If to the City: City of Newburgh
 Office of the City Manager
 83 Broadway, City Hall
 Newburgh, New York 12550

With a copy to: City of Newburgh
 Office of the Corporation Counsel
 83 Broadway, City Hall
 Newburgh, New York 12550

If to CBHV: Collection Bureau of the Hudson valley
 155 North Plank Road
 Newburgh, New York 12550

This Agreement, contains the entire agreement between the parties as to subject matter herein and supersedes all prior agreements whether oral or written between the parties hereto. This Agreement may be modified only by a written instrument signed by the parties.

SIGNATURE _____ TITLE _____ DATE _____

RESOLUTION NO.: 186 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH COMPUTEL CONSULTANTS
TO PROVIDE UTILITY BILLING ANALYSIS SERVICES
ON BEHALF OF THE CITY OF NEWBURGH**

WHEREAS, the City of Newburgh wishes to enter into the attached Consulting Agreement with Computel Consultants ("COMPUTEL") to provide Utility Billing Analysis Services for NYCOM Member Municipalities; and

WHEREAS, this agreement will authorize COMPUTEL to review the City's telephone, electric (including street lighting), natural gas accounts to identify, correct and secure funds for overcharges and to review the Cable Television Franchise agreements to identify underpayments of franchise fees during the prior six-year time period; and

WHEREAS, it is in the best interests of the City to retain the professional services of COMPUTEL to provide utility billing analysis services on a one time fee of forty (40%) percent of any and all recovered refunds and/or credits;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter in a Consulting Agreement in the general form attached hereto, with such other terms and conditions as may be required by Corporation Counsel and the City Manager, same as being in the best interest of the City of Newburgh with Computel Consultants to provide professional services in connection with utility billing analysis services on behalf of the City of Newburgh for a one time fee of forty (40%) percent of any and all recovered refunds and/or credits.

COMPUTEL CONSULTANTS

P.O. Box 35 ♦ Earlville, New York 13332 ♦ (800) 724-9859 ♦ Fax (315) 691-4311

September 26, 2012

Ms. Cheryl Gross
City of Newburgh
City Hall - 83 Broadway
Newburgh, New York 12550

Dear Ms. Gross,

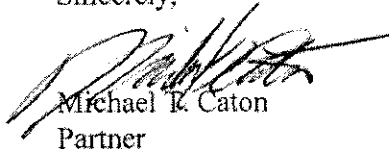
Thanks for your interest in the NYCOM USA program. In addition to a proposal explaining what we do and how we get paid, I've enclosed our Consulting Agreement. As a NYCOM member, you'll receive our special discounted contingency fee rate of 40%. If we don't secure a refund for you - there is no charge for the service. Also included in this package are the Letters of Authority we use to get information directly from your utility providers. Pending your approval, we're prepared to review your electric (including street lighting), gas, and telephone accounts, as well as your Cable TV franchise agreements.

In order to begin the process we will need the following items returned to us:

- the signed Consulting Agreement - make a copy for your records.
- the completed Letters of Authority for your utility vendors. **Please copy each letter of authority onto your letterhead before filling in the requested information.** Where it asks for account/billing numbers we just need the main account number from the top of each bill you receive. Attach separate sheets if it's easier. If you receive service from any other utility providers, either in addition to or in place of those listed, we'll need a separate letter of authority in a similar format to those provided.
- return the original Consulting Agreement and the completed Letters of Authority (on your letterhead) to us at the address listed above.
- in performing our Cable audit, we'll need to review the terms of all franchise agreements that have been in effect during the past six years. Your Verizon franchise agreement is available on the PSC website, but it would be helpful if you could send us a copy of your current Time Warner franchise agreement.

We've designed our service to take up as little of your time as possible. After reviewing the enclosed information, please call me with any questions you have. Otherwise, as soon as we receive the above information we will begin our review. Thanks again for your time and interest.

Sincerely,


Michael K. Caton
Partner

encl:

www.computel-consultants.com
mcaton@computel-consultants.com

COMPUTEL CONSULTANTS

P.O. Box 35 ♦ Earlville, New York 13332 ♦ (800) 724-9859 ♦ Fax (315) 691-4311

NYCOM Utility Savings Audit Program

PROPOSAL:

To provide Utility Billing Analysis Services for NYCOM Member Municipalities. The purpose of this review would be to identify, correct, and secure refunds for overcharges on utility accounts during the prior six-year time period. The purpose of our Cable Television Franchise review would be to identify underpayments of franchise fees during the prior six-year period.

Computel Consultants proposes to review your telephone, electric, and natural gas accounts – as well as your cable television franchise agreement - utilizing the following process:

- We review contracts, franchise agreements, customer service records, bills, and other relevant documentation. In order to minimize impact on the client, we obtain as much information as possible directly from the utility companies.
- Using our expertise in utility company tariffs, we identify errors. We then file a written claim with the responsible utility company detailing the dispute. The client receives copies of all correspondence and is kept informed of all developments regarding the claim(s).
- We negotiate with the utility company in order to secure the maximum refund possible.
- All refunds go directly from the utility company to the client.
- We follow-up to make sure that the necessary corrections are made to your accounts.

Fee

Through the NYCOM USA Program, our reduced fee is 40% of any refund we secure for you. All refunds go directly to the Municipality and our fee is not due until after the refund is received. There are no upfront costs and if we do not secure a refund for you, there is no charge at all for our service. Typically, when we correct billing errors we not only secure a refund for you, but also reduce your future bills as well. Likewise, when we identify a cable television franchise fee underpayment, you would typically receive higher payments going forward. All future savings and/or increased franchise fee payments are yours to keep in their entirety.

In order to begin we would need you to execute a consulting agreement and provide us with letters of authority that allow us to request information directly from your utility vendors. A typical review should be completed in a period of four to six months. Our goal is to provide a high-quality, comprehensive service in a timely fashion while keeping the impact on your staff to a minimum.

For more information and a comprehensive client list, visit www.computel-consultants.com.

Contact

Michael T. Caton

Partner

mcaton@computel-consultants.com

COMPUTEL CONSULTANTS

P.O. Box 35 ♦ Earlville, New York 13332 ♦ (800) 724-9859 ♦ Fax (315) 691-4311

CONSULTING AGREEMENT

Client: **City of Newburgh**
Address: City Hall - 83 Broadway
Newburgh, New York 12550

Telephone: [845] 569-7316

Contact: Ms. Cheryl Gross

This agreement is made on _____, 2012, between the aforementioned City of Newburgh, hereinafter referred to as CLIENT, and COMPUTEL CONSULTANTS, hereinafter referred to as COMPUTEL.

