



City of Newburgh Council Work Session

6:00 pm

September 6, 2012

AGENDA

1. Procedural Items Related to the City Council Meeting of September 10
 - a. Approval of meeting minutes
 - b. Public hearing regarding the local law and ordinance regarding SEQRA
 - (Local Law No. 5 - 2012) Amendment to Article 158 entitled "Environmental Quality Review", Section 158-2, "Actions Requiring and not Requiring Impact Statements" of the Code of Ordinances.
 - (Ordinance No. 5 - 2012) Proposed Ordinance: Amendment to Chapter 200 entitled "Zoning" to exempt certain activities from requiring a certificate of appropriateness from the ARC.
 - c. Proclamations:
 - Hispanic Heritage Month will be Sept. 15 to Oct. 15
 - Family Day will be September 24
2. Community & Economic Development and Real Estate:
 - a. (Res. 151) Authorizing an extension of the time by which the due diligence and closing of title must occur related to the settlement agreement with Leyland Alliance.
 - b. Property disposition: 279 Liberty Street, 146 Chambers Street & 7 Van Ness Street
 - c. (Res. 152) Authorizing an agreement with Pace University Land Use Law Center to develop a community profile, a vacant property database and an adaptive reuse plan
 - d. (Res. 153) Authorizing an agreement with Pace University Land Use Law Center as sub recipient of the TSEC Grant to assist with the relocation and expansion plans of companies seeking to operate in the City of Newburgh.
 - e. (Res. 154) Authorizing the disposition of 146 Chamber, 279 Liberty and 7-9 Van Ness Street via public auction.
 - f. Further staff disposition recommendations:
 - 29 Chamber Street - added to sealed bid list
 - Tenant occupied properties (3) added to auction list
 - 186 Dubois Street – request to repurchase
 - g. (Res. 155) Authorizing a contract with Ritter and Paratore Contracting for Demolition of 7-11 Johnes Street
3. Finance Department:
 - a. Cash report for July

4. Discussion:

- a. (Res. 156) Authorizing the vendor service contracts with SUNY Orange, Newburgh Enlarged City School District and Best Resource Center at a cost of \$435,000.00 in accordance with the requirements of the 21st Century Grant program.
- b. (Res. 157) Renewal of an agreement with the Humane Society of Walden for the care boarding of animals
- c. Reminder about board openings

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

Thursday, August 9, 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 6:05 pm.
- Executive Session: At 9:45 p.m. a motion was made by Councilwoman Regina Angelo and seconded by Councilman Brown to enter into executive session regarding matters of pending litigation.
- YES: 5
NO: 0
CARRIED
- Adjournment: Upon consensus the Council adjourned the meeting noting the time as 10:10 p.m.

LOCAL LAW NO.: 5 - 2012

OF

SEPTEMBER 10, 2012

A LOCAL LAW AMENDING ARTICLE 158 ENTITLED
"ENVIRONMENTAL QUALITY REVIEW"
SECTION 158-2, "ACTIONS REQUIRING AND NOT REQUIRING
ENVIRONMENTAL IMPACT STATEMENTS"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Article 158 Entitled 'Environmental Quality Review', Section 158-2, 'Actions Requiring and Not Requiring Environmental Impact Statements' of the Code of Ordinances of the City of Newburgh".

SECTION 2 - AMENDMENT

Article 158, Section 158-2, "Actions Requiring and Not Requiring Environmental Impact Statements" is hereby amended to read as follows:

§158-2. Actions requiring and not requiring environmental impact statements and not requiring environmental assessment forms.

All actions ~~that may likely to~~ have a significant adverse impact effect upon the environment within the meaning of Section 617.711 of Title 6 of NYCRR ~~and defined as "Type I" actions in Section 617.4 of Title 6 of NYCRR~~ shall require the preparation of an environmental impact statement, unless they are unlisted actions as to which the relevant local reviewing agency determines that a conditional negative declaration is appropriate. Type II actions, as described in Section 617.5 ~~therein, or determined to be such under local law~~ will not require the preparation of an environmental assessment form ~~impact statement.~~

SECTION 3 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Underlining denotes additions
~~Strikethrough~~ denotes deletions

SECTION 4 - EFFECTIVE DATE

This Local Law and shall be effective in accordance with the provisions of New York State Municipal Home Rule Law and shall immediately.

Underlining denotes additions

~~Strikethrough~~ denotes deletions

ORDINANCE NO.: 5 - 2012

OF

SEPTEMBER 10, 2012

AN ORDINANCE TO AMEND CHAPTER 300 ENTITLED "ZONING"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO EXEMPT CERTAIN ACTIVITIES FROM REQUIRING
A CERTIFICATE OF APPROPRIATENESS FROM THE ARCHITECTURAL REVIEW
COMMISSION AND TO ELIMINATE THE ARCHITECTURAL REVIEW COMMISSION
ADVISORY OPINION IN APPLICATIONS FOR VARIANCES
WITHIN IN THE HISTORIC OR ARCHITECTURAL DESIGN DISTRICTS
TO THE ZONING BOARD OF APPEALS

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 300 of the Code of Ordinances shall be amended as follows:

Section 1: § 300-26. Certificate of appropriateness.

A. Certificate required. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark, nor shall any person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley which affect the appearance and cohesiveness of a district and its designated properties, without first obtaining a certificate of appropriateness.

1. Exemptions. The following activities do not require a certificate of appropriateness under this Article:

- a. Repair, replacement and installation of electrical, plumbing, heating and ventilation systems, provided that such work does not affect the exterior of the structure.
- b. Caulking, weather-stripping, glazing and repainting of windows.
- c. Repair of porches, cornices, exterior siding, doors balustrades, stairs or other trim when the repair is done in-kind to match existing material and form.
- d. Repair of storm windows (exterior, interior or wood), provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window; color should match trim.

Underlining _____ denotes additions

~~Strikethrough~~ denote deletions

- e. Installation of new window jambs or jamb liners.
- f. Repair or replacement of awnings when work is done in-kind to match existing materials and form.
- g. Roof repair of historic roofing with material that matches the existing material in form or better.
- h. Repair of gutters and downspouts.
- i. Installation of insulation where exterior siding or trim is not altered or damaged.
- j. Repair of existing roads, driveways, sidewalks and curbs provided that work is done so that there are no changes in dimension or configuration of those features.
- k. Exterior lead paint abatement that includes scraping and repainting of exterior work and masonry surfaces.
- l. Repair of fencing when work is done in-kind to match existing material and form.
- m. Repair or replacement of water, gas, storm or sewer lines.
- n. Emergency repairs necessitated by a casualty to the property (fire, storm, flood, etc.).

Section 2: § 300-80. Procedures.

