

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

Thursday, February 7, 2013

- Members Present: Mayor Judy Kennedy
Councilwoman Regina Angelo
Councilman Curlie Dillard
Councilwoman Gay
- Members Absent: Councilman Cedric Brown
- Also Present: Richard F. Herbek, City Manager
Michelle Kelson, Corporation Counsel
- Call to Order: The meeting was called to order by City Manager Richard F. Herbek at 6:00 pm.
- Executive Session: At 6:03 p.m. a motion was made by Mayor Judy Kennedy and seconded by Councilwoman Gay Lee to enter into executive session regarding matters of litigation
- YES: 4
NO: 0
CARRIED
- At 6:10 p.m. a motion was made by Councilwoman Gay Lee and seconded by Councilwoman Regina Angelo to return to the regular work session agenda.
- Adjournment: Upon consensus, the Council adjourned at 7:00 p.m.

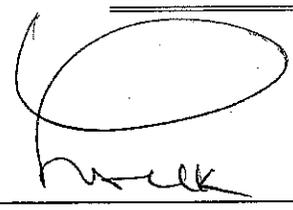
Account#	Account Description	Fee Description	Qty	Local Share
	Marriage License	Marriage License	23	402.50
		Sub-Total:		\$402.50
2590	Additional Tow Truck	Additional Tow Truck	1	25.00
	Loading Zone	Loading Zone	1	100.00
	Misc. Fees	Handicap Parking Spaces	1	25.00
	Towing License	Towing License	1	150.00
		Sub-Total:		\$300.00
A12550002	Cancellation Certificate	Cancellation Certificate	1	25.00
		Sub-Total:		\$25.00
A12550003	Misc. Fees	Certified Copies - Marriage	34	352.00
		Sub-Total:		\$352.00
A12550008	Misc. Fees	Copies	342	85.50
		Sub-Total:		\$85.50
A12550012	Thumbprint Fee	Thumbprint Fee	1	5.00
		Thumbprint Fee	1	5.00
		Sub-Total:		\$10.00
A2544	Dog Licensing	Female, Spayed	5	37.50
		Female, Unspayed	3	37.50
		Male, Neutered	6	45.00
		Male, Unneutered	2	25.00
		Sub-Total:		\$145.00
A25450002	Annual License Fee	Annual License Fee	1	200.00
		Sub-Total:		\$200.00
A25900008	Alarm Permit	Alarm Permit	1	100.00
		Sub-Total:		\$100.00
A25900019	Taxi Application Fee	Taxi Application Fee	3	300.00
		Sub-Total:		\$300.00
A25900020	Taxi Drivers License	Taxi Drivers License	1	100.00
		Sub-Total:		\$100.00

Total Local Shares Remitted: \$2,020.00

Amount paid to: NYS Ag. & Markets for spay/neuter program _____ 26.00
 Amount paid to: State Health Dept. For Marr. Licenses _____ 517.50

Total State, County & Local Revenues: \$2,563.50

Total Non-Local Revenues: \$543.50



 City Clerk

2/1/13

 Date



CITY OF NEWBURGH

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

LORENE VITEK
CITY CLERK

February 4, 2013

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: REGISTRAR OF VITAL STATISTICS

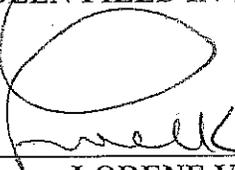
I RESPECTFULLY REPORT THAT THERE HAS BEEN
RECEIVED IN THE OFFICE OF VITAL STATISTICS DURING THE MONTH
OF JANUARY 2013 THE SUM OF \$6,954.00 AS FOLLOWS:

250 CERTIFIED COPIES OF BIRTH CERTIFICATES	\$2,500.00
445 CERTIFIED COPIES OF DEATH CERTIFICATES	<u>\$4,454.00</u>
TOTAL	\$6,954.00

IN ADDITION:

86 BIRTHS HAVE BEEN FILED IN THIS OFFICE TO DATE,

65 DEATHS HAVE BEEN FILED IN THIS OFFICE TO DATE,



LORENE VITEK

PERSONNEL REPORT
CIVIL SERVICE COMMISSION
JANUARY 2013

COMPTROLLER:

Ja’Nise Patrick Intern
14 S. Miller Street Temporary Appointment
Newburgh, NY 1/14/13 \$11/hr.

Vickiana Demora Cashier
202 Fullerton Avenue Permanent Appointment
Newburgh, NY 1/22/13 \$36,934

DPW:

Sharieff Anderson CDBG Temporary Laborer
56 Bay View Terrace End of Assignment
Newburgh, NY 1/31/13 \$16.00/hr.
Bldg. Maint. Worker
Temporary Appointment
2/1/13 \$16.00/hr.

Kenyon Nolcox CDBG Temporary Laborer
241 Third Street End of Assignment
Newburgh, NY 1/31/13 \$16.00/hr.
Bldg. Maint. Worker
Temporary Appointment
2/1/13 \$16.00/hr.

Irell Jones CDBG Temporary Laborer
1 Chadwick Gardens End of Assignment
Newburgh, NY 1/31/12 \$16.00/hr.

Alex Livingston CDBG Temporary Laborer
57 Carson Avenue End of Assignment
Newburgh, NY 1/31/13 \$16.00/hr.

DPW

Continued:

Joseph DiBlasi
PO Box 15
Newburgh, NY

Sanitation Worker
Suspended w/o Pay
12/27/12- 1/26/13
\$45,230

Julius Riglioni
33 Central Avenue
Wallkill, NY

Motor Equip Operator
Deceased 1/22/13
\$48,082

**Planning &
Development:**

Bonnie Clemmer
72 Clinton Street
Newburgh, NY

Economic Development Specialist
From Part Time to Full Time
1/1/13 \$51,890

Acacia Bellamy
80 Prospect Street
Newburgh, NY

Intern
Temporary Appointment
1/1 – 4/1/13 \$10.00/hr.



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
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LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

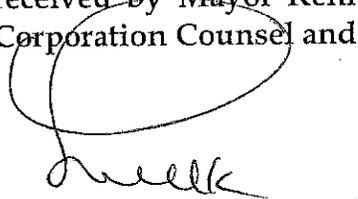
TO: Michelle Kelson, Corporation Counsel

FROM: Lorene Vitek, City Clerk

RE: Notice of Claim:
Joseph Belford vs City of Newburgh

DATE: February 11, 2013

Please find attached Notice of Claim regarding the above, which was received by Mayor Kennedy on February 4th or 5th, 2013 then forwarded to Corporation Counsel and the City Clerk on February 6, 2013.


Attachment

Cc City Manager ✓
Mayor & Council

NOTICE OF CLAIM

RECEIVED
FEB 06 2013
CITY CLERK

In the Matter of the Claim of
JOSEPH BELFORD
against

THE CITY OF NEWBURGH and POLICE OFFICER JOHN DOE

TO: THE CITY OF NEWBURGH, THE CITY OF NEWBURGH POLICE DEPARTMENT

PLEASE TAKE NOTICE that the undersigned claimant hereby makes claim and demands against THE CITY OF NEWBURGH and POLICE OFFICER JOHN DOE as follows:

1. The name and post-office address of claimant and claimant's attorney is:

Attorney:
Aaron David Frishberg
The Thurgood Marshall Institute
20 E 1st St # 204
Mount Vernon, NY 10550
(914) 699-5034
LawyerADF@AOL.com

Claimant:
Joseph Belford
Newburgh Ministry
290 Broadway
Newburgh NY, 12550

2. The nature of the claim: Action to recover for wrongful eviction, breach of implied covenant of quiet enjoyment, conversion, trespass to property, trespass to chattels, retaliatory eviction, interference with Rights of Tenants to Join

or Participate in Tenant's Groups, violation of First Amendment, and violation of the Fourth Amendment.

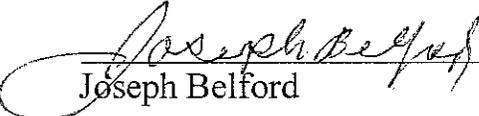
3. The time when, the place where and the manner in which the claim arose: The incident occurred on or about October 29, 2012, a Monday, at approximately 11:30 AM through 12:00 PM, while plaintiff JOSEPH BELFORD was at his home located at 10 Farrington Street. Claimant JOSEPH BELFORD was wrongfully evicted from his home by POLICE OFFICER JOHN DOE. Respondent POLICE OFFICER JOHN DOE evicted JOSEPH BELFORD by threatening to arrest him without probable cause that he was illegally squatting in the apt. THE CITY OF NEWBURGH was negligent in the hiring and training of Respondent POLICE OFFICER JOHN DOE.

4. The items of damage or injuries claimed are (include dollar amounts): Bed Television, DVD player, DVD Collection, Clothing, Shoes, Bike, Toiletries, Two phones, Camera, Lamp, Heater, Fan, Antique Record Collection the sum of which is \$3,000.00. Additionally, due to the actions and/or negligence of Respondents as aforesaid, the Claimant has suffered emotional distress amounting in at \$200,000.00, and in case of suit, to be determined by a trier of fact.

TOTAL AMOUNT CLAIMED \$203,000.00

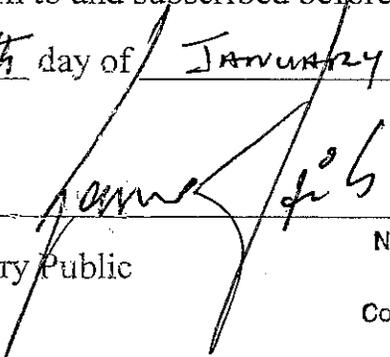
The undersigned claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimants intend to commence an action on this claim.

Dated: January 25, 2013


Joseph Belford

Sworn to and subscribed before me on this

25th day of January, 2013


Notary Public

LENNOX HINDS
Notary Public, State Of New York
No. 02H16078222
Qualified In New York County
Commission Expires July 29, 2014



CITY OF NEWBURGH

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

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Motion of Intent of Service:
Larry Gantt vs. City of Newburgh

DATE: February 6, 2013

Please find attached Motion of Intent of Service regarding the above, which was received from the Office of Corporation Counsel on this date.

Attachment

Cc City Manager
Mayor & Council

+UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT

MOTION OF INTENT
OF SERVICE

-AGAINST-

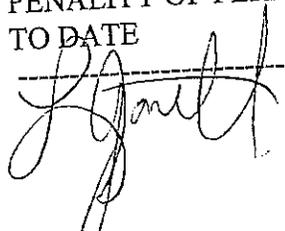
RECEIVED
FEB 06 2013
CITY CLERK

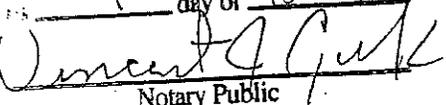
-----X
THE STATE OF NEW YORK COUNTY
OF ORANGE, ERIC HENDERSON AND
OTHER OFFICERS OF THE CITY OF
NEWBURGH POLICE DEPARTMENT

I LARRY GANTT BEING DULY SWORN DEPOSES AND SAYS TO MAKE
AFFIRMATION UNDER PENALTIES OF PERJURY

I LARRY GANTT AS PLAINTIFF IN THE ABOVE-ENTITLED ACTION
RESPECTFULLY MOVE THIS COURT TO ORDER DEFENDANTS TO SHOW
CAUSE WHY THEY SHOULD NOT BE ENJOINED FROM TO UNTIL A FINAL
DISPOSITION ON THE MERITS IN THE ABOVE-ENTITLED ACTION.

I LARRY GANTT WAS JUMPED AND ASSULTED ON 11-3-12 BY
NUMEROUS UNIDENTIFIED ASSAULTS IN THE CITY OF THE CITY OF
NEWBURGH;# ERIC HENDERSON WAS SEEN PUNCHING AND SHAKING
ME ON OR AROUND THE NECK AREA BY SEVERAL WITNESSES, WHEN I
WAS UNCONSCIOUS LYING ON THE GROUND BLEEDING PROFUCELLY
FROM THE FACE AND BODY INJURIES THAT I OBTAINED THIS NIGH IN
QUESTION. AND MULTIPLE STAB WOUNDS # IN TOTAL. ALSO IM
ENTERING THE SECURITY STAFF OF #90 BROADWAY AND THEIR
EMPLOYEES FOR NOT ATTEMPTING TO STOP THIS ASSULT WHICH WAS
do# FEET OF THEIR ESTABLISHMENT. UNDER THIS ORDER IS ISSUED, I
WILL SUFFER AND IRREPARABLE INJURY LOSS AND DAMAGES IN THIS
AS CAN BE SEEN FROM THE FOREGOING. I HAVE NO ADEQUATE
REMAND AT ALL ON PRIOR REQUEST HAS BEEN MADE FOR THE RELIEF
REQUESTED HERE IN WHEREFORE I RESPECTFULLY REQUEST THAT THE
COURT GRANT THE WITHIN RELIEF AS WELL AS SUCH OTHER AND
FURTHER RELIEF THAT MAY BE JUST AND PROPER. I DECLARE UNDER
PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT
TO DATE



Subscribed and sworn to before me
this 1 day of Feb 2013

Notary Public
VINCENT J. CZUBAK
Notary Public, State of New York
No. 01CZ6102072
Qualified in Sullivan County
Commission Expires November 24, 2015

McCABE & MACK LLP
ATTORNEYS AT LAW

(1-25-13)

To: the Law office of

DAVID L. POSNER

63 WASHINGTON STREET

Post office BOX 509

Re: MR LARRY Gantt of

POUGHKEEPSIE, N.Y. 12602-0509

Orange County Corr Facility

TELEPHONE: (845) 486-6800

10 WELLS FARM ROAD

FAX (845) 486-7621

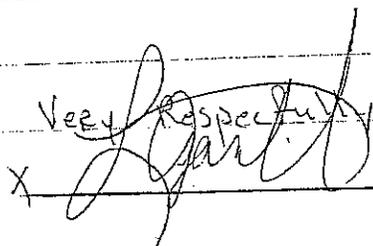
Poughkeepsie NY 10924

www.mccm.com

~~DECEMBER~~ / JANUARY

JANUARY 25, 2013

The Reason for this Letter is to notify your office that I'm sending your office a motion of Intent To Sue as required by law. This incident took place on 11/3/2012 and as a respect and courtesy I'm writing to notify you that (ERIC HENDERSON) and other officers of the city of NEWBURGH police Department. My name is MR (LARRY Gantt) and this motion will give you a clear understanding of a brief look into this case so as to not to be as a surprise when the 1983 Federal Law Suit packet hits.

Very Respectfully yours
X 



CITY OF NEWBURGH

CITY CLERK'S OFFICE
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LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Notice of Claim:
Diasparra vs. City of Newburgh

DATE: February 5, 2013

Please find attached Notice of Claim which was received via the Corporation Counsel office on this date.

Attachment

Cc City Manager
Mayor & Council

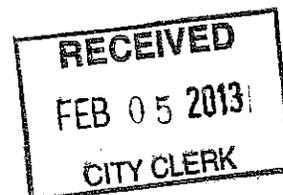
NOTICE OF CLAIM

X-----X
RICHARD DIASPARRA and LYNDA DIASPARRA

-against-

CITY OF NEWBURGH NY

X-----X



To: City of Newburgh NY, Office of Corporation Counsel, 83 Broadway, 2nd Floor, Newburgh NY 12550

PLEASE TAKE NOTICE that the undersigned claimant hereby makes claim and demands against you as follows:

1. Name and post office address of each claimant and claimant's attorney is:

Claimant:

RICHARD DIASPARRA
LYNDA DIASPARRA
293 Bullet Hole Road
Patterson, 12563NY

Attorney for Claimant

Michael A. Rose
Hach & Rose, LLP
185 Madison Avenue, 14th Floor
New York, NY 10016

2. Nature of this Claim:

RICHARD DIASPARRA: Personal injuries due to negligence, and violations of sections 200, 241(6) and 240 of the Labor Law of the State of New York.

3. The time when, the place where and the manner in which the claim arose:

The claim arose on November 26, 2012 at approximately 1:00 pm on an elevated makeshift wooden walkway at the Town of Newburgh Water Supply Chadwick Lake Filter Plant, 343 Route 32 Newburgh, NY 12550, when claimant, RICHARD DIASPARRA, while in the course of his employment for Wilken Construction Corp, was caused to sustain multiple injuries when said wooden planks broke causing him to fall approximately 20 feet. Said accident was caused by unsafe, dangerous, and defective conditions at said Water Supply Chadwick Lake Filter Plant which the City of Newburgh created, maintained and permitted to exist despite the fact that it had actual and constructive notice of same and violations of Labor Law 200, 240 and 241(6). Defendants were careless, reckless and negligent in failing to repair and maintain and/or construction a safe walkway at the aforesaid location; in failing to inspect/repair the walkway at the aforesaid location, in

failing to provide the plaintiff with proper and adequate safety equipment to perform his job function including but not limited to fall protection, in failing to provide lifelines, guardrails and safety equipment to allow plaintiff protection from falling 20 feet through broken plywood covering the walkway. In having actual and constructive notice of the aforesaid conditions and carelessly, recklessly and negligently allowing such conditions to exist for an unreasonable period of time. (OSHA investigation information is annexed hereto)

4. The items of damage or injuries claimed are:

That as a result of the negligence of The City of Newburgh, the claimant, Richard Diasparra, became, still is and for a long time to come, will be sick, sore, lame, bruised, injured, disabled and wounded in and about the various parts of his body, limbs, blood vessels and surrounding tissues, and has suffered severe and extreme mental shock, anguish and psychic injuries, and that plaintiff was otherwise injured, and upon information and belief, said injuries are permanent. That by reason of the foregoing, the plaintiff was obligated to and did necessarily employ medical aid, hospital services, medicine and medical supplies in an attempt to cure the aforesaid injuries, and has been prevented from his usual duties and will be so prevented for a long time to come.
Lynda Diasparra-loss of services and consortium

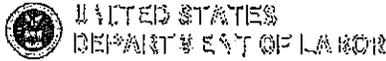
Claimant claims monetary damages in which exceed the jurisdictional limits of all lower courts of the State of New York.

Dated: New York, New York
January 08, 2013



Hach & Rose, LLP
Michael A. Rose, Esq.
185 Madison Avenue, 14th Floor
New York, NY 10016
212.779.0057

EXHIBIT "A"



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OSHA

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer.

Inspection: 759801.015 - Wilken Construction Corp.

