

RESOLUTION NO.: 1 - 2013

OF

JANUARY 14, 2013

A RESOLUTION ADOPTING  
RULES OF ORDER AND PROCEDURE  
FOR THE COUNCIL OF THE CITY OF NEWBURGH  
FOR THE YEAR 2013

BE IT RESOLVED, that the Council of the City of Newburgh, New York adopts for use during the year 2013 the Rules of Conduct and Procedure: By Laws, a copy of which is attached hereto and made a part of this Resolution; and

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

City of Newburgh City Council  
Rules of Order and Procedure

Rule I: General Rules of Procedure

- A. The presiding officer shall preserve order and decorum and shall decide questions of order; subject to an appeal by motion to the City Council; the appeal to be taken without debate. The presiding officer may, if (s)he so desires, present motions and resolutions to the City Council, and (s)he may debate on any question which is being considered by it.
- B. When a question is under consideration, no motion shall be entertained except as herein specified, which shall have precedence in the following order:
1. Motion for clarification, or to request reversal of ruling of the presiding officer, or limiting or extending discussion;
  2. Recess the session;
  3. Lay on table;
  4. Postpone to a meeting of a certain date;
  5. Refer to work session;
  6. Amend;
  7. Call the previous question, to be asked as follows: "Shall the main question be put now?" If answered in the negative, the main question remains before the Council.
- C. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone shall be decided without debate.
- D. A motion to adjourn shall always be in order and shall be decided without debate.
- E. Every member desiring to speak shall address the presiding officer. All council members shall confine him/herself to the question under debate and avoid personalities. A member once recognized shall not be interrupted when speaking.
- F. No question or motion shall be debated or put, unless it is seconded. It shall then be stated by the presiding officer.
- G. A motion to reconsider any action taken by the Council may be made on the day such action was taken, either immediately during the session or at a recessed or adjourned session. Such motion must be made by a member on the prevailing side, but may be seconded by any member. The motion is subject to debate. This rule shall not prevent any member of the Council from making or re-making the same or any other motion at a subsequent meeting of the Council.

H. No member of the Council shall by conversation or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to comply with these rules, or the orders of its presiding officer. The Presiding Officer, subject to appeal by motion to the Council, may direct a member who is acting in violation of this section to leave the meeting or call for a recess or adjournment.

I. As the sergeant-at-arms of the meetings, the Police Chief shall carry out all order and instructions given by the presiding officer, for the purpose of maintaining order and decorum at the meetings, subject to an appeal by motion, to the Council.

J. Any motion may be withdrawn by the maker before it has been amended or voted upon, but in such case any other member may renew the motion at that time.

#### Rule II. Order of Business

A. The Order of Business shall be in conformity with section 20-3 of the Code of Ordinances.

B. The Order of Business may be departed from by majority vote of the members present.

#### Rule III. Voting

A. The order of voting shall be by alphabetical order of the last name of each Council member with the Mayor voting last.

B. All votes shall be by roll call. It shall be the duty of the City Clerk to enter on the minutes the names of the members voting for or against the question. Once a question has been put and the vote is being taken, the members of the Council shall confine themselves to voting and shall not resume discussion or make further comments on the question.

C. Every resolution or motion must be seconded before being put to a vote. An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

D. No resolution, ordinance or local law may be introduced at a meeting unless the resolution, ordinance or local law has been considered at a work session of the Council prior to the Council meeting or is listed on the written agenda for said meeting. Notwithstanding the foregoing, by majority vote, an item not discussed at work session or appearing on the written agenda may be introduced, considered, and voted upon.

#### Rule IV. Executive Session

Whenever the Council shall determine to transact business in an executive session, it shall do so in accordance with the provisions of Open Meetings Law. All executive sessions shall be commenced at the public meeting. Proposals, discussions, statements and transactions in executive session are intended to be and shall be held and maintained in confidence and shall not be disclosed. The presiding officer shall direct all persons except members and designated officers and employees of the City to withdraw.

#### Rule V. Participation of City Manager and Staff

The City Manager shall be permitted to address the Council and participate in discussions. Heads of Departments shall be permitted to address the Council. Any other City officer or employee shall be permitted to address the Council with permission of the presiding officer, subject to an appeal by motion to the City Council, the appeal to be taken without debate.

#### Rule VI. Suspension of the Rules

In order to hear persons other than members of the City Council, the Mayor, and members of City staff, it shall be necessary to pass a motion suspending the rules of order. A motion to suspend the rules may be made at any time during the meeting and shall be decided without debate. Any such person speaking shall confine himself-herself to the subject and shall spend not longer than three (3) minutes, unless the time is extended by the presiding officer. This rule shall not apply to public hearings.

#### Rule VII. Guidelines for Public Comment

A. The public shall be allowed to speak only during the Public Comment periods of the meeting or at such other time as the presiding officer may allow, subject to appeal by motion to the Council.

B. Speakers must adhere to the following guidelines:

1. Speakers must be recognized by the presiding officer.
2. Speakers must step to the front of the room.
3. Speakers must give their name, address and organization, if any.
4. Speakers must limit their remarks to 3 minutes on a given topic. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
5. Speakers may not yield any remaining time they may have to another speaker.

6. Council members may, with the permission of the presiding officer, , interrupt a speaker during their remarks, but only for the purpose of clarification or information.
7. All remarks shall be addressed to the Council as a body and not to any specific member or to staff.
8. Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste. No profanities shall be used. No personal, slanderous, boisterous remarks shall be made. Council members, the Mayor and staff shall be treated with respect. The presiding officer, subject to appeal by motion to the Council, or the Council, may, by majority vote, request that the presiding officer direct that a speaker violating this provision or any other rule yield the floor and in the event the speaker fails to obey, (s)he may be escorted from the meeting by the sergeant-in-arms.
9. Interested parties or their representatives may address the Council by written communications. Written communications shall be delivered to the Clerk or their designee. Speakers may read written communications verbatim.

C. Members of the public not speaking shall observe commonly accepted rules of courtesy and decorum. They shall not annoy or harass others or speak when another speaker is being heard by the Council.

#### Rule VIII. Use of Recording Equipment

All members of the public and all public officials are allowed to audio or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer, subject to appeal by motion to the Council, may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Council, size of the equipment, and the ability of the public to still participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, (s)he may request an accommodation to avoid the interference and if not complied with, may ask the individual to leave the meeting room.

#### Rule IX. Rules for Public Hearings

The following rules shall apply to a legally required public hearing held before the City Council:

- (a) Speakers shall register in writing prior to the beginning of the hearing by providing their name, address, and organization, if any. Individuals arriving after the commencement of the hearing shall be permitted to register upon arrival as long as the Chairperson has not closed the hearing.

(b) The Presiding Officer shall recognize each speaker, in the order registered, when the hearing is commenced. Speakers shall identify themselves, their address and organization, if any, prior to the remarks.

(c) Speakers must limit their remarks to five (5) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.

(d) All remarks shall be addressed to the Council as a body and not to any individual member thereof.

(e) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.

(f) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.

(g) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.

#### Rule X. Work Sessions

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions.

#### Rule XI. Robert's Rules of Order

In the event any question in procedure shall arise that is not provided for by these rules, then, in that event, Robert's Rules of Order, Newly Revised, 10<sup>th</sup> Edition, shall be followed.

#### Rule XII. Adoption of Ordinances

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on

agenda items before Council action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

This rule shall not be construed to prevent the Council from holding a public hearing on any ordinance at its discretion, provided a majority of the members of the Council in attendance at a meeting, upon a motion or resolution duly introduced, vote to conduct such public hearing.

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)

RESOLUTION NO.: 2 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A SATISFACTION IN CONNECTION WITH  
A MORTGAGE ISSUED TO 97-103 GRAND STREET, LLC  
FOR PREMISES LOCATED AT 97-103 GRAND STREET  
(SECTION 24, BLOCK 12, LOT 3)**

WHEREAS, by Resolution No.: 105-2010 of May 10, 2010, this Council authorized the acceptance and assumption of all the assets and liabilities of the Newburgh Community Development Agency ("NCDA"), all without consideration, pursuant to Section 554(19) of the General Municipal Law; and

WHEREAS, Resolution No.: 105-2010 of May 20, 2010, further authorized the Acting City Manager to execute and accept delivery of any and all deeds, assignments, instruments, agreements, and any and all other necessary documents to effect such acceptance and assumption by the City; and

WHEREAS, by an Assignment and Assumption of Mortgage Without Covenant between the NCDA f/k/a the Newburgh Urban Renewal Agency to the City of Newburgh, executed on November 15, 2010, and recorded in the Orange County Clerk's Office on November 22, 2010, included a mortgage issued to 97-103 Grand Street, LLC for premises located at 97-103 Grand Street (Section 24, Block 12, Lot 3) in the principal sum of Ten Thousand (\$10,000.00) Dollars; and

WHEREAS, the terms of the mortgage instrument have been satisfied by the mortgagor, and the issuance of a Satisfaction of Mortgage, a copy of which is annexed hereto, is necessary and appropriate; and

WHEREAS, this Council has determined that executing said Satisfaction is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute the attached Satisfaction in connection with a mortgage issued to 97-103 Grand Street, LLC for premises located at 97-103 Grand Street (Section 24, Block 12, Lot 3).