The powers and duties of the Zoning Board of Appeals shall be exercised in accordance with the procedures set forth in this article plus the following additional procedures:

- A. Strict compliance. The Zoning Board of Appeals shall act in strict accordance with the procedures specified by law and by this chapter.
- B. Fees. All appeals made to the Zoning Board of Appeals shall be accompanied by the fee established by the City Council as provided for § 300-83. The Board may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal is under § 300-78 hereof and is partially or wholly successful.
- C. Contents of applications. Each appeal shall fully set forth the circumstances of the case. Every appeal shall refer to the specific provision of the chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed.
- D. Hearing appeals. The jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order,

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requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the City.

- E. Time of appeal. Such appeal shall be taken within 60 days after the filing in the City Clerk's office of any order, requirement, decision, interpretation, or determination of the administrative official charged with the enforcement of such ordinance or local law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- F. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certified to the Zoning Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reasons of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- G. Public hearings. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and the applicant shall be notified of such date. At least 10 days prior to such hearing the Secretary of the Board shall mail, by regular mail, at the applicant's expense, a notice of such hearing and of the substance of the appeal to the owners of all properties within 300 feet of the exterior boundaries of the property affected by the appeal, provided that no such mailing or proof of mailing shall be required where the application is for an area variance of less than three feet in regard to any front, rear or side yard setback. At least 10 days prior to such hearing, the Secretary of the Zoning Board of Appeals, at the expense of the applicant to be paid in advance, shall cause to be published in the official newspaper of the City a notice of such hearing and of the substance of the appeal. Prior to said hearing, the applicant shall submit to the Board affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.
- H. Planning Board advisory opinion. The Zoning Board of Appeals is not required to but may, in its discretion, refer any requests for appeals or applications for variances to the Planning Board for review and recommendations. The Zoning Board shall defer any decision on these

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matters pending the receipt of a report from the Planning Board. If no report is received from the Planning Board within 31 days, the Zoning Board of Appeals may render its decision without said report.

~~I. Architectural Review Commission advisory opinion. The Zoning Board of Appeals shall, within 10 days of its submission, refer any requests for appeals or applications for variances within historic districts or architectural design districts to the Architectural Review Commission for review and recommendations. The Zoning Board of Appeals shall defer any decision on these matters pending the receipt of a report from the Architectural Review Commission.~~

J. I. Waterfront Advisory Committee. Whenever a request for appeal or application for variance involves the City's waterfront area, the Zoning Board of Appeals shall refer a copy of a completed coastal assessment form (CAF) to the Waterfront Advisory Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Advisory Committee with reference to the consistency of the proposed action as set forth in Chapter 296 of the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law." In the event that the Waterfront Advisory Committee recommendation is not forthcoming within 30 days following referral of the CAF, the Zoning Board of Appeals shall make its decision without the benefit of the Waterfront Advisory Committee recommendation.

K. J. Notice to Park Commission and County Planning Department. At least 10 days before such hearing, the Board of Appeals shall mail notices thereof to the regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal and to the Orange County Planning Department, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision 1 of § 239-m of the General Municipal Law.

L. K. Time of decision. The Zoning Board of Appeals shall decide upon an appeal within 62 days after the conduct of the public hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

M. L. Filing of decision or action. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the City Clerk or the zoning office, if such office has been established, within five business days after the day such decision is rendered and a copy thereof mailed to the applicant.

N. M. Compliance with Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.

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Θ N. Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reheard may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing, the Board may reverse, modify, or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

Section 3. This ordinance shall take effect immediately.

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RESOLUTION NO.: 151 - 2012

OF

SEPTEMBER 10, 2012

**A RESOLUTION AUTHORIZING AN EXENTION OF TIME TO
COMPLETE THE DUE DILIGENCE AND CLOSING OF TITLE
IN CONNECTION WITH THE SEPARATION AND SETTLEMENT AGREEMENT
WITH LEYLAND ALLIANCE LLC**

WHEREAS, by Resolution No. 107-2012 of June 18, 2012, the City Council authorized the City Manger to execute a Settlement and Separation Agreement ("Separation Agreement") with Leyland Alliance, LLC terminating prior agreements regarding the proposed redevelopment of approximately thirty (30) acres of City-owned lands located on and in close proximity to the Newburgh waterfront on the Hudson River; and

WHEREAS, the Separation Agreement, dated June 28, 2012, provided for a transfer certain real property from the City of Newburgh to Leyland Alliance LLC and afforded Leyland Alliance LLC a 60-day due diligence period and further provided for a closing of title within 90 days of the execution of the Separation Agreement; and

WHEREAS, Leyland Alliance LLC is seeking a thirty (30) day extension of the due diligence period from August 27, 2012 to September 26, 2012 and a corresponding thirty (30) day extension of time to close title from September 26, 2012 to October 26, 2012; and

WHEREAS, this Council has determined that granting the requested extensions of time is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that Leyland Alliance be and hereby is granted a thirty (30) day extension of the due diligence period from August 27, 2012 to September 26, 2012 and a corresponding thirty (30) day extension of time to close title from September 26, 2012 to October 26, 2012.

RESOLUTION NO.: 152 - 2012

OF

SEPTEMBER 10, 2012

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH PACE UNIVERSITY LAND
USE LAW CENTER AS A SUB-RECIPIENT OF THE SMART GROWTH GRANT FUNDS
TO DEVELOP A COMMUNITY PROFILE, DEVELOP A VACANT PROPERTY
DATABASE AND DRAFT AN ADAPTIVE REUSE PLAN**

WHEREAS, by Resolution No. 97-2009 of June 15, 2009 the City of Newburgh authorized its full cooperation with Orange County's application for the Smart Growth Grant Program, Lower Hudson Valley Region; and

WHEREAS, New York State Department of State accepted Orange County's proposal to reallocate the grant funds in the amount of \$34,997.05 for activities in support of the City's land banking efforts; and

WHEREAS, the City of Newburgh has engaged the Pace University Land Use Law Center to manage activities related to the development of a community profile and vacant property database; drafting an adaptive reuse plan; and community related outreach and training programs; and

WHEREAS, the City of Newburgh wishes to enter into a sub-recipient agreement with Pace University Land Use Law Center to undertake such work; and

WHEREAS, this Council has determined that entering into the sub-recipient agreement is in the best interests of the City of Newburgh and its residents;

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 sub-recipient grant agreement in substantially the same form as annexed hereto with other provisions as Counsel may require with Pace University Land Use Law Center to undertake the scope of work set forth in Schedule "A" of the agreement..

AGREEMENT

THIS AGREEMENT, entered into this day of September, 2012

BY AND BETWEEN:

NAME: Pace University Land Use Law Center
ADDRESS: 78 North Broadway, White Plains, NY 10603
FEDERAL EMPLOYER ID # 13-5562314

a Not-for-Profit Corporation established in accordance with the laws of the State of New York hereinafter referred to as the SUB-GRANTEE, and the CITY OF NEWBURGH, a municipal corporation duly organized under the laws of the State of New York, having its principal office and place of business at 83 Broadway, City Hall, Newburgh, Orange County, New York, hereinafter referred to as the CITY, a public body corporate established under the laws of the State of New York, having its principal office at 83 Broadway, Newburgh, Orange County, New York, hereinafter referred to as "THE CITY".