In consideration of the mutual covenants contained in this Agreement, CLIENT and COMPUTEL agree as follows:

I. SERVICES TO BE PERFORMED

CLIENT agrees to engage COMPUTEL to examine CLIENT's utility accounts listed below, to identify prior and present overcharges, or, in the case of Cable TV, to identify underpayment of franchise fees, to prepare necessary documentation and negotiate with the appropriate utility, telephone, and/or communications company to have any identified errors corrected, and to obtain refunds and/or credits. COMPUTEL will also, whenever possible, make specific recommendations to the CLIENT for the purpose of reducing future billing and/or increasing future cable franchise fees.

1) Telephone 2) Electric (including Street Lighting) 3) Natural Gas 4) Cable TV

II. COMPENSATION

As compensation for the performance of COMPUTEL's services under this Agreement, and as a participant in the NYCOM USA program, CLIENT agrees to pay COMPUTEL a one time fee of forty percent (40%) of any and all recovered refunds and/or credits as aforesaid, due and payable upon receipt of same.

IN WITNESS WHEREOF, the parties have executed this Agreement at _____, New York, on the day and year first above written.

COMPUTEL CONSULTANTS

By: 
Michael T. Caton, Partner

CLIENT: **City of Newburgh**

By: _____
Title: _____

RESOLUTION NO. 187 -2012

OF

OCTOBER 22, 2012

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED OCTOBER 22, 2012, AUTHORIZING EMERGENCY RECONSTRUCTION OF THE WEST TRUNK SEWER MAIN AND RELATED IMPROVEMENTS IN THE CITY, STATING THE ESTIMATED TOTAL COST THEREOF IS \$9,144,000, APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$9,144,000 BONDS OF SAID CITY TO FINANCE SAID APPROPRIATION.

THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN THE COUNTY OF ORANGE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said City Council) AS FOLLOWS:

Section 1. The City of Newburgh, in the County of Orange, New York (herein called the "City"), is hereby authorized to finance the cost of emergency reconstruction of the West Trunk sewer main, and related improvements, at the estimated maximum cost of \$9,144,000, including but not limited to access roadway, pipe replacement, by pass pumping system, access manholes, pipe lining, restoration and stabilization of the Quassaick Creek stream bank. The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and to the financing thereof, is \$9,144,000 and said amount is

hereby appropriated therefor. The plan of financing includes the issuance of not to exceed \$9,144,000 bonds of the City to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the City in the aggregate principal amount of \$9,144,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called "Law"), to finance the appropriation referred to herein.

Section 3. The period of probable usefulness of the specific object or purpose for which said \$9,144,000 bonds herein authorized are to be issued, within the limitations of Section 11.00 a. 4 of the Law, is forth (40) years.

Section 4. The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the City for expenditures made after the effective date of this resolution for the purpose or purposes for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

Section 5. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision

shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Comptroller/Director of Finance, the chief fiscal officer of the City.

Section 7. Pursuant to the provisions of section 16 of Chapter 223 of the New York Laws of 2010, the City is authorized to include in this resolution the following pledge and agreement of the State of New York (herein called the "State") contained in said Section 16:

"The state does hereby pledge to and agree with the holders of any bonds, notes or other obligations issued by the city during the effective period of this act and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the city to fulfill the terms of any agreements made with such holders pursuant to this act, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations until such bonds, notes or other obligations together with the interest thereon and all costs and

expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged."

Section 8. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution or a summary hereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- (c) such obligations are authorized in violation of the provisions of the constitution.

Section 9. This Bond Resolution shall take effect immediately, and the City Clerk is hereby authorized and directed to publish the foregoing resolution, in summary, together with a Notice attached in substantially the form prescribed by §81.00 of the Law in "*The Sentinel*," "*The Mid Hudson Times*," and "*The Hudson Valley Press*," three newspapers each having a general circulation in the City and hereby designated the official newspapers of said City for such publication.

The adoption of the foregoing resolution was seconded by

_____ and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

RESOLUTION NO.: 188 - 2012

OF

OCTOBER 22, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER OR
THE CHIEF OF POLICE AS MANAGER'S DESIGNEE
TO EXECUTE AN AGREEMENT WITH THE COUNTY OF ORANGE
CONFIRMING CITY OF NEWBURGH PARTICIPATION
IN THE STOP-DWI PROGRAM
FOR THE PERIOD OF OCTOBER 14, 2012 TO JANUARY 1, 2013 PROVIDING
THE CITY WITH AN AMOUNT NOT TO EXCEED \$2,818.00

WHEREAS, the County of Orange (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an agreement, to provide for the funding of the STOP-DWI Program within the City of Newburgh for the period of October 14, 2012 and ending January 1, 2013, which includes Thanksgiving, Christmas and the New Year's enforcement campaigns; and

WHEREAS, the County shall reimburse the City of Newburgh for increased patrol and court time in connection with enhanced enforcement of laws prohibiting driving while intoxicated; and

WHEREAS, this Council has determined that entering into such agreement would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manger or the Chief of Police as Manager's designee be and he is hereby authorized to execute an agreement with the County of Orange confirming the City's participation in the STOP-DWI Program in order to fund the additional cost of stepped-up police patrols and related court appearances for the period of October 14, 2012 through January 1, 2013, not to exceed \$2,818.00

RESOLUTION NO.: 189 - 2012

OF

OCTOBER 22, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER OR
THE CHIEF OF POLICE AS MANAGER'S DESIGNEE
TO ENTER INTO AN INTERMUNICIPAL AGREEMENT BETWEEN
THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH
IN CONNECTION WITH THE STOP DWI PROGRAM
TO ACCEPT AN AMOUNT NOT TO EXCEED \$1,000.00
WHICH MAY BE USED SOLELY FOR THE PURCHASE OF EQUIPMENT

WHEREAS, the City of Newburgh wishes to enter into an Inter-Municipal Agreement with the County of Orange, a copy of which is attached hereto and made a part hereof, in connection with the Stop DWI Program; and

WHEREAS, the County shall provide the City an amount not to exceed \$1,000.00 solely for the purchase of equipment; and

WHEREAS, such equipment includes window tint meters, Pocket Jet TraCS printers, Pocket Jet printer car power cables, Pocket Jet 3 printer USB cables, and thermal printer paper; and

WHEREAS, this Council has reviewed the attached agreement and has determined that entering into such agreement would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he or the Chief of Police as Manager's is hereby authorized to execute an Inter-Municipal Agreement with the County of Orange in connection with the Stop DWI Program to accept an amount not to exceed \$1,000.00 which may be used solely for the purchase of equipment.