Inspection Information - Office: Albany

Nr: 759801.015 Report ID:0213100 Open Date: 11/28/2012

Wilken Construction Corp.
118 Lattintown Road
Newburgh, NY 12550 Union Status: NonUnion
SIC:
NAICS: 237110/Water and Sewer Line and Related Structures Construction
Mailing: 4 Abbeyfield Road, Brewster, NY 10509

Inspection Type: Referral
Scope: Partial Advanced Notice: N
Ownership: Private
Safety/Health: Safety Close Conference: 11/28/2012
Emphasis: L:Fall Close Case:

Related Activity: Type ID Safety Health
Referral 684731 Yes

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U.S. Department of Labor | Occupational Safety & Health Administration | 200 Constitution Ave., NW, Washington, DC 20210
Telephone: 800-321-OSHA (6742) | TTY: 877-889-5627

www.OSHA.gov

The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this claim.

Dated: 1/16/13

Attorney(s) for Claimant(s)
Office and Post Office Address, Telephone Number

Hach & Rose, LLP
185 Madison Avenue
14th Floor
New York, NY 10016

INDIVIDUAL VERIFICATION

State of New York, County of New York ss.:

being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

X

Sworn to before me, this 16th day of January 19 2013

MARIE MORROW

NOTARY PUBLIC-STATE OF NEW YORK
No. 01MO6251412
Qualified in Queens County
My Commission Expires November 14, 2015

In the Matter of the Claim of

Notice of Claim Against

Attorney(s) for Claimant(s)
Office and Post Office Address

X

The name signed must be printed beneath

Richard Diasparra

The name signed must be printed beneath

CORPORATE VERIFICATION

State of New York, County of ss.:

being duly sworn, deposes and says that deponent is the of corporate claimant named in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because said claimant is a corporation, and deponent an officer thereof, to wit its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this 19 day of



CITY OF NEWBURGH

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

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lorene Vitek, City Clerk

RE: Summons & Complaint:
Vincent A. Abate and Vincent A Abate, II
vs Robert Vasta and John Buckley

DATE: February 8, 2013

Please find attached Summons & Complaint regarding the above, which was received by the Police Department, forwarded to Corporation Counsel and then forward to this Office.

Lorene Vitek

Attachment

Cc City Manager ✓
Mayor & Council

UNITED STATES DISTRICT COURT

Southern

District of

New York

VINCENT A. ABATE and VINCENT A. ABATE, II,

SUMMONS IN A CIVIL ACTION

V.
ROBERT VASTA and JOHN BUCKLEY,

RECEIVED
FEB 08 2013
CITY CLERK

CASE NUMBER:

13 CV 0680

JUDGE BRICCETTI

TO: (Name and address of Defendant)

ROBERT VASTA, c/o City of Newburgh Police Department, 55 Broadway,
Newburgh, New York, 12550

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

BERGSTEIN & ULLRICH, LLP
15 Railroad Avenue
Chester, New York 10918
(845) 469-1277

an answer to the complaint which is served on you with this summons, within 20 21 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

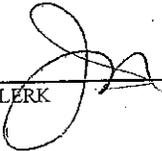
RUBY J. KRAJICK

JAN 30 2013

CLERK

DATE

(By) DEPUTY CLERK



UNITED STATES DISTRICT COURT

Southern

District of

New York

VINCENT A. ABATE and VINCENT A. ABATE, II,

V.

ROBERT VASTA and JOHN BUCKLEY,

SUMMONS IN A CIVIL ACTION

RECEIVED
FEB 08 2013
CITY CLERK

CASE NUMBER:

13 CV

0380

JUDGE BRICCETTI

TO: (Name and address of Defendant)

ROBERT VASTA, c/o City of Newburgh Police Department, 55 Broadway,
Newburgh, New York, 12550

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

BERGSTEIN & ULLRICH, LLP
15 Railroad Avenue
Chester, New York 10918
(845) 469-1277

an answer to the complaint which is served on you with this summons, within 20 21 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

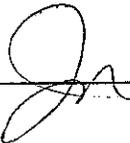
RUBY J. KRAJICK

JAN 30 2013

CLERK

DATE

(By) DEPUTY CLERK



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

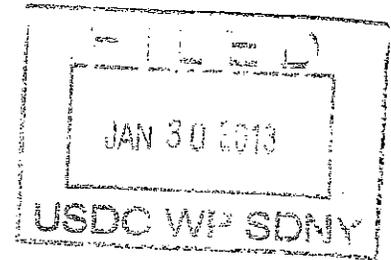
-----X
VINCENT A. ABATE and VINCENT
A. ABATE, II,

Plaintiffs,

-vs-

ROBERT VASTA and JOHN BUCKLEY,
sued in their individual capacities,

Defendants.
-----X



COMPLAINT
Jury trial demanded

13 CV 0680

JUDGE BRICCETTI

I INTRODUCTION

1. Plaintiffs are father and son. They bring this action under 42 U.S.C. § 1983, challenging as unconstitutional the excessive force, false arrest and malicious prosecution caused by defendants on February 27, 2012.

II PARTIES

2. Plaintiff Vincent A. Abate ("Vincent Sr.") is a 56 year-old male who resides in the Town of Blooming Grove, New York, within this judicial district.
3. Plaintiff Vincent A. Abate, II ("Vincent II"), is an 18 year-old male who resides in the Town of Blooming Grove, New York, within this judicial district. He is the son of co-plaintiff Vincent A. Abate, Sr.
4. Defendant Robert Vasta is a police officer employed by the City of Newburgh. This state actor is sued in his individual capacity.
5. Defendant John Buckley is a police officer employed by the City of Newburgh. This state actor is sued in his individual capacity.

the building. Vasta told Vincent Sr., "I don't give a shit" and that plaintiff had to leave immediately.

13. Vincent Sr. asked Vasta if he was under arrest. Vasta said that he was not, but that he had to leave.
14. When Vincent Sr. turned to let his wife know that he was leaving the building, Vasta grabbed him and threatened to spray him with mace if he did not accompany him outside.
15. At this time, Vincent II saw Vasta escort his father out of the gym. Vincent II approached his father.
16. Buckley grabbed Vincent II as he walked down from the bleachers and, without provocation, threw him into a wall and onto the floor, breaking Vincent II's watch and gold chain. This use of force also caused Vincent II to suffer significant pain in his right arm, right shoulder and lower back.
17. Buckley also threatened to spray Vincent II with mace. With Vincent II on the ground, Buckley then pressed his knee into Vincent II's back and placed him in handcuffs.
18. When Vincent Sr. turned to see what had happened to his son, Vasta grabbed Vincent Sr.'s right arm and twisted it behind his back, injuring plaintiff's shoulder. Vasta also hit Vincent Sr. in the face, breaking Vincent Sr.'s glasses.
19. Vasta next brought Vincent Sr. outside the building and accused him of trying to sneak into the building earlier that evening. Vasta told Vincent Sr. that he should have arrested him when he tried to enter the gym without paying. He also told

otherwise.

26. In addition, Vasta arrested Vincent Sr. for disorderly conduct, accusing him of verbally antagonizing people who were fighting outside the gymnasium and acting in a violent manner towards Vasta, causing public alarm. In fact, Vincent Sr. was not disorderly at all, and Vasta lacked probable cause to believe otherwise.

27. Also that evening, Buckley arrested Vincent II for disorderly conduct and obstructing governmental administration, accusing him of shoving Buckley on the left side and again in his chest in an attempt to prevent Buckley from escorting another individual out of the gymnasium. In fact, Vincent II was not disorderly at all, and he did not obstruct governmental administration. Buckley lacked probable cause to believe otherwise.

28. As probable cause did not support either plaintiff's arrest, defendants proceeded with malice, particularly since they subjected both plaintiffs to excessive force in effecting their arrests and Vasta did not have a contemporaneous justification for seizing Vincent Sr.

29. As both plaintiffs had to hire a criminal defense attorney and attend in-person court appearances, their arrests created a post-arraignment deprivation of liberty. Vincent II attended three or four court appearances. Vincent Sr. attended 12 court appearances. Plaintiffs spent \$3,000 in legal fees arising from the criminal charges.

30. The Newburgh City Court judge formally dismissed plaintiffs' arrests in the interests of justice. The charges terminated in plaintiffs' favor because dismissal

Buckley violated the Fourth and Fourteenth Amendments to the U.S. Constitution.

38. In arresting Vincent II without probable cause and with malicious intent, defendant Buckley violated the Fourth and Fourteenth Amendments to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Honorable Court:

- a. accept jurisdiction over this action;
- b. empanel a jury to hear and decide this action;
- c. award to plaintiffs compensatory damages for defendants' excessive use of force, false arrest and malicious prosecutions against them;
- d. award to plaintiffs punitive damages for defendants' wanton and outrageous use of excessive force, false arrest and malicious prosecutions in violation of federal law;
- e. award to plaintiffs reasonable attorneys' fees and costs expended in litigating this action; and
- f. award to plaintiffs any other relief deemed just and proper.

Hon. Vincent L. Briccetti

United States District Judge

The Hon. Charles L. Brieant Jr.
Federal Building and United States
Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Courtroom: 620
Chambers Phone: (914) 390-4166
Deputy Phone: (914) 390-4167
Chambers Fax: (914) 390-4170

[Download Contact Info](#)

Civil Case Discovery Plan and Scheduling Order - March 1st, 2012

Individual Rules of Practice - March 1st, 2012

Notice of Initial Conference - March 1st, 2012

Information contained in this site, such as Judges's Individual Practices, is made available for the convenience of the bar and litigants and is accurate as of each judge's last submitted update.

500 Pearl Street, New York, New York 10007-1312 • 300 Quarropas Street, White Plains, New York 10601-4150

- ii. the number of previous requests for adjournment or extension, and the reason(s) therefor;
- iii. whether the previous requests were granted or denied;
- iv. the reason for the instant request; and
- v. whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent.

If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. Absent extraordinary circumstances, requests for extensions will be denied if not made before the expiration of the original deadline. If the request is for an adjournment of a court appearance, absent an emergency the request shall be made at least 48 hours prior to the scheduled appearance. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be directed to that assigned Magistrate Judge.

PLEASE NOTE: Judge Briccetti will not routinely grant adjournments or extensions of time, even if agreed to by counsel.

- F. Proposed Orders and Stipulations.** All proposed orders, and stipulations requiring the Court's signature, must be submitted directly to the Clerk. In ECF cases these documents must be sent by email to wpclerk@nysd.uscourts.gov. Please do not send courtesy copies to chambers.

2. Pleadings and Motions

- A. Courtesy Copies.** One courtesy hard copy of all pleadings (complaint, answer, reply) and motion papers (with the exception of motions for admission *pro hac vice*), shall be submitted to chambers as soon as practicable after filing. Courtesy copies should be clearly marked as such. If hand-delivered, courtesy copies should be brought to the Clerk's office on the first floor of the courthouse, not to chambers.

PLEASE NOTE: If a courtesy copy of a document filed on ECF is not delivered to chambers, it may not come to the Court's attention in a timely manner.

Whenever possible, the courtesy hard copy should be accompanied by an electronic copy submitted on any portable media (CD/DVD preferred).

file an answer, file a new motion to dismiss, or notify the Court that it will rely on the initially-filed motion to dismiss.

E. Special Rules for Summary Judgment Motions.

- i. Except in *pro se* cases, the moving party shall provide all other parties with an electronic copy of the moving party's Statement of Material Facts pursuant to Local Civil Rule 56.1. Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it.
- ii. With respect to any deposition transcript that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- iii. Except in *pro se* cases, the parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.)

F. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the date and time.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days after the date for completion of discovery in a civil case, or, if a dispositive motion has been filed, within 30 days after a decision on the motion, the parties shall submit to the Court for its approval a Joint Pretrial Order, with one courtesy hard copy for chambers.

The Joint Pretrial Order shall include the information required by Fed. R. Civ. P. 26(a)(3) and the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), email addresses, and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter

commencement of trial if such a date has been fixed, or 30 days after the filing of the Joint Pretrial Order if no date has been fixed:

- i. In jury cases, proposed *voir dire* questions, requests to charge, and verdict form. In addition to being filed in the normal manner, proposed jury instructions should be emailed to Judge Briccetti's law clerk. Counsel should call chambers at (914) 390-4166 to make arrangements for same. Each proposed jury instruction must contain a citation to the source/authority for the proposed instruction, or the request will be disregarded.
- ii. In nonjury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed, and proposed conclusions of law should include a statement of the elements of each claim or defense.
- iii. In all cases, motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- iv. In any case in which any party believes it would be useful, a pretrial memorandum.

C. Filings in Opposition. Unless otherwise ordered by the Court, any party may file, and submit one courtesy hard copy to chambers, the following documents within one week of the filing of any document described in section 3(B) above:

- i. Objections to the other party's proposed *voir dire* questions or requests to charge.
- ii. Opposition to any motion *in limine*.
- iii. Opposition to any legal argument made in a pretrial memorandum.

D. Additional Submissions in Non-Jury Cases. Unless otherwise ordered by the Court, at the time the Joint Pretrial Order is filed, each party shall serve, *but not file*, the following:

- i. Affidavits constituting the direct testimony of each trial witness, except for the testimony of an adverse witness for whom a party has requested and the Court has agreed to hear direct testimony during the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at trial. Only those witnesses who will be cross-examined need appear at trial. The

practicable.

- C. **Sentencing.** Follow the Sentencing Procedures attached hereto as Attachment B.

defendant.

6. Prior to the return date, file the affidavit of service on the defendant of a conformed copy of the Order. For ECF cases, the affidavit of service must be filed electronically on the ECF system.

identified in the Privacy Policy, an application to do so must be served and filed at the time the sentencing submission is served. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

3. If you have any questions about these procedures, contact Judge Briccetti's Courtroom Deputy Clerk, Donna Hilbert, at (914) 390-4167.

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What's New

Revised January 30, 2013.

This edition of the ECF Rules & Instructions contains new material:

Transcripts

Pursuant to the Judicial Conference of the United States Policy on Privacy and Public Access to Electronic Case Files, official transcripts of court proceedings taken by official court reporters, contract court reporters and transcribers are available electronically through the Public Access to Court Electronic Records (PACER) computer system. (See section 13.22.)

F.R.C.P. Rule 7.1 Corporate Disclosure Statements

Effective September 6, 2011, non-governmental corporate parties are required to electronically file a Federal Rule of Civil Procedure 7.1 Disclosure Statement on the District Court's Electronic Case Filing (ECF) system (see, Standing Order 11MC278). The Clerk of Court will no longer accept hard copy versions of this document for filing.

Notice of Appeal

Effective October 15, 2012, parties in civil cases must electronically file any Notice of Appeal and pay the associated fee through the ECF system. (See section 17.1.)

Social Security Cases

Effective February 1, 2012, parties who appeal a Social Security Administration (SSA) decision may view an electronic version of the administrative record through PACER. (See section 13.21.)

Pro Se Cases

Effective June 1, 2012, all *pro se* civil cases are assigned to the ECF system. Attorneys in *pro se* cases must electronically file their documents using the ECF system. *Pro se* litigants shall continue to file their documents in the traditional manner, on paper. Documents filed by *pro se* litigants will be scanned and added to the ECF system by the Clerk's Office. (See Standing Order M10-468).

Motion for Admission *Pro Hac Vice*

Effective September 1, 2012, attorneys must electronically file any written motion for admission *pro hac vice* and pay the associated fee through the ECF system. (See section 20.4)

Electronic Signatures

Effective January 30, 2013, judge's signatures may appear in electronic form. (See section 4.1)

Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted *pro hac vice* and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States, or admitted *pro hac vice*. See the ECF page at www.nysd.uscourts.gov for details.

2.2 The Court may permit or require a party to a pending civil action, who is not represented by an attorney, to register as a Filing User in the ECF system solely for purposes of that action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing (NEF) will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant must be electronically filed in the ECF system.

2.5 An attorney of record may, by written request to the Judge, have transmission of Notices of Electronic Filing (NEF) to another attorney in his or her firm terminated. Please review the Judge's Individual Practices.

(See section 22 - ECF Passwords).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing (NEF) from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Federal Rules of Civil Procedure 58 and 79 and Federal Rules of Criminal Procedure 49 and 55.

3.2 When a document has been filed electronically, the official record is the electronic recording of the

Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. For complete instructions see the sealed records filing instructions on the Cases page at www.nysd.uscourts.gov.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(See section 18 - Non-Electronic Documents).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(See section 13 - ECF Basics).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed (see section 13.15).

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(See section 23 - ECF Computer System Information).

Section 12. Public Access

A person may review filings that have not been sealed by the Court, in person, at the Clerk's Office.

A person may also view available court records on-line through the Public Access to Court Electronic Records (PACER) computer system (separate PACER log-in and password required). A person who has PACER access may retrieve docket sheets in civil, criminal and miscellaneous cases; documents in civil and miscellaneous cases assigned to the ECF System; and documents in criminal cases filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in criminal cases filed prior to November 1, 2004.

(See section 13 - ECF Basics).

13.4 What is the public website for information about the Court?

For publicly available information go to www.nysd.uscourts.gov (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312; and

United States District Court, Southern District of New York, Charles L. Bricant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, NY 10601-4150.

13.6 How can I tell if my case is an ECF case?

The docket sheet will include the letters "ECF" in the upper right corner and an entry titled "CASE DESIGNATED ECF".

13.7 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the Filing User is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below, the Clerk's Office will not accept paper filings in an ECF case.

(See section 1 - Scope of Electronic Case Filing and section 18 -Non-Electronic Documents).

13.8 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case.

(See section 1 - Scope of Electronic Case Filing).

13.9 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (PDF-A) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.10 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(See section 3 - Consequences of Electronic Case Filing).

13.11 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing

13.17 How do I find the correct ECF Filing Event for my document?

When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion. ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it's listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212) 805-0800 for assistance if necessary.

(See section 24 - ECF Help Desk and Training).

13.18 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review. See section seven for specific retention requirements.

(See section 7 - Retention Requirements).

13.19 Should I continue to submit courtesy copies?

Read the Judge's Individual Practices to learn if courtesy copies are required. Individual Practices are available on-line at www.nysd.uscourts.gov/judges

(See section 3 - Consequences of Electronic Case Filing).

13.20 Are administrative records filed electronically?

Yes. If, however, the administrative record is too large to be scanned, it may be served and filed in hard copy without prior motion and order of the Court.

(See section 5 - Attachments and Exhibits).