WHEREAS, the City is scheduled to receive a grant from the _Orange County Department of Planning in the amount of \$34,997.05 Dollars for the purpose of Smart Growth Grant ("Grant"), as authorized by _____ adopted by the City Council on _____; and

and;

WHEREAS, the Sub-Grantee has submitted a proposal for funding which states the purpose, specific goals and objectives of their program, which is attached hereto and made a part of this Agreement as Schedule A thereto; and

WHEREAS, City wishes to engage the Sub-Grantee to conduct the aforementioned program for the period of such agreement;

NOW, THEREFORE, the City, and the Sub-Grantee, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE I. SCOPE OF SERVICES

(1) The Sub-Grantee shall establish and implement a program within the City of Newburgh as set forth on Schedule A attached hereto and assures the City that the Sub-Grantee will employ personnel and/or consultants who are thoroughly familiar with the procedures and requirements of the said Sub-Grantee to execute their program. When required, it may request pertinent assistance from other agencies.

ARTICLE II. TERMS OF CONTRACT

- (1) The services of the Sub-Grantee are to commence upon execution of this Agreement and extend for a period ending one (1) year from the date thereof, or as otherwise provided herein.
- (2) This contract may be terminated at any time by either party on ten (10) days notice in writing to the other party for any breach of the agreement

ARTICLE III. SERVICES TO BE PROVIDED BY THE THE CITY

- (1) Upon request by the Sub-Grantee, the THE CITY may provide such technical and/or advisory assistance as is requested, based upon requirements and availability of staff. Approval of such requests is at the sole discretion of the City Manager of the City.
- (2) If, in the opinion of the City, technical assistance is required from New York State, a request may be initiated by the City for such assistance.

ARTICLE IV. PROGRAM DOCUMENTATION

- (1) The Sub-Grantee hereby agrees to maintain confidential documentation for all activities sponsored in the conduct of the aforesaid program. These confidential records will be subject to and made available for periodic site review by the City. For each such review, the representative of the City will prepare a written report containing comments on overall program performance and effectiveness.
- (2) The Sub-Grantee hereby agrees to maintain separate and complete accounting for all funds received from the City under this agreement. Complete and accurate time and attendance records will be maintained for all personnel receiving funds under this grant.
- (3) Certified yearly audits of the Sub-Grantee will be provided to the City for review by the City's CPA when requested..

ARTICLE V. COMPENSATION

- (1) Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this agreement that the agreement of the City to fund the Sub-Grantee shall be deemed executory to the extent that Grant monies are available to it for the purpose of carrying out the terms of this contract and that no liability shall be incurred by the City should the Grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this agreement.
- (2) Total payment under this Contract shall not exceed THIRTY FOUR THOUSAND NINE HUNDRED NINTY SEVEN DOLLARS AND FIVE CENTS (\$34,997.05) as full payment for all services rendered by the Sub-Grantee during the period of this agreement. The adopted budget of the Sub-Grantee is annexed hereto as Schedule B.
- (3) The City may withhold any payment whenever the Sub-Grantee fails to illustrate proper expenditure of requested funds. Unless otherwise specified, goals are considered the pro rata share for the period of billing, e.g. monthly, quarterly, semi-annually, based on the total goals set forth for the life of the contract.

ARTICLE VI. METHOD OF PAYMENT

(1) Within thirty (30) days of the execution of this Agreement, and on a semi-annual basis, thereafter, for the term of this Agreement, the City shall pay, and the Sub-Grantee agrees to accept as full compensation for such services and in conformity with the approved budget attached hereto, the following amounts under this Agreement:

(b) Payment for services shall cease upon termination of the contract or upon the payment of the amount stated in Article V above, whichever occurs first. All payments for services are to be made from the Grant. The City shall not be obligated by this agreement to make any payments from the General Fund or any other funds.

ARTICLE VII. EQUAL EMPLOYMENT OPPORTUNITY

(1) In carrying out the obligation of this Contract, the Sub-Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. The Sub-Grantee shall take affirmative action to ensure that applicants for employment and employees of the Sub-Grantee are treated without regard to their race, color, religion, sex, national origin or disability. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

(2) The Sub-Grantee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Sub-Grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

(3) No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE VIII. ASSIGNMENT BY THE SUB-GRANTEE

The Sub-Grantee represents that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City Manager of the City.

ARTICLE IX. RECORDS AND REPORTS

(1) The Sub-Grantee shall maintain accounts and records, including personnel, property and financial records, adequate to identify the account for all costs pertaining to its performance under this Agreement, and such other records as may be deemed necessary by the Sub-Grantee, the City, Orange County, and/or New York State to assure proper accounting for project funds. The Sub-Grantee agrees that such records shall be open for inspection by any authorized representative of the City, or its assignee under this Agreement.

(2) The Sub-Grantee shall submit semi-annual reports to the City identifying prescribed activities funded under this Agreement, together with a record of expenses incurred by Sub-Grantee during each such semi-annual period.

ARTICLE X. AUDITS

(2) The Sub-Grantee shall maintain records of all details with respect to work and services to be performed under this Agreement and income, expenses, liabilities and assets. These records will be made available for audit purposes in accordance with OMB Circular A-133 to the City, Orange County, State of New York or any authorized representative and will be retained for such periods of time as may be required by State and local statutes, but in any event, not less than six (6) years.

ARTICLE XI. CONFIDENTIALITY

With the exception of specific identifiers, such as individual names of persons and addresses, all reports, information, data, etc., prepared or assembled by the Sub-Grantee in performing the services set forth in the funding proposal and pursuant to this Agreement, are public documents. The Sub-Grantee hereby agrees that they shall be available to any individual, organization or corporation in accordance with the Freedom of Information Law of the State of New York.

ARTICLE XII. FACILITIES AND PERSONNEL

The Sub-Grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder. The Sub-Grantee further represents that it will terminate and dismiss from further performance of work and services under this agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to the Sub-Grantee by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for the Sub-Grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve the Sub-Grantee from meeting its obligations under the terms and conditions of this Agreement.

ARTICLE XIII. INTEREST OF SUB-GRANTEE, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

(1) The Sub-Grantee hereby agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.

(2) The Sub-Grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.

(3) The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

ARTICLE XIV. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE CITY; MEMBERS OF THE CITY COUNCIL, OR OTHER PUBLIC OFFICIALS

(1) No member, officer or employee of the City or its designees or agents, no member of the City Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities, during his/her

tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.

(2) The Sub-Grantee shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE XV. Reserved.

ARTICLE XVI. SOLICITATION OR PROCUREMENT OF AGREEMENT

The Sub-Grantee represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

ARTICLE XVII. CHANGES AND MODIFICATIONS

The City, with written consent of Sub-Grantee and Orange County, may modify the scope or quantity of services and work to be furnished under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Sub-Grantee or in the time required for their performance, an equitable adjustment shall be made in the provisions of this Agreement for payments to the Sub-Grantee or for the time and performance of the services, or for both, as may be agreed upon by the parties in writing.