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

**KNOW ALL MEN BY THESE PRESENTS,**

That The City of Newburgh, a New York municipal corporation, and having its principal office at 83 Broadway, City Hall, Newburgh, New York 12550.

*Insert residence, if individual, or principal office, if corporation, giving street and street number.*

**DOES HEREBY CERTIFY** that the following Mortgage **IS PAID**, and do hereby consent that the same be discharged of record.

Mortgage dated the 29<sup>th</sup> day of August in the year 2001, made by To Newburgh Community Development Agency F/K/A Newburgh Urban Renewal Agency

To by 97-103 Grand Street, LLC

in the principal sum of \$10,000.00 and recorded on the 16th day of October in the year 2003, in Liber 11230 of Section of Mortgages, page 1157, in the office of the County Clerk of the County of Orange and further described in Assignment and Assumption of Mortgage Without Covenant from the Newburgh Community Development Agency formerly known as the Newburgh Urban Renewal Agency to the City of Newburgh, dated the 15<sup>th</sup> day of November in the year 2010, and recorded on the 22<sup>nd</sup> day of November in the year 2010, in Book 13085 Page 0851.

Dated the \_\_\_\_\_ day of November in the year 2011

IN PRESENCE OF:

\_\_\_\_\_  
THE CITY OF NEWBURGH

\_\_\_\_\_  
RICHARD F. HERBEK, CITY MANAGER

*Section 321 of the Real Property Law expressly provides who must execute the certificate of discharge in specific cases and also provides, among other things, that (1) no certificate shall purport to discharge more than one mortgage, (except that mortgages affected by instruments of consolidation, spreader, modification or correction may be included in one certificate if the instruments are set forth in detail in separate paragraphs); (2) if the mortgage has been assigned, in whole or in part, the certificate shall set forth: (a) the date of each assignment in the chain of title of the person or persons signing the certificate, (b) the names of the assignor and assignee, (c) the interest assigned, and (d) if the assignment has been recorded, the book and page where it has been recorded or the serial number of such record, or (e) if the assignment is being recorded simultaneously with the certificate of discharge, the certificate of discharge shall so state, and (f) if the mortgage has not been assigned of record, the certificate shall so state; (3) if the mortgage is held by any fiduciary, including an executor or administrator, the certificate of discharge shall recite the name of the court and the venue of the proceedings in which his appointment was made or in which the order or decree vesting him with such title or authority was entered.*

*Insert "Further" when required.*

**ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE**

State of New York, County of Orange, ss:

On the \_\_\_\_\_ day of January in the year 2013, before me, the undersigned, personally appeared RICHARD F. HERBEK

\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE**

State of New York, County of \_\_\_\_\_, ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, the

subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

**Satisfaction of Mortgage**

**Title No.**

City of Newburgh  
TO  
97-103 Grand Street, LLC



**ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE**

State of New York, County of \_\_\_\_\_, ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared

\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE**

\*State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

\*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me \_\_\_\_\_ the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

SECTION: 24  
BLOCK: 12  
LOT: 3  
COUNTY OR TOWN: City of Newburgh

**RETURN BY MAIL TO:**



RESOLUTION NO.: 3 - 2012

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A DONATION OF LABOR AND MATERIALS FROM  
ORANGE COUNTY DRYWALL SERVICES, INC. TO RENOVATE  
THE POLICE STATION LOBBY ACOUSTICAL CEILING GRID SYSTEM**

WHEREAS, the City of Newburgh Police Station lobby has sustained serious water damage; and

WHEREAS, Mr. Ruben Galan, the owner of Orange County Drywall Services, Inc., has contacted the Chief of Police and offered to donate labor and materials to renovate the police station lobby acoustical ceiling grid system; and

WHEREAS, this Council has determined that accepting such donation is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a donation of labor and materials from Orange County Drywall Services, Inc. to renovate the Police Station lobby acoustical ceiling grid system.

RESOLUTION NO.: 4 -2013

OF

JANUARY 14, 2013

A RESOLUTION ACCEPTING DONATIONS FROM  
ENFORCEMENT TECHNOLOGY GROUP, INC. AND THE POLICE SUPERIOR  
OFFICERS ASSOCIATION OF NEWBURGH, NEW YORK, INC.  
FOR A DIRECT-LINK LIFELINE SERIES CRISIS RESPONSE THROW PHONE SYSTEM  
FOR THE CITY OF NEWBURGH POLICE DEPARTMENT

WHEREAS, a City of Newburgh Police Sergeant attending a Hostage/Crisis Negotiation Training Course provided by the Public Agency Training Council was randomly selected to receive a Bluetooth Communications System donated by Enforcement Technology Group, Inc.; and

WHEREAS, the Sergeant requested to apply the retail value of the Bluetooth Communications System toward the purchase of a Direct-Link LifeLine Series Crisis Response Throw Phone System for the City of Newburgh Police Department; and

WHEREAS, Enforcement Technology Group, Inc. is willing to provide the Direct-Link LifeLine Series Crisis Response Throw Phone System to the City of Newburgh Police Department for an added cost of \$1,000.00; and

WHEREAS, the Police Superior Officers Association of Newburgh, New York, Inc. has offered to donate to the City of Newburgh the \$1,000.00 for the Direct-Link LifeLine Series Crisis Response Throw Phone System; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to accept such donations from Enforcement Technology Group, Inc. and the Police Superior Officers Association of Newburgh, New York, Inc.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a donation in the amount of One Thousand (\$1,000.00) Dollars from Police Superior Officers Association of Newburgh, New York, Inc. and the donation of Direct-Link LifeLine Series Crisis Response Throw Phone System from Enforcement Technology Group, Inc.

RESOLUTION NO.: 5-2013

OF

JANUARY 14, 2013

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A \$700.00 GRANT FROM THE ORANGE COUNTY HISTORIAN FOR THE PURPOSE OF SCANNING THE CITY CLERK'S HANDWRITTEN COUNCIL MINUTES DATING FROM 1865 THROUGH 1884 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS AS MAY BE APPROPRIATE AND NECESSARY TO ACCEPT SUCH FUNDS

WHEREAS, the City Clerk's Office is in possession of handwritten Council Minutes dating from 1865 through 1884; and

WHEREAS, the Orange County Historian recognizes the significance of the City's archives and has offered the City a \$700.00 grant to begin scanning of the handwritten minutes; and

WHEREAS, this Council has determined that accepting such grant is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be authorized to accept the \$700.00 grant from the Orange County Historian for the purpose of scanning the City Clerk's handwritten Council Minutes dating from 1865 through 1884; and

BE IT FURTHER RESOLVED, that the City Manager is further authorized to execute the necessary documents as may be appropriate and necessary to accept such funds.

RESOLUTION NO.: 6 - 2013

OF

JANUARY 14, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A LEASE AGREEMENT  
WITH NEW YORK COMMUNICATIONS COMPANY, INC.  
TO PROVIDE FOR COMMUNICATIONS EQUIPMENT AND THE SERVICE OF  
THE COMMUNICATIONS EQUIPMENT FOR THE CITY OF NEWBURGH  
POLICE DEPARTMENT AT A COST OF \$3,139.00 PER MONTH  
FOR 84 MONTHS

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

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

WHEREAS, said renewal agreement is being provided at a monthly cost of \$3,139.00 for 84 months; and

WHEREAS, NYCOMCO agrees three (3) years from lease equipment installation "effective date" they will remove any communication equipment and maintenance agreements which will be replaced and will be provided by the County for operation on a new County wide radio system, without penalty and the lease will be prorated to reflect the reduction in the monthly cost of equipment removed; and

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

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

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the annexed agreement with NYCOMCO for communications equipment and the service of the communications equipment at a monthly rate of \$3,139.00 for 84 months for the City of Newburgh Police Department.