13.21 Are administrative records filed electronically in Social Security cases?

Yes. Effective February 1, 2012, parties who appeal a Social Security Administration (SSA) decision may view an electronic version of the administrative record through the PACER computer system.

13.22 Are transcripts filed electronically?

Yes. Pursuant to the Judicial Conference of the United States Policy on Privacy and Public Access to Electronic Case Files, official transcripts of court proceedings taken by official court reporters, contract court reporters and transcribers are available electronically through the PACER computer system. More information is available at http://nysd.uscourts.gov/court_reporting.php

SDNY ELECTRONIC CASE FILING RULES & INSTRUCTIONS

Each document must be in a separate PDF-A file no larger than 4 megabytes (separate large files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
caseopenings@nysd.uscourts.gov
- For new civil cases assigned to a White Plains Judge e-mail to:
wpclerk@nysd.uscourts.gov

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from this Rule.

14.4 File the proof of service for the initiating document in the following manner:

- (a) Electronically file the proof of service for the initiating document on the ECF system (do not e-mail), and
- (b) Deliver the original paper proof of service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing (NEF or filing receipt).

Pro se litigants who have been granted *in forma pauperis* (IFP) status are exempt from this Rule.

Pro se litigants who have not been granted IFP status (and who are not members of the bar and who do not have an active ECF account) shall deliver the original paper proof of service with summons attached to the Clerk's Office.

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including F.R.C.P. Rule 7.1 Disclosure Statements and the Defendant's Answer, must be filed electronically on the ECF system at <https://ecf.nysd.uscourts.gov>. With the exception of documents filed by *pro se* litigants and other limited exceptions, the Clerk's Office will not accept a paper document for filing in an ECF case.

(See section 18 - Non-electronic Documents).

14.6 *Pro se* cases

Pro se litigants – including *pro se* defendants – are not permitted to file documents electronically without permission of the Court and must continue to file documents in the traditional manner on paper. The Clerk's Office will scan documents received from *pro se* litigants and will file them electronically on the ECF system. Attorneys in *pro se* cases must electronically file their documents using the ECF system.

(See section 1 - Scope of Electronic Filing)

section 16.4 below.

When electronically filing a Request to Enter Default Judgment before submitting a Default Judgment, you must:

- (a) file an unsigned Clerk's Certificate as an attachment to the Request to Enter Default;
- (b) submit a paper copy of the proposed Clerk's Certificate to the Orders and Judgments Clerk (the clerk will sign and docket the Clerk's Certificate); and
- (c) after completion of the above, you may then move for a Default Judgment using the appropriate method outlined in section 16.2, 16.3 or 16.4 below.

When necessary, submit paper documents to the Orders and Judgments Clerk in Manhattan, (212) 805-0143, or White Plains (914) 390-4000, depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses see section 13 - ECF Basics.

16.2 Default Judgment brought by Motion:

- (a) Submit to the Orders and Judgments Clerk a paper Clerk's Certificate. The clerk will sign and docket the Certificate, and provide a copy to the filing party.
- (b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: (1) the signed Clerk's Certificate; and (2) a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).
- (c) Electronically file proof of service for the Motion for Default Judgment.
- (d) Submit a courtesy copy of the Motion to the Judge, including a copy of the original signed Clerk's Certificate and a copy of the proof of service.

16.3 Default Judgment brought by Order to Show Cause (O.S.C.):

- (a) Submit to the Orders and Judgments Clerk a paper original of the O.S.C. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment. Include courtesy copies of all documents.
- (b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.
- (c) Electronically file proof of service for the O.S.C.

that portion of this Rule that requires litigants to e-mail to the Clerk's Office the Notice of Appeal. The Clerk's Office will scan and electronically file all proper appellate papers received from *pro se* litigants who do not have an active ECF account.

Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of civil complaints (Third Party, Interpleader etc.), see below;
- Proposed orders; proposed judgments, stipulations; consents, see below;
- Orders to show cause / temporary restraining orders, see below;
- Sealed documents, see below;
- Surety bonds, see below;
- Bill of Costs, see below;
- Miscellaneous Initiating Documents, see below; and
- Notices of Appeal in criminal cases, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate. In criminal ECF cases, a letter brief may be filed electronically as a motion. The letter must include the formal case caption.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc., filed electronically?

No. All civil complaints, no matter what type, are filed the same way:

- (a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and
- (b) Within 24 hours of filing you must email a PDF-A copy of the document, including exhibits, to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

18.7 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner on paper. The sealed envelope must contain the paper document and a CD-ROM containing a PDF-A copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(See section 6 - Sealed Documents).

18.8 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner on paper. Include a copy of the Court's Order regarding the bond.

18.9 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner on paper. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

18.10 How are Miscellaneous documents filed?

As of December 1, 2010 civil miscellaneous cases will be filed electronically through the District Court's ECF system. The party initiating the civil miscellaneous case is required to appear at the Clerk's Office and present the following documents:

1. A completed civil miscellaneous case cover sheet (original & two copies)
2. The hard copy of the civil miscellaneous application and any other supporting documents
3. The applicable filing fee

Within 24 hours of the assignment of a case number, the filing party is required to e-mail the PDF-A copy of the initiating document and any supporting documents to:

- For miscellaneous applications assigned to Manhattan e-mail to:
miscfoley@nysd.uscourts.gov
- For miscellaneous applications assigned to White Plains e-mail to:
miscwhiteplains@nysd.uscourts.gov

The subject line of the e-mail and name of the file should list the case number followed by a brief document description (e.g., "Re: 10 MC 1234 - a letter rogatory"). Failure to do so within 24 hours will delay adding your documents to the computerized ECF docket. Each document must be in a separate PDF-A format file no larger than 4.0 megabytes (separate large computer files into smaller parts if necessary).

The party commencing the civil miscellaneous action is required to serve initiating documents on the opposing party in the traditional manner on paper, and electronically file the proof of service for the initiating documents on the ECF system. The original paper proof of service is required to be delivered to the Clerk's Office along with a copy of the ECF Notice of Electronic Filing (NEF) of the proof of service (the filing receipt).

SDNY ELECTRONIC CASE FILING RULES & INSTRUCTIONS

- (1) Electronically file proof of service for the initiating document on the ECF system (do not send by e-mail), and
 - (2) Deliver the original paper proof of service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document.
- (b) Proof of service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from that portion of this Rule requiring proof of service to be filed electronically.

(See section 9 - Service of Documents by Electronic Means).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(See section 3 - Consequences of Electronic Case Filing).

19.5 Do I receive a receipt (Notice of Electronic Filing (NEF)) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Save a copy for your records. The NEF receipt indicates what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet. If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and you risk missing an e-mail message. Therefore it remains the duty of the Filing User with an active ECF account to review regularly the docket sheet of the case.

(See section 9 - Service of Documents by Electronic Means).

Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

Each attorney whose name appears under the signature line on the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add alternate e-mail addresses in the SDNY ECF system by clicking on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet by anyone with a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with these rules.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk by email helpdesk@nysd.uscourts.gov or by telephone (212) 805-0800.

(See section 2 - Eligibility, Registration, Passwords).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov.

22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be admitted to the bar of this Court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. If you wish to practice in one case only, you may move for admission *pro hac vice* (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice *pro hac vice*?

An attorney may be admitted to practice in one case by moving for admission *pro hac vice*. For complete *pro hac vice* motion and password instructions go to www.nysd.uscourts.gov, then click on Attorney Admission.

22.7 Do I need a new ECF password if I change law firms?

No. Your ECF password will remain the same even if your contact information changes. Local Civil Rule 1.3 requires an attorney to notify the court of any contact information changes. For information go to www.nysd.uscourts.gov

23.6 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(See section 5 - Attachments and Exhibits).

23.7 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

- (a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).
- (b) If the Court's ECF system is out of order you should electronically file your document as soon as the system is restored.
- (c) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(See section 11 - Technical Failures)

Section 24. ECF Help Desk & Training

24.1 How can I learn how to file electronically?

The Court offers several options for ECF training. Details are available on the ECF page at www.nysd.uscourts.gov

- (a) In-person training classes are offered bi-weekly for attorneys and support staff (approx. 1 hour).
- (b) Step by step filing instructions can be found on-line in the course materials for our in-person training. From the ECF page click on Training. Then click on Instructor Led Training, and click on the course title.
- (c) "ECF 101" is a short interactive web-based introduction to electronic filing available on-line.

24.2 How do I sign up for free alerts concerning ECF news?

Sign up for free electronic alerts from the Court at www.nysd.uscourts.gov. From the homepage click on ECF, then POC. You will receive periodic RSS messages through your web browser alerting you to interruptions in ECF service and other ECF information. You do not need to be an attorney to sign up for this service.

RESOLUTION NO.: 34 -2013

OF

FEBRUARY 25, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
AN INTERMUNICIPAL AGREEMENT FOR MEMBERSHIP IN
HISTORIC HUDSON RIVER TOWNS
WITH AN ANNUAL DUES ASSESSMENT OF \$3,000.00**

WHEREAS, Historic Hudson River Towns, Inc. is a consortium of municipalities located along New York's Hudson river from Yorkers to Albany, organized under an Inter-municipal Agreement with non-profit tax exempt status; and

WHEREAS, membership in Historic Hudson River Towns, Inc. is open to all riverfront communities along the Hudson River from Yonkers to Albany with an annual dues assessment; and

WHEREAS, Historic Hudson River Towns, Inc. is an economic development initiative focused on issues of common concern in the general areas of downtown revitalization, waterfront renewal and tourism development; and

WHEREAS, the City Council of the City of Newburgh finds that becoming a member of Historic Hudson River Towns, Inc. will be useful and effective tool for economic development and a way of promoting the City of Newburgh among our residents and visitors; and

WHEREAS, this Council has reviewed the attached Inter-municipal Agreement and has determined that becoming a member of Historic Hudson River Towns, Inc. is in the best interests of the City of Newburgh; and

WHEREAS, it has been further determined that a budget transfer is necessary to fund the dues assessment.

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 Inter-municipal Agreement with the Historic Hudson River Towns, Inc.; and

BE IT FURTHER RESOLVED, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900.1990. Contingency	\$3,000.00	
A.7550.0463 Celebrations - Riverwalk		\$3,000.00

HISTORIC HUDSON RIVER TOWNS
Intermunicipal Agreement

This agreement dated as of January 1, 2007 is made between the New York municipalities along the East and West shorelines of the Hudson River that have agreed to participate according to the terms below:

WITNESSETH:

WHEREAS: the communities along the Hudson Riverfront share a common history and have many characteristics and concerns in common; and

WHEREAS: the Historic River Towns of Westchester has served the interests of the 13 riverfront municipalities from Yonkers to Peekskill in economic development through tourism marketing, riverfront renewal and downtown revitalization since 1994; and

WHEREAS: it is now useful to expand the Historic River Towns of Westchester to offer participation to all Hudson Riverfront communities for mutual benefit, collaboration and co-operative tourism marketing; and

WHEREAS: this IMA is a continuation of the original IMA with no change other than the name and geographic area; and

WHEREAS: representatives of the municipalities herein have recognized the value in joining forces to focus attention on projects and programs that will increase public awareness of all that they and their neighboring river towns have to offer to residents of and visitors to the region;

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The municipalities who sign this Intermunicipal Agreement have joined together under the name "Historic Hudson River Towns," as a successor to and expansion of "Historic River Towns of Westchester" with the intention of working collaboratively on projects of mutual benefit.
2. The governance of this organization shall in all respects be in the hands of the Board of Historic Hudson River Towns, to wit:
 - a. A representative of each signatory of this agreement shall constitute the Board, which shall have no fewer than one regularly scheduled meeting in each year and more frequently as the Board may determine.

- b. At the first official meeting of the Board, the representatives shall select an executive committee consisting of a President, a Vice-President, a Treasurer and a Secretary to serve for the balance of the year and serve as the Executive Committee.
 - c. The President shall develop the agenda and preside over all meetings of the whole and of the Board.
 - d. The Vice-President shall act when the President is unable to do so.
 - e. The Secretary shall maintain minutes of all meetings and proceedings.
 - f. The Treasurer shall prepare an annual budget and financial reports as required.
 - g. A majority of the total number of representatives shall be required for a quorum at any meeting. Each member of the Board shall have one vote.
 - h. The Board may, upon an affirmative vote of the members, approve additional Hudson Riverfront municipalities to become members of Historic Hudson River Towns.
3. The goals of "Historic Hudson River Towns" are as follows:
- a. To promote intermunicipal cooperation by and between the signatories to this agreement.
 - b. To build the local economy of the Hudson riverfront through public-private partnerships.
 - c. To enhance and promote tourism as an economic development initiative along the riverfront.
 - d. To increase public awareness of the features and benefits of local attractions of historical, cultural and environmental value.
 - e. To improve methods of transportation to and through the river towns.
 - f. To develop and implement a comprehensive marketing plan for the river towns.
 - g. To serve as a unified voice on issues particular to riverfront communities.
4. Members of the Historic Hudson River Towns agree to contribute the sum of \$3,000 (three thousand dollars) per year to help with the costs of operating this group. Any increase in this contribution shall require the approval of the governing

body.

5. These funds will be used to retain a consultant to assist the Historic Hudson River Towns in administering the program. The consultant will be responsible for:
 - a. Developing and implementing a marketing and public relations plan.
 - b. Building positive relationships within the group and with relevant external groups and audiences.
 - c. Building membership in the IMA.
 - d. Coordinating activities with the 501c3 non-profit organization.
 - e. Identifying funding sources to support the group's objectives.
6. Historic Hudson River Towns will complement the work that is being done through local Chambers of Commerce and county and regional tourism efforts, and is intended to supplement their efforts.
7. Historic Hudson River Towns (the IMA) will work closely with Historic Hudson River Towns, Inc., a non-profit organization established to seek funding for major projects that will benefit the entire rivertowns region. The IMA will elect two representatives to sit on the Board of the 501c3 non-profit.
8. Participation in this agreement will automatically be renewed each year unless a participant gives 60 day notice prior to the end of any calendar year of intent to withdraw.

IN WITNESS WHEREOF AND AGREEMENT THERETO, the Chief Elected Official (or duly appointed proxy) of a municipality wishing to participate in this IMA has, by the authority vested in them, signed below:

Signature _____ Date _____

Position _____

Municipality _____

RESOLUTION NO.: 35 -2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE ADDITION
OF ONE (1) CAPTAIN POSITION ON A TEMPORARY BASIS
IN THE FIRE DEPARTMENT

WHEREAS, due to injuries and retirements, it has become necessary to create an additional position of Fire Department Captain so that there is another individual capable of performing such duties in the Fire Department; and

WHEREAS, the creation of such additional position will be on a temporary basis; and

WHEREAS, the Fire Department has advised the City Manager that its department is in need of one (1) additional individual to perform the duties of "Captain";

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the budget for the fiscal year 2013 be amended, and that there be and hereby is created one (1) additional position in the job title "Captain" in the Fire Department.

RESOLUTION NO.: 36 - 2013

OF

FEBRUARY 25, 2013

A RESOLUTION TO SPONSOR THE
NEWBURGH ILLUMINATED EVENT

BE IT RESOLVED, by the Council of the City of Newburgh, New York hereby supports and sponsors the Newburgh Illuminated Festival as a City-sponsored event.

RESOLUTION NO.: 37 -2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN EQUIPMENT LEASE AGREEMENT WITH BELL COPIERS
TO ACQUIRE TWO (2) KONICA MINOLTA BIZHUB 363 COPIERS
FOR USE BY THE CODE COMPLIANCE DEPARTMENT
AND THE FIRE DEPARTMENT

WHEREAS, the City of Newburgh Code Compliance Department and the Fire Department have requested to lease new copiers to perform their statutory duties, assigned tasks and day-to-day operations; and

WHEREAS, Bell Copiers has submitted a proposal for a bid replacement of two copier systems and after a review of available equipment and systems has identified a Konica Minolta BizHub 363 to be the most appropriate and cost-effective alternative; and

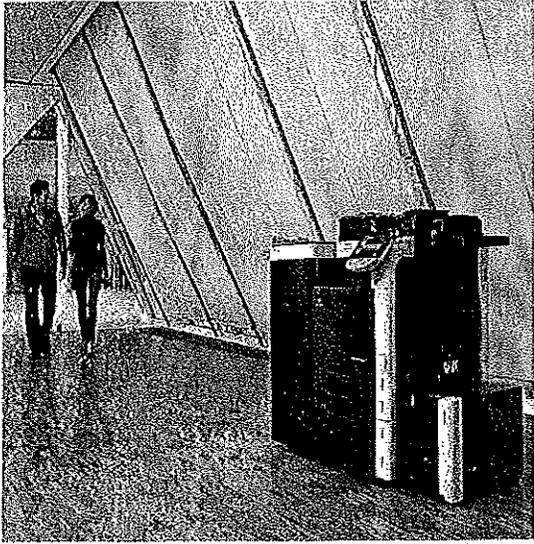
WHEREAS, the cost of the lease for the copier for Code Compliance is \$205.92 per month including 5,000 prints per month with excess copies charged at \$.01/copy, add fax and fax from and to computer for additional \$17.00 per month, includes delivery and installation as copier, network printer, scan to folder, and includes termination of current agreement; and

WHEREAS, the cost of the lease for the copier for the Fire Department is \$146.00 per month, optional stapling collator for an additional \$17.00 per month, maintenance for 24,000 prints per year for \$360.00 or monthly at \$40.00 per month, and includes termination of current lease; and

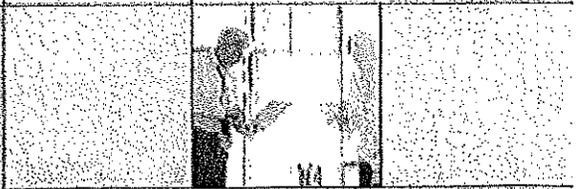
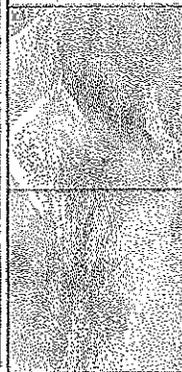
WHEREAS, this Council has reviewed said proposal, a copy of which is attached hereto and made a part of this resolution, and finds it beneficial to the City of Newburgh Code Compliance Department and the Fire Department;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute a lease agreement, to acquire two (2) Konica Minolta BizHub 363 from Bell Copiers for use by the Code Compliance Department and the Fire Department.