ARTICLE XVIII. EFFECT OF TERMINATION OF AGREEMENT

(1) In the event of termination as herein provided, any completed reports prepared by the Sub-Grantee under this Agreement and any material gathered in the preparation of reports under this Agreement, whether such reports are completed or not, shall become the property of the City and shall be submitted to it.

(2) In the event of termination, the Sub-Grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-Grantee, the City may withhold from any payments due the Sub-Grantee for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by the Sub-Grantee.

ARTICLE XIX. INDEMNIFICATION

(1) The Sub-Grantee hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of the Sub-Grantee or its agents, sub-contractors, servants or employees.

(2) If any person shall make a claim for any damage or injury (including death resulting therefrom) as described above, the Sub-Grantee hereby agrees to defend, indemnify, and save harmless the City from and against any and all loss, expense, damage or injury whatsoever arising out of this Agreement.

(3) The Sub-Grantee shall procure and maintain at its own expense until final completion of this Contract, insurance which must name the City of Newburgh as additional insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, by an accredited insurance company as may be approved by the City Manager.

Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.

(A) The Sub-Grantee shall provide Worker's Compensation Insurance in accordance with the statutes of the State of New York.

(B) The Sub-Grantee shall carry Liability and Property Damage Insurance with limits of not less than:

BODILY INJURY LIABILITY

Each Person
\$1,000,000

Each Occurrence
\$2,000,000

PROPERTY DAMAGE LIABILITY

Each Occurrence
\$1,000,000

PERSONAL INJURY LIABILITY

Each Person
\$1,000,000

Occurrence
\$2,000,000

ARTICLE XX. MODIFICATION

This Agreement may not be modified orally. It may only be modified by written agreement signed by the parties hereto.

IN WITNESS WHEREOF, the **Sub-Grantee and City** have executed this Agreement the day and year herein mentioned.

By _____

Title _____

Date: _____

CITY OF NEWBURGH

By _____
Richard F. Herbek
City Manager

Date _____

APPROVED AS TO FORM BY:

APPROVED BY:

Corporation Counsel

Director of Finance/Comptroller

Schedule A
Proposed Scope/Program

Approach and Schedule

The Center will serve as the Project Coordinator on behalf of the City and Land Bank, with the Center's Managing Director, Jessica Bacher acting as the Lead Project Consultant for the

project's term. In this role, Ms. Bacher will manage the day-to-day activities of the project team and will have overall responsibility for ensuring the sufficiency and timeliness of all project deliverables.

Task 1 – Community/Regional Profile (Months 1 through 3)

The Center will prepare the Community/Regional Profile for Newburgh with input from City staff and citizens. As part of this effort, the Center will gather relevant economic and demographic information for the City and region and place the City's current circumstances within the larger regional context.

Task 2 – Searchable Database of Vacant Buildings and Properties (Months 1 – 6)

This task will begin with the Center developing key criteria or characteristics of vacant building and properties to be used in identifying and categorizing such properties. Then Newburgh's Planning Staff, along with personnel from the Land Bank, will have primary responsibility for identifying, characterizing and categorizing vacant buildings and properties located in the City, building off of its initial work in the Newburgh Target Area, discussed below. This information will then be coded and compiled into a searchable database by municipal section, block, and lot number (SBL). Tax parcels are georeferenced which allows queries and analyses to be displayed on digital maps. Parcels can then be queried by SBL, street address, or any other attribute field (for example by property size) using an open source, GIS-based platform. Parcels will also be searchable by selecting them on an interactive map. SBL will be the unique key identifier in the database for the purpose of relating tables of attribute information.

Task 3 – Draft Adaptive Reuse Plan (Months 6 – 9)

The Center will prepare the draft Adaptive Reuse Plan with the assistance of City and Land Bank staff and, where necessary, the Center's resource partner, the Center for Community Progress. The Adaptive Reuse Plan will set forth the short-term use of identified building and properties, such as greening efforts or demolition, and will also establish long-term adaptive reuse strategies for these properties consistent with the City's draft Future Land Use Plan, prepared in January 2011. The Adaptive Reuse Plan will include GIS analyses to determine the best use of the properties. The location of the findings of the analyses will be expressed with maps and graphs generated from GIS.

Task 4 – Newburgh-based Community Meetings (As necessary throughout Project)

Relying on its significant facilitation experience, the Center will conduct all necessary community meetings, including stakeholder sessions for input necessary to prepare the Community/Regional Profile required under Task 1. Information from these meetings will also be used to assist in prioritization efforts under Task 5.

Task 5 – Prioritization of Sites for Specific Adaptive Reuse Projects (Months 10 – 11)

As part of the Final Adaptive Reuse Plan, the document will identify specific buildings and properties for prioritization of adaptive reuse efforts within the Newburgh Target Area (discussed below). For these priority sites, the City will present recommendations regarding site specific reuses and the activities necessary to get these priority projects funded by utilizing matching funds. The City of Newburgh was awarded a planning grant from the U.S. Department of Housing and Urban Development (HUD) with the assistance of Senator Schumer. The City has committed some of this grant funding for revitalization efforts. This funding can be used for the development of architectural renderings that will serve as a component of the submission of other funding proposals for demolition, greening, rehabilitation and redevelopment work for these priority projects. This work will complement the Adaptive Reuse Plan.

Task 6 – Final Adaptive Reuse Plan (Months 11 - 12)

After providing the draft Adaptive Reuse Plan to the City and its citizens, the Center will gather comments and proposed edits and revise the document into the final Adaptive

Reuse Plan for adoption and implementation by the City Council. This plan will include specific recommendations for sites identified as priorities under Task 5 that will be expressed using maps, graphics and text.

Task 7 – Training Sessions for other Orange County Communities (Month 12)

The Center will conduct at least one training session for other Orange County communities regarding the process undertaken by and results of the City of Newburgh's efforts to address its vacant buildings and properties.

Schedule B

	Smart Growth Grant	HUD Grant	City Match	TOTAL
Lead Project Consultant (Rate \$74.02)	\$ 8,882.40			\$ 8,882.40
Land Use Specialist I (\$68.53)	\$ 8,566.25			\$ 8,566.25
Land Use Specialist II (\$72.56)	\$ 7,256.00			\$ 7,256.00
Training and Engagment Director (\$74.02)	\$ 8,882.40			\$ 8,882.40
GIS Specialist			\$4,962	\$ 4,962.00
Planner			\$2,089.60	\$ 2,089.60
City Engineer			\$1,445.50	\$ 1,445.50
Administration			\$692.60	\$ 692.60
Land Bank Staff		\$ 35,000.00		\$ 35,000.00
Professional Services		\$ 45,000.00		\$ 45,000.00
GIS and Web Software/Services	\$ 15,000.00			\$ 15,000.00
Mileage	\$ 660.00			\$ 660.00
Training Materials	\$ 500.00			\$ 500.00
Training Refreshments	\$ 250.00			\$ 250.00
TOTAL	\$ 49,997.05	\$ 80,000.00	\$ 9,189.70	\$ 139,186.75