## **IT IS FURTHER AGREED BY THE PARTIES:**

- (1) **ASSIGNMENT.** (a) The Lessor may assign the equity interest of the equipment described in this lease to a bank or financial institution. The Lessor will continue to collect the monthly payments due under this lease and will continue to provide service and maintenance of the equipment for the Lessee. No obligation is imposed upon the bank or financial institution to which the equity value of the equipment may be assigned to perform or fulfill any obligations of the Lessor under this lease. The Lessee acknowledges that any claim it may have under this lease shall be asserted against the Lessor only and not against an assignee of the equity value of the equipment
- (b) The Lessee may not assign this lease or any right to or use of the equipment described herein without the written consent of the Lessor first obtained. Notwithstanding an assignment, the Lessee will remain fully obligated under this lease unless specifically released by the Lessor and any person or company which takes over the rights or obligations under this lease will have all of the rights and will be obligated to keep all of the promises and agreements made herein.
- (2) **DEFAULT.** If the Lessee be adjudicated a bankrupt or there is filed against it a petition under the bankruptcy laws, or if any insolvency proceedings is initiated by or against the Lessee, or if the equipment or any part thereof is encumbered, pledged, or attached, seized or taken under any judicial process, the Lessor or its assignee may at any time terminate this lease agreement and enter any premises or vehicles where the leased equipment may be located, without process of law, and remove all said equipment, without prejudice to any other rights or remedies of the Lessor or its assignee.
- (3) **SERVICE.** The performance of equipment and the liability of the Lessor under the service provision is contingent upon maintenance by a qualified communications technician, employed and certified by NYCOMCO. This maintenance is the liability of NYCOMCO and is included in the lease charges.
- (4) **PATENT INDEMNITY.** The Lessor will defend any suit or proceeding brought against the Lessee so far as based on a claim that any leased equipment, or any part thereof, constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information, and assistance (at the Lessor's expense) for the defense of same, and the Lessor shall pay all damages and costs awarded therein against the Lessee.
- (5) **OPTION TO RENEW.** The Lessee shall have the option to renew this lease agreement at a monthly rental to be determined at or before the expiration of the lease term, by written notice prior to expiration of the lease term by execution of a renewal form.
- (6) **LESSEE'S OBLIGATIONS.** The Lessee shall
- (a) keep the equipment described herein at the location designated and shall not move it elsewhere without prior written authorization from the Lessor;
  - (b) notify the Lessor of the name and mailing address of any party having a right or interest in any motor vehicle not unconditionally owned by the Lessee in which any of the equipment listed herein is installed;
  - (c) at the expiration of this lease agreement, return to the Lessor in good condition except for normal wear and tear all leased equipment, together with all parts and accessories added to or installed in the leased equipment;
  - (d) keep the label reading "Property of New York Communications Company, Inc." affixed to all leased equipment at all times, and make equipment available for Lessor's inspection at reasonable times upon reasonable notice;
  - (e) be responsible during the lease term for loss or theft of all portable radios listed herein and maintain adequate insurance thereon payable to the Lessor and Lessee as their interests may appear;
  - (f) arrange for access by the Lessor or any person acting in its behalf to the location where the leased equipment is to be installed.
- (7) **LIMITATION OF LIABILITY.** In no event shall the Lessor be liable for special or consequential damages. The Lessor's liability on any other claim for loss of liability, arising out of or connected with this lease, or the use of any equipment covered by this lease (including, but not limited to, loss or liability arising from breach of contract) shall in no case exceed the prorated total monthly rental then paid on the particular unit involved in the claim, except as provided in the paragraphs entitled "SERVICE" and "PATENTS".
- (8) **GOVERNMENT AUTHORIZATIONS.** Neither the Lessor nor any of its employees is an agent or representative of the Lessee and the Lessee is solely responsible for obtaining any required authorizations from the Federal Communications Commission and for compliance therewith. If this lease includes the furnishing of a tower and installation, the Lessee shall have the sole responsibility for obtaining all necessary Federal, State and Local permits or authorizations pertaining thereto. The Lessor will comply with all other applicable Federal, State or Local laws and specifically represents that any goods to be delivered hereunder shall be produced in compliance with the Fair Labor Standards Act of 1938 as amended. Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the lease and not for the benefit of any other person.
- (9) **AMENDMENTS.** This lease agreement (and any amendments attached hereto and signed by both parties) contains the entire understanding between the parties concerning the subject matter hereof and any representation, promise, modification or amendment shall not be binding upon either party unless reduced in writing and signed on behalf of each by a duly authorized representative.

**NEW YORK COMMUNICATIONS COMPANY, INC.**



REMIT TO:  
 53 West Cedar Street  
 Poughkeepsie, NY 12601  
 (845) 471-5520 Fax (845) 486-4123  
 WWW.NYCOMCO.COM

134 Bracken Road  
 Montgomery, NY 12549  
 (845) 452-5800 Fax (845) 457-5733

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

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

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

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
3	905-0381	ZETRON MAX PRO WORKSTATION BUNDLE WITH CPU, MEDIA DOCK, 2 SPEAKERS, POWER SUPPLY AND LICENSES. 23" TOUCH SCREEN MONITORS 3-SHURE DESKTOP MICROPHONES 4-MAX RADIO GATEWAYS 1-MAX MANAGER 1-BLOCK OF 10 RADIO LICENSES 1-REDUNDANT POWER SUPPLY 1-12VDC POWER DISTRIBUTION PANEL 4-DUAL UNIT RACK MOUNT OTION 3-24-PORT SWITCH-CISCO 3-FOOT SWITCH 1-77" CABINET ENCLOSURE MAX SETUP AND PROGRAMMING INSTALLATION 7 YEAR LEASE COVERAGE	807.00 /MO	2,421.00 /MO
3	EXISTING MAHG-N8MXX	EXISTING HARRIS M7100 CONTROL STATIONS WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. 1-PATROL 1-ANI 1-WATCH COMMANDER	40.00 /MO	120.00 /MO
2	MAMW-SDMXX	HARRIS M7300 EDACS CONTROL STATION WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. EDACS SCAN BASE-1 EDACS SCAN BASE-2 PROGRAMMING AND INSTALLATION 7 YEAR LEASE COVERAGE	40.00 /MO	80.00 /MO
5	TK-790HBK-U	KENWOOD 150MHZ 110W BASE STATION-USED	40.00 /MO	200.00 /MO

Continued on Next Page . . .

**NEW YORK COMMUNICATIONS COMPANY, INC.**



REMIT TO:  
 53 West Cedar Street  
 Poughkeepsie, NY 12601  
 (845) 471-5520 Fax (845) 486-4123  
 WWW.NYCOMCO.COM

134 Bracken Road  
 Montgomery, NY 12549  
 (845) 452-5900 Fax (845) 457-5733

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

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

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

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
		WITH POWER SUPPLY, EXISTING ANTENNA SYSTEM, CABINET ENCLOSURE, INTERFACE TO RTL, PROGRAMMING AND INSTALLATION. 2-ARMORY 2-DOWNING PARK 1-FIRE DEPARTMENT 7 YEAR LEASE COVERAGE		
1	EXISTING SXHMCX	HARRIS MASTR III 150 MHZ REPEATER WITH EXISTING ANTENNA SYSTEM LOCATED AT CRONOMER HILL. 7 YEAR LEASE COVERAGE	248.00 /MO	248.00 /MO
1	NYCOMCO CPU	NYCOMCO COMPUTER FOR ANI SYSTEM WITH 2-23" MONITORS. 7 YEAR LEASE COVERAGE	35.00 /MO	35.00 /MO
1	NYANI	NYCOMCO ANI SOFTWARE PACKAGE 7 YEAR LEASE COVERAGE	35.00 /MO	35.00 /MO
			TOTAL:	3,139.00 /MO

AUTHORIZED SIGNATURE \_\_\_\_\_

PRINT NAME \_\_\_\_\_

TITLE \_\_\_\_\_

RESOLUTION NO.: 7 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH THE TOWN OF NEWBURGH TO  
PROVIDE FOR THE EXPANSION OF THE CROSSROADS SEWER DISTRICT AND AN  
UPGRADE OF THE CRESCENT AVENUE PUMP STATION**

WHEREAS, by Resolution No. 70-2010 of March 22, 2010, the City Council of the City of Newburgh authorized the City Manger to negotiate and execute the necessary agreements and related contracts with the Town of Newburgh to provide for the upgrade of the Crescent Avenue Pump Station with the City's proportionate cost of such upgrade to be paid for through a reduction of its sewer operation and maintenance charges as levied through the existing inter-municipal agreement between the Town and City dated May 6, 2004; and

WHEREAS, the City is now able to pay its proportional cost of the upgrade to the Crescent Avenue Pump Station in a lump sum at the completion of the project; and

WHEREAS, it has been determined by this Council that the City and Town will mutually benefit from this project;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York authorizes the City Manger to execute Amendment No. 1 to the Inter-Municipal Sewer Agreement between the City of Newburgh and the Town of Newburgh in substantially the same form as annexed hereto, with terms and conditions as required by the Corporation Counsel, to provide for the upgrade of the Crescent Avenue Pump Station.

**THE CITY OF NEWBURGH**  
**AND**  
**THE TOWN OF NEWBURGH**  
**AMENDMENT NO. 1**  
**TO INTERMUNICIPAL**  
**SEWER AGREEMENT**

ADOPTED BY THE CITY COUNCIL OF THE CITY  
OF NEWBURGH ON \_\_\_\_\_, 2013

ADOPTED BY THE NEWBURGH TOWN  
BOARD ON \_\_\_\_\_, 2012

Richard F. Herbek, City Manager

Wayne C. Booth, Town Supervisor

**DRAFT: IntermunicipalSewerAgreement-Amendment 9/11/12 revised 1/4/13**

AMENDMENT NO. 1  
TO INTER-MUNICIPAL SEWER AGREEMENT

This AMENDMENT TO INTER-MUNICIPAL SEWER AGREEMENT ("Amendment") is made and entered this \_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Newburgh (the "City") and the Town of Newburgh (the "Town") (collectively referred to herein as the "Parties").