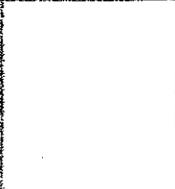
A Proposal For City of Newburgh Fire Department



bizhub 



**bizhub Office
Printing Solutions**



**Presented By:
Noel Hirsch**



**A Proposal By:
BELL DUTCHESS, INC.
600 Violet Ave., NY 12538**

BELL DUTCHESS, INC.
600 Violet Ave.
Hyde Park, NY 12538

4/26/2011

Chief Mike Vatter
City of Newburgh Fire Department
22 Grand St.
Newburgh, NY 12551

Dear Chief Mike Vatter,

Thank you for the opportunity to submit this proposal for your review and consideration.

In our review meeting, you asked for a bid for replacement of two systems:

- 1) KonicaMinolta 363 with Automatic document feeder, fax, and base
- 2) For Code Compliance: KonciaMinolta 363 with Automatic Document Feeder, Fax, stapling collator, and base.

You are familiar with Bell, and the quality of the KonicaMinolta product through our many years of working together. We discussed that the Machinery has performed well, and your service has been good, and response time is very quick.

The KonicaMinolta C224 Multifunctional Printer/copier/scanner/Fax is an **up to date product.**

These systems *maximize productivity* – and **are extrememy cost effective:**

✚ Scanning –

Allows us to scan to computer and distribute by email – Reduce costs by viewing by email instead of hard copy.

Scan to computer and view on computer: - Lower costs by viewing electronic documents instead of paper docs.

✚ **Production of electronic Documents:**

Paper documents can be scanned and stored electronically.

TLC Pediatrics of Poughkeepsie – 483-5844 Jennifer White
Jennifer is saving 70% of her former costs of archiving documents by utilizing her KonicaMinolta as a scanner. Her costs for retrieving archived documents is also a fraction of the former cost.

✚ **Archiving and Backup:**

Paper documents can be scanned, stored on server, and backed up automatically when server is backed up. Now, if there is a Fire, or water damage irreplaceable documents are not lost forever:

** The Village of Washingtonville Village Hall was damaged by the Hurricane of 2012. Almost all of their paper documents were damaged by water, and mold. What they had scanned with their KonicaMinolta was backed up and preserved, but thousands of documents that had not been scanned were damaged and are unrecoverable.

BELL DUTCHESS, INC. Recommendation

Based on previous contracts, we estimate the Annual Volume for the Fire Department to be 24,000 annually- 2,000 prints per month.

For Code Compliance we estimate an annual volume of 60,000 prints, 5,000 per month.

The utilization of scanning is expected to have an impact on the volume of printing.

Konica Minolta BizHub 363 Digital Document Solution.

Investment Includes:

Fire Department

1 bizhub 363 - Monochrome Printer/Copier/Color Scan/ Optional Fax –

Copy and Print at 36 pages per minute – single or double sided

Color Scanning – up to 70 pages per minute
100 sheet - Reversing Automatic Document Feeder
Base

Lease this copier for: \$ 146.00 per month

For optional stapling collator add: \$ 14.00 monthly

Maintenance for 24,000 prints per year = \$ 360.00 Or Monthly at \$ 40.00 per month

Includes termination of current Lease.

Code Compliance:

1 bizhub 363 - Monochrome Printer/Copier/Color Scan/ Fax
Copy and Print at 36 pages per minute – single or double sided

Color Scanning – up to 70 pages per minute
100 sheet - Reversing Automatic Document Feeder
Fax and fax from Computer {optional}
Stapling collator
Base

Lease for: \$ 205.92 including 5,000 prints per month excess copies charged at \$.01/copy

Add fax and fax from and to computer : Add \$ 17.00 per month

Includes delivery and installation as copier, network printer, scan to folder.

Includes termination of current agreement.

Thank you for your time, and interest.

I will follow up by telephone.

Regards: Noel A. Hirsch.

CONFIDENTIAL

A Proposed Solution is an intellectual property of Bell Copiers and a trade secret of Konica/Minolta Corporation and may not be duplicated or distributed in any format. Proposal may be modified at any time prior to acceptance of signed lease. Proposal is not, and is not intended to be a contract, and is for informational purposes only.



SPECIFICATIONS	
Print / Copy Speed (Letter, portrait) Monthly Duty Cycle (pages)	B&W: 42 ppm 150,000
COPY	
Warm-up Time / First Copy Time Copy Resolution / Copy Quantity Copy Features	Less than 30 seconds / Less than 3.6 seconds 1800 dpi (equivalent) x 600 dpi / 1 - 9,999 Account Track, Auto Duplex, Card Shot, Cover Mode, Form Overlay, Image Preview, Interrupt, Job Skip, Job List, LDAP, Program Recall Jobs, Proof Copy, Separate Scan, User Authentication, Watermark
PRINT - Empower Print System with bizhub Extended Solution Technology / Open API	
Processor / Speed / Memory Print Resolution / Grayscale Gradations Interface HD-516 250 GB Hard Disk Drive Page Description Language Print Features	MPC8533E / 667MHz / 2 GB RAM (shared print, copy, scan and fax memory) 1800 dpi (equivalent) x 600 dpi / 256 shades 10 Base-T/100 Base-TX/1000 Base-T, USB 1.1, USB 2.0, USB Host Standard PCL5e/c Emulation, PCL XL ver.3.0 Emulation, PostScript 3 Emulation (3016), XPS v.1.0 (XML Paper Specification) Encrypted Network Password Printing, Job Skip, MyTab Driver Feature, Print from USB Memory
SCAN	
Scan Speed with DF-621 Scan Resolution / Scan File Formats Scan Features	Color / B&W: 70 opm (@300 dpi, letter), 42 opm (@600 dpi, letter) 200 dpi, 300 dpi, 400 dpi, 600 dpi / TIFF, PDF, Compact PDF, JPEG, XPS, Compact XPS bizhub Send, Separate Scan, Scan-to-Email, Scan-to-FTP, Scan-to-SMB, Scan-to-User Box (HDD), Scan-to-USB Memory, Network TWAIN (via Ethernet TCP/IP), Scan-to-Me and Scan-to-Home, Scan-to-WebDAV
FAX	
Internet Fax • FK-508 Fax Kit • MK-726 Fax Model Kit • Fax Line / Mode • Fax Transmission Speed • Fax Features	Color / B&W Includes Super G3 Fax, IP Address Fax, PC Network Fax Driver Required for each FK-508 Installation PSTN (Public Switch Telephone Network), PBX (Private Branch Exchange), Super G3 (Fax line) Approx. 3 sec (A4, V34, 33.6kbps, JBIG) Activity Reports, Fax Forward, F-Code, Group Dial, Memory RX, One-Touch Dial, TSI Routing
PAPER INPUT	
DF-621 Reversing Automatic Document Feeder Tray 1 & Tray 2 Bypass • PC-109 Paper Feed Cabinet / Storage • PC-208 Paper Feed Cabinet • PC-409 Large Capacity Cabinet • DK-508 Copy Desk Storage Maximum Paper Capacity	Standard: Capacity 100 sheets, Paper Size: 5.5" x 8.5" to 11" x 17", Paper Weight: Single-sided: 9.31 lb. bond to 34 lb. bond (35-128 g/m ²), Double-sided or mixed originals: 13.25 lb. bond to 34 lb. bond (50-128 g/m ²) 500-sheet / 5.5" x 7.16" to 11.69" x 17" (140 x 182 mm to A3) / 16 lb. bond to 24 lb. (60-90 g/m ²) 150-sheet / 3.54" x 5.5" to 11.69" x 17" (90 x 140 mm to A3) / 16 lb. to 55.75 lb. (60-210 g/m ²) 500-sheet / 5.5" x 7.16" to 11.69" x 17" (140 x 182 mm to A3) / 16 lb. bond to 24 lb. (60-90 g/m ²) 2 x 500-sheet / 5.5" x 7.16" to 11.69" x 17" (140 x 182 mm to A3) / 16 lb. bond to 24 lb. (60-90 g/m ²) 2,500-sheet / 8.5" x 11" (A4) portrait only / 16 lb. bond to 24 lb. (60-90 g/m ²) Storage Drawer 3,650 Sheet (total with options)
PAPER OUTPUT	
Standard Output • JS-505 Inter. Job Separator	Inner Output Tray: 250 sheet Capacity Inner Output Tray 1: 150 Sheet Capacity, Inner Output Tray 2: 50 Sheet Capacity
FINISHING	
• FS-527 Floor Finisher • JS-603 Additional Output Tray for FS-527 • PK-517 Punch Kit for FS-527 • SD-509 Saddle Stitch Kit for FS-527 • FS-629 Inter Finisher	50 Sheet stapling Output Tray 1: 200 Sheet Capacity Output Tray 2: 3,000 Sheet Capacity Output Tray 3: 100 Sheet Capacity 2 and 3 Hole Punching 60-page Booklet Making Output Booklet Tray: 20 Booklet Capacity 60 sheet stapling Output Tray: 200 Sheet Capacity
USER BOX	
User Box Functionality Max. User Boxes / Max. Document Storage	Standard 1,000 User Boxes for Document Storage, Re-Output, Distribution / Up to 200 Documents per User Box, Up to 3,000 Documents in all User Boxes, Up to 10,000 pages in all User Boxes
APPLICATION SOFTWARE	
Network and Device Management User Tools / Management Tools • Optional Software	PageScope Data Administrator, Driver Packaging Utility, HDD Back-Up Utility, Log Management Utility PageScope Web Connection, PageScope Direct Print, PageScope Box Operator, PageScope Print Status Notifier, Font Management Utility, Copy Protect Utility / bizhub vCare support PageScope Enterprise Suite: Account Manager, Authentication Manager, MyPanel Manager, MyPrint Manager, PageScope Net Care Device Manager (standard)
I-OPTION	
• UK-203 • UK-101 v2 • UK-102 • UK-105	1-GB Memory Upgrade Kit: Required to enable any I-Option: PageScope My-Panel Manager Enables Web Browsing at Control Panel / Image Panel to Create / combine / route documents Enables Enhanced Scanning Security with advanced digital IDs for AES-128-bit Encrypted PDF Enables scanning to a searchable PDF (OCR)
EXTERNAL KEYBOARD	
• Keyboard Option / KH-101 Keyboard Holder • EK-604 USB Kit • EK-605 USB Kit	External Keyboard / External Keyboard Mounting Kit Enables USB connection for External Keyboard Enables USB connection for External Keyboard and Bluetooth Printing
AUTHENTICATION DEVICES	
• AU-102 • AU-201H • AU-202H • AU-211P • WT-506 Working Table	Biometric Finger Vein Authentication HID Proximity Card Authentication HID iClass Card Authentication CAC/PIV Card Authentication Working Table to support Authentication Devices
SECURITY	
Security Features SC-507 Copy Guard Kit	ID & Print, IEEE 802.1X Authentication, External Server Authentication, NDS Authentication over TCP/IP, Secure Print Support for SMTP Authentication (POP before SMTP), IP Filtering, Encrypted Communications (SSL, S/MIME, Encrypted PDF), HDD Encryption, HDD Job Overwrite, HDD Sanitizing Enables Watermark Security to prevent unauthorized copying of documents and Password Copy Feature
POWER & DIMENSIONS	
Power Requirements / Consumption Dimensions (W x D x H) / Weight	120V / 60Hz @ 12A (110V) / Less than 1500W (max consumption), Less than 7.6 W (low power / sleep mode) 24.5" x 31.2" x 32.2" / 119 lb.

OPTIONAL STANDARD For more detailed specifications see the bizhub 423 Series Specification and Install Guide.

*Available Summer 2010.



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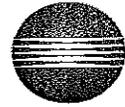
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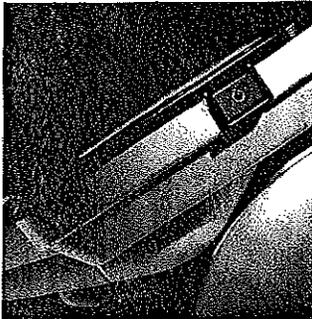
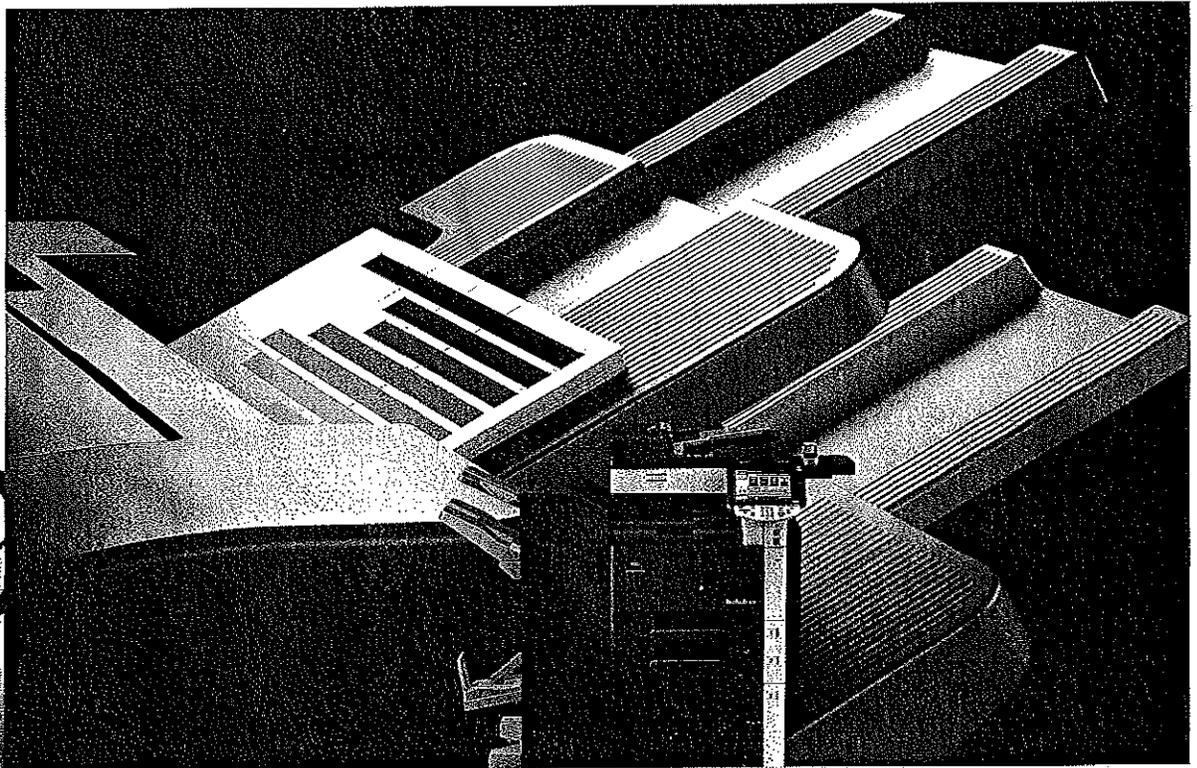
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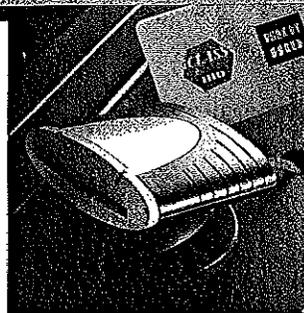
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COUNT ON KONICAMINOLTA

RESOLUTION NO. 38 -2013

OF

FEBRUARY 25, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
GRANT AN EXTENSION OF TIME TO REHABILITATE
THE PREMISES KNOWN AS 110 RENWICK STREET
(SECTION 45, BLOCK 5, LOT 24)
IN THE CITY OF NEWBURGH**

WHEREAS, the City of Newburgh did convey the premises located at 110 Renwick Street, more accurately described as Section 45, Lot 5, Block 24 on the Official Tax Map of the City of Newburgh, by deed dated June 16, 2011; and

WHEREAS, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about December 16, 2012; and

WHEREAS, Fredy Arias, the owner of property located at 110 Renwick Street in the City of Newburgh, has been unable to comply with the deadline, but has attempted a good faith effort and intent to complete the rehabilitation; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its future development to grant said extension;

NOW, THEREFORE, BE IT RESOLVED, that the City Manager be and he hereby is authorized to grant Fredy Arias a one (1) year extension to rehabilitate the premises known as 110 Renwick Street in the City of Newburgh, until February 25, 2014, that being one (1) year from the date of this Resolution.

RESOLUTION NO. 39 - 2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER TO
GRANT AN EXTENSION OF TIME TO REHABILITATE
THE PREMISES KNOWN AS 112 RENWICK STREET
(SECTION 45, BLOCK 5, LOT 25)
IN THE CITY OF NEWBURGH

WHEREAS, the City of Newburgh did convey the premises located at 112 Renwick Street, more accurately described as Section 45, Lot 5, Block 25 on the Official Tax Map of the City of Newburgh, by deed dated June 16, 2011; and

WHEREAS, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about December 16, 2012; and

WHEREAS, Jorge Arias, the owner of property located at 112 Renwick Street in the City of Newburgh, has been unable to comply with the deadline, but has attempted a good faith effort and intent to complete the rehabilitation; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its future development to grant said extension;

NOW, THEREFORE, BE IT RESOLVED, that the City Manager be and he hereby is authorized to grant Jorge Arias a one (1) year extension to rehabilitate the premises known as 112 Renwick Street in the City of Newburgh, until February 25, 2014, that being one (1) year from the date of this Resolution.