RESOLUTION NO.: 153 - 2012

OF

SEPTEMBER 10, 2012

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH PACE UNIVERSITY
LAND USE LAW CENTER AS A SUB-RECIPIENT OF THE TSEC GRANT FUNDS TO
PROVIDE EXPEDITED ASSISTANCE TO COMPANIES SEEKING TO RE-LOCATE
TO OR EXPAND WITHIN THE CITY OF NEWBURGH**

WHEREAS, by Resolution No. 33-2012 of March 12, 2012, the City of Newburgh applied for and was awarded a grant from the Solar Energy Consortium ("TSEC") in the amount of \$50,000.00 for the purposes of developing a database of industrial and commercial properties that would be appropriate for partners in the New York Renewable Energy Cluster Program; and

WHEREAS, the City of Newburgh has engaged the Pace University Land Use Law Center to inventory and develop a database of industrial properties and to assist manufacturers seeking help with building code and other issues pertaining to starting or expanding operations in the City; and

WHEREAS, the City of Newburgh wishes to enter into a sub-recipient agreement with Pace University Land Use Law Center to undertake such work; and

WHEREAS, this Council has determined that entering into the sub-recipient agreement is in the best interests of the City of Newburgh and its residents;

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 sub-recipient grant agreement in substantially the same form as annexed hereto with other provisions as Counsel may require with Pace University Land Use Law Center to undertake the scope of work set forth in Schedule "A" of the agreement..

AGREEMENT

THIS AGREEMENT, entered into this 1 day of September , 2012

BY AND BETWEEN:

NAME: Pace University Land Use Law Center
ADDRESS: 78 North Broadway, White Plains, NY 10603
FEDERAL EMPLOYER ID #: 13-5562314

a Not-for-Profit Corporation established in accordance with the laws of the State of New York hereinafter referred to as the SUB-GRANTEE, and the CITY OF NEWBURGH, a municipal corporation duly organized under the laws of the State of New York, having its principal office and place of business at 83 Broadway, City Hall, Newburgh, Orange County, New York, hereinafter referred to as the CITY, a public body corporate established under the laws of the State of New York, having its principal office at 83 Broadway, Newburgh, Orange County, New York, hereinafter referred to as "THE CITY".

WHEREAS, the City is scheduled to receive a grant from the The Solar Energy Consortium, Inc. in the amount of 50,000.00 Dollars for the purpose of New York Renewable Energy Cluster Program ("Grant"), as authorized by _____ adopted by the City Council on _____; and

and;

WHEREAS, the Sub-Grantee has submitted a proposal for funding which states the purpose, specific goals and objectives of their program, which is attached hereto and made a part of this Agreement as Schedule A thereto; and

WHEREAS, City wishes to engage the Sub-Grantee to conduct the aforementioned program for the period of such agreement;

NOW, THEREFORE, the City, and the Sub-Grantee, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE I. SCOPE OF SERVICES

(1) The Sub-Grantee shall establish and implement a program within the City of Newburgh as set forth on Schedule A attached hereto and assures the City that the Sub-Grantee will employ personnel and/or consultants who are thoroughly familiar with the procedures and requirements of the said Sub-Grantee to execute their program. When required, it may request pertinent assistance from other agencies.

ARTICLE II. TERMS OF CONTRACT

- (1) The services of the Sub-Grantee are to commence upon execution of this Agreement and extend for a period ending one (1) year from the date thereof, or as otherwise provided herein.
- (2) This contract may be terminated at any time by either party on ten (10) days notice in writing to the other party for any breach of the agreement

ARTICLE III. SERVICES TO BE PROVIDED BY THE THE CITY

- (1) Upon request by the Sub-Grantee, the THE CITY may provide such technical and/or advisory assistance as is requested, based upon requirements and availability of staff. Approval of such requests is at the sole discretion of the City Manager of the City.
- (2) If, in the opinion of the City, technical assistance is required from New York State, a request may be initiated by the City for such assistance.

ARTICLE IV. PROGRAM DOCUMENTATION

- (1) The Sub-Grantee hereby agrees to maintain confidential documentation for all activities sponsored in the conduct of the aforesaid program. These confidential records will be subject to and made available for periodic site review by the City. For each such review, the representative of the City will prepare a written report containing comments on overall program performance and effectiveness.
- (2) The Sub-Grantee hereby agrees to maintain separate and complete accounting for all funds received from the City under this agreement. Complete and accurate time and attendance records will be maintained for all personnel receiving funds under this grant.
- (3) Certified yearly audits of the Sub-Grantee will be provided to the City for review by the City's CPA when requested..

ARTICLE V. COMPENSATION

- (1) Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this agreement that the agreement of the City to fund the Sub-Grantee shall be deemed executory to the extent that Grant monies are available to it for the purpose of carrying out the terms of this contract and that no liability shall be incurred by the City should the Grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this agreement.
- (2) Total payment under this Contract shall not exceed FIFTYTHOUSAND (\$50,000.00) DOLLARS as full payment for all services rendered by the Sub-Grantee during the period of this agreement. The adopted budget of the Sub-Grantee is annexed hereto as Schedule B.

(3) The City may withhold any payment whenever the Sub-Grantee fails to illustrate proper expenditure of requested funds. Unless otherwise specified, goals are considered the pro rata share for the period of billing, e.g. monthly, quarterly, semi-annually, based on the total goals set forth for the life of the contract.

ARTICLE VI. METHOD OF PAYMENT

(1) Within thirty (30) days of the execution of this Agreement, and on a semi-annual basis.

basis, thereafter, for the term of this Agreement, the City shall pay, and the Sub-Grantee agrees to accept as full compensation for such services and in conformity with the approved budget attached hereto, the following amounts under this Agreement:

(b) Payment for services shall cease upon termination of the contract or upon the payment of the amount stated in Article V above, whichever occurs first. All payments for services are to be made from the Grant. The City shall not be obligated by this agreement to make any payments from the General Fund or any other funds.

ARTICLE VII. EQUAL EMPLOYMENT OPPORTUNITY

(1) In carrying out the obligation of this Contract, the Sub-Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. The Sub-Grantee shall take affirmative action to ensure that applicants for employment and employees of the Sub-Grantee are treated without regard to their race, color, religion, sex, national origin or disability. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

(2) The Sub-Grantee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Sub-Grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

(3) No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because s/he has filed any complaint or instituted, or caused to be instituted, any proceeding; or has testified, or is about to testify, in any proceeding under or relating to the labor standards applicable hereunder.

ARTICLE VIII. ASSIGNMENT BY THE SUB-GRANTEE

The Sub-Grantee represents that its rights, obligations and duties under this Agreement shall not be assigned, in whole or in part, without prior written approval of the City Manager of the City.

ARTICLE IX. RECORDS AND REPORTS

(1) The Sub-Grantee shall maintain accounts and records, including personnel, property and financial records, adequate to identify the account for all costs pertaining to its performance under this Agreement, and such other records as may be deemed necessary by the Sub-Grantee, the City, TSEC, and/or New York State to assure proper accounting for project funds, both Grant and non-Grant shares. The Sub-Grantee agrees that such records shall be open for inspection by any authorized representative of the City, or its assignee under this Agreement.