INTER-MUNICIPAL AGREEMENT

THIS INTER-MUNICIPAL AGREEMENT ("IMA") is entered into this ____ day of _____, 20__ by and between the County of Orange, a County of the State of New York, with its principal offices at 255-275 Main Street, Goshen, New York, by and through its Department of Emergency Services ("COUNTY"), and the CITY OF NEWBURGH of the State of New York, with its principal offices at 55 Broadway, Newburgh, NY 12550 by and through its Police Department ("MUNICIPALITY").

ARTICLE 1. SCOPE OF AGREEMENT

The COUNTY is a municipal corporation chartered under the authority of the State of New York. Among other powers and duties, the COUNTY, by and through its Department of Emergency Services, administers the COUNTY's Special Traffic Options Program for Driving While Intoxicated in accordance with New York State Vehicle and Traffic Law Section 1197 ("DWI Program"). The purpose of the DWI Program is to coordinate and fund county, town, city, and village efforts to reduce alcohol-related traffic injuries and fatalities. To facilitate this goal the COUNTY and the MUNICIPALITY recognize that proper equipment is essential in providing effective police patrols ensuring safe and sober roadways.

It is the intention of the COUNTY, in order to carry out the goals of the DWI Program, to grant to the MUNICIPALITY the aggregate not to exceed sum of ONE THOUSAND and 00/100 (\$1000.00) to be used solely for the purchase or towards the purchase of window tint meters, Pocket Jet TraCS printers, Pocket Jet printer car power cables, Pocket Jet 3 printer USB cables, thermal printer paper ("Equipment"), which purchase must be made no later than December 31, 2012. The expenditure of these funds, the use of the Equipment, and all activity of the MUNICIPALITY relating to such Equipment, shall be in full compliance with the terms and conditions of this IMA and federal, State of New York ("State"), and local laws.

ARTICLE 2. ADDITIONAL TERMS OF AGREEMENT

The MUNICIPALITY agrees (i) to purchase and utilize the Equipment pursuant to the terms of this IMA; (ii) to carry out the designated and intended purpose(s) of the Equipment; (iii) that the Equipment shall be made available for use regionally by law enforcement for as long as the Equipment is serviceable and in its possession at the time of the request; (iv) that it shall not dispose of

the Equipment without written permission from the COUNTY; and (v) that it shall, at its own cost and expense, maintain, service, and repair the Equipment (as necessary).

The MUNICIPALITY shall, upon receiving due notice from the COUNTY, have the Equipment (and all associated records, including, but not limited to, all books and documents relevant to the care, maintenance and upkeep of the Equipment) available for a physical inspection and/or audit. For purposes of the Article, due notice shall mean a period of time not to exceed five (5) business days.

ARTICLE 3. PROCUREMENT OF AGREEMENT

The MUNICIPALITY represents and warrants that no person or selling agency has been employed or retained by the MUNICIPALITY to solicit or secure this IMA upon an agreement for, or upon an understanding of, a commission, percentage, a brokerage fee, contingent fee or any other compensation. The MUNICIPALITY 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. The MUNICIPALITY makes such representations and warranties to induce the COUNTY to enter into this IMA and the COUNTY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this IMA without liability, entitling the COUNTY to immediately recover the Equipment from the MUNICIPALITY. This remedy, if effected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or to take any other action provided for by law or pursuant to this IMA.

ARTICLE 4. CONFLICT OF INTEREST

The MUNICIPALITY represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have an interest, and shall not acquire an interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the Equipment herein provided. The MUNICIPALITY further represents and warrants that in the performance of this IMA, 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 COUNTY, nor any person whose salary is payable, in whole or in part, by the COUNTY, 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 IMA or in the proceeds thereof, unless such person (1) is required by the Orange County Ethics Law, as amended from time to time, to submit a Disclosure form to the Orange County Board of Ethics, amends such Disclosure form to include his/her interest in this IMA, or (2) submits such a Disclosure form and (a) discloses his/her interest in this IMA, or (b) seeks a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this IMA without liability, entitling the COUNTY to recover the Equipment. This remedy, if elected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY'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 IMA.

ARTICLE 5. ASSIGNMENT AND SUBCONTRACTING

No party shall assign any of its rights, interest, or obligations under this IMA, or enter into a sub-contract relating to the Equipment to be purchased under this IMA, without the prior written consent of the COUNTY.

ARTICLE 6. BOOKS AND RECORDS

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

ARTICLE 7. RETENTION OF RECORDS

MUNICIPALITY agrees to retain all books, records and other documents relevant to this IMA for six (6) years after the Equipment is returned to the COUNTY or after final disposition of the Equipment. The COUNTY, or any State and/or Federal auditors, and any other persons duly authorized by the COUNTY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 8. AUDIT BY THE COUNTY 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 COUNTY. The MUNICIPALITY shall submit any and all documentation and justification in support of expenditures or fees under this IMA as may be required by the COUNTY, so that it may evaluate the reasonableness of the charges, and the MUNICIPALITY shall make its records available to the COUNTY 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 COUNTY, the State, the federal government, and/or other persons duly authorized by the COUNTY. Such audits may include examination and review of the source and application of all funds whether from the COUNTY and State, the federal government, private sources or otherwise. The MUNICIPALITY shall not be entitled to any interim or final payment under this IMA if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 9. INDEMNIFICATION

The MUNICIPALITY agrees to defend, indemnify and hold harmless the COUNTY, its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including reasonable attorney fees and costs of litigation and/or settlement) arising out of any act or omission of the MUNICIPALITY, its employees, representatives, subcontractor, assignees, or agents, relating to this IMA or the Equipment.

ARTICLE 10. TERMINATION

The COUNTY may, by written notice to the MUNICIPALITY, effective upon mailing, terminate this IMA in whole or in part at any time (i) for the COUNTY's convenience, (ii) upon the failure of the MUNICIPALITY to comply with any of the terms or

conditions of this IMA, or (iii) upon the MUNICIPALITY becoming insolvent or bankrupt.

Upon termination of this IMA, the MUNICIPALITY shall comply with any and all COUNTY closeout procedures, including, but not limited to, (i) accounting for and refunding to the COUNTY within thirty (30) days, any unexpended funds which have been paid and/or transferred to MUNICIPALITY pursuant to this IMA; and (ii) furnishing within thirty (30) days an inventory to the COUNTY of all equipment, appurtenances and property purchased by MUNICIPALITY through or provided under this IMA, and carrying out any COUNTY directive concerning the disposition thereof.

Notwithstanding any other provision of this IMA, the MUNICIPALITY shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of the MUNICIPALITY's breach of the Agreement or failure to perform in accordance with applicable standards.