WHEREAS, on May 6, 2004, the City and the Town entered into an inter-municipal agreement governing sewage treatment service and the construction of additional sewage treatment plant capacity under a program that was mutually beneficial to both municipalities and in the general public interest (the "2004 Sewer Agreement"); and

WHEREAS, the Town seeks to make an additional interconnection to the City sewer system in accordance with the terms of the 2004 Sewer Agreement in order to serve a new district extension to the Town's Crossroads Consolidated Sewer District in the area of West Stone Street and North Carpenter Avenue; and

WHEREAS, the Parties desire to amend the 2004 Sewer Agreement to provide for certain improvements to the City's Crescent Avenue Sewage Pumping Station which the City's engineer has advised are necessary in order for the City sewage collection system to be capable of carrying sewage from the new interconnection on terms that are mutually beneficial to both municipalities, and

WHEREAS, the City and the Town, both in the County of Orange, State of New York, have the power and authority to each contract with the other to accomplish the aforesaid purposes,

NOW, THEREFORE, in consideration of the foregoing and pursuant to the authority vested in the City and the Town by the General Municipal Law and other statutes of the State of New York, and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereto do mutually agree as follows:

1. DEFINITIONS: The following words and phrases shall have the meanings set forth below whenever they are used in this Amendment.

"2004 Sewer Agreement" shall mean the inter-municipal agreement between the City and the Town dated May 6, 2004.

"Amendment" shall mean this amendment to the 2004 Sewer Agreement including all appendices and exhibits.

"Crescent Avenue Sewage Pumping Station" shall mean the underground pump station which is part of the City of Newburgh sewer system situated at Crescent Avenue including the real property, personal property, equipment, fixtures, structures, appurtenances, and related facilities used to conduct the City's sewage and waste water discharge operations.

"New Interconnection" shall mean the new point at which the Town's sewer system connects to the City sewer system in order to serve the West Stone Street Extension.

"West Stone Street Extension" shall mean the new sewer district extension to the Town's Crossroads Consolidated Sewer District in the area of West Stone Street and North Carpenter Avenue. Except as provided in this Amendment, all terms used in this Amendment that are not otherwise defined shall have the respective meanings ascribed to such terms in the 2004 Sewer Agreement.

2. INCONSISTENCY. In the event there is any inconsistency or difference between the terms and provisions of this Amendment and the 2004 Sewer Agreement, the terms and provisions set forth in this Amendment shall control and govern.

3. CONSTRUCTION OF IMPROVEMENTS TO CRESCENT AVENUE SEWAGE PUMP STATION. The Parties agree that the Town, subject to the terms and conditions of this Agreement, will construct improvements to the Crescent Avenue Sewage Pumping Station so that the City sewage collection system shall be capable of carrying additional sewage flow from the New

Interconnection. The City agrees to provide the Town with such appropriate license or permit over City property as may be necessary to construct the improvements and the usual appurtenances thereto. The construction shall be done in accordance with plans and specifications prepared and approved in accordance with the terms and conditions of this Amendment. The design and construction shall be compatible with the existing City sewer system and shall meet the requirements of all State, Federal and Local laws, rules, and regulations pertaining thereto.

4. TOWN UNDERTAKINGS. The Town agrees to:
  - a. Engage the services of a New York State licensed professional engineer (the "Consultant Engineer") to review the existing condition of the Crescent Avenue Sewage Pumping Station, evaluate rehabilitation and replacement alternatives and in conjunction with the City's Engineer, recommend a plan for a fully updated sewage pumping station designed to accommodate the additional flow from the West Stone Street Extension through the New Interconnection and to prepare a basis of design report (the "Pumping Station Project").
  - b. Engage the services of a New York State licensed professional engineer (the "Design Engineer") to prepare the necessary contract documents (including specifications and drawings) necessary for regulatory review and approval and for bidding of the proposed Pumping Station Project. Design drawings will be forwarded to the City's Engineer for review and comment at 30 percent, 70 percent and 90 percent completion points in the design.
  - c. Advertise the project and award construction to the successful lowest responsive and responsible bidder(s) (the bidder(s) to whom the contract is awarded by the Town is hereinafter referred to as the "contractor").
  - d. Engage the services of a New York State licensed professional engineer (the "Project Engineer") to conduct the construction engineering, administration and inspection of the construction contract,

including review and approval of all materials and products proposed for the Pumping Station Project, compliance with the specifications during construction, review and approval of all payment requests made by the contractor, review and approval of any change orders necessary for the completion of the Project, preparation of as-built drawings and certification of the Project as complete. The Town shall administer the construction or inspection of the Pumping Station Project in such a manner as to make certain that all work is performed according to plans drawn by the Design Engineer and approved by the City.

- e. Make any and all payments for the above engineering services and the construction contract.
  - f. Upon completion of the construction of the Pumping Station Project, the Town shall furnish the City with three (3) sets of as built drawings of the completed work, one of which said sets shall be a reproducible copy.
5. CITY UNDERTAKINGS. The City agrees to:
- a. Provide access to the Crescent Avenue Sewage Pumping Station to the Town and the Consultant Engineer for the purposes of evaluation of rehabilitation and replacement alternatives and any and all assistance reasonably necessary for the Town to complete the undertakings in Section 4 above.
  - b. Provide any and all comments on proposed alternatives within 15 working days of their submittal by the Consultant Engineer and to have City officials and the City Engineer be reasonably available for any meetings requested by the Town and its Consultant Engineer.
  - c. Provide any and all comments on the Pumping Station Project design specifications and drawings within 15 working days of their submittal by the Design Engineer and to have responsible City officials and the City Engineer be reasonably available for any meeting requested by the Town and its Design Engineer in that regard. The plans and specifications shall be modified as required by the City, if such modification is necessary to protect the City's sewer system or to make them conform

to the intent and dictates of this Agreement Any other changes or modifications to the plans and specifications shall require review and approval by the City's engineer, which said approval shall not be unreasonably delayed or withheld

- d. Provide any and all comments on the New Interconnection design specifications and drawings and proposed metering device for the New Interconnection within 15 working days of their submittal by the Design Engineer and Town and to have responsible City officials and the City Engineer be reasonably available for any meeting requested by the Town and its Design Engineer in that regard. The plans and specifications shall be modified as required by the City, if such modification is necessary to protect the City's sewer system or to make them conform to the intent and dictates of this Agreement Any other changes or modifications to the plans and specifications shall require review and approval by the City's engineer, which said approval shall not be unreasonably delayed or withheld
- e. If necessary, execute any applications for regulatory review and approval, including but not limited to applications to the New York State Department of Environmental Conservation and expeditiously issue any review and approval for City of Newburgh Building Permits submitted by the contractor.
- f. Provide permission for the successful low bidder to complete the construction of the Pumping Station Project and the New Interconnection on City owned property.
- g. Provide any and all comments on construction issues to the Town's Project Engineer and the Town in writing within 24 hours.
- h. Provide written acceptance of the facility upon conducting a final inspection of both Substantial and Final Completion of the work and submission of any required test results and determination that the work was performed satisfactorily and otherwise provide prompt notice of deficiency or defect in the work to the Town. The City shall not unreasonably withhold or delay final approval.

- i. Make any and all payments for reimbursement of Town expenses as specified by this Amendment within 30 calendar days of submittal by the Town of Newburgh.

6. ADDITIONAL RIGHTS AND OBLIGATIONS WITH REGARD TO PUMPING STATION PROJECT.

- a. No work on construction shall begin until and unless the City has approved the form of the contract therefor, and has had a reasonable opportunity to review the contractor proposed to be engaged to perform the work. The City shall have the right, through the Town, to disapprove such contractor if it is determined through valid documentation by the City that the apparent low bidder does not meet the General Municipal Law requirements for being a responsive and responsible bidder.
- b. The Town shall give the City at least thirty (30) days notice prior ' to commencement of the actual work on the construction of the Pumping Station Project.
- c. The City may observe the work in progress as it deems appropriate or necessary. All certifications of the work required to be presented to the Town shall also be required to be presented to the City. Should the City have reason to believe that the contractor is not complying with the plans and specifications, it shall immediately notify the Town and the Town shall demand and obtain compliance from the contractor forthwith so that the completed project will comply with the plans and specifications
- d. The Town shall obtain all necessary permits and approvals for and shall conform to all laws, ordinances, rules, regulations and requirements affecting the construction and work on the Pumping Station Project. The Town agrees that the work shall be done in compliance with the direction of the City's engineer for the prevention of damage to the City's sewer system as well as in conformance with this Agreement.

- e. The Town shall maintain and keep clean all of the City's lands occupied for the purpose of the Pumping Station Project construction work and shall in no way interfere with the City's ongoing sewer system operations.
  - f. The Town agrees that there shall be no blasting done in connection with the Pumping Station Project unless the parties agree in advance that blasting will be done for a specific purpose, and in a specific manner so as to ensure the health and safety of persons and property.
  - g. The cost and expense of the construction of the expansion(s) and appurtenances, of the work thereon, and the planning, legal, and engineering costs incurred by the Town shall be paid solely by the Town, subject to the provisions for partial reimbursement by the City in Section 10 below.
7. NEW INTERCONNECTION. The design and construction of the New Interconnection shall be governed by the 2004 Sewer Agreement.
8. INSURANCE, INDEMNIFICATION AND HOLD HARMLESS.
- a. The Town also agrees to cause the contractor(s) to provide and maintain the following insurance in relation to the construction of the Pumping Station Project:
    - i. Comprehensive General Liability Policy with limits of liability of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
    - ii. Umbrella policy with limits of liability of at least \$3,000,000 per occurrence and \$3,000,000 in the aggregate;
    - iii. Comprehensive Automobile Liability Policy with a combined limit of liability of at least \$1,000,000 and
    - iv. Worker's Compensation with the New York statutory limits.