(2) The Sub-Grantee shall submit semiannual reports to the City identifying prescribed activities funded under this Agreement, together with a record of expenses incurred by Sub-Grantee during each semiannual period.

ARTICLE X. AUDITS

(2) The Sub-Grantee shall maintain records of all details with respect to work and services to be performed under this Agreement and income, expenses, liabilities and assets. These records will be made available for audit purposes in accordance with OMB Circular A-133 to the City, TSEC, State of New York or any authorized representative and will be retained for such periods of time as may be required by State and local statutes, but in any event, not less than six (6) years.

ARTICLE XI. CONFIDENTIALITY

With the exception of specific identifiers, such as individual names of persons and addresses, all reports, information, data, etc., prepared or assembled by the Sub-Grantee in performing the services set forth in the funding proposal and pursuant to this Agreement, are public documents. The Sub-Grantee hereby agrees that they shall be available to any individual, organization or corporation in accordance with the Freedom of Information Law of the State of New York.

ARTICLE XII. FACILITIES AND PERSONNEL

The Sub-Grantee represents that it has and shall continue to have proper facilities and personnel to perform the work and services agreed to be performed hereunder. The Sub-Grantee further represents that it will terminate and dismiss from further performance of work and services under this agreement any officer, employee, agent, sub-contractor or other person upon a finding, based upon procedures which provide the process to the individual and to the Sub-Grantee by the City that such officer, employee, agent sub-contractor or other personnel of the contractor is incompetent to perform such services under this Agreement and that it will replace such officer, employee, agent, sub-contractor or other such personnel as the City reasonably finds necessary for the Sub-Grantee to replace to meet its obligations under this Agreement. It is expressly understood that nothing in the Article shall relieve the Sub-Grantee from meeting its obligations under the terms and conditions of this Agreement.

ARTICLE XIII. INTEREST OF SUB-GRANTEE, ITS OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS

(1) The Sub-Grantee hereby agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.

(2) The Sub-Grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.

(3) The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

ARTICLE XIV. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE CITY; MEMBERS OF THE CITY COUNCIL, OR OTHER PUBLIC OFFICIALS

(1) No member, officer or employee of the City or its designees or agents, no member of the City Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.

(2) The Sub-Grantee shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE XV. Reserved.

ARTICLE XVI. SOLICITATION OR PROCUREMENT OF AGREEMENT

The Sub-Grantee represents that it has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, bonus or any other compensation in connection with the procurement of the Agreement.

ARTICLE XVII. CHANGES AND MODIFICATIONS

The City, with written consent of Sub-Grantee and TSEC, may modify the scope or quantity of services and work to be furnished under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Sub-Grantee or in the time required for their performance, an equitable adjustment shall be made in the provisions of this Agreement for payments to the Sub-Grantee or for the time and performance of the services, or for both, as may be agreed upon by the parties in writing.

ARTICLE XVIII. EFFECT OF TERMINATION OF AGREEMENT

(1) In the event of termination as herein provided, any completed reports prepared by the Sub-Grantee under this Agreement and any material gathered in the preparation of reports under this

Agreement, whether such reports are completed or not, shall become the property of the City and shall be submitted to it.

(2) In the event of termination, the Sub-Grantee shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. However, if termination is affected by the City because of default or breach on the part of the Sub-Grantee, the City may withhold from any payments due the Sub-Grantee for the purpose of set-off, such amount as the City reasonably determines to be the damages due it by the Sub-Grantee.

ARTICLE XIX. INDEMNIFICATION

(1) The Sub-Grantee hereby assumes entire responsibility for any and all damage or injury of any kind, name or nature (including death resulting therefrom) to all persons, including third parties, and for all property damage when such personal and/or property damage is caused by, results from, arises out of or occurs in connection with any act, or failure to act, of the Sub-Grantee or its agents, sub-contractors, servants or employees.

(2) If any person shall make a claim for any damage or injury (including death resulting therefrom) as described above, the Sub-Grantee hereby agrees to defend, indemnify, and save harmless the City from and against any and all loss, expense, damage or injury whatsoever arising out of this Agreement.

(3) The Sub-Grantee shall procure and maintain at its own expense until final completion of this Contract, insurance which must name the City of Newburgh as additional insured for liability for damages imposed by law of the kinds and in the amounts hereinafter stated, by an accredited insurance company as may be approved by the City Manager.

Certificates of Insurance acceptable to the City shall be filed with the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City as evidenced by Return Receipt of Registered or Certified letter. Renewal Certificates covering renewal of all policies expiring during the life of the Contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.

(A) The Sub-Grantee shall provide Worker's Compensation Insurance in accordance with the statutes of the State of New York.

(B) The Sub-Grantee shall carry Liability and Property Damage Insurance with limits of not less than:

BODILY INJURY LIABILITY

Each Person
\$1,000,000

Each Occurrence
\$2,000,000

PROPERTY DAMAGE LIABILITY

Each Occurrence
\$1,000,000

PERSONAL INJURY LIABILITY

Each Person
\$1,000,000

Occurrence
\$2,000,000

ARTICLE XX. MODIFICATION

This Agreement may not be modified orally. It may only be modified by written agreement signed by the parties hereto.

IN WITNESS WHEREOF, the **Sub-Grantee and City** have executed this Agreement the day and year herein mentioned.

By _____

Title _____

Date: _____

CITY OF NEWBURGH

By _____

Richard F. Herbek
City Manager

Date _____

APPROVED AS TO FORM BY:

APPROVED BY:

Corporation Counsel

Director of Finance/Comptroller

SCHEDULE A
Proposed Scope/Program

Expedited assistance to companies

1. seeking to re-locate to the City of Newburgh
2. seeking to expand in the City of Newburgh

Deliverables:

- a. Database development. In partnership with the Office of Planning, the Center will collaborate with NYREC to develop a database of industrial properties that would be appropriate for cluster partners. The Center will develop an inventory of industrial properties and collect all pertinent information for each property. This data will be inputted into a database that can be used by staff and will include a web based program to allow companies to access relevant information.
- b. In partnership with the Building Department, the Center will provide expedited assistance to manufacturers seeking help with building code and other issues pertaining to starting or expanding operations in the City. This will include the review of applications and application requirements and an examination of new and better processes for the review and approval process.