Any rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this IMA.

ARTICLE 11. GENERAL RELEASE

The acceptance by the MUNICIPALITY, or its assignees, of the funds and of the terms of this IMA, shall constitute, and operate as a general release in favor of the COUNTY, from any and all claims of the MUNICIPALITY arising out of the performance of this IMA.

ARTICLE 12. SET-OFF RIGHTS

The COUNTY shall have all of its common law, equitable and statutory rights of set-off. These rights

shall include, but are not limited to, the COUNTY's right to withhold for the purposes of set-off any monies otherwise due to the MUNICIPALITY (i) under any other agreement or contract with the COUNTY, including any agreement or contract commencing prior to or after the term of this IMA, or (ii) from the COUNTY by operation of law.

ARTICLE 13. GOVERNING LAW

This IMA shall be governed by the laws of the State of New York. The MUNICIPALITY shall utilize all Equipment purchased under this IMA in accordance with applicable provisions of all federal, State, and local laws, rules and regulations as are in effect at the time such Equipment is purchased.

ARTICLE 14. ENTIRE AGREEMENT

The rights and obligation of the parties and their respective agents, successors and assignees shall be subject to and governed by this IMA, including Schedule A, which supersedes any other understandings or writings between or among the parties.

ARTICLE 15. MODIFICATION

No amendment or modification of any of the terms and/or conditions of this IMA shall be valid unless reduced to writing and signed by both parties. The COUNTY shall not be bound by any changes made to this IMA that is not made in compliance with the above, and which imposes on the COUNTY any financial obligation. Unless otherwise specifically provided for therein, the provisions of this IMA shall apply with full force and effect to any such amendment, modification or change order.

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

COUNTY OF ORANGE

By: _____
Edward A. Diana
County Executive

DATE: _____

MUNICIPALITY

By: *Michael D. Kozlowski*
Name: Michael D. Kozlowski
Title: Police Chief

DATE: 9-26-12

RESOLUTION NO.: 190 - 2012

OF

OCTOBER 22, 2012

A RESOLUTION REQUESTING AN EXEMPTION FROM COUNTY
TAXES FOR THE CITY'S RESERVOIR AND FILTER PLANT
PROPERTIES FOR THE YEAR 2014

BE IT RESOLVED, by the Council of The City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to request a real property tax exemption from real property taxes to be levied by the County of Orange on all of the City's reservoir and filter plant properties, and the buildings and improvements thereon, and to be constructed thereon in the Town of Newburgh and the Town of New Windsor, pursuant to the provisions of Section 406, subdivision 3, of the Real Property Tax Law of the State of New York.

The requested exemption would include exemption from all taxation, special ad valorum levies and special assessments through December 31, 2014, so long as the subject premises are used for the aforesaid purposes.

The specific properties involved are as follows:

<u>OWNER</u>	<u>MUNICIPALITY</u>	<u>TAX PARCEL NO.</u>
CITY OF NEWBURGH	TOWN OF NEW WINDSOR	4 - 1 - 38
		4 - 1 - 35
		4 - 3 - 1.1
		4 - 1 - 12.2
		4 - 1 - 9.21
		4 - 1 - 10
		32 - 2 - 53
	TOWN OF NEWBURGH	75 - 1 - 17
		97 - 3 - 17
		97 - 2 - 22.1
		97 - 3 - 10
		97 - 1 - 44

RESOLUTION NO.: 191 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION TO IMPLEMENT A CITY-WIDE
CURFEW FOR MINORS 16 YEARS OF AGE AND UNDER
ON OCTOBER 30TH AND 31ST
FROM 9:00 P.M. TILL 6:00 A.M.**

WHEREAS, the City of Newburgh has a general obligation to ensure the safety and welfare of the general population of the City including minors, along with protection of private property; and

WHEREAS, October, 30th and 31st are associated with Halloween related activities, including "Trick or Treating" and other related outdoor activities, some of which might be prejudicial to the safety and welfare of the population and protection of private property; and

WHEREAS, the City of Newburgh determines that the passage of a curfew resolution for Halloween and the preceding night will assist in protecting the welfare of minors by reducing the likelihood of their involvement in inappropriate behavior, while aiding parents or guardians of minors entrusted in their care;

NOW THEREFORE, BE IT RESOLVED:

THIS COUNCIL HEREBY DECLARES a city-wide curfew for minors from 9:00 P.M. until 6:00 A.M. each day, starting at 9:00 p.m. on Tuesday, October 30, 2012, and ending at 6:00 a.m. on Thursday, November 1, 2012; and

BE IT FURTHER RESOLVED, this Council urges all parents to inform their children and supervise the implementation of this City-wide curfew so that we may avoid problems and promote the safety, health and welfare of our City's young people and property owners; and

BE IT FURTHER RESOLVED, that it shall be a defense to a violation of this curfew that the minor was accompanied by the minor's parent or guardian, engaged in an employment activity, or involved in an emergency or other legally justifiable activity.

RESOLUTION NO.: 192 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION AUTHORIZING THE EXECUTION OF
AN AMENDED LICENSE AGREEMENT EXTENDING THE TERM FOR THE USE OF
THE STADIUM LOCATED AT DELANO-HITCH RECREATION PARK
BY THE NEWBURGH HOOK ELITE BOXING CLUB
AND EBC SPORTS MINISTRY**

WHEREAS, this Council, by Resolution No.: 92-2012 of June 18, 2012, authorized the execution of a license agreement with the Newburgh Hook Elite Boxing Club and EBC Sports Ministry for the use of the stadium located at Delano-Hitch Recreation Park for a youth boxing program; and

WHEREAS, Newburgh Hook Elite Boxing Club and EBC Sports Ministry has expressed interest in extending the term of said license agreement until June 30, 2013; and

WHEREAS, a copy of such amended license agreement is annexed hereto and made a part of this resolution; and

WHEREAS, the City Council has examined such amended license agreement and determined it to be in the best interests of the City of Newburgh and its youth to enter into such license 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 and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh.

AMENDED LICENSE AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between:

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

THE NEWBURGH HOOK ELITE BOXING CLUB and EBC SPORTS MINISTRY, c/o Leonard Lee, 70 Johnes Street, Newburgh, New York 12550 hereinafter called "Licensee".

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

ARTICLE 1: Term.

This Agreement shall run from June 1, 2012 to June 30, 2013.

ARTICLE 2: Obligation of the City.