RESOLUTION NO.: 46 2013

OF

FEBRUARY 25, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO BERND A. STOERCHLE
TO THE PREMISES KNOWN AS 47 OVERLOOK PLACE
(SECTION 48, BLOCK 2, LOT 8)**

WHEREAS, on June 15, 2011, the City of Newburgh conveyed property located at 47 Overlook Place, being more accurately described on the official Tax Map of the City of Newburgh as Section 48, Block 2, Lot 8 to Bernd A. Stoerchle; and

WHEREAS, Mr. Stoerchle has requested a release of the restrictive covenants contained in said deed; and

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

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

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

RESOLUTION NO.: 41-2013

OF

FEBRUARY 25, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO JOSEPH D. PARRELLA
TO THE PREMISES KNOWN AS 206-208 WEST PARMENTER STREET
(SECTION 38, BLOCK 1, LOT 21) N/K/A 206 WEST PARMENTER STREET**

WHEREAS, on November 14, 1986 the City of Newburgh conveyed property located at 206-208 West Parmenter Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 38, Block 1, Lot 21, n/k/a 206 West Parmenter Street to Joseph D. Parrella; and

WHEREAS, the current owner, by her attorney, has requested a release of the restrictive covenants contained in said deed; and

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

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

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 206-208 West Parmenter Street, Section 38, Block 1, Lot 21 on the Official Tax Map of the City of Newburgh, n/k/a 206 West Parmenter Street, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated November 14, 1986, from THE CITY OF NEWBURGH to JOSEPH D. PARRELLA, recorded in the Orange County Clerk's Office on November 24, 1986 in Liber 2611 of Deeds at Page 299 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed

Dated: _____, 2013

THE CITY OF NEWBURGH

By:

RICHARD F. HERBEK,
City Manager

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

On the ____ day of _____ in the year 2013, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 42 -2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO RAYMOND LaCHANCE AND GISELA LaCHANCE
TO THE PREMISES KNOWN AS 210 WEST PARMENTER STREET
(SECTION 38, BLOCK 1, LOT 22)

WHEREAS, on June 13, 1997 the City of Newburgh conveyed property located at 210 West Parmenter Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 38, Block 1, Lot 22, to Raymond LaChance and Gisela LaChance; and

WHEREAS, the current owner, by her attorney, has requested a release of the restrictive covenants contained in said deed; and

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

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

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

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 210 West Parmenter Street, Section 38, Block 1, Lot 22 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, and 4 in a deed dated June 13, 1997, from THE CITY OF NEWBURGH to RAYMOND LaCHANCE and GISELA LaCHANCE, recorded in the Orange County Clerk's Office on October 6, 1997 in Liber 4642 of Deeds at Page 278 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed

Dated: _____, 2013

THE CITY OF NEWBURGH

By: _____
RICHARD F. HERBEK,
City Manager

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

On the ____ day of _____ in the year 2013, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 43 - 2013

OF

FEBRUARY 25, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A LICENSE AGREEMENT WITH THE NEWBURGH COMMUNITY LAND BANK
FOR A PORTION OF THE SECOND FLOOR OF 123 GRAND STREET
FOR A TERM OF ONE YEAR**

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

WHEREAS, the Newburgh Community Land Bank Agency (NCLB) has expressed an interest in using a portion of said premises to establish a fixed office for its administrative operations until such time as the properties known as 13 and 15 Chambers Street have received certificates of occupancy, a rehabilitation project for which the NCLB has received grant funds; and

WHEREAS, the term of the license shall be one year and which may automatically renew for successive one year terms unless terminated as set forth in the license agreement, a copy of which is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license agreement 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 license agreement with the Newburgh Community Land Bank for the use of a portion of the second floor of 123 Grand Street in substantially the same form and on the terms and conditions contained in the attached license agreement, including such other terms and conditions as may be deemed appropriate and necessary by the City Manager and /or the Corporation Counsel in order to carry-out the subject transaction.

LICENSE AGREEMENT

This Agreement made this _____ day of _____ 2013, between the CITY OF NEWBURGH, a municipal corporation having its principal offices at City Hall, 83 Broadway, Newburgh, NY 12550 (hereinafter referred to as "LICENSOR" or "CITY) and NEWBURGH COMMUNITY LAND BANK, a corporation organized and existing under the laws of the State of New York, having its principal place of business at PO Box 152, Newburgh NY 12550 (herein referred to as "LICENSEE" or "NCLB").

WITNESSETH:

WHEREAS, LICENSOR owns property known as the Grand Street Courthouse, located at 123 Grand Street, Newburgh, New York, hereinafter referred to as the "Premises"; and

WHEREAS, LICENSEE desires the license or privilege of gaining access to a portion of the second floor of the Premises for the purpose of establishing a fixed office for the conduct of operations; and

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

NOW THEREFORE, in pursuance of said agreement and in consideration of ONE AND NO/100 (\$1.00) DOLLAR paid by each of said parties to each other, receipt of which is hereby acknowledged and of the mutual covenant, agreements, conditions, and stipulations herein contained, it is mutually covenanted, stipulated and agreed by and between the parties hereto as follows:

1. PREMISES:

LICENSOR does hereby grant unto LICENSEE use and occupancy of a portion of the second floor of the Premises for the purpose of establishing a fixed office for the conduct of its business operations according to the terms and conditions as hereinafter provided.

2. TERM:

The license granted hereunder shall be for a term of one (1) year, commencing upon the date this Agreement shall be properly executed by both parties, unless earlier terminated by either or both parties as provided herein.

3. CONSIDERATION:

The consideration shall be ONE AND No/100 (1.00) DOLLAR payable by each party to the other upon execution of this License Agreement, and all such other covenants, promises and understandings provided herein.

4. RENEWAL

This Agreement shall automatically renew for a term of one (1) year unless either party gives notice as specified herein of its intention not to renew this Agreement. Such notice must be given in writing no less than one (1) month prior to the expiration of this Agreement or of any renewal extension hereunder.

For each and every renewal hereunder, each party shall pay to the other the sum of ONE AND No/100 (1.00) DOLLAR.

5. LIABILITY/INSURANCE:

A. LICENSOR and LICENSEE each agree to be responsible for the negligent or wrongful acts or omissions of their respective employees arising under this agreement. The parties agree to cooperate in good faith to resolve any claims promptly and wherever appropriate without litigation.

B. LICENSOR and LICENSEE shall at all times during the term of this Agreement maintain and keep in force comprehensive general liability insurance. LICENSOR shall at all times during the term of this Agreement maintain and keep in force property and casualty insurance covering the Premises.

6. USE AND OCCUPANCY:

LICENSEE shall use and occupy the Premises in a careful, safe and proper manner, and shall not occupy or use said premises or permit the same to be occupied or used for any purpose or business which is unlawful and shall comply with all lawful requirements of all current laws, ordinances, rules and regulations of all governmental authorities pertaining to the use and occupancy of the Premises.

9. ENFORCEABILITY:

Should any provision of this Agreement be deemed unenforceable for any reason, the remainder of this Agreement shall continue in effect so long as the purpose of this Agreement is not nullified by the absence of such provision.

10. NON-ASSIGNMENT:

LICENSEE shall not have the right to assign this Agreement without prior written approval of LICENSOR.

11. INVALIDITY OF PROVISIONS:

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

12. HEADINGS:

It is understood and agreed that the headings are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Agreement, or in any way affect this Agreement.

13. ENTIRE AGREEMENT:

This Agreement contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify or discharge it in whole or part unless such agreement is in writing and signed by both parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have signed
this Agreement below.

(date)

CITY OF NEWBURGH, LICENSOR

By: _____
RICHARD F. HERBEK
City Manager

(date)

NEWBURGH COMMUNITY LANDBANK
LICENSEE

By: _____

RESOLUTION NO.: 44 - 2013

OF

FEBRUARY 25, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO A SUB-RECIPIENT AGREEMENT WITH THE ARMORY UNITY GROUP, INC.
FOR THE IMPLEMENTATION OF THE HUDSON RIVER VALLEY COUNCIL
GREENWAY COMMUNITIES A GRANT TO PURSUE A PLAN
FOR GREEN URBAN LAND USE IN THE CITY OF NEWBURGH**

WHEREAS, by Resolution No. 22-2011 of January 24, 2011, the City Council of the City of Newburgh authorized the City Manager to apply for a Greenway Communities Grant from the Hudson River Valley Council for the purpose of pursuing a Land Use Planning and Evaluation Process for the Newburgh Food and Urban Gardens Community Planning Project; and

WHEREAS, by Resolution No. 65-2011 of March 28, 2011, the City Council authorized the City Manager to accept the Greenway Communities Grant and execute a sub-recipient grant agreement with PathStone Community Improvement of Newburgh ("PathStone") to coordinate this project; and

WHEREAS, PathStone, acting on behalf of the City of Newburgh, successfully completed "A Plan for Green Urban Land Use in the City of Newburgh" ("the Plan") to the satisfaction of the Hudson River Valley Greenway in connection with this original grant; and

WHEREAS, by Resolution No. 58-2012 of April 23, 2012, the City Council authorized PathStone to prepare and submit a grant application to the Greenway Communities Program in the amount of Ten Thousand (\$10,000) Dollars for the implementation of the next phase of the Plan, and further authorized the City Manager to accept said grant and execute an agreement with the Hudson River Valley Greenway Communities Council under the Greenway Communities Grant Program, for a project known as Green Urban Land Use Plan Implementation ("the Project"); and

WHEREAS, the City of Newburgh has been informed it has been awarded Ten Thousand (\$10,000.00) Dollars to fund the implementation of the Plan and the work associated with the Project; and

WHEREAS, PathStone is unable to continue to coordinate the Project but the Armory Unity Group, Inc. has agreed to coordinate the Project; and

WHEREAS, the City of Newburgh wishes to enter into a sub-recipient agreement with the Armory Unity Group, Inc. to undertake the coordination of the Project and to provide the matching funds of \$10,000.00 for a total project of \$20,000.00; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the sub-recipient agreement with the Armory Unity Group, Inc. to coordinate the Project and to provide the matching funds of \$10,000.00 for a total project of \$20,000.00.

AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2013

BY AND BETWEEN:

NAME: ARMORY UNITY GROUP, INC.

ADDRESS:

FEDERAL EMPLOYER ID #: _____

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

WHEREAS, the City is scheduled to receive a grant from the Hudson River Valley Council on behalf of the Greenway Communities Program in the amount of Ten Thousand (\$10,000.00) Dollars for the purpose of pursuing a Land Use Planning and Evaluation Process for the Newburgh Food & Urban Gardens Community Planning Project ("Grant"), as authorized by Resolution No. _____ -2013 adopted by the City Council on February 25, 2013; and

and;

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

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

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

ARTICLE I. SCOPE OF SERVICES

- (1) The Sub-Grantee shall establish and implement a program within the City of Newburgh as set forth on Schedule A attached hereto and assures the City that the Sub-Grantee will employ

personnel and/or consultants who are thoroughly familiar with the procedures and requirements of the said Sub-Grantee to execute their program. When required, it may request pertinent assistance from other agencies.

(2) The Sub-Grantee will continue to maintain adequate office facilities at a suitable location within the designated area and provide essential equipment, supplies and services as needed for the operation of such office. Such office shall provide convenient access and service primarily to existing and prospective residents of the designated area. Such office and services provided are intended to provide assistance principally to existing and prospective residents of the City and to carry out those activities authorized under this agreement.

ARTICLE II. TERMS OF CONTRACT

(1) The services of the Sub-Grantee are to commence upon execution of this Agreement and extend for a period ending one (1) year from the date thereof, or as otherwise provided herein.

(2) This contract may be terminated at any time by either party on ten (10) days notice in writing to the other party for any breach of the agreement

ARTICLE III. SERVICES TO BE PROVIDED BY THE THE CITY

(1) Upon request by the Sub-Grantee, the THE CITY may provide such technical and/or advisory assistance as is requested, based upon requirements and availability of staff. Approval of such requests is at the sole discretion of the City Manager of the City.

(2) If, in the opinion of the City, technical assistance is required from New York State, a request may be initiated by the City for such assistance.

ARTICLE IV. PROGRAM DOCUMENTATION

(1) The Sub-Grantee hereby agrees to maintain confidential documentation for all activities sponsored in the conduct of the aforesaid program. These confidential records will be subject to and made available for periodic site review by the City. For each such review, the representative of the City will prepare a written report containing comments on overall program performance and effectiveness.

(2) The Sub-Grantee hereby agrees to maintain separate and complete accounting for all funds received from the City under this agreement. Complete and accurate time and attendance records will be maintained for all personnel receiving funds under this grant.

(3) Certified yearly audits of the Sub-Grantee will be provided to the City for review by the City's CPA when requested..

ARTICLE V. COMPENSATION

(1) Notwithstanding anything to the contrary herein, it is understood and agreed by the parties to this agreement that the agreement of the City to fund the Sub-Grantee shall be deemed executory to the extent that Grant monies are available to it for the purpose of carrying out the terms of this contract and that no liability shall be incurred by the City should the Grant monies not be available for such purposes. No general or other funds of the City shall be used by the City for the funding of this agreement.

(2) Total payment under this Contract shall not exceed TEN THOUSAND (\$10,000.00) DOLLARS as full payment for all services rendered by the Sub-Grantee during the period of this agreement. The adopted budget of the Sub-Grantee is annexed hereto as Schedule B.

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

(4) Sub-Grantee shall provide the matching funds of Ten Thousand (\$10,000.00) Dollars required under the Grant, including, but not limited to, in-kind donations of professional and other services from other organizations and Sub-Grantee's volunteers.

ARTICLE VI. METHOD OF PAYMENT

(1) Within thirty (30) days of the execution of this Agreement, and on a bimonthly

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

(a) For each bimonthly period, payments will be made based upon vouchers submitted which reflect actual authorized expenses per budget for the period and contain documentation for all expenditures. Vouchers documenting expenditures for the billing period must be submitted on or before the 15th of the month. In no event shall such expenditures exceed Ten Thousand (\$10,000.00) Dollars in the aggregate.

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

ARTICLE VII. EQUAL EMPLOYMENT OPPORTUNITY

(1) In carrying out the obligation of this Contract, the Sub-Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. The Sub-Grantee shall take affirmative action to ensure that applicants for employment and employees of the Sub-Grantee are treated without regard to their race, color, religion, sex,

national origin or disability. Such actions shall include, but are not limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

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

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

ARTICLE VIII. ASSIGNMENT BY THE SUB-GRANTEE

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

ARTICLE IX. RECORDS AND REPORTS

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

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

ARTICLE X. AUDITS

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

ARTICLE XI. CONFIDENTIALITY

With the exception of specific identifiers, such as individual names of persons and addresses, all reports, information, data, etc., prepared or assembled by the Sub-Grantee in performing the services set forth in the funding proposal and pursuant to this Agreement, are public documents.

The Sub-Grantee hereby agrees that they shall be available to any individual, organization or corporation in accordance with the Freedom of Information Law of the State of New York.

ARTICLE XII. FACILITIES AND PERSONNEL

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

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

- (1) The Sub-Grantee hereby agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the area which would conflict in any manner or degree with the performance of its obligations under this Agreement.
- (2) The Sub-Grantee further agrees that it shall fully disclose, in writing to the City, upon execution of this Agreement and as such becomes known to it, any conflicting interest held by any of its directors or officers, or any of its paid employees, agents or sub-contractors or by any close relative of such persons.
- (3) The City shall have the right to publicly disclose any disclosures made to it under this Agreement.

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

- (1) No member, officer or employee of the City or its designees or agents, no member of the City Council of the City of Newburgh, New York and no other public official of the City, its Departments or of any other public agencies which exercise any functions or responsibilities, during his/her tenure in office or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement.
- (2) The Sub-Grantee shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest as prohibited by this Article.

ARTICLE XV. Reserved.

ARTICLE XVI. SOLICITATION OR PROCUREMENT OF AGREEMENT

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

ARTICLE XVII. CHANGES AND MODIFICATIONS

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

ARTICLE XVIII. EFFECT OF TERMINATION OF AGREEMENT

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

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

ARTICLE XIX. INDEMNIFICATION

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

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

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

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

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

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

BODILY INJURY LIABILITY

Each Person
\$1,000,000

Each Occurrence
\$2,000,000

PROPERTY DAMAGE LIABILITY

Each Occurrence
\$1,000,000

PERSONAL INJURY LIABILITY

Each Person
\$1,000,000

Occurrence
\$2,000,000

ARTICLE XX. MODIFICATION

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

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

ARMORY UNITY GROUP, INC.

By _____

Title _____

Date: _____

CITY OF NEWBURGH

By _____
Richard F. Herbek
City Manager

Date _____

APPROVED AS TO FORM BY:

APPROVED BY:

Corporation Counsel

Director of Finance/Comptroller

ATTACHMENT III
Proposed Scope/Program

RESOLUTION NO.: 45 - 2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH THE COUNTY OF ORANGE
TO PROVIDE FOR REIMBURSEMENT OF FUNDS TO
THE CITY OF NEWBURGH WITH RESPECT TO CERTAIN
URBAN RENEWAL PROJECTS FOR THE PERIOD
OF JANUARY 1, 2013 TO DECEMBER 31, 2013
IN THE AMOUNT OF TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS

WHEREAS, the Orange County Department of Public Works (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an agreement, a copy of which is attached hereto and made a part hereof, to provide for the funding of certain urban renewal projects within the City for the year 2013; and

WHEREAS, the County shall provide the City a total annual sum not to exceed Twenty Five Thousand (\$25,000.00) Dollars for the completion of certain urban renewal projects; and

WHEREAS, such funds shall be used exclusively for the acquisition, rehabilitation, improvements and otherwise implementing and completion of urban renewal projects within the City's limits; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached agreement with the County of Orange to provide for a total annual sum not to exceed Twenty Five Thousand (\$25,000.00) Dollars in order to obtain the available funding for certain urban renewal projects.

**AGREEMENT
BETWEEN THE
COUNTY OF ORANGE
AND
THE CITY OF NEWBURGH
FOR THE FUNDING OF CERTAIN
URBAN RENEWAL PROJECTS, AS FURTHER DEFINED HEREIN**

This **Agreement** for funding certain Urban Renewal Projects, hereinafter "**Agreement**," represents the entire understanding between the parties hereto the **County of Orange**, a municipal corporation organized and existing under the laws of the State of New York, with its principle offices at 255 – 275 Main Street, Goshen, New York 10924, hereinafter referred to as the "**County**" and, the **City of Newburgh** with its principle offices at 83 Broadway, City Hall, Newburgh, New York 12550, hereinafter referred to as the "**City**." Further, the parties hereto agree as follows:

WHEREAS, the **County** and the **City** share a commitment to the rehabilitation and revitalization efforts in Orange County, and

WHEREAS, the **County** shall provide to the **City** a total annual sum of **TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS**, for completing the activities enumerated in this **Agreement** and performed during the period of **January 1, 2013 to December 31, 2013**. These funds shall be used exclusively for the acquisition, rehabilitation, improvements, and otherwise implementing and completion of urban renewal projects within the **City's** limits and as described herein (Exhibit A). The **County** shall have no obligation to the **City** beyond the payment of these monies in accordance with the terms and conditions of this **Agreement**, and

NOW, THEREFORE, it is mutually agreed by and between the **County** and the **City** that:

1. The **County** will pay to the **City**, for the Capital Improvements, an annual amount, not-to-exceed **TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS**. The **City** shall submit any and all documentation in support of such expenditures or the **County** may require fees under this **Agreement** as so that it may evaluate the reasonableness of the charges. All such requests shall be reasonable in time and scope; and
2. Proceeds shall be paid to the **City** for eligible costs based upon approved requests for payments. All requests for payments shall be directed to the Orange County Department of Public Works. Each request for payment shall include an itemization of all monies due for eligible costs, labor performed and/or materials supplied for the period covered by the request, a statement describing the eligible expenses, work that was performed using such labor and material, and a release of liens by subcontractors, laborers or material suppliers. Other appropriate receipts, invoices, bills or other documentation evidencing the expenditures to be reimbursed shall be appended to the request forms. As a condition of receiving payment, the **City** shall deliver to the **County** complete releases from all

relevant contractor's, laborers, or suppliers. Once the releases have been obtained and the Department of Public Works has certified that all work has been completed or that the total sum made available from the **County** has been expended payment may be made to the **City**. The **County** will not withhold a payment, without cause, for more than **THIRTY (30) DAYS** after a request for payment but, the **County** shall not be restricted from withholding payment for cause, as determined by the Department of Public Works including but not limited to that in the judgement of the Department of Public Works, after consultation with the Orange County Department of Law and the County Executive, the funds available, from all sources whatsoever, to complete the project, are insufficient to do so. The **County** will use its best efforts to make all payments due the **City** within 15 business days of receiving an approved payment request.