SCHEDULE B
Proposed Budget

BUDGET CATEGORY	BUDGETED AMOUNT
John Nolon (20%)	\$ 17,000.00
Fringe (33.4%)	\$ 5,678.00
Jessica Bacher (20%)	\$ 18,360.00
Fringe (33.4%)	\$ 6,132.24
STUDENT INTERN	\$ 1,900.00
TRAVEL	\$ 500.00
MATERIALS	\$ 429.76
	\$ 50,000.00

RESOLUTION NO.: 154 - 2012

OF

SEPTEMBER 10, 2012

A RESOLUTION AUTHORIZING A PUBLIC AUCTION
OF CITY OWNED PROPERTIES
AND AMENDING THE TERMS AND CONDITIONS

WHEREAS, this Council has, by Resolutions No.: 121-2012 and 122-2012 and 129-2012, respectively, authorized a public auction of City owned properties and further authorized the City Manager to enter into an agreement with Haroff Auction and Realty, Inc./Absolute Auctions & Realty, Inc. for services in connection with such auction, and approved the Terms and Conditions of the auction for the City of Newburgh 2012 Property Auction; and

WHEREAS, subsequent to the adoption of said resolutions the City of Newburgh acquired title to the following parcels of real property by tax foreclosure *in rem*

- 146 Chambers Street - Section 18, Block 5, Lot 29
- 279 Liberty Street - Section 18, Block 5, Lot 8
- 7-9 Van Ness Street - Section 29, Block 6, Lot 3; and

WHEREAS, the City of Newburgh now desires to dispose of these properties; and

WHEREAS, upon the recommendation of City staff, this Council has determined that auctioning the parcels listed herein above is in the best interests of the City of Newburgh; and

WHEREAS, the properties are to be sold to the highest bidder and are subject to the final approval of each sale by this Council; and

WHEREAS, it is necessary and appropriate to amend said Terms and Conditions to provide for the requirement that 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 and that 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;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the properties listed herein above are to be sold at public auction to the highest bidder subject with the final approval of each sale by this Council; and

BE IT FURTHER RESOLVED, that the Terms and Conditions of the Auction be and are hereby amended to provide for the requirement that 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 and that 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; and

BE IT FURTHER RESOLVED, the City Manager be and he hereby is directed to take all steps and execute any and all instruments and documents necessary to implement this resolution.

RESOLUTION NO.: 155 - 2012

OF

SEPTEMBER 10, 2012

A RESOLUTION TO AUTHORIZE THE AWARD OF A BID
AND THE EXECUTION OF A CONTRACT WITH RITTER & PARATORE
CONTRACTING INC. IN CONNECTION WITH THE JOHNES STREET
BUILDING DEMOLITION PROJECT
WITH A BID IN THE AMOUNT OF \$118,470.00

WHEREAS, the City Council has, by Resolution No. 113-2012 of July 16, 2012, rejected the initial bids which were received as it was determined that all bids received far exceeded the pre-bid estimate; and

WHEREAS, the City of Newburgh has taken the necessary and appropriate measures to advertise for the Johnes Street Building Demolition Project re-bid; and

WHEREAS, two (2) bids were received and opened; and

WHEREAS, upon such review of the submitted bids it has been determined that the lowest responsible bidder is Ritter & Paratore Contracting Inc.; and

WHEREAS, as said property is part of the ERP the City will be reimbursed 90% of remedial onsite costs and 50% of building demolition costs by the Department of Environmental Conservation; and

WHEREAS, funding for such project shall be derived from the budget line H1.1440.0215.5403.2010; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the bid for the Johnes Street Building Demolition Project be and is hereby awarded to Ritter & Paratore Contracting Inc. for the bid amount of \$118,470.00 to be provided from budget line H1.1440.0215.5403.2010, and that the City Manager is hereby authorized to enter into a contract for such work in this amount.



City of Newburgh
DEPARTMENT OF PLANNING & DEVELOPMENT
City Hall – 83 Broadway
Newburgh, New York 12550

TEL: (845) 569-9400

FAX: (845) 569-9700

MEMORANDUM

TO: City Council, Richard Herbeck

FROM: Ian MacDougall, City Planner; Craig Marti, City Engineer

DATE: August 31, 2012

RE: Building Demolition at 7-11 Johnes Street Site

The Johnes Street site is one of five contaminated sites included in the Environmental Restoration Program (ERP). The city benefits from the program by being reimbursed 90% of remedial onsite costs and 50% of building demolition costs. The building located on the site must be demolished to address contaminants below the building.

Early in 2012 the demolition of the building was put out for bid. The bids were rejected July 16, 2012 by the City Council because the bids for the work were too high. In August there was a second bid which resulted in an acceptable bid. It has been determined that the responsible low bidder is Ritter & Paratore Inc. which is the firm retained by the City to demolish the building at the Provan site.

It is a practice of the ERP program to award the contract to the lowest bidder provided all basic requirements are met. It is also in the city's interest to award the work to the lowest bidder because the city is responsible for 50 percent of the demolition costs. The lowest bidder did meet all State requirements, and city requirements identified in the bid therefore, staff recommends awarding the demolition contract to Ritter & Paratore Contracting Inc.

RESOLUTION NO.: 156 - 2012

OF

SEPTEMBER 10, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE VENDOR SERVICE AGREEMENTS WITH
SUNY ORANGE, THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT
AND BEST RESOURCE CENTER AT A COST OF \$435,000.00
IN CONNECTION WITH THE CURRENT REQUIREMENTS OF THE
TWENTY FIRST CENTURY GRANT PROGRAM

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

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

WHEREAS, the City's 21st Century Community Learning Centers Program partners with Best Resource Center, SUNY Orange and the Newburgh Enlarged City School District for 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 partners such as Best Resource Center, SUNY Orange and the Newburgh Enlarged City School District for the final fiscal year of said grant period beginning October 1, 2012 and ending on June 30, 2013 for the following amounts:

- Best Resource Center \$5,000.00
- SUNY Orange \$30,000.00
- Newburgh Enlarged City School District \$400,000.00; and

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 community partnerships and strengthen afterschool services to Newburgh's children and youth;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute Vendor Service Agreements with SUNY Orange, the Newburgh Enlarged City School District and Best Resource Center at a cost of \$435,000.00 in connection with the current requirements of the Twenty First Century Grant Program.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this 29th day of August, 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 **BEST RESOURCE CENTER**, 49 Grand Street, Newburgh, NY 12550, 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: Vera Best
VERA BEST
EXECUTIVE DIRECTOR

DATE: _____

DATE: 8/29/12

SCHEDULE A

SCOPE OF SERVICES

Parent workshops providing professional skill development and college prep. Workforce development, soft skills, etc. As well as skills to assist their children in the educational arena.

SCHEDULE B
FEES AND EXPENSES

Contract Amount: \$5,000.00 **

**** This is to include (but not exceed \$5,000): supplies, materials, curriculum and other related expenditures related to college readiness and exposure.**

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 SUNY Orange County Community College , 115 South Street, 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 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 \$30,000.00 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.

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

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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.

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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.

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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.

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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.

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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.