- b. Neither the Town nor the contractor(s) or subcontractor shall commence work on City property under this Amendment until all the insurance required under this Amendment has been obtained and such insurance has been approved by the City. Certificates of Insurance shall be filed with the City prior to commencement of the work. These Certificates shall contain a provision that the coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been received by the City. The Town, and any contractors and subcontractors (including any materialmen and suppliers), shall immediately cease all work on the expansion(s) during such time as any of the noted insurance coverages are not in effect, except such work that is limited to ensuring the safety of the site.
- c. Renewal certificates covering the 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.
- d. All of the above-mentioned insurance policies shall name the City of Newburgh, and its officers, employees, and agents as either additional or named insureds and neither the City nor its officers, employees or agents shall be responsible for the payment of premiums for such insurance.
- e. The Town shall be responsible to the City in damages for any injury sustained by the City's lands, the City's sewage system or any structure, building, fixture, appurtenances, facility, equipment, meter, metering equipment, device of any kind and other property, real and/or personal, belonging to the City or the City's agents, which is caused or occasioned, directly or indirectly, by any act or omission, whether or not negligent, on the part of the Town or its agents, servants, or employees during the construction of the Pumping Station Project by the Town. Such injuries shall be repaired by the Town as may be required by the City, and the Town shall bear the entire cost and expense of such repairs. The Town must be given written notice of the condition if possible or at least oral notice where written notice is not practical. If any delay by the Town in making the required repairs

would jeopardize or endanger the City's sewage treatment system, the City may make such repairs and/or take such reasonable and appropriate measures as are deemed necessary by the City to safeguard the City's sewage and sewage treatment system. The City may charge to the Town the entire cost of such repairs and/or measures.

f. The Town will require its contractor to obtain and maintain Builder's Risk Insurance against loss or damage for replacement value and for such larger amount as may be necessary to prevent any claim for contribution for co-insurance on the part of the insurance company. Losses thereunder shall be payable to the Town and the City as their interests may appear. The Parties agree that any insurance monies collected upon any such policies covering the Crescent Avenue Pumping Station shall be held by them and used only toward the repair, reconstruction or rebuilding thereof.

g. The Town shall save the City harmless from, defend and indemnify the City for all judgments, settlements, payments, fines, penalties, causes of action, liabilities, awards, damages, losses, costs and expenses including, but not limited to legal fees and expenses rendered against or charged to the City in all suits, actions, claims and proceedings instituted against the City because of any injury, including death, to any person and/or any damage to any property caused or occasioned, directly or indirectly, by reason of any act or omission, whether or not negligent, on the part of the Town, its agents, servants or employees, or any other person engaged in any activity or work authorized by the Town pursuant to the provisions of this Agreement relating to the construction of the Pumping Station Project, including but not limited to the planning, designing work and construction of the Pumping Station Project and appurtenances thereto.

9. PROJECT COSTS SUBJECT TO THIS AMENDMENT. The following Pumping Station Project

costs (the "Project Costs") shall be subject to this Amendment:

- a. Any and all costs for engineering services associated with the evaluation of alternatives, preparation of a basis of design, regulatory review and approval, design engineering, construction engineering and inspection for the Pumping Station Project.
- b. Any and all costs associated with the construction contract contemplated under this Amendment including any and all change order costs executed to complete the Pumping Station Project.
- c. Any and all administrative and legal expenses incurred by the Town in connection with the Pumping Station Project, including but not limited to legal expenses, bond counsel costs (if necessary), advertising costs and printing costs.

10. PRO-RATA SHARING OF PROJECT COSTS. The Project Costs paid by the Town shall be shared by the Parties on the following pro-rata basis: the City's pro-rata share shall be 70%; the Town's pro-rata share shall be 30%. This calculation is based upon the assignment of "sewer facility unit charges" pursuant to the City's Code Section 248-1A by the City Engineer to properties in the City whose sewage flows through the Crescent Avenue Sewage Pumping Station and to the properties in the West Stone Street Extension of the Town. The City has 183.32 sewer facility units contributing flow to the Crescent Avenue Sewage Pumping Station and the West Stone Street Extension of the Town will have 78.89 sewer facility units contributing flow through the New Connection. The total number of sewer units is 262.21 and the respective percentages are 70 percent assigned to the City and 30 percent assigned to the Town. The City shall reimburse the Town for its pro-rata share of the Project Costs pursuant to Section 11 below.

11. REIMBURSEMENT OF PRO-RATA SHARE OF PROJECT COSTS BY THE CITY.

The City shall reimburse the Town for its pro-rata share of the Project Costs by remitting full

payment to the Town after review and approval of contractor and consultant invoices by the City Engineer and Comptroller upon the completion of the Project.

12. OWNERSHIP AND OPERATION OF THE CRESCENT AVENUE SEWAGE PUMPING STATION.

It is agreed that the City shall continue to own the now existing City sewer system, all of the land now occupied by the sewage system, and that the City will own the new Crescent Avenue Pumping Station and its appurtenances which the Town has herein agreed to construct. The City shall continue to operate and maintain the sewage system including the Crescent Avenue Pumping Station improvements constructed by the Town.

13. AUDIT AND INSPECTION:

The City, at its own cost and expense, may audit the books, accounts, and records maintained by the Town pertaining to the Pumping Station Project which is the subject of this Amendment. The City shall notify the Town in writing of its intention to audit at least seven (7) days prior to said audit, and said audit shall be made during regular business hours on regular business days.

13. SEVERABILITY: If any portion or portions of this Amendment is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

14. APPROVALS. Approvals required pursuant to this Amendment shall not be unreasonably delayed or withheld.

15. TITLES: The titles used in these provisions are for convenience only and shall not be used in interpreting these provisions.

16. WAIVER. The waiver by either party of a breach of any provision of this Amendment by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

17. CHOICE OF LAW: This Amendment shall be governed by and construed in accordance with the

Laws of the State of New York.

18. RESOLUTIONS: This Amendment has been agreed to and approved by formal resolution of the Town Board of the Town of Newburgh and the City Council of the City of Newburgh, copies of which resolutions are attached as Exhibit "A."

IN WITNESS WHEREOF, the Parties have signed this Amendment this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2013.

Town of Newburgh

By \_\_\_\_\_  
Wayne C. Booth, Supervisor

City of Newburgh

By \_\_\_\_\_  
Richard F. Herbek, City Manager

RESOLUTION NO.: § - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE VENDOR SERVICE AGREEMENTS WITH  
VARIOUS SERVICE PROVIDERS AT A COST NOT TO EXCEED \$26,250.00  
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 21<sup>st</sup> Century Community Learning Centers Program provides strengthening and expanding opportunities afterschool for children and youth; and

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

Maritza Claderon	\$ 4,500.00
Corey Woods	\$ 3,400.00
Kanisha Henderson	\$ 3,860.00
Ridge Hester	\$ 8,000.00
Darrell Williams	\$ 4,440.00
Robin Mann	\$ 2,050.00

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute Vendor Service Agreements with the service providers referenced herein above at a cost not to exceed \$26,250.00 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 \_\_\_\_\_ 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 Maritza Calderon, 511 Fostertown Rd., 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 \$4,500.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

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

#### **ARTICLE 4. EXECUTORY CLAUSE**

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

#### **ARTICLE 5. PROCUREMENT OF AGREEMENT**

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

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

#### **ARTICLE 6. CONFLICT OF INTEREST**

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

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

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

**ARTICLE 7. FAIR PRACTICES**

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

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

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

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

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

**ARTICLE 8. INDEPENDENT CONTRACTOR**

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

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

**ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING**

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

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

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

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

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

#### **ARTICLE 10. BOOKS AND RECORDS**

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

#### **ARTICLE 11. RETENTION OF RECORDS**

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

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

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

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

#### **ARTICLE 13. INDEMNIFICATION**

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

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

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

#### **ARTICLE 14. PROTECTION OF CITY PROPERTY**

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

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

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

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

#### **ARTICLE 15. CONFIDENTIAL INFORMATION**

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

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

#### **ARTICLE 16. TERMINATION**

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

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

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

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

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

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

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

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

#### **ARTICLE 17. GENERAL RELEASE**

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

#### **ARTICLE 18. SET-OFF RIGHTS**

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

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

#### **ARTICLE 19. NO ARBITRATION**

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

#### **ARTICLE 20. GOVERNING LAW**

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

#### **ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES**

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

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

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

**ARTICLE 22. ENTIRE AGREEMENT**

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

**ARTICLE 23. MODIFICATION**

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

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

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

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
RICHARD F. HERBEK,  
ACTING CITY MANAGER

BY:   
MARITZA CALDERON  
VENDOR

DATE: \_\_\_\_\_

DATE: 12/17/12

**SCHEDULE A**  
**SCOPE OF SERVICES**

Teach Zumba skills, exercises, and moves.