The City shall grant to the Licensee a revocable license to use the municipal stadium located in the Delano-Hitch Recreation Park in the City of Newburgh for a youth boxing program by the Newburgh Hook Elite Boxing Club for the period of time set forth above pursuant to a written schedule to be submitted to and approved in writing by the City Manager or his designee. The City shall provide space for players/participants in a location in the Delano-Hitch Recreation Park to be determined by the City Manager or his designee.

ARTICLE 3: Obligation of Licensee.

A. The Licensee shall provide the City Manager or his designee a written schedule of all programs and other uses of the facility for the term of the Agreement and failure to do so may result in City canceling any or all such program(s). No programs or other uses may be schedule to start after 8:00 p.m.

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

C. The Licensee shall, after each day of programs, return the facility to the City on that same day to a clean condition free of all equipment, garbage and debris. Licensee shall clean up all garbage generated in the area designated for use and deposit in proper trash receptacle. The Licensee shall repair all damage incurred to the area designated for use during the exercise of the license at its own sole expense. Such repairs shall be performed immediately. Licensee agrees that if such damages are not promptly and completely repaired, Licensee shall remain liable for all consequences, direct and indirect, consequential and incidental, to the City resulting from the damages and from the unavailability of such facilities resulting therefrom.

D. The Licensee shall have a representative with authority over all programs and activities present at all times. Licensee shall secure the facility after each use. Noise levels shall be kept at appropriate decibel levels so as not to disturb neighbors.

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

ARTICLE 4: Payment.

The Licensee shall pay to the City, as and for a fee for the use of the facility during the period of this agreement, ONE THOUSAND (\$1,000.00 AND 00/100) DOLLARS.

ARTICLE 5: Insurance.

The Licensee shall not commence any program under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

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

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.
2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

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

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

ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

- A. That it is financially solvent and that it is experienced and competent to perform the type of work or to furnish the consideration to be furnished by it; and
- B. That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

ARTICLE 7: Permits and Regulations.

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

ARTICLE 8: City's Right to Terminate Agreement.

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

1.
 - (a) The Licensee refuses or fails to perform any of its obligations under this agreement; or
 - (b) The Licensee fails to make prompt payment or perform work as required by this agreement; or
 - (c) The Licensee fails or refuses to comply with all applicable laws or ordinances; or
 - (d) The Licensee is guilty of substantial violation of any provision of this agreement.
 - (e) In the event the City elects to stop work or terminate this agreement on any ground or grounds set forth in subparagraphs (a) - (d) of this paragraph, the City shall provide the Licensee with written notice, no less than fourteen (14) days prior to such stop work or termination of this agreement, of the City's intent to so stop work or terminate this agreement and the ground or grounds therefore. In the event the Licensee shall cure such ground or grounds prior to the date noticed for stop work or termination of this agreement, the City shall not stop work or terminate the agreement on such grounds.
2. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days notice to the Licensee, terminate the agreement with the Licensee.

ARTICLE 9: Damages.

It is hereby mutually covenanted and agreed that the relation of the Licensee to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances, whether or not the Licensee, its agents or employees have been negligent. The Licensee shall hold and keep the City free and discharged of and from any and all responsibility and liability of any sort or kind. The Licensee shall assume all responsibility for risks or casualties of every description, for loss, death or injury to persons or property arising out of the nature of the performance, other than those wholly caused by Acts of God or conditions pre-existing this license. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance.

ARTICLE 11: Indemnity and Save Harmless Agreement.

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

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

ARTICLE 12: No Assignment.

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

ARTICLE 13: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

ARTICLE 14: Notices.

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

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

TO: Newburgh Hook Elite Boxing Club
c/o Leonard Lee
70 Johnes Street
Newburgh, New York 12550
(845) 857-0612

ARTICLE 15: Waiver.

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

ARTICLE 16: Modification:

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

Remainder of page intentionally left blank.

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

THE CITY OF NEWBURGH

by: _____
RICHARD F. HERBEK
City Manager

NEWBURGH HOOK ELITE BOXING CLUB

by: _____
LEONARD LEE

EBC SPORTS MINISTRY

By: _____
DR. BRUCE DAVIS
Pastor

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

RESOLUTION NO.: 193 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY
REVIEW ACT (SEQRA) FOR WEST TRUNK SEWER IMPROVEMENTS PROJECT,
DECLARING THE PROJECT TO BE A TYPE II ACTION,
ADOPTING THE ENVIRONMENTAL ASSESSMENT FORM,
FINDING NO SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT AND
AUTHORIZING THE CITY MANAGER TO EXECUTE ALL SEQRA DOCUMENTS**

WHEREAS, the City of Newburgh currently owns, operates and maintains the combined sewer collection system within the City of Newburgh, including the west trunk line sewer;

WHEREAS, Cured in Place Pipe Liner has been installed within approximately 1,250 feet of the west trunk sewer as a result of a collapse which occurred on July 16, 2012; and

WHEREAS, Cured in Place Pipe Liner has been ordered for approximately 650 feet of additional trunk sewer as a result of a blowout which occurred on October 4, 2012; and

WHEREAS, the City of Newburgh intends to assess the condition of the west trunk sewer, make necessary repairs and/or upgrades to an additional 5,700 feet of the west trunk sewer; and

WHEREAS, the City of Newburgh must evaluate and determine the scope of the necessary permanent repairs to the west trunk sewer and Quassaick Creek Corridor to the damaged sections set forth above and intends to assess the condition of the remainder of the west trunk sewer and make necessary repairs and/or upgrades to an additional 5,700 feet of the west trunk sewer; and

WHEREAS, the City of Newburgh intends to prepare documents necessary to obtain funding through the Environmental Facilities Corporation; 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 617.6 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 a "Type II", as the quoted term is defined in the SEQRA Regulations;
3. adopts Part I of the Environmental Assessment Form;
4. determines, based upon an examination of the short EAF and other available supporting information and considering the magnitude and importance of each area of environmental concern, and based on the city's knowledge of the area surrounding the Project, that the Project will not have a significant adverse environmental impact and will not require the preparation of a Draft Environmental Impact Statement;

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

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

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

1. APPLICANT/SPONSOR Barton and Loguidice, P.C.	2. PROJECT NAME West Trunk Sewer Improvements
3. PROJECT LOCATION: Municipality City of Newburgh County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) The project is located just south of the existing CSX railway and north of Quassaick Creek in the City of Newburgh; see location map attached.	
5. PROPOSED ACTION IS: ☐ New ☐ Expansion ☒ Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Installation of CIPP lining; installation of manhole structures, clearing and grubbing along sewer easement; investigation of integrity of the West Trunk Sewer; stream bank stabilization and restoration as a result of the sewer collapse in July and October, 2012	
7. AMOUNT OF LAND AFFECTED: Initially 4 acres Ultimately 4 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? ☒ Yes ☐ No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? ☐ Residential ☒ Industrial ☒ Commercial ☐ Agriculture ☐ Park/Forest/Open Space ☐ Other Describe: The City Zoning Map shows the area being of heavy commercial and light industrial zoning.	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? ☒ Yes ☐ No If Yes, list agency(s) name and permit/approvals: NYSDEC - Freshwater Wetlands Permit, Water Quality Permit, Stream Disturbance; Div. of Dams; Div. of Water; DOH - Project Approval; ACOE ; NYSEFC - Project Financing	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? ☐ Yes ☒ No If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? ☐ Yes ☒ No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