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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

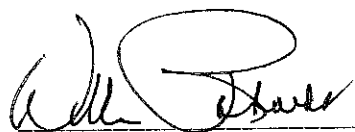
Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum 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: _____
DR. WILLIAM RICHARDS
PRESIDENT

DATE: _____

DATE: 9/7/12

SCHEDULE A

SCOPE OF SERVICES

Schedule B to contract

SUNY Orange, as a major partner will continue based on the current grant requirements/guidelines, to:

Provide 240 hours of in class instruction on the topic of College and Career Readiness

Purchase and maintain curriculum, supplies, technology, and miscellaneous items

necessary to fulfill objectives and goals outlined in 21st Century grant and,

Hire and supervise college and career readiness person who will report directly to Madeline Torres-Diaz and maintain an office at the college. This person is not a City of Newburgh employee.

The supervisor will submit status reports as necessary to Project Director of 21st Century.

SCHEDULE B
FEES AND EXPENSES

Contract Amount: \$30,000.00 **

**** This is to include (but not exceed \$30,000): supplies, materials, curriculum and other related expenditures related to college readiness and exposure.**

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 Newburgh Enlarged City School District, a firm with principal offices at 124 Grand Street, Newburgh, New York 12550, 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 July 31, 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 \$400,00.00 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.

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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.

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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.

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ARTICLE 23. MODIFICATION

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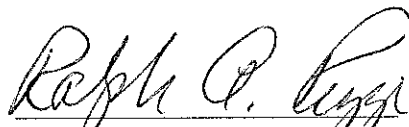
Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum 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.

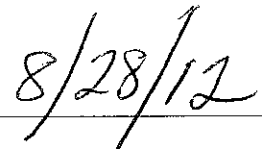
THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
CITY MANAGER

BY: 
RALPH A. PIZZO,
SUPERINTENDENT OF SCHOOLS

DATE: _____

DATE:  _____

SCHEDULE A

SCOPE OF SERVICES

Scope of Work:

Provide facilities for City of Newburgh 21st Century After school Program

Provide certified teachers for academic hour at each site

Provide School Nurse for the Duration of after school program

Provide School Security, where applicable, for after school Program

Provide School Administrator for the entirety of the program

Provide transportation home via school bus company

The following shall be sites where the after school program shall take place:

Horizons on the Hudson to serve 120 students

Heritage Middle School to serve 120 students

Newburgh Free Academy to serve 120 students

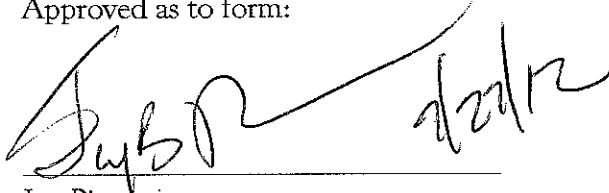
School district also agrees to make reasonable office space accommodations for City of Newburgh 21st Century staff as well as make classroom space available for specialist, including but not limited to Gym Space, Cafeteria Space, Art Room Space and Music Room space.

SCHEDULE B
FEES AND EXPENSES

	HOH	NFA	HJH	Total:
Totals:	\$181,000	\$109,500	\$109,500	\$400,000

(See attached breakdown)

Approved as to form:



Joy Pittman
Director

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

Richard Herbek
City Manager

Newburgh Enlarged City School District
21 Century Program Budget Projection
2012-13

	Oct 22-April 26	Oct 22 -May 31	Oct 17 -May 31	
Students	125	75	75	275
Adj Days	111	131	131	
Days	89	104	104	Total
	HOH	NFA	HJH	
Administrators	27306	32226	32226	91758
Teachers(9,5,5)	44456	28860	28860	102176
Nurse(1,0,1)	14819	0	17316	32135
Security (1,1,1)	8010	9360	9360	26730
Support Staff (1,1,1)	3560	4160	4160	11880
Supplies	2000	600	600	3200
FICA	7509	5707	7032	20248
WC	1296	985	1213	3494
TR	13766	9713	12466	35945
ER	1370	1601	1601	4572
				0
Transportation (4,2,2)	26700	20800	20800	68300
				0
				0
Indirect Costs				0
	150792	114012	135634	400438
	181000	109500	109500	400000

RESOLUTION NO.: 157 - 2012

OF

SEPTEMBER 10, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT
WITH THE HUMANE SOCIETY OF WALDEN
TO CARE FOR DOGS IN THE CUSTODY OF THE
CITY OF NEWBURGH

WHEREAS, as mandated by New York State law, the Animal Control Unit must have caregivers for the dogs taken into the custody of the City of Newburgh; and

WHEREAS, the Humane Society of Walden has been willing to undertake such care in compliance with the Agricultural and Markets Law of the State of New York; and

WHEREAS, this Council has reviewed the attached agreement with the Humane Society of Walden and has determined that entering into the same is in the best interests of the City of Newburgh, its citizens and the animals alike;

NOW, THEREFORE, BE IT RESOLVED, that this Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement with the Humane Society of Walden to care for the dogs in the custody of the City of Newburgh.

AGREEMENT BETWEEN
THE HUMANE SOCIETY OF WALDEN, INC.
AND
THE CITY OF NEWBURGH

FOR THE PERIOD JULY 1, 2012 to JULY 1, 2013

Agreement made this _____ day of _____, 2012 between the Humane Society of Walden, Inc., 2489 Albany Post Road, Walden, New York 12586 and the City of Newburgh, City Hall, 83 Broadway, Newburgh, NY 12550 as follows:

The Humane Society of Walden, Inc., agrees to accept any dog brought to the Shelter by the Police Department or Dog Control Officer of the City of Newburgh, with the following exceptions enumerated below. If no empty pens are available, the Humane Society of Walden, Inc., will do their best to accommodate the City of Newburgh.

In accordance with the New York State Agricultural Department Law, all dogs must be kept until midnight of the 7th day after which they may be put up for adoption if not claimed by the owner. Any dog not claimed or adopted may be humanely euthanized. This decision is at the discretion of the Shelter Manager.

The City of Newburgh will pay a fee of \$200.00 per dog delivered to the Humane Society of Walden, Inc.

If the Humane Society of Walden Inc., must hold a dog beyond the legal holding period due to a pending court case, biting incident, etc., the Humane Society of Walden, Inc., will charge the City of Newburgh \$75.00 (flat rate) per dog.

Since the Humane Society of Walden, Inc. does not have a veterinarian on premises, any animal with suspected mange, parvo, rabies, distemper, or injury needing immediate medical care cannot be accepted. The City of Newburgh is responsible to obtain treatment and/or euthanasia of sick or injured animals and for all related costs.

In the event a dog is brought to the shelter DOA (dead on arrival), cremation fees are as follows:

5 lbs. - 40 lbs	\$80.00	81 lbs - 95 lbs	\$120.00
41 lbs - 65 lbs	95.00	96 lbs - 115 lbs.	130.00
66 lbs - 80 lbs	110.00	116 lbs - 150 lbs.	150.00

All animals brought to the Humane Society of Walden, Inc., are subject to Shelter manager's approval.

The Humane Society of Walden will send vouchers monthly to the City of Newburgh, City Hall, 83 Broadway, Newburgh, New York 12550. A record of the disposition of the dogs from the previous month will be provided by the end of the current month.

The Humane Society of Walden,

City of Newburgh

BY: _____
Jean Buckley, President

BY: _____