**SCHEDULE B**

## FEES AND EXPENSES

Contract amount: \$4,500.00 (not to be exceeded)

- (\$30/hr)

Approved as to form:

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MICHELLE KELSON  
Corporation Counsel

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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 Corey Woods, 10 Vermont Dr., 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 \$3,400.00 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 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 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.

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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.

#### **ARTICLE 11. RETENTION OF RECORDS**

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#### **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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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

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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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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**.

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#### **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.

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

#### **ARTICLE 19. NO ARBITRATION**

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

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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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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

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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: \_\_\_\_\_  
COREY WOODS  
VENDOR

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **SCHEDULE A**

### **SCOPE OF SERVICES**

**Seamlessly integrate the Dynamo Dance Program. Teach the kids to experience hands on foray in to the dance world. Increase student confidence, engagement, and absolute satisfaction.**

**Location- Heritage: Tue. And Wed.**

**SCHEDULE B**

**FEES AND EXPENSES**

Contract amount: \$3,400.00 (not to be exceeded)/ \$50

Approved as to form:

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MICHELLE KELSON  
Corporation Counsel

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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 Kanisha Henderson, 2610 Vailsgate Heights Dr., New Windsor, NY 12553 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 \$3,860.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

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

#### **ARTICLE 4. EXECUTORY CLAUSE**

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

#### **ARTICLE 5. PROCUREMENT OF AGREEMENT**

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

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

#### **ARTICLE 6. CONFLICT OF INTEREST**

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

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

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

#### ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

#### ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

#### ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

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

#### **ARTICLE 10. BOOKS AND RECORDS**

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

#### **ARTICLE 11. RETENTION OF RECORDS**

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

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

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

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

#### **ARTICLE 13. INDEMNIFICATION**

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

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

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

#### **ARTICLE 14. PROTECTION OF CITY PROPERTY**

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

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

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

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

#### **ARTICLE 15. CONFIDENTIAL INFORMATION**

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

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

#### **ARTICLE 16. TERMINATION**

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

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

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

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

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

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

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

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

#### **ARTICLE 17. GENERAL RELEASE**

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

#### **ARTICLE 18. SET-OFF RIGHTS**

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

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

#### **ARTICLE 19. NO ARBITRATION**

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

#### **ARTICLE 20. GOVERNING LAW**

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

#### **ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES**

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

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

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

**ARTICLE 22. ENTIRE AGREEMENT**

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

**ARTICLE 23. MODIFICATION**

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

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

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

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
RICHARD F. HERBEK,  
ACTING CITY MANAGER

BY: \_\_\_\_\_  
KANISHA HENDERSON  
VENDOR

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **SCHEDULE A**

### **SCOPE OF SERVICES**

**Providing students with the skills and technical understanding of DJing. Teach Intro to DJing such as history, indentify and understand equipment, tech advances, etc. and DJing styles.**

**Location- HOH: W  
Heritage: T  
NFA: M**

**SCHEDULE B**

**FEES AND EXPENSES**

Contract amount: \$3,860.00 (not to be exceeded)

Approved as to form:

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MICHELLE KELSON  
Corporation Counsel

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CHERYL A. GROSS  
City Comptroller

**SCHEDULE B**

**FEES AND EXPENSES**

Contract amount: \$3,860.00 (not to be exceeded)/ \$60

- Agreed to hire Ms. Henderson at \$60 per hour contingent that she uses her own supplies; submit a final project (DVD/CD), etc.) to the program; submit monthly report on time as required; hand on child involvement—including equipment.

Approved as to form:

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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 Ridge Hester, 287 Grand St., 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 \$8,000.00 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.

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

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

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

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

#### **ARTICLE 8. INDEPENDENT CONTRACTOR**

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

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

#### **ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING**

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged

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

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

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

#### **ARTICLE 10. BOOKS AND RECORDS**

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

#### **ARTICLE 11. RETENTION OF RECORDS**

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

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

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

#### **ARTICLE 13. INDEMNIFICATION**

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

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

#### **ARTICLE 14. PROTECTION OF CITY PROPERTY**

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

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

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

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

#### **ARTICLE 15. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and

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

#### **ARTICLE 16. TERMINATION**

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

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

**ARTICLE 17. GENERAL RELEASE**

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

**ARTICLE 18. SET-OFF RIGHTS**

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

**ARTICLE 19. NO ARBITRATION**

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

**ARTICLE 20. GOVERNING LAW**

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

**ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES**

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

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

other action provided for by law or pursuant to this Agreement.

**ARTICLE 22. ENTIRE AGREEMENT**

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

**ARTICLE 23. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no

payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
RICHARD F. HERBEK,  
ACTING CITY MANAGER

BY: \_\_\_\_\_  
RIDGE HESTER  
VENDOR

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## SCHEDULE A

### SCOPE OF SERVICES

To enhance the students knowledge of HBCU marching band and learn how to play instrument. This will allow students to learn about English, Math, and Science without using the conventional methods of learning.

Location- HOH: M, W, F  
Heritage: T, Th.  
NFA: M, W

Additional: 2hrs on Thursday's and Friday's with the City of Newburgh Dynamic Approaching Storm Band

**SCHEDULE B**

**FEES AND EXPENSES**

Contract amount: \$8,000.00 (not to be exceeded)

Approved as to form:

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MICHELLE KELSON  
Corporation Counsel

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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 Darrell Williams, 42 Wesley Court, 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 \$4,440.00 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.

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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.

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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.

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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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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

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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.

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#### **ARTICLE 19. NO ARBITRATION**

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

#### **ARTICLE 20. GOVERNING LAW**

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

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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

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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: \_\_\_\_\_  
DARRELL WILLIAMS  
VENDOR

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## SCHEDULE A

### SCOPE OF SERVICES

Providing students with the skills to gain encouragement through creativity and aid them in proper band dancing techniques. Teach step classes and techniques for performance.

Location: HOH: M, W, F  
Heritage: T, Th.  
NEA: M, W

Additional: 2hrs on Thursday's and Friday's with the City of Newburgh Dynamic Approaching Storm Band

**SCHEDULE B**

**FEES AND EXPENSES**

Contract amount: \$4,440.00 (not to be exceeded)/ \$30 per hr

Approved as to form:

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MICHELLE KELSON  
Corporation Counsel

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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 Robin Mann, 11 Debra Place #2, 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 \$2,050.00 has been established for the scope of SERVICES



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

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

#### ARTICLE 4. EXECUTORY CLAUSE

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

#### ARTICLE 5. PROCUREMENT OF AGREEMENT

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

For a breach or violation of such representations or warranties, the CITY shall

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

#### ARTICLE 6. CONFLICT OF INTEREST

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

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

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

#### ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

#### ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

#### ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged

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

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

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

#### **ARTICLE 10. BOOKS AND RECORDS**

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

#### **ARTICLE 11. RETENTION OF RECORDS**

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

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

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

#### **ARTICLE 13. INDEMNIFICATION**

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

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

#### **ARTICLE 14. PROTECTION OF CITY PROPERTY**

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

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

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

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

#### **ARTICLE 15. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and

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

#### **ARTICLE 16. TERMINATION**

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

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

#### **ARTICLE 17. GENERAL RELEASE**

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

#### **ARTICLE 18. SET-OFF RIGHTS**

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

#### **ARTICLE 19. NO ARBITRATION**

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

#### **ARTICLE 20. GOVERNING LAW**

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

#### **ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES**

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

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

other action provided for by law or pursuant to this Agreement.

**ARTICLE 22. ENTIRE AGREEMENT**

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

**ARTICLE 23. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no

payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
RICHARD F. HERBEK,  
ACTING CITY MANAGER

BY: Robin Mann  
ROBIN MANN  
VENDOR

DATE: \_\_\_\_\_

DATE: 12/11/12

## **SCHEDULE A**

### **SCOPE OF SERVICES**

**Providing students with the skills to gain encouragement through creativity and aid them in becoming productive citizens that will be able to set and accomplish goals. Teach time management skills as well as structured organizational skills.**

**SCHEDULE B**  
**FEES AND EXPENSES**

Contract amount: \$2,050.00 (not to be exceeded)

Approved as to form:

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MICHELLE KELSON  
Corporation Counsel

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CHERYL A. GROSS  
City Comptroller

RESOLUTION NO.: 9 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION ADOPTING THE CITY OF NEWBURGH  
POLICY ON BEST PRACTICES IN HIRING**

**BE IT RESOLVED**, that the Council of the City of Newburgh, New York hereby adopts the City of Newburgh Policy on Best Practices in Hiring, a copy of which is attached hereto and made a part of this Resolution; and

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

# **CITY OF NEWBURGH**

## **EMPLOYMENT HIRING PRACTICES AND POLICY**

The City Manager shall direct the recruitment, advertising, interviewing and selection process of all City of Newburgh employees. Under his/her direction the following protocol must be met prior to any appointment.