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? If yes, coordinate the review process and use the FULL EAF.	
☐ Yes	☒ No
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: Other than temporary disturbances during construction, this project includes the repair of existing infrastructure and is not anticipated to have a negative effect on the environment	
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly: This project includes the repair of existing infrastructure. SHPO has been contacted to ensure that this project will not have an impact on resources, however, only temporary disturbances related to construction activities are anticipated	
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly: The DEC has been contacted to determine if any threatened or endangered animals are in the project area. However, since this project is to repair or replace existing infrastructure, the project is not anticipated to have long term adverse effects.	
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: This project is to repair existing infrastructure and is not anticipated to alter any current land use, plans or goals	
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly: This project is to repair existing infrastructure, and no subsequent growth is anticipated	
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly: Short-term disruption associated with the construction or repair of existing infrastructure	
C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly: None have been identified	
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

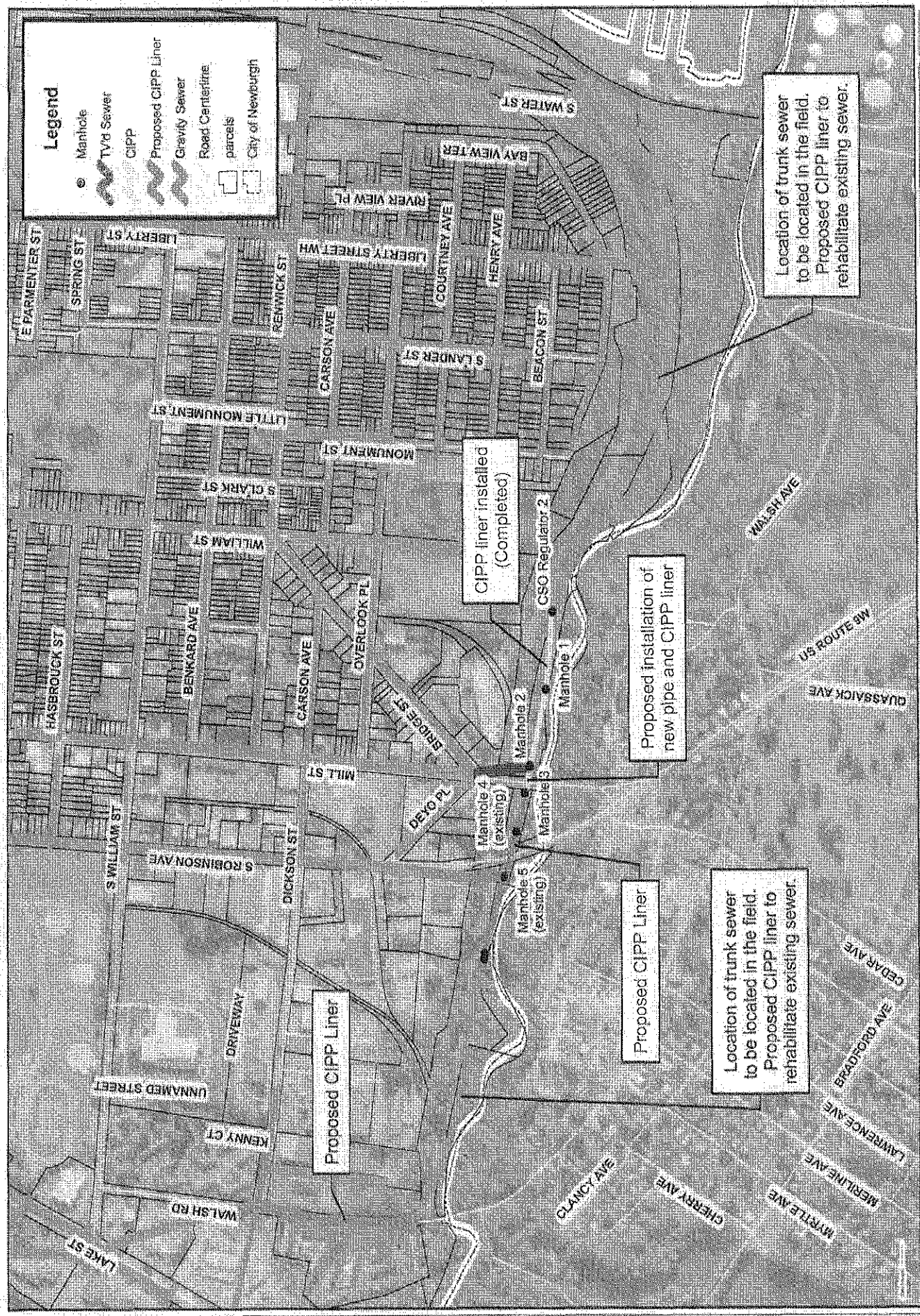
Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

Reset

1 inch = 600 feet



RESOLUTION NO.: 194 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE ON BEHALF OF THE CITY OF NEWBURGH
A LAND DEVELOPMENT AGREEMENT WITH
MILL STREET PARTNERS, LLC FOR THE REDEVELOPMENT OF CITY OWNED
PROPERTIES KNOWN AS THE MID-BROADWAY SITE**

WHEREAS, the City of Newburgh wishes to develop the City-owned .66 acre Lander Street surface parking lot (between Chambers Street and Lander Street) as well as the 1.8 acre principal site that fronts on Broadway (the "Mid-Broadway Site"); and

WHEREAS, the City has issued a Request For Qualifications (RFQ) for the development of the Mid-Broadway Site and received six (6) responses from developers interested in pursuing a development project on the Mid-Broadway site; and

WHEREAS, the City Council has reviewed the responses to the RFQ and has determined that Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. is the preferred team to develop the Mid-Broadway site; and

WHEREAS, by Resolution No. 78-2012 of May 29, 2012, the City Council authorized to the City Manager to negotiate on behalf of the City of Newburgh a Development and Land Disposition Agreement with Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. for the redevelopment of the Mid-Broadway site; and

WHEREAS, the City Council has reviewed the Development and Land Disposition Agreement with Mill Street Partners, LLC, attached hereto and made part hereof, and finds that entering into such agreement is in the best interest of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached Development and Land Disposition Agreement with Mill Street Partners, LLC for the redevelopment of the Mid-Broadway site.