3. The **City** 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**. The **City** agrees to retain all books, records, and other documents relevant to this **Agreement** for six (6) years after the payment or termination of this **Agreement**, whichever occurs later. **County**, State and/or Federal auditors, and any other persons duly authorized by the **County**, shall have full access and the right to examine any of said materials during said period; and
4. All provisions of Federal, State and local laws, rules, regulations and ordinances governing non-discriminatory practices; warranties against collusion; solicitation or procurement; warranties against conflicts of interest and compliance with applicable ethics laws; confidentiality; fair practices and other legally imposed safeguards shall apply; and
5. This **Agreement** shall be subject to such further agreements or amendments, as the parties deem appropriate and necessary. Neither party shall assign or subcontract its duties, practices or responsibilities to a third party without the express written permission of the other. Neither party shall be a subrogee of the other, nor be responsible to defend, indemnify or hold harmless the other as to third parties but for their own errors, acts and omissions which causes the other party to suffer a loss; and
6. The **County** shall have the right to terminate this **Agreement** at any time without recourse and, upon thirty- (30) days written notice to the other. Should the **County** terminate this **Agreement** prior to its expiration date for reasons other than **City's** default, the **County** shall pay unto the **City** the earned portion of the total contract **Agreement**; and
7. The **County** shall have no liability under this **Agreement** to the **City** or, to anyone, beyond funds appropriated and available for this **Agreement**; and
8. The **City** shall provide proof of Workers' Compensation and Disability Coverage's as required by the New York State Worker's Compensation Board and same shall be attached to this **Agreement**; and

9. This **Agreement** shall be governed by the laws of the State of New York. The **City** shall render all services under this **Agreement** in accordance with all applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such services are rendered; and
10. The rights and obligations of the parties, and their respective agents, successors and assigns, if any, shall be subject to and governed by this **Agreement** as well as any amendments or attachments thereto; and
11. The acceptance by the **City** or its assignees of the payment under this **Agreement**, whether by invoice, judgement of any court of competent jurisdiction, or administrative means, shall constitute as a general release to the **County** from any and all claims of the **City** out of the performance of this **Agreement**.

IN WITNESS WHEREOF, the **COUNTY** has caused this **Agreement** to be signed by its County Executive, and the **City** has caused the same to be executed by its Council, pursuant to Resolution of its **City** Council, adopted _____.

CITY OF NEWBURGH:

COUNTY OF ORANGE:

Richard F. Herbek
City Manager

Edward A. Diana
County Executive

Date: _____

Date: _____

Please Update

STATE OF NEW YORK WORKERS' COMPENSATION BOARD

CERTIFICATE OF PARTICIPATION IN WORKERS' COMPENSATION GROUP SELF-INSURANCE

1a. Legal Name and Address of Business Participating in Group Self-Insurance (Use Street Address Only) City of Newburgh 83 Broadway Newburgh, NY 12550	1d. Business Telephone Number of Business referenced in box "1a" 845-569-7303
1b. Effective Date of Membership in the Group <u>03/01/2008</u>	1e. NYS Unemployment Insurance Employer Registration Number of Business referenced in box "1a"
1c. The Proprietor, Partners or Executive Officers are <input type="checkbox"/> included (only check box if all partners/officers included) <input type="checkbox"/> all excluded or certain partners/officers excluded	1f. Federal Employer Identification Number of Business referenced in Box "1a"
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as Certificate Holder) County of Orange 255 Main Street Goshen, NY 10924	3. Name and Address of Group Self-Insurer NEW YORK STATE MUNICIPAL WORKERS' COMPENSATION ALLIANCE CLAIMS ADMINISTERED BY: WRIGHT RISK MANAGEMENT 333 EARLE OVINGTON BLVD., SUITE 505 UNIONDALE, NY 11553-3524

This certifies that the business referenced above in box "1a" is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law as a participating member of the Group Self-Insurer listed above in box "3" and participation in such group self-insurance is still in force. The Group Self-Insurer's Administrator will send this Certificate of Participation to the entity listed above as the certificate holder in box "2". The Group Self-Insurer's Administrator will notify the above certificate holder within 10 days IF the membership of the participant listed in box "1a" is terminated. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for a maximum of one year from the date certified by the group self-insurer.

If this certificate is no longer valid according to the above guidelines and the business referenced in box "1a" continues to be named on a permit, license or contract issued by the certificate holder, the business must provide the certificate holder either with a new certificate or other authorized proof the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative of the Group Self-Insurer referenced above and that the business referenced in box "1a" has the coverage as depicted on this form.

Certified by: Eric Hartcorn 07/01/2011 - 06/30/2012
 (Print name of authorized representative of the Group Self-Insurer) Date

Certified by: 
 (Signature)

Title: PROGRAM MANAGER

Telephone Number 516-750-9409



**Certificate of Attestation of Exemption
From New York State Workers' Compensation
and/or Disability Benefits Insurance Coverage**

****This form cannot be used to waive the workers' compensation rights or obligations of any party.****

The applicant may use this Certificate of Attestation of Exemption **ONLY** to show a government entity that New York State specific workers' compensation and/or disability benefits insurance is not required. The applicant may **NOT** use this form to show another business or that business's insurance carrier that such insurance is not required.

Please provide this form to the government entity from which you are requesting a permit, license or contract. This Certificate will not be accepted by government officials one year after the date printed on the form.

<p align="center">In the Application of (Legal Entity Name and Address):</p> <p>CITY OF NEWBURGH CITY HALL 83 BROADWAY NEWBURGH, NY 12550 PHONE: 845-569-7340 FEIN: XXXXX2329</p>	<p align="center">Business Applying For: Contract with Government Agency</p> <p>From: ORANGE COUNTY</p>
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Workers' Compensation Exemption Statement:

The applicant is NOT applying for a workers' compensation certificate of attestation of exemption and will show a separate certificate of NYS workers' compensation insurance coverage.

Disability Benefits Exemption Statement:

The above named business is certifying that it is **NOT REQUIRED TO OBTAIN NEW YORK STATE STATUTORY DISABILITY BENEFITS INSURANCE COVERAGE** for the following reason:
The applicant is a political subdivision that is legally exempt from providing statutory disability benefits coverage.

I, RICHARD F. HERBEK, am the CITY MANAGER with the above-named legal entity. I affirm that due to my position with the above-named business I have the knowledge, information and authority to make this Certificate of Attestation of Exemption. I hereby affirm that the statements made herein are true, that I have not made any materially false statements and I make this Certificate of Attestation of Exemption under the penalties of perjury. I further affirm that I understand that any false statement, representation or concealment will subject me to felony criminal prosecution, including jail and civil liability in accordance with the Workers' Compensation Law and all other New York State laws. By submitting this Certificate of Attestation of Exemption to the government entity listed above I also hereby affirm that if circumstances change so that workers' compensation insurance and/or disability benefits coverage is required, the above-named legal entity will immediately acquire appropriate New York State specific workers' compensation insurance and/or disability benefits coverage and also immediately furnish proof of that coverage on forms approved by the Chair of the Workers' Compensation Board to the government entity listed above.

SIGN HERE	Signature:	Date:
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Exemption Certificate Number

2012-036699

Received

June 22, 2012

NYS Workers' Compensation Board

RESOLUTION NO.: 40-2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE APPLICATION TO
NEW YORK STATE ARCHIVES FOR A LOCAL GOVERNMENT
RECORDS MANAGEMENT IMPROVEMENT FUND (LGRMIF) GRANT
WITH NO REQUIRED CITY MATCH FOR THE PURPOSE OF CONVERTING
THE 2,338 ACTIVE CODE COMPLIANCE PROPERTY FILES FOR THE EAST END
HISTORIC DISTRICT TO ELECTRONIC FORMAT

WHEREAS, the City has invested in the electronic document scanning and filing system "Laserfiche" through General Code as a result of a prior NYS Local Government Records Improvement Fund (LGRMIF) grant for Code Compliance and the City Clerk; and

WHEREAS, the "Laserfiche" system provides standardization of document and electronic record filing, as well as thorough key-word searching and expedited retrieval; and

WHEREAS, the City is interested in the most effective management of its paper documents and electronic records; and

WHEREAS, N.Y.S. Archives provides a grant for conversion of paper documents to electronic imaging through the Local Government Records Management Improvement Fund (LGRMIF) and in 2012-2013 funded the conversion of 1,963 Code Compliance property files currently in the Records Center that were culled from the active files due to space constraint; and

WHEREAS, three New York State firms that do document conversion and entry into the Laserfiche document management system are providing quotes, the lowest responsible of which will be used for the application, and the preparation of the files again will be done by local temporary skilled clerks on site here in Newburgh; and

WHEREAS, this grant does not require a match;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the application be submitted to the New York State Archives Local Government Records Management Improvement Fund, with no required City match, for the purpose of converting the 2,338 active Code Compliance property files for the East End Historic District to electronic format, and if awarded, the City Manager be hereby authorized to accept said grant if awarded and execute an agreement with New York State Archives.

RESOLUTION NO.: 47 - 2013

OF

FEBRUARY 25, 2013

RESOLUTION AMENDING RESOLUTION NO: 223-2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$3,000.00 FROM CONTINGENCY TO
RECORDS MANAGEMENT IN CONNECTION WITH THE SCOPE OF WORK
UNDER THE NYS LGRMIF GRANT FOR THE CITY OF NEWBURGH
CODE COMPLIANCE BUREAU

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900.1990. Contingency	\$3,000.00	
A.1460.0448. Records Management		\$3,000.00

RESOLUTION NO.: 48 - 2013

OF

FEBRUARY 25, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO AN AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES WITH CLOUGH HARBOR ASSOCIATES
IN CONNECTION WITH THE INSTALLATION OF A TRAFFIC SIGNAL FOR THE
INTERSECTION OF COLDEN STREET AND REV. DR. MARTIN LUTHER KING JR.
BOULEVARD IN THE CITY OF NEWBURGH

WHEREAS, the City of Newburgh solicited proposals for professional engineering services for the design of a traffic signal to be installed at the intersection of Colden Street and Rev. Dr. Martin Luther King, Jr. Boulevard in the City of Newburgh; and

WHEREAS, Clough Harbor Associates has submitted a proposal to design the traffic signal and to prepare contract plans, bid documents and a construction estimate; and

WHEREAS, based on their experience, references and project history, Clough Harbor Associates is best qualified to provide such services; and

WHEREAS, the cost for such project shall be in an amount not to exceed Seventeen Thousand Four Hundred and 00/100 (\$17,400.00) Dollars; and

WHEREAS, funding for such project shall be derived from Engineering Line A.1440.0455, Consulting Services; and

WHEREAS, this Council has determined that entering into an agreement with Clough Harbor Associates is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to enter into an agreement with Clough Harbor Associates for professional engineering services for the design of a traffic signal to be installed at the intersection of Colden Street and Rev. Dr. Martin Luther King, Jr. Boulevard in the City of Newburgh.



February 1, 2013

Mr. Craig Marti, P.E.
City Engineer
123 Grand Street
Newburgh, NY 12550

**RE: Professional Engineering Services, Traffic Signal Design
Rev. Dr. Martin Luther King Boulevard & Colden Street/4th Street,
City of Newburgh, NY
CHA Proposal No.: X37032**

Dear Mr. Marti:

The following scope of work is proposed to provide contract documents for the installation of a traffic signal at the intersection of Rev. Dr. Martin Luther King Boulevard (MLK Blvd) & Colden Street/4th Street. This work will include the preparation of contract plans, bid documents and engineers estimate.

I. SCOPE OF WORK

Task 1: Development of Advance Detail Plans

We will attend a project kick-off meeting with the City to confirm project information, including design elements (such as layout and equipment specifications) and to review the project schedule and deliverables. We will conduct a site visit to familiarize ourselves with the physical conditions of the project location.

We will develop Advance Detail Plans (ADPs) for the new traffic signal with sidewalk ramp and pavement marking modifications. These plans will represent approximately 75% completion of the plans and will include a Preliminary Engineer's Estimate. The Preliminary Engineer's Estimate will provide an approximate cost for the project, and will be an item/quantity estimate to the extent possible. If quantities cannot be determined for all items, the cost will be based on the best information available at the time.

- The ADP submission is anticipated to include the following:
 - Cover Sheet
 - Legend, Notes, Tables and Details
 - General Plan to include sidewalk ramp modifications
 - Traffic Signal Plan, to include the following:
 - ✓ Location and size of traffic signal poles

- ✓ Location and type of traffic signal heads
- ✓ Table of Operations to illustrate the sequence of the required signal phases
- ✓ Table of Clearances
- ✓ Location and type of vehicle detectors to be installed
- ✓ Location and type of pedestrian crossing devices (signals, pushbuttons, etc.) to be installed
- ✓ Location of conduit and pullboxes to be installed
- ✓ Wiring diagram to illustrate the wiring required outside of the controller assembly including wiring to a power source
- ✓ Location and type of signal controller
- ✓ Overhead and pole-mounted traffic signal signs
- ✓ Table of Items and Quantities
- Signing and Striping Plan
- Traffic Control Plan for Construction

We will coordinate with the local utility company to identify the location/source and logistics for providing power service to the signal equipment.

We will submit two (2) printed copies of the ADPs to the City for review, and submit two (2) printed copies to NYSDOT for their review.

Task 2: Development of Final Plans, Specifications and Estimate

We will attend a meeting with the City to review comments on the ADPs and discuss the scope of work to include in the contract documents. We will modify the ADPs, Specifications and Engineer's Estimate based on feedback from the City, as appropriate, and submit the Final Plans, Specifications and Estimate (PS&E).

We will prepare a complete package of bid-ready contract documents (i.e. Project Manual). The package will include:

- Instructions to bidders
- Bid requirements
- Contract language, including applicable federal provisions and prevailing wage rates
- Special notes
- Specifications
- Other pertinent information

We will provide one (1) set of the PS&E package to the City and six (6) copies on compact disk (CD). CHA shall retain a copy of the Final PS&E and Bid Document as prepared for record purposes.

CHA will also prepare the necessary Highway Work Permit and submit it to NYSDOT for approval.



Task 3: Traffic Signal Timings

CHA will utilize the traffic volumes used by the City and/or NYSDOT for the traffic signal warrant study to develop traffic signal timings for the intersection. The tabulated signal input timings will be provided to the City and Contractor.

II. CONDITIONS AND ASSUMPTIONS

1. Topographic survey and Base Mapping was compiled under PIN 8239.16 Robinson Avenue and will be used for the design and plan preparation. Additional survey for signal design base mapping will not be required.
2. Project plans will be prepared using Microstation and be formatted to NYSDOT standard 11" x 17" sheet size.
3. The plans will be developed in accordance with City of Newburgh requirements and NYSDOT standards. The information provided on the plan sheets will be sufficient for the development of a detailed construction cost estimate by prospective contractors by including an item listing and quantity estimates.
4. Materials and equipment specifications will be based on NYSDOT standard Specifications. Special or non-standard materials or equipment specifications shall not be required.
5. This proposal does not include the preparation of any R.O.W. acquisition maps or utility easements.
6. Conducting hazardous waste or asbestos assessments or soil borings are not included in this proposal.
7. Signal warrant analysis and design justification studies are not included.
8. It is assumed that a street lighting analysis is not required.
9. It is assumed that the design will not include communication/interconnect to adjacent traffic signals.
10. It is assumed that there will be no drainage system modifications or improvements required as part of the proposed work.

III. SCHEDULE

It is anticipated that the ADPs will be submitted to the City within eight weeks of Notice to Proceed. Preparation of final plans will be discussed with the City at the Task 2 meeting.



IV. FEE

Our fee for the scope included in this proposal will not exceed \$17,400. We will bill the City on an hourly rate basis plus expenses.

Thank you for considering CHA for your engineering services. We look forward to working with you and your staff on this project. Please contact me at (518) 453-3984 to discuss this proposal.

Sincerely,



Lee Ecker, P.E.
Project Manager

CLD\mjp

V:\CHA200_Proposals\TR\Proposal_13\Traffic\X37032 Rev Dr MLK Blvd & Colden St-4th St\Newburgh Water St Scope of Work.docx



ORDINANCE NO.: 1 - 2013

OF

, 2013

**AN ORDINANCE RESCINDING THE LANGUAGE CONTAINED IN
CHAPTER 212, NOISE, OF THE CODE OF ORDINANCES AND AMENDING
CHAPTER 212, NOISE IN ITS ENTIRETY**

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Section 212, Noise, be and is hereby amended as follows:

§ 212-1. Statement of policy.

It is hereby declared to be the policy of the City of Newburgh to prevent excessive, unnecessary or unusually loud noise which may jeopardize the well-being, public health, comfort, convenience, safety and welfare of its citizens and the peace and quiet of its inhabitants. The provisions and prohibitions hereinafter contained shall not be utilized or construed in any manner so as to deny or limit any right or privilege granted and recognized by the First Amendment of the Constitution of the United States.

§ 212-2. Unreasonable public noise prohibited.

No person shall, with intent to cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, make any unreasonable noise.

§ 212-3. Definitions.

Unless otherwise indicated by context, the following terms and phrases shall have the following meanings:

DECIBEL(dB)

A unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of 20 micronewtons per square meter.

HOLIDAYS

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

SOUND LEVEL

The sound-pressure level measured in decibels with a sound-level meter set to a weighting expressed in dB(A).