- 1. JOB DESCRIPTION:** All jobs offered by the city must have a written job description on file with the Newburgh Civil Service Commission. The job description must be reviewed to ensure that the minimum requirements are set to fully meet the needs of position. If modification is required, suggested amendments must be proposed to the Commission for adoption. If a new position is being created that does not have a current description, the City staff shall provide the Civil Service Commission with a New Position Duty Statement to assist the Commission with creating the job description. All employees must meet the minimum requirements of the job description for their position,
- 2. FUNDING:** Before any job can be posted or advertised, proper funding must be allocated in the budget. The City Comptroller will verify if the position is currently funded. If not funded, a Council resolution may be required. Depending on the bargaining unit, additional steps may be required.
- 3. JOB POSTINGS & ADVERTISEMENT:** How and when a job opportunity is advertised depends on the job classification. However, all advertisements should state that minority and bi-lingual candidates are encouraged to apply. **In addition, to the extent that city residents are qualified and eligible for the available job, they shall be given preference.** This applies to full, part-time and temporary positions. For the following classifications, job opportunities shall be posted or advertised in the following manner:

**Unclassified:** These positions can be elected positions or appointed or serving for a term of office. Examples are City Council members, Board members and City Manager. Elected positions are self-explanatory; board members are recruited through various communications such as newspaper press releases, city website and other local venues. The city manager position shall be advertised in professional organizations such as ICMA and NYCOM as well as other appropriate newspapers, websites and appropriate venues.

**Exempt:** These positions do not require a civil service exam and are classified as non-bargaining jobs. These jobs must be posted and advertised using all the means available for job advertisement such as city website and city bulletin board, NYS Department of Labor, professional and educational organizations as appropriate to the job, other job posting websites and local newspapers.

**Competitive:** For all competitive jobs, a civil service exam is required. A list of qualified candidates is generated by the results of the exam. All candidates for appointment must be chosen from the list of qualified candidates determined by the exam. Therefore, it is essential that all civil service examination be adequately posted and advertised in order to solicit the best candidates. City residents shall receive preference in appointment from resulting eligible lists as provided by NYS Civil Service Law

Announcement of exams shall be posted on the City website and bulletin board, with all education and/or professional organizations, NYS Department of Labor, and as many other local media outlets as possible depending on the title. Announcements for higher-level management examinations shall also be advertised in at least two local newspapers.

**Non-Competitive:** These jobs do not require a civil service exam, however applicants must meet minimum experience and educational requirements as stated in the position job description. Although there is no civil service list from which to work, non-competitive positions should be advertised in the same manner as competitive positions. City residents shall receive preference in appointment among other qualified applicants.

**Labor Class:** These are entry level jobs that require few skills and very minimal education and experience. In order to provide fair access to all jobs, these positions still need to be adequately advertised. Positions shall be advertised on the City website and bulletin boards, NYS Department of Labor and other sites as identified. City residents shall receive preference in appointment to these positions.

4. **RESUMES & JOB APPLICATIONS:** All applications for employment with the City of Newburgh will be accepted and held on file with the Civil Service Office or Human Resources Department (CS/HR) for one year. Resumes, when required, shall be also be collected by the CS/HR and kept on file in one location for the City.
5. **INTERVIEWS:** Interviews of prospective selected candidates for all positions will be required and will vary depending upon the level of the position within the City's organizational chart. Listed below are the minimum requirements for conducting interviews.

For the City Manager position, the Council may invite additional Subject Area Experts in the fields of municipal government, executive management, contract and labor negotiations or similarly related fields to participate in the recruitment and interview process of selected prospective candidates.

For upper level management positions, an interview committee consisting of the City Manager and/or his/her designee, the CS/HR Dept, selected Department Heads and Subject Matter Expert(s) will be convened to conduct the interview. The Committee shall make recommendations to the City Manager for appointment.

For middle management level positions, interview committees shall be established and consist of the City Manager and/or his/her designee, the CS/HR Dept., the Department Head and others as needed.

For entry level positions, interview committees shall be established by the City Manager and shall consist of the CS/HR Department and the Department Head and/or his designee, who shall then make recommendations to the City Manager for appointment.

For Board and Commission Members, resumes shall be submitted to the Civil Service/HR Department and provided to the City Manager and City Council for evaluation and selection for appointment.

- 6. PRE-EMPLOYMENT MEDICAL EXAMS:** The City of Newburgh is a drug free workplace. With the exception of the members of the City Council and Boards and Commissions, all prospective new employees, including management positions, shall be subject to a pre-employment medical exam which shall include illegal drug screening. The department head shall be notified by the Civil Service Office when the candidate has been cleared for work. Temporary, Seasonal and Part-Time employees are included under this requirement unless specifically exempted, (i.e.; Summer Youth Programs). **Under no circumstances shall a new employee start prior to the results of the medical examination.**
- 7. REPORT OF PERSONNEL CHANGE FORM (Pink Slips):** After clearance of the above, a Report of Personnel Change (Pink Slip) shall be prepared by the department. If the new employee is coming from an exam list, a certified list of eligibles should be requested from the civil service office, completed and forwarded with the pink slip. Pink Slips are to be sent to the Comptroller's Office first, then to the Civil Service Office and finally to the City Manager for approval. **A new employee cannot start until the Pink Slip has been signed and approved by the City Manager.** Therefore it is recommended that the Pink Slip is prepared and circulated at least two weeks in advance of the start date.
- 8. ADDITIONAL REQUIREMENTS:** In addition to the above, all employees must complete an Application for Employment, W-4, I-9, and NYS Retirement application/declination forms before they can appear on the payroll. Health insurance enrollment forms are also required for covered employees as well as union affiliated forms.

All questions or concerns regarding any of the above procedures should be directed to the Department Head, Civil Service/HR Dept or Finance.

RESOLUTION NO.: 10 - 2013

OF

JANUARY 14, 2013

A RESOLUTION TO AUTHORIZE THE REPURCHASE OF  
REAL PROPERTY KNOWN AS 11 VAN NESS STREET  
F/K/A 11-13 VAN NESS STREET (SECTION 29, BLOCK 6, LOT 2)  
AT PRIVATE SALE TO MARCOS R. ROMERO

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

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

WHEREAS, Marcos R. Romero, the former owner of 11 Van Ness Street f/k/a 11-13 Van Ness Street, being more accurately described as Section 29, Block 6, Lot 2 on the official tax map of the City of Newburgh, has requested to re-purchase the property at private sale; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 11 Van Ness Street f/k/a 11-13 Van Ness Street, Section 29, Block 6, Lot 2, to Marcos R. Romero be and hereby is confirmed and that the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, for a total amount of \$13,803.26, no later than January 31, 2013; and

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

RESOLUTION NO.: 11 - 2013

OF

JANUARY 14, 2013

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF  
REAL PROPERTY KNOWN AS 459 FIRST STREET  
(SECTION 27, BLOCK 1, LOT 14)  
AT PRIVATE SALE TO LORRAINE C. PENNEY

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

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

WHEREAS, Lorraine C. Penney, the former owner of 459 First Street, being more accurately described as Section 27, Block 1, Lot 14 on the official tax map of the City of Newburgh, by her attorney has requested to re-purchase the property at private sale; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 459 First Street, Section 27, Block 1, Lot 14, to Lorraine C. Penney be and hereby is confirmed and that the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, for a total amount of \$15,056.23, no later than January 31, 2013; and

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

RESOLUTION NO.: 12 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO A LEASE WITH REPRESENTATIVE SEAN PATRICK MALONEY  
FOR A PORTION OF THE SECOND FLOOR OF 123 GRAND STREET  
FOR A TERM OF TWO YEARS IN THE AMOUNT OF \$2,000.00 PER MONTH**

WHEREAS, the City of Newburgh has offered the City owned premises at 123 Grand Street for rental; and

WHEREAS, Representative Sean Patrick Maloney has expressed an interest in renting said premises to establish a Congressional District Office; and

WHEREAS, the term of the lease shall be two years and the rent shall be two thousand (\$2,000.00) per month as set forth in the lease, a copy of which is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such lease and finds that entering into the same would be in the best interests of the City of Newburgh and the community alike;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached lease agreement with Representative Sean Patrick Maloney Committee for a portion of the second floor of 123 Grand Street on the terms and conditions contained in the subject lease.