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 twenty-four (24) months after its execution if the Developer has not secured the Public Funding sufficient to begin construction of the Development, or 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 and the Development shall provide, at a minimum, at least one parking space per residential unit.

(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

Exhibit C: Escrow Agreement

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 Reimbursable Municipal Expenses. In addition to other costs to be paid as described in this Agreement, and fees legally required to be paid to the City as part of the zoning and building permit process, the Developer shall be liable for and shall reimburse the City for all of the reasonable costs and expenses paid by the City to its consultants' for adopting modifications to the City's Zoning Ordinance to permit the proposed development and reviewing the Project under SEQRA (subject to SEQRA's statutory fee limitation), and for all other reasonable consultant expense incurred by the City in furtherance of the Project (including, but not limited to, defending any lawsuits, environmental consultant costs, and the review and analysis of Developer's financial information) (the "Reimbursable Municipal Expenses"), subject to the periodic review and approval of the consultant expenses in accordance with the Escrow Agreement attached hereto as Schedule C. Subject to Developer's right to dispute bills and invoices presented to it hereunder, the City shall pay Reimbursable Municipal Expenses in accordance with the terms and conditions of the Escrow Agreement, (subject to Developer's obligation to replenish said Escrow as set forth therein). Upon the execution of this Agreement and the Escrow Agreement (attached hereto as Schedule C) by all parties hereto, the Developer shall deposit with the City an advance in the amount of \$10,000.00 Dollars, which funds shall be held in a separate account maintained by the City (the "Escrow Account"), and applied solely to the payment of Reimbursable Municipal Expenses. When the Escrow Account is reduced below \$5,000.00, the Developer shall deposit an additional sum of money so as to maintain the Account at or near \$ \$10,000.00. In the event of a dispute concerning Reimbursable Municipal Expenses

the parties shall promptly confer in a good faith effort to resolve the dispute, provided, that such dispute shall not be cause for non-performance by any party of any of its obligations hereunder.

2.04 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.

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

2.06 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. The Developer will provide copies of all funding applications submitted for the Development to the City. In addition, the Developer will provide copies of all market studies, environment site

assessments, and any geotechnical reports prepared for the Development. If the Developer has not secured the Public Funding sufficient to begin construction of the project within twenty-four (24) months of the execution of this agreement, the Developer may, at its election, extend the term of this agreement for another twelve (12) month period by making a payment of \$50,000 to the City.

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 grant programs, including but not limited to 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").

3.05 Deed. The Project shall be developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed will contain provisions stating that the Developer is required to complete construction of the Project in compliance with all State, County and Local standards for occupancy within thirty (30) months of the date of the deed. Within such thirty (30) month time period the Developer must obtain a Certificate of Occupancy for all buildings within the Project. The deed shall require the Developer to schedule an inspection by City officials at or before the end of the thirty (30) month period. If the Developer has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy is issued.

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

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 23, 2012
Developer Commences Preparation of Preliminary Engineering and Site Plan	October 24, 2012
City Commences Preparation of Zoning Modifications to Permit Development	November 13, 2012
Developer submits applicable applications and/or petitions for project approvals within the jurisdiction of the City and its municipal boards ("City Approvals")	March 1, 2013
City Adopts Zoning Modifications to Permit Development	April 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: Developer Closes on Project Financing	Two hundred seventy (270) days from 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 23, 2012.

EXHIBIT "C"

ESCROW AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2012, by and between **THE CITY OF NEWBURGH**, a New York municipal corporation with offices at 83 Broadway, Newburgh, New York 12550 (the "City") and the **MILL STREET PARTNERS LLC**, a limited liability company organized under the laws of the State of New York with offices at 853 Broadway, New York, New York 10003 (the Developer):

WITNESSETH:

WHEREAS, the City desires to facilitate redevelopment of the City's downtown and promote a mixture of residential, retail and other appropriate uses on City-owned property, more commonly referred to as the Mid-Broadway Opportunity; and

WHEREAS, the City and the Developer entered into a Development Agreement dated _____, 2012 (the "Development Agreement"), for a mixed-use project consisting of housing and commercial components along Broadway, Johnston Street, and Lander Street in the City of Newburgh, New York; and

WHEREAS, the Developer, pursuant to the Development Agreement, provided an escrow deposit of \$ _____ to reimburse the City for outside consultant and other expenses incurred by the City in furtherance of the Project; and

WHEREAS, the Developer and the City have entered into a Development Agreement, in order to set forth certain understandings among them with respect the environmental review concerning the implementation of the Project, subject to the New York State Environmental Quality Review Act and the regulations promulgated thereunder by the Commissioner of the New York State Department of Environmental Conservation (collectively, "SEQRA"); and

WHEREAS, the Development Agreement provides, among other things, that the Developer shall be liable for and reimburse the City for all reasonable costs and expenses paid by the City to its consultants for reviewing the Developer's application for the Project (the "Application") under SEQRA, and for other consultant expenses incurred by the City in furtherance of the Project ("City Expenses"); and

WHEREAS, the City and the Developer wish to enter into an Escrow Agreement to govern the payment by the Developer of the City Expenses of the City and its Consultants pursuant to the terms and conditions set forth therein; and

WHEREAS, the City and the Developer desire to appoint the City Comptroller as escrow agent (the "Escrow Agent"), and the Escrow Agent agrees to serve in such capacity and act in accordance with the provisions hereof,

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Developer agree as follows:

1. Escrow Agent. The City and the Developer hereby appoint the Escrow Agent to act in accordance with the provisions of this Escrow Agreement, and hereby designate it with the authority to receive, deposit and withdraw said funds from the Escrow Fund in order to pay the City's Expenses, as those terms are hereinafter defined.

2. Escrow Fund. The Developer will deposit with the City the sum of Ten Thousand Dollars (\$10,000 .00) (the "Initial Deposit"), which shall be placed in an interest bearing account, and interest earned thereon shall be added thereto (the Initial Deposit, together with Additional Deposits as hereinafter defined, and the interest earned thereon shall be referred to as the "Escrow Fund").

3. Use of Escrow Fund. The Escrow Fund shall be used to pay for all City Expenses.

4. Consultants. The City reserves the absolute right in its full discretion to retain and control the work of the consultants in connection with their review of the Application and/or terminate their retention.