SOUND-LEVEL METER

An instrument for the measurement of sound levels which conforms to Type 1 or Type 2 standards under ANSI Specifications S1.4-1971 or the latest approved revision thereof.

UNREASONABLY INTRUSIVE

Any sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities under the circumstances.

§ 212-4. Standards for determination.

The standard or standards to be considered in determining whether a noise is an unreasonably intrusive noise which constitutes a prohibited noise shall include, but not be limited to, one or more of the following:

- A. The volume of the noise.
- B. The intensity of the noise.
- C. Whether the nature of the noise is usual or unusual.
- D. Whether the origin of the noise is natural or unnatural.
- E. The volume and intensity of the background noise, if any.
- F. The proximity of the noise to residential sleeping facilities.
- G. The nature and the zoning district of the area within which the noise emanates.
- H. The time of day or night the noise occurs.
- I. The time duration of the noise.
- J. Whether the noise is temporary.
- K. Whether the noise is continuous or impulsive.
- L. The presence of discrete tones.

§ 212-5. Enumeration of prohibited noises.

The following acts, among others, are declared to be noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive:

- A. The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a warning signal pursuant to the provisions of the Vehicle and Traffic Law of the State of New York.
- B. Playing, using, operating or permitting to be played, used or operated any radio, television, phonograph, musical instrument or instruments, loudspeaker, sound amplifier or other machine or device for the production or reproduction of sound so as to create an unreasonably intrusive noise.
- C. Playing, using, operating or permitting to be played, used or operated any radio, television, phonograph, musical instrument or instruments, loudspeaker, sound amplifier or other machine or device for the production or reproduction of sound exceeding 65 dB(A) at any time within a residential district or within any other district exceeding 70 dB(A) between the hours of 10:00 p.m. and 8:00 a.m. Sunday through Saturday or exceeding 65 dB(A) between the hours of 11:00 p.m. Saturday and 10:00 a.m. Sunday or exceeding 65 dB(A) between the hours of 12:01 a.m. and 11:59 p.m. on holidays as defined in this chapter.
- D. The keeping or harboring of any animal, fowl or bird which, by causing frequent or long-continued noise, shall disturb the comfort or repose of any person residing in the vicinity.
- E. The blowing of any whistle attached to any stationary boiler, except to give notice of the time to begin work or stop work or as a warning of danger.
- F. The discharge into the open air of the exhaust of any steam engine, stationary internal-combustion engine, air compressor, motorcycle engine or motor vehicle engine, except through a muffler or other device which effectively prevents loud, unusual or explosive noise so as to create unreasonably intrusive noise.
- G. Construction work, including but not limited to building, repairing, blasting, grading, leveling and excavating, between the hours of 8:00 p.m. and 8:00 a.m. Sunday through Saturday and between the hours of 8:00 p.m. Saturday and 10:00 a.m. Sunday.
- H. The operation of power lawn mowers, rakers or leaf blowers or other motor-driven lawn or garden equipment between the hours of 6:00 p.m. Sunday and 8:00 a.m. Monday, between the hours of 8:00 p.m. and 8:00 a.m. Monday through Friday, between the hours of 8:00 p.m. Friday and 9:00 a.m. Saturday, and between the hours of 6:00 p.m. Saturday and 10:00 a.m. Sunday.

- I. Playing, using, operating or permitting to be played, used or operated any radio, phonograph, musical instrument, loudspeaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public places for advertising, soliciting or sales purposes.
- J. The use of any drum, bell, loudspeaker or other instrument or device for the purpose of attracting attention to any solicitation, performance, show or sale or display of merchandise by the creation of noise, except bells sounded by licensed mobile vendors, provided that the sound thereof is not audible more than 300 feet from said vehicle.
- K. The making, continuing, causing or permitting to be made, verbally or mechanically, any unreasonable intrusive noise.
- L. No person shall operate a blower or power fan unless any noise resulting therefrom is properly muffled.
- M. No person shall operate an internal-combustion engine unless the noise resulting therefrom is properly muffled.
- N. No person shall carry or use upon any vehicle any gong or siren whistle similar to that use on ambulances or vehicles of the Police or Fire Department.

§ 212-6. Transportation of metal.

All rails, pillars or columns of iron, steel or other material which are being transported over and along streets or other public places upon carts, drays, cars, trucks or in any other manner shall be so loaded as to avoid causing any loud noises or disturbing the peace and quiet of such streets or other public places.

§ 212-7. Chains on motor vehicles.

No person shall drive or propel any motor vehicle in any street or public place with chains fastened to the wheels in such a manner that they or any part of them will strike any other part of the vehicle on the revolution of the wheels or with any other part of such vehicle so loose or out of repair as to create any loud or unnecessary noise.

§ 212-8. Designation of quiet zones.

- A. Neighborhood of St. Luke's Hospital. The territory included within the following bounds is created as a hospital or quiet zone: the north side of Third Street, the south side of First Street the west side of Dubois Street and the east side of Johnson Street. No person shall create an unreasonable noise within such zone.

B. Prohibited acts. The following are specifically forbidden within such zone:

- (1) The operation of any radio, radio device, device for the playing of prerecorded music or sound, playing of a mechanical or electronic musical instrument, or the operation of a loudspeaker, amplifier or mechanical or electronic instrument or sound-producing device of any kind, except as may be specifically permitted by ordinance or law, which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of a reasonable person within such zone. This section shall apply to any sound originating from within a premises or from within or on a motor vehicle.
- (2) The calling of wares for sale.

C. Scope of section. Such specific enumeration shall not be construed as limiting the general restrictions contained in Subsection A.

§ 212-9. Temporary quiet zones.

Temporary quiet zones may be established in residential zones by the City Manager, for a period of no longer than 90 consecutive days, in instances where the health, safety or well-being of persons in such zones may be aided thereby. All activities prohibited by § 212-5 of this chapter shall be prohibited in such temporary quiet zones together with any additional activities as the City Manager may, in his discretion, also deem necessary, under all facts and circumstances, to prohibit during such temporary time period.

§ 212-10. Methods of measurement.

The measurement of any sound or noise shall be made with a sound-level meter using an A-scale decibel level. The measurement shall be conducted at or within ten (10) feet of the property line of the property on which such noise is generated.

§ 212-11. Penalties for offenses.

Any person violating any provision of this chapter shall, upon conviction, be punished up to \$250 per day, for each violation. Each day that a violation shall continue shall constitute a separate offense.

§ 212-12. Exceptions.

- A. Nothing in this chapter shall be construed to prevent the production of music in connection with any military or civic parade, funeral procession or religious service or the use of any bell, chimes or other instrument, apparatus or device by any church or synagogue, or school licensed or chartered by the State of New York, provided

that such production or use does not occur between the hours of 10:00 p.m. and 8:00 a.m. of the following day.

- B. Sounds created by any governmental agency or railroad agency by the use of public warning devices are exempted from the limitations of this chapter.
- C. Sounds created by public utilities in carrying out the operations of their franchise are exempted from the limitations of this chapter.
- D. Sounds connected with organized sporting events of any public or private school or with City of Newburgh Recreation Department sponsored or permitted special events or sports programs or other community sporting activities conducted on school or Village-owned playing fields are exempted from the limitations of this chapter.
- E. Sounds connected with activities and equipment of the City of Newburgh Department of Public Works are exempted from the limitations of this chapter.

§ 212-13. Effect of other provisions.

The provisions of this chapter shall in no case remove or render less restrictive limitations on noise generated or other conditions imposed for specific properties by actions of the City of Newburgh Planning Board or by the actions of the City of Newburgh Zoning Board of Appeals or required under other applicable laws or regulations.

§ 212-14. Enforcement.

The provisions of this chapter shall be enforced by the Police Department of the City of Newburgh, Code Enforcement Officers of the City of Newburgh, the Fire Department of the City of Newburgh, or other officials designated by the City Manager.

§212- 15. Severability.

The provisions of this ordinance shall be deemed severable. The finding of the invalidity, illegality or unenforceability of any one or more provisions hereof shall not be deemed to affect the validity of the other sections or provisions of this ordinance, as long as the sense thereof remains.

THIS ORDINANCE SHALL TAKE EFFECT immediately as provided under the terms of the Municipal Home Rule and other applicable laws.

ORDINANCE NO.: 2 - 2013

OF

, 2013

AN ORDINANCE AMENDING CHAPTER 223
OF THE CODE OF ORDINANCES
ENTITLED "PEDDLERS, VENDORS AND SOLICITORS"

BE IT ORDAINED, by the Council of the City of Newburgh, New York that:

Section 1. Chapter 223 of the City Code of Ordinances entitled "Vendors, Peddlers and Solicitors" be and is hereby amended as follows:

§ 223-1. Activities requiring license.

It shall be unlawful for any person or organization who has not been issued a license as a peddler under this chapter to engage in business as a street vendor, peddler, canvasser or solicitor, selling wares or services from or by means of a vehicle, trailer, cart, pushcart, wagon, mobile platform, table or other means of carrying, displaying, offering or serving same; or using public streets or sidewalks or other public property or calling at residences without the previous consent of the occupant or owner for the purpose of soliciting orders, sales, subscriptions or business of any kind or seeking donations to or alms for any church, charity or private institution whatsoever or selling or distributing any ticket or chance whatsoever without first having obtained a license of a peddler under this chapter; or calling at commercial, manufacturing or industrial places of business without the previous consent of the owner or occupant for the purpose of seeking donations to or alms for any church, charity or private institution or selling or distributing any ticket or chance whatsoever without first having obtained a license as a peddler this chapter; provided that any home solicitation by charitable or political organizations, or other activity subject to regulation hereunder, as those activities are defined by law and/or described herein, shall be exempt from the provisions of this chapter so long as they shall meet all other lawful requirements and be exempted herefrom by force or authority of superior law, rule or regulation, including but not limited to the Constitution of the United States and the Constitution of the State of New York.

§ 223-2. Permit and license required; licensing officer.

A. It shall be unlawful for any person to engage in the business of vendor or peddler as defined in §§ 223-1 and 223-3 of this chapter within the corporate limits of the City of Newburgh without

first obtaining a valid permit and license therefor as provided herein. No invalid, expired, suspended, revoked, altered or counterfeit licenses shall be possessed, used, represented or displayed by any person, or purported to be valid for any reason, whether in connection with peddling and soliciting or otherwise.

B. The City Clerk shall be the licensing officer and commissioner of licenses as provided in the General Business Law of the State of New York and shall keep a record of all licenses and the status thereof.

§ 223-3. Definitions; word usage.

A. As used in this chapter, the following terms shall have the meanings indicated:

CITY

The City of Newburgh of the State of New York, unless otherwise specified.

FALSE, FRAUDULENT, MISREPRESENTATION, INACCURATE or MISLEADING

(1) Representations that goods have manufacture, sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have; the supplier or manufacturer has a sponsorship, approval, status, affiliation or connection that he does not have; goods are original or new if they are deteriorated, altered, reconditioned, reclaimed or secondhand; or goods are of particular standard, quality, grade, style or model if they are of another; and/or

(2) The use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact if such use deceives or tends to deceive; and/or

(3) Disparaging the goods, services or business of another by false or misleading representations of material facts; and/or

(4) Offering goods with intent not to sell them as offered; and/or

(5) Making false or misleading representations of fact concerning the reasons for, existence of or amount of price reductions, or price in comparison to prices of competitors or one's own prices at a past or future time; and/or

(6) Falsely stating the reasons for offering or supplying goods at sale or discount prices.

FOOD

Any raw, cooked or processed edible substances, beverages, ingredients, condiments, ice or water used or intended for use or for sale in whole or in part for human consumption.

PUBLIC SPACE and PUBLIC STREETS

All publicly owned property between the private property lines on a street as such property lines are shown on City records, including, but not limited to, a park, plaza, roadway

shoulder, tree space, sidewalk or parking space between such property lines. It shall also include, but not be limited to, publicly owned or leased land, buildings, piers, wharfs, stadiums and terminals.

VENDOR or PEDDLER

Includes any person traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, clothing, products, items for sale, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, cart, pushcart, table, platform, automotive vehicle, trailer, railroad car or other vehicle or conveyance or other stationery location on a public street, sidewalk or other location on City-owned property normally used for public accommodation or travel, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed a vendor or peddler, subject to the provisions of this chapter. The word "peddler" shall include the words "vendor," "street vendor," "hawker" and "huckster" and other such words carrying or conveying the same meaning and understanding and addressing the same activities described thereby.

CANVASS OR SOLICIT

To make or seek to make personal contact wit another, either on the highways or streets of this city or on public or private property other than his own, for the purpose of raising funds for, supportinggoals of or recruiting new members into a religious, charitableeducational, or political organization or participating in a political campaign on behalf of any candidate for public office.

PERSONAL CONTACT

The face-to-face canvassing or solicitation of a person by another. Mail and telephone contact does not require registration or wearing an identification badge under this Article.

POLITICAL ORGANIZATION

An organization, a substantial part of the acitivites of which is carrying on propaganda or otherwise, attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office.

RELIGIOUS OR CHARITABLE OR EDUCATIONAL ORGANIZATION

An organization granted tax exemption by the Internal Revenue Service of the United States Treasury Department.

DECIBEL(dB)

A unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of 20 micro-Newton's per square meter.

B. The use of any pronoun shall be deemed to include both the masculine and the feminine, and the singular and plural, as the sense and meaning thereof shall appropriately require.

§ 223-4. Application for permit or license; health regulations; fee.

A. Applicants for permits and licenses under this chapter must file with the City Clerk a sworn application, in writing, in duplicate, on a form to be furnished by the City Clerk, which shall give and provide the following information:

- (1) The name and a description of the applicant and date of birth.
- (2) The applicant's legal permanent and local business and residence addresses, telephone number(s) for home and business and cellular telephones, and e-mail and other means of electronic communications.
- (3) A description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant and, if not, the name, address and telephone number of the producer or grower.
- (4) If employed by another, the name and address and telephone number and other information specified in Subsection A(2) hereinabove of the employer, together with credentials establishing the exact relationship.
- (5) The length of time for which the right to do business is desired.
- (6) If a wagon, cart, platform, ~~trailer~~, vehicle or other method or device is to be used, a description of the same, together with license number or other means of identification thereof.
- (7) If a source of power or energy is to be used in the conduct of the vending, a description of same; and a document from the City Code Compliance Department and/or Fire Department indicating its review and approval of same, pursuant to § 223-13.

- (8) Two identical photographs of the applicant, taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner. One such photograph shall remain on file with the application in the records of the City Clerk and one shall be permanently affixed to the permit issued by the City.
- (9) The fingerprints of the applicant.
- (10) A statement as to whether or not the applicant has been convicted of or pleaded guilty to any crime, misdemeanor or violation of any federal, state or municipal ordinance, the date(s) of any and all such convictions, the nature of the offense and the punishment or penalty assessed therefor.
- (11) A statement whether any license similar to or like that provided in this chapter was issued or denied to the applicant within the current or any prior year, whether in the City of Newburgh or elsewhere, and, if issued, whether such license had been revoked or suspended, setting forth the reasons for said revocation or suspension.
- (12) If the applicant is applying for a renewal of a license issued in the year immediately preceding the year of such application, or if the applicant has ever been licensed by the City within the past five years of such application by the City as a vendor or peddler, the applicant shall submit with such application records showing the following: proof of payment of New York State sales tax for the most recent prior such year for which the applicant was licensed by the City.
- B. If the applicant is offering food for sale under this chapter, he shall file with his application a statement by a ~~reputable~~ physician licensed by the State of New York, dated not more than 10 days prior to submission of the application, certifying the applicant to be free of infectious, contagious or communicable disease.
- C. At the time of filing the application, a nonrefundable application fee as set forth in Chapter 163, Fees, of this Code shall be paid to the City Clerk to cover the cost of investigation and other City administrative costs relating to same.
- D. If the applicant and the activity regulated hereunder is also subject to the Health and Sanitary Code administered by the Orange County Department of Health, or of any other applicable law, code, rule, regulation or permit condition, he must submit satisfactory proof of compliance with all such, including but not limited to the proper issuance of any permits required, copies of which shall be provided to the City as part of the application required hereunder.
- E. Whenever any information provided on the application for a license or for a renewal thereof has changed, the applicant and/or licensee shall notify the City Clerk of all such changes within 10 days thereof. Each licensed vendor shall notify the City Clerk within 10 days if:

(1) He has committed or been found by a court to have committed ~~four~~ one or more violations of any of the provisions of this chapter on separate occasions; or

(2) He has failed to answer a summons, appear for a hearing or pay a fine imposed by a court for violation of this chapter within 30 days of its due date.

F. The applicant shall submit proof of a valid current certificate of authority from the New York State Department of Taxation and Finance to collect sales tax on all sales subject thereto by law.

G. The applicant shall provide proof of certification and approval by the County Sealer of Weights and Measures of all scales and measuring devices used by the applicant in the conduct of business.

§ 223-5. Investigation; disapproval or approval by Chief of Police and/or Fire Chief.

A. Upon receipt of such application, the original shall be referred to the Chief of Police, and the Fire Chief, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.

B. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police and/or the Fire Chief shall endorse on such application his disapproval and his reasons for the same and return the application to the City Clerk, who shall notify the applicant that his application is disapproved and that no permit and license will be issued. The applicant shall be entitled to receive, upon request, a copy of such disapproval.

C. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Fire Chief may endorse the application and forward same to the Chief of Police, who may shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return said permit, along with the application, to the City Clerk, who shall, upon payment of the prescribed license fee, deliver to the applicant his permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The Clerk shall keep a permanent record of all licenses issued.

§ 223-6. Fees; term of license.

A. Fees shall be computed and assessed as set forth in Chapter 163, Fees, of this Code.

B. Basis for fees. For the purpose of this chapter, the full yearly or seasonal amount will be due during any period of time during the course of a calendar year.; ~~† There shall be no prorated partial-year fees., any period of seven calendar days or less shall be considered one week; any period of more than seven calendar days and not more than 30 calendar days shall be~~

~~considered one month; any period of more than 30 calendar days and not more than one calendar year shall be treated as a year. The annual fees herein provided for shall be assessed on a calendar year basis, and on and after July 1 of any year the amount of the fee for such annual licenses shall be 1/2 the amount stipulated for the remainder of the year.~~

C. Any and all licenses issued hereunder shall expire on December 31 of the year in which same was issued.

D. Any person canvassing or soliciting under § 223-7 (A.) (c) shall pay a fee of \$20 for an identification badge as set forth in Chapter 163, Fees, of this Code.