*U.S. House of Representatives*

Washington, D.C. 20515

**District Office Lease**

(Page 1 of 2 – 113<sup>th</sup> Congress)

Pursuant to 2 U.S.C. § 57, and the Regulations of the Committee on House Administration (as modified from time to time by Committee Order) relating to office space in home districts, \_\_\_\_\_

City of Newburgh

83 Broadway, Newburgh, NY 12550

(Landlord's name)

(Landlord's street address, city, state, ZIP code)

("Lessor"), and Rep. Sean Patrick Maloney \_\_\_\_\_, a Member/Member-Elect of the U.S. House of Representatives ("Lessee"), agree as follows:

1. **Location.** Lessor shall lease to Lessee \_\_\_\_\_ square feet of office space located at  
123 Grand Street, 2nd Floor  
\_\_\_\_\_  
(Office street address)  
in the city, state and ZIP code of Newburgh, NY 12550  
\_\_\_\_\_  
(Office city, state and ZIP)
2. **Parking.** The Lease includes (please check any and all that apply):
  - 2 parking spaces that are assigned
  - parking spaces that are unassigned
  - General off-street parking on an as available basis
  - No off-street parking
3. **Term.** Lessee shall have and hold the leased premises for the period beginning \_\_\_\_\_, 20\_\_\_\_ and ending \_\_\_\_\_, 20\_\_\_\_. The term of this District Office Lease ("LEASE") may not exceed two years and may not extend beyond January 2, 2015, which is the end of the constitutional term of the Congress to which the Member is elected.
4. **Rent.** The monthly rent shall be \_\_\_\_\_, and is payable in arrears on or before the last day of each calendar month. Rent payable under this LEASE shall be prorated on a daily basis for any fraction of a month of occupancy.
5. **Early Termination.** This Lease may be terminated by either party giving \_\_\_\_\_ days' prior written notice to the other party. The commencement date of such termination notice shall be the date such notice is delivered or, if mailed, the date such notice is postmarked.
6. **Payments.** During the term of this Lease, rent payments under Section 4 shall be remitted to the Lessor by the Chief Administrative Officer of the U.S. House of Representatives ("CAO") on behalf of the Lessee.
7. **District Office Lease Attachment for 113<sup>th</sup> Congress.** The District Office Lease Attachment attached hereto is incorporated herein by reference, and this Lease shall have no force or effect unless and until accompanied by an executed District Office Lease Attachment for the 113<sup>th</sup> Congress.
8. **Counterparts.** This Lease may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

*U.S. House of Representatives*

Washington, D.C. 20515

**District Office Lease**

(Page 2 of 2 – 113<sup>th</sup> Congress)

9. **Section Headings.** The section headings of this Lease are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.
10. **Modifications.** Any amendments, additions or modifications to this Lease inconsistent with Sections 1 through 9 above shall have no force or effect to the extent of such inconsistency.
11. **Other.** Additionally, the Lessor and the Lessee agree to the following:

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease as of the later date written below by the Lessor or the Lessee.

\_\_\_\_\_  
Print Name (Lessor/Landlord)

\_\_\_\_\_  
Print Name (Lessee)

\_\_\_\_\_  
Lessor Signature

\_\_\_\_\_  
Lessee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

*This District Office Lease must be accompanied by an executed District Office Lease Attachment.*

*U.S. House of Representatives*  
Washington, D.C. 20515

**District Office Lease Attachment**

(Page 1 of 4 – 113<sup>th</sup> Congress)

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-Elect of the U.S. House of Representatives) agree that this District Office Lease Attachment (“Attachment”) is incorporated into and made part of the Lease (“Lease”) and, if applicable, District Office Lease Amendment (“Amendment”) to which it is attached.
2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (“House”) nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (“CAO”) to Lessor to satisfy Lessee’s rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.
3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO (“Administrative Counsel”) must review and give approval of any amendment to the Lease prior to its execution.
4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until the Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing on page 4 of this Attachment.
5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance of the House at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.
6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.
7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and shall not be paid by the CAO on behalf of the Lessee.
8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a) terminate the Lease by giving thirty (30) days’ prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee’s successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

*U.S. House of Representatives*  
Washington, D.C. 20515

**District Office Lease Attachment**

(Page 2 of 4 – 113<sup>th</sup> Congress)

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-Elect before taking office. Should the Member-Elect not take office to serve as a Member of the 113<sup>th</sup> Congress, the Lease will be considered null and void.
10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515, and with the Administrative Counsel, Office of the Chief Administrative Officer, U.S. House of Representatives, 217 Ford House Office Building, Washington, D.C. 20515.
11. **Notification upon Occurrence of Certain Events.** Lessor agrees to promptly notify Lessee in writing in the event Lessor sells, transfers, or otherwise disposes of the leased premises; in the event Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily); in the event the leased premises is foreclosed upon; or in the event of any similar occurrence. Lessee shall promptly file a copy of any such notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515.
12. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall not require the review and approval of the Administrative Counsel.
13. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.
14. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.
15. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 13 and 14.
16. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.
17. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.

*U.S. House of Representatives*  
Washington, D.C. 20515

**District Office Lease Attachment**

(Page 3 of 4 – 113<sup>th</sup> Congress)

18. **Limitation of Liability.** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.
19. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.
20. **Electronic Funds Transfer.** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.
21. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.
22. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.
23. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.
24. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).
25. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.
26. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
27. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

*[Signature page follows.]*

U.S. House of Representatives  
Washington, D.C. 20515

**District Office Lease Attachment**

(Page 4 of 4 -- 113<sup>th</sup> Congress)

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

\_\_\_\_\_  
Print Name (Lessor)

\_\_\_\_\_  
Print Name (Lessee)

\_\_\_\_\_  
Lessor Signature

\_\_\_\_\_  
Lessee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

From the Member's Office, who is the point of contact for questions?			
Name	Ed Brancati	Phone (914 )	522-1432 E-mail
			ed.brancati@mail.house.gov

**This District Office Lease Attachment and the attached Lease or Amendment have been reviewed and are approved, pursuant to Regulations of the Committee on House Administration.**

Signed \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_  
(Administrative Counsel)

<p>Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D.C. 20515. Copies may also be faxed to 202-225-6999</p>
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RESOLUTION NO.: 13 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE TRANSFER OF REAL PROPERTY  
KNOWN AS 13 CHAMBERS STREET (SECTION 30, BLOCK 4, LOT 21) AND  
15 CHAMBERS STREET (SECTION 30, BLOCK 4, LOT 20.1)  
TO THE NEWBURGH COMMUNITY LANDBANK AT PRIVATE SALE**

WHEREAS, the Newburgh Community Land Bank is ready to acquire City-owned properties consistent with its mission to stimulate planning, economic development and neighborhood revitalization by acquiring, managing and disposing of vacant, abandoned and underutilized properties in a responsible manner in collaboration with community stakeholders, developers and other governmental agencies in order to improve the quality of life in Newburgh; and

WHEREAS, by Resolution No. 106-2012 of June 18, 2012, the City Council of the City of Newburgh memorialized its support for the New York State Consolidated Funding Application of the Newburgh Community Land Bank for funding through the Urban Initiatives Program for the purpose of implementing programs for the restoration and improvement of housing in the City of Newburgh; and

WHEREAS, in December 2012, the Newburgh Community Land Bank was awarded a \$200,000.00 grant to implement Phase I of a re-development project for Chambers Street; and

WHEREAS, the redevelopment project requires the conveyance of real property known as 13 Chambers Street and 15 Chambers Street, more accurately described as Section 30, Block 4, Lot 21 and Section 30, Block 4, Lot 20.1), respectively, on the official Tax Map of the City of Newburgh; and

WHEREAS, upon the request of the Newburgh Community Land Bank, this Council has determined that transferring title to 13 Chambers Street and 15 Chambers Street is in the best interests of the City of Newburgh.

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

Property address                      Section, Block, Lot                      Purchaser

13 Chambers Street	30 - 4 - 21	Newburgh Community Land Bank
15 Chambers Street	30 - 4 - 20.1	Newburgh Community Land Bank

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

RESOLUTION NO.: 14 - 2013

OF

JANUARY 14, 2013

A RESOLUTION APPOINTING MEMBERS OF  
THE BOARD OF ETHICS

WHEREAS, the Code of Ordinances of the City of Newburgh, § 34-7, provides for the appointment of members to the Board of Ethics; and

WHEREAS, said Board shall consist of five members, a majority of whom shall not be officers or employees of the City of Newburgh; and

WHEREAS, it is necessary to appoint two new members to fill vacancies now existing on the Board of Ethics; and

WHEREAS, several citizens have expressed their interest in donating their time and efforts to this Board,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following individuals be and are hereby appointed to the Board of Ethics for a new two (2) year term commencing on this date, January 14, 2013 and expiring on January 13, 2015.

Eddie Loren Williams, Esq.  
Valarie E. Larry, MPA

RESOLUTION NO.: 15 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF  
MIGUEL RODRIGUEZ AGAINST THE CITY OF NEWBURGH  
IN THE AMOUNT OF TWENTY THOUSAND DOLLARS**

WHEREAS, Miguel Rodriguez brought an action against the City of Newburgh; and

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

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

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

RESOLUTION NO.: 16 - 2013

OF

JANUARY 14, 2013

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF  
REAL PROPERTY KNOWN AS  
34 CARTER STREET (SECTION 22, BLOCK 2, LOT 26)  
AT PRIVATE SALE TO STACY BURKS  
FOR THE AMOUNT OF \$7,500.00

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

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

WHEREAS, the City of Newburgh desires to sell 34 Carter Street, being more accurately described as Section 22, Block 2, Lot 26, on the official tax map of the City of Newburgh; and

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

WHEREAS, the prospective buyer is the son of the former owner and resides within the subject property with his family; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before April 15, 2013, being ninety (90) days from the date of this resolution; and

Property address      Section, Block, Lot      Purchaser      Purchase Price

34 Carter Street      22 - 2 - 62      Stacy Burks      \$7,500.00

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