5. Consultants Invoices. The City shall require that all invoices submitted by the consultants ("Consultant(s) Invoice(s)") to the City in connection with the Project shall set forth in written form with sufficient specificity (i) descriptions of all work performed on a daily basis, (ii) total time spent performing such work on a daily basis, (iii) the charge for such work, including individual billing rates, (iv) a particular statement of any disbursements charged, and (v) the total fees charged for each bill or invoice. The Consultants Invoices shall be transmitted to the Escrow Agent, who shall transmit a copy by mail or facsimile to the duly authorized representative of the Developer as soon as reasonably possible after receipt of same, for review and approval.

6. Automatic Approval of Invoices. Unless the Escrow Agent receives a written objection to any Consultant Invoice within seven (7) business days of the Developer's receipt of such Invoice, the Escrow Agent shall promptly release that amount of the Escrow Fund to pay the invoiced City Expenses. All objections hereunder shall provide a detailed elaboration describing the disputed task and associated costs. The Escrow Agent may pay from the Escrow Fund any undisputed portion of the Consultant Invoice as set forth above. In making payment of any of the City Expenses out of the Escrow Fund, the Escrow Agent shall be entitled to rely upon the accuracy and veracity of any bill, invoice and/or statement for services which is tendered to the Escrow Agent in connection with the Project; provided, however, that upon each payment of the City Expenses out of the Escrow Fund, the Escrow Agent shall provide the Developer with a true and correct copy of the invoice or bill being paid.

7. Appeals Procedure. In the event the Developer timely objects to any Consultant Invoice as set forth above, the Escrow Agent and the Developer shall affirmatively seek to resolve said disagreement in a timely manner. If they are unable to resolve the disagreement within ten (10) days of the Escrow Agent's receipt of the written objection as set

forth above, the Escrow Agent shall refer such dispute to the City Attorney ("City Attorney") for its review and determination. The Escrow Agent shall provide the City Attorney with true and correct copies of all written records relevant to the dispute, and the City Attorney shall examine the record and issue a written decision within ten (10) business days of its receipt of the written objection regarding the reasonableness of the disputed expense. The determination of the City Attorney shall be reasonable and binding. The Developer agrees that the Escrow Agent may pay from the Escrow Fund reasonable City Expenses as determined by the City Attorney.

8. Accounting. The Escrow Agent shall provide the Developer with a full written accounting of the Escrow Fund within thirty (30) days of any written request thereof.

9. Additional Deposits.

(i) The Developer agrees to ensure that throughout the City's review of the Application, and until all Consultants Invoices regarding the City Expenses have been submitted and paid in full as set forth herein (the "Termination Date"), the Escrow Fund shall be replenished to \$10,000.00 at any time the balance is below \$5,000.00 by making additional deposits ("Additional Deposits") in such amount or amounts as the Escrow Agent, in its sole and reasonable discretion, shall determine is necessary to replenish the Escrow Fund to \$10,000.00. Such Additional Deposits shall be made by the Developer within ten (10) business days after written request for same is made by the Escrow Agent. In no event shall the Escrow Fund remain in effect more than 60 days after the Termination Date.

(ii) In the event the Developer fails or refuses to make such Additional Deposits in such amounts and in the manner required herein, then notwithstanding anything to the contrary contained or agreed to in any other contract or agreement between the Developer and the City, the City shall, at its sole option, stop processing the Application unless and until such time as the Developer makes such Additional Deposit.

10. Payment of All Consultants Invoices. The Developer agrees that in the event it withdraws the Application or otherwise terminates the City's review of the Application, all City Expenses incurred up to and including that point in time shall be paid out of the Escrow Fund pursuant to the terms set forth herein, including, those costs incurred but not yet submitted to the Escrow Agent for payment.

11. Refund of Escrow Fund. At the expiration of the Termination Date, the Escrow Agent shall pay to the Developer the balance of the proceeds contained within the Escrow Fund.

12. Indemnity. The Escrow Agent and the City Attorney undertake to perform only such duties as are specifically set forth in this Escrow Agreement. The Escrow Agent and the City Attorney shall not be liable for any action taken or omitted by them in good faith and believed by them to be authorized hereby or within the rights or powers conferred upon them hereunder, nor shall they be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind, unless caused by their own gross negligence or willful misconduct. The City and the Developer, in equal part, shall indemnify the Escrow Agent and the City Attorney and hold them harmless from and against, and shall reimburse them with respect to, any and all

losses, damages, liabilities, claims, costs and expenses, including reasonable attorneys' fees, incurred by the Escrow Agent and the City Attorney in connection with their duties hereunder.

13. Entire Understanding. This Agreement contains the entire understanding of the parties who hereby acknowledge that there has been and there are no representations, warranties, covenants or understandings other than those expressly set forth herein.

14. Modification. Neither this Agreement nor any provision hereof, shall be amended or modified, or deemed amended or modified, except by an agreement in writing duly subscribed and acknowledged with the same formality as this Agreement. This Agreement and the provisions hereof may not be modified, changed, waived, discharged or terminated orally.

15. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties, their related entities, successors and assigns.

16. Legal Interpretation. All matters affecting the interpretation of this Agreement and the rights of the parties hereto shall be governed by the laws of the State of New York.

17. Severability. Should any provision contained within this Agreement be determined to be invalid or illegal, such invalidity or illegality shall not affect in anyway any other provision hereof, all of which shall continue, nevertheless, in full force and effect.

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

To the City:

City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550
Attention: Richard F. Herbek, City Manager

City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550
Attention: Cheryl Gross, City Comptroller

with a copy to:

City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550
Attention: Michelle Kelson, Esq., Corporation Counsel

To the Developer:

Mill Street Partners, LLC
853 Broadway
New York, New York 10003
Attention: Patrick Normoyle

With a copy to: Cannon Heyman & Weiss
54 State Street, 5th Floor
Albany, New York 12207
Attention: Steve Heyman, Esq.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

CITY OF NEWBURGH

By:

Richard F. Herbek, City Manager

Dated: _____

MILL STREET PARTNERS, LLC

By:

Patrick Normoyle, Manager

Dated: _____

RESOLUTION NO.: 195 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
TERESA GARCIA DE FLORES AGAINST THE CITY OF NEWBURGH
IN THE AMOUNT OF TWENTY THOUSAND DOLLARS**

WHEREAS, Teresa Garcia de Flores brought an action against the City of Newburgh; and

WHEREAS, the plaintiff and the City of Newburgh have reached an agreement for the payment of the settlement in the amount of Twenty Thousand (\$20,000.00) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the plaintiff and the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorneys are hereby authorized to settle the claim of Teresa Garcia de Flores against the City of Newburgh in the total amount of Twenty Thousand (\$20,000.00) Dollars and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.