§ 223-7. Exceptions and exemptions.

A. The following activities are excepted and/or exempt from the provisions of this chapter related to licensing and fees:

- (1) The sale of farm or garden produce by the actual farmer or grower.
- (2) The door-to-door delivery or sale of newspapers, milk, bakery goods, eggs and cream along a regularly established route.
- (3) The activities of nonprofit, charitable or other organizations or individuals who are holding fairs or other similar functions on City property with the permission of the City Manager for a definite short period of time and/or as same may be authorized by the City under the terms of a special event or permit and/or as authorized under the provisions of the City Code. For purposes of this regulation, a nonprofit association shall be deemed to be any governmental agency; any charitable, educational, religious or political organization or any association incorporated in accordance with or subject to the provisions of the New York Not-For-Profit Corporation Law; or any other organization or association which does not exist for purposes of pecuniary profit or financial gain and no part of the assets, income or profit of which is distributable to its members, directors or officers.
- (4) Persons with a bona fide affiliation with a street fair, block party or festival (hereafter "street fair"). For purposes of this regulation, a street fair is any event in a public space for which all permits required by law in order for the event to be held have been obtained from the appropriate City agencies by the association sponsoring same. A "bona fide affiliation" shall be deemed to mean residence on the block on which the fair is taking place, in the case of a fair sponsored by a block association; or membership in the association, where the association does not have as its sole function the sponsorship of street fairs. Any nonprofit association as defined herein holding a street fair, and any person who operates as a general vendor at such street fair, is exempted from the provisions of this chapter relating to licensing and fees, as long as:

(a) The person has a bona fide affiliation with the sponsor of the street fair, is not acting as a general vendor other than at a street fair and is making a contribution to the sponsoring association through participation in the street fair; or

(b) The person who sells or offers to sell goods or services has a location during the fair on the street or sidewalk in front of a store normally maintained by that person. The sponsoring association must submit to the City Clerk, Police, Fire, and Code Enforcement Offices a copy of any permits required by the Orange County Department of Health under the Health and Sanitary code; and a certification, which shall include the name and address of each person qualifying for the exemption prior to the opening of the street fair.

(5) Any activity which is exempt to such extent or degree from the provisions of this chapter by the terms, force or effect of superior law, rule, regulation or authority, including but not limited to the Constitution of the United States and the Constitution of the State of New York.

B. No exception provided for hereunder shall be deemed to be an exception or waiver of any other requirement or condition imposed by any other provision of any law, code, rule or regulation of the City or of any other agency with jurisdiction thereover.

C. Registration and identification badge required. Any person who wishes to canvass or solicit for a religious, charitable, educational or political organization or on behalf of any candidate for public office, either in public or private property within the City, must first register with the City Clerk and must thereafter wear an identification badge when canvassing or soliciting.

§ 223-8. Nontransferability; assistants.

A. No license issued under the provisions of this chapter shall be used at any time by any person other than the one to whom it was issued and whose picture appears thereon, nor shall any vendor or peddler allow any other person to carry on or conduct the business of vending from, of or with the goods, vehicle, pushcart or stand used by or belonging to such licensee.

B. Each vendor licensed hereunder shall be allowed to employ up to two assistants to assist such vendor in his operations. The license issued to such vendor shall allow such assistants to assist in such vendor's operations; such assistants shall not be required to be separately and individually licensed. Such licensed vendor shall be fully and completely responsible for all acts of such assistants, and the acts of such assistants shall be considered the acts of the licensee for the purposes of enforcement of this chapter. While acting as assistant to the licensed vendor, such person shall remain no farther than 15 feet from the location of such vendor.

§ 223-9. Food vendors.

Each licensed food vendor and mobile food unit licensee shall:

Underlining denotes additions
~~Strike through~~ denotes deletions

- A. Permit regular inspections by any authorized City law, Fire or Code Enforcement Officer of any mobile food unit used in the operation of his business, or any premises under his control in which food is intended to be sold, offered for sale, distributed or given away by him as a food vendor, is prepared, processed or stored, and present such mobile food unit for inspection at such place and time as may be designated by the City Code Enforcement, Fire Department or Police Department.
- B. Provide to the Code Enforcement or Police Department, or any other authorized officer or employee of the City, the names and home and business addresses of the owners of such service rooms, commissaries, depots or distributors from whom such licensee received his food supply and where his mobile food unit and food supply are stored when not in use for sale or distribution.
- C. Have in his possession and make available for inspection satisfactory proof or documentation detailing the source of all foods being held, stored, offered for sale, distributed or given away.
- D. Not use or permit anyone else to use the mobile food unit for vending, distributing or giving away any foods other than those authorized, in writing, by the license issued to such vendor.
- E. Refrain from acting as a food vendor or operating a mobile food unit after the expiration of his license or permit and during any period of suspension or revocation of same.
- F. Surrender his license, permit, badge and insignia promptly to the City Clerk upon revocation, suspension, termination or expiration of his license or permit.
- G. Not sell, lend, lease or in any manner transfer his license, permit, badge or insignia unless otherwise specifically provided by law or by rule or regulation prescribed by this Code.
- H. Comply with all laws, codes, rules and regulations applicable to all vendors provided herein, and all laws, codes, rules and regulations applicable to the sale or provision of food and drink to the general public.
- I. Vendors are hereby prohibited from using tangible city property meant for public use to enhance their business, such city property includes but is not limited to picnic tables and garbage cans.

§ 223-10. Noise.

All peddlers and vendors must adhere to and comply with Chapter 212, Noise, of the Newburgh City Code.

- ~~A. No vendor or peddler nor any person on his behalf or in his employ or engaged in such activity with him shall shout, make any cryout, blow a horn, ring a bell or use any sound device, including any loudspeaking radio or sound amplifying system upon any of the streets, alleys, parks or other public places of said City or upon any private premises in said City where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon~~

the streets, avenues, alleys, parks or other public places for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell, if same shall cause a nuisance or disorder or disturb the peace and quiet of the City or of any public or private area therein, nor shall such sounds be employed while any vendor or peddler, and/or his vehicle or platform from which his wares are offered for sale, is located in a stationary location for any length of time. Such sounds may be employed if the vendor or peddler is in a vehicle in motion and the route taken by such vehicle is continuous and not repetitive and if such sounds do not at any time cause a nuisance or disorder or disturb the peace and quiet of any area or part of the City.

~~B.~~ The reasonable judgment of any police officer or other officer charged with enforcing this chapter shall be determinative of whether such sounds cause a nuisance or disorder or disturb the peace and quiet of any area or part of the City. Upon such determination, such officer shall give verbal notice to such vendor or peddler and such vendor or peddler shall immediately cease making or causing such sounds. The failure of a vendor or peddler to immediately cease making or causing such sounds after receiving such notice shall constitute a violation of this chapter.

§ 223-11. Use of public space, streets and certain property restricted.

- A. No vendor or peddler shall have any exclusive right to any location in the public streets, nor shall one be permitted a specified stationary location, nor shall he be permitted to operate in any congested area where his operations reasonably would or might impede or inconvenience the public or cause congestion or public disorder or block or impede the free flow of pedestrian or vehicular traffic. For the purpose of this chapter, the judgment of a police officer or other City officer or official charged with the duty or possessing the authority to enforce the City Code and any applicable laws, rules or regulations, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public is impeded or inconvenienced or the use made by the vendor or peddler is contrary to the provisions hereof. Such officer or official shall have the authority to compel any vendor(s) or peddler(s) to move to a different location in order to relieve congestion or otherwise resolve any disputes and restore calm and order at any public location.
- B. No vendor or peddler shall engage in any vending business on any sidewalk unless such sidewalk has at least an eight-foot-wide clear pedestrian path to be measured from the boundary of any private property to any obstructions in or on the sidewalk or, if there are no obstructions, to the curb. In no event shall any pushcart or stand be placed on any part of a sidewalk other than that which abuts the curb.
- C. No vendor or peddler shall occupy more than ~~10~~ 25 linear feet of public space parallel to the curb in the operation of a vending business and, in addition, no vendor or peddler operating any vending business on any sidewalk shall occupy more than four linear feet to be measured from the curb toward the property line.

- D. No vending vehicle, trailer, pushcart, stand, goods or any other item related to the operation of a vending business shall touch, lean against or be affixed permanently or temporarily to any building or structure, including but not limited to lampposts, parking meters, mailboxes, traffic signal stanchions, fire hydrants, tree boxes, benches, bus shelters, refuse baskets or traffic barriers.
- E. A vendor or peddler shall not place a vehicle, trailer, pushcart or stand, or conduct a general vending business, at a location in the roadway where stopping, standing or parking is prohibited or during a time period when stopping, standing or parking is restricted.
- F. A vendor or peddler shall not place a vehicle, trailer, pushcart or stand, or conduct a general vending business, in the roadway in a metered parking space unless such vendor has complied with the coin requirements of such meter. A vendor or peddler shall not remain in a metered parking space for a period of time in excess of the maximum time permitted at such space. A vendor or peddler shall not allow any vehicle, stand, platform or other device used to display or carry wares, food, merchandise or other products for sale to extend beyond the delineated limits of such parking space.
- G. A vendor or peddler shall not place a vehicle, trailer, pushcart or stand or conduct a general vending business in the roadway within 15 feet of a fire hydrant or within a safety zone.
- H. No vending pushcart, trailer, stand or goods shall be located against display windows of fixed location businesses, nor shall they be within 20 feet from an entranceway to any building, store, theater, movie house, sports arena or other place of public assembly.
- I. No vendor or peddler shall vend within any bus stop or taxi stand, or on the sidewalk immediately adjacent thereto, or within 10 feet of a crosswalk at any intersection or within 10 feet of any driveway.
- J. Each vendor or peddler vending from a pushcart, trailer or stand in a street or roadway shall obey all traffic and parking laws, rules and regulations as now exist or as may be promulgated, but in no case shall a vendor or peddler vend so as to restrict the continued maintenance of a clear passageway for vehicles.
- ~~K. Unless otherwise allowed by law, rule, regulation or permit, no vendor shall operate within 20 feet of any other vendor whose location can be determined to have been previously and continuously established.~~
- L.K. Where exigent circumstances exist and a police officer, or other officer or employee of any City agency authorized to enforce this chapter, gives notice to a vendor or peddler to temporarily move from any location such vendor or peddler shall not vend from such location.
- (1) For the purposes of this subsection, "exigent circumstances" shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public

space, an accident, fire or other emergency situation, a parade, demonstration or other such event or occurrence at or near such location.

- (2) When a vendor or peddler has received notice to temporarily move from any location where exigent circumstances exist, such vendor or peddler shall immediately stop all vending business and, within one minute, begin to and as quickly as possible move his goods, vehicle, pushcart or stand from the entire area in which the exigent circumstances exist as determined and stated by a police officer or other authorized person giving such notice to move. A vendor or peddler shall not return to the area of the exigent circumstances while such condition continues to exist. In the absence of a statement to the contrary by an authorized person, it shall be presumed that the exigent circumstances will continue to exist in such area for a period of two hours from the time notice to move was given to the vendor or peddler.

M.L. No vendor or peddler licensed under this chapter shall leave any items, wares, goods, merchandise, vehicles, trailer(s), -pushcart(s), stand(s), platform(s), boxes, bales, containers, trash or other equipment or material on any City or other public property or on private property without the permission of the owner thereof overnight, but must remove same to a private secured location at close of business.

N.M. No vendor or peddler shall trespass upon private property where the owner or proprietor thereof shall have prohibited such activity thereon.

~~O.~~ No vendor or peddler shall vend, sell or give away any product or merchandise within a radius of 1,000 feet of any business, store or permanent building or facility where the same category or type of product or merchandise is offered for sale.

§ 223-12. Restrictions on use of parks.

No person, whether holding a license or not, shall sell, offer or expose for sale any foodstuffs, items or merchandise within Delano-Hitch Recreation Park or within Downing Park or upon or along any street or public place which forms a boundary of said parks or within one block of either park in any direction. This section shall not apply to operators of food stands at Delano-Hitch Recreation Park who have been granted franchises pursuant to Chapter 13, Sale or Lease of City Real Property, of this Code, or to any separate contract or agreement or special events or other permits authorized or issued by the City providing therefor.

§ 223-13. Restrictions on use of generators.

No vendor or peddler shall employ a generator or other independent source of power while vending in the City limits, unless such generator is pre-approved by the fire Chief and/or Code Enforcement and conforms to the City Noise Ordinance, Chapter 212 of the Newburgh City Code, and does not exceed a maximum noise output of Eighty decibels (80db), and is subject to

~~inspection of same in any other City park or recreational facility where vending is not otherwise prohibited by this chapter, unless otherwise permitted or authorized by the City, including the inspection and approval thereof by the code enforcement and fire officials with jurisdiction to inspect same and enforce all codes, rules and regulations.~~

§ 223-14. Garbage and waste materials.

Garbage and waste materials generated in the course of business, whether generated by the vendor or peddler or the customers thereof, shall not be permitted to accumulate or to become a nuisance, but shall be placed in separate secure and sanitary containers provided for such purpose by the vendor or peddler. The garbage receptacles and their contents shall be properly removed by the vendor or peddler whenever necessary to prevent spillage and accumulation of trash, and at the close of each business day. Vendors and peddlers shall not use public trash receptacles or storm or sewer lines, mains or systems for disposal of such containers and trash, or other organic or inorganic waste, but shall take such containers and trash away with them and dispose of same privately and lawfully at their own expense. Vendors and peddlers shall remain responsible for keeping the area immediately surrounding their location of operation, within fifteen-foot radius, clean and free of all trash and debris at all times.

§ 223-15. Restrictions on vending near schools.

Vendors shall not sell any foodstuffs, confectionery, drink or ice cream on the grounds of any school or on the public streets bordering any school or within one block of any school in any direction between the hours of 8:00 a.m. and 4:00 p.m. on days when school is in session.

§ 223-16. Weighing and measuring appliances.

Any vendor carrying, keeping or using scales, measures or other appliances for weighing or measuring shall first have the same inspected by the Sealer of Weights and Measures or other municipal official with authority over same, and, if the latter shall find such appliances correct and true, his certificate to that effect shall be affixed to said scales, measures or other appliances in a conspicuous place. No vendor shall carry or use any such appliance which is not correct and true and does not record and give the weight and quantity accurately and as claimed by said vendor.

§ 223-17. Display and exhibition of license.

Vendors and peddlers are required to display all of their permits and/or their licenses visibly and prominently on their person, or at the location where they are operating, and produce same at the request of any citizen or City official or officer.

§ 223-18. Display of prices; receipts.

- A. No vendor shall make, portray or communicate any misrepresentations or false, fraudulently inaccurate or misleading information concerning any merchandise. All items sold or offered for sale by general vendors shall have conspicuously displayed, at the point of offering for sale, the total selling price, exclusive of tax by means of:
- (1) A stamp, tag or label attached to the item; or
 - (2) A sign at the point of display which indicates the item to which the price refers, provided that this information is plainly visible at the point of display for sale of the items so indicated.
- B. Each general vendor shall offer a consumer a serially numbered receipt for any purchase. The receipt must include:
- (1) The name and home address of the general vendor;
 - (2) The date of the purchase;
 - (3) The total amount of money and tax paid for the purchase;
 - (4) A description of the item purchased; and
 - (5) The license number of the vendor.
- C. Each general vendor shall retain a duplicate copy of each receipt which shall be produced for inspection upon request by Police or other Code Enforcement personnel. The receipts shall be presented for review to any City enforcement officer by the general vendor upon request.

§ 223-19. Enforcement; confiscation and return of property.

- A. It shall be the duty of any police officer or other authorized law or code enforcement officer of the City of Newburgh to require any person seen peddling and who is not known by such officer to be duly licensed to produce his peddler's license and to enforce the provisions of this chapter against any person found to be violating the same.
- B. Any City police or code enforcement officer who determines that a vendor has committed or is committing one or more violations of this chapter relating to vending without a valid license, failure to pay fees or fines, improper use of streets, improper management of waste, inaccurate weighing and measuring, or false and misleading misrepresentations to consumers may confiscate by taking physical custody and possession the goods, merchandise and wares of such vendor and any platform or vehicle used for such vending.
- C. A vendor who has had any goods, or any vehicle, platform, pushcart or stand, removed under the provisions of this section may serve notice of a request for the return of such property. The City may return said goods and/or vehicle before or after a judicial determination of the charges. Unless the judicial proceeding has terminated in favor of the vendor, the owner or

other person lawfully entitled to the possession of such vehicle, pushcart, stand or goods which have been removed under the provisions of this section, such person(s) may be charged with the reasonable costs as set forth in Chapter 297, Wreckers and Towers, of the Code of Ordinances for the removal and storage of such goods, platform, pushcart, trailer, stand and/or vehicle, payable prior to the release of such goods, platform, vehicle, pushcart or stand.

§ 223-20. Recordkeeping.

A. The Chief of Police and/or Director of Code Compliance and the Corporation Counsel shall report to the City Clerk all convictions for any and all violations of this chapter, and the City Clerk shall maintain a record for each license issued and record the reports of violations therein.

B. Each licensee shall keep and maintain accurate and complete records as follows:

(1) Each vendor shall keep written records of daily gross sales, purchases and expenses, including receipts for expenditures, and any other business-related records as the Chief of Police or Director of Code Compliance may require, and shall make such records available for inspection by any authorized official or employee of the City at all reasonable times upon demand, including daily gross sales receipts from vending in a format that includes the month and year, the date, the daily sales, sales tax collected and the total sales for the date. Such records shall be kept in the following format:

Date:

Item Sold:

Sales Tax Collected:

Total Price:

(2) This shall be in addition to the requirement to keep and maintain duplicate receipts and such other records which are required under this chapter and under other laws, rules and requirements. All records shall be made available to police and code enforcement personnel, upon request, at the department's offices.

§ 223-21. Suspension or revocation of license.

A. Any license or permit issued under the provisions of this chapter may be suspended or revoked by the Police Chief and/or the City Manager of the City of Newburgh after notice and hearing for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for license.

- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as a peddler.
- (3) Any violation of this chapter.
- (4) Conviction of any crime or misdemeanor involving moral turpitude or misconduct arising out of commercial dealing or the conduct of business or any conviction of violation of this Section.-
- (5) Conducting the business of vending or peddling in violation of any provision of this chapter or in any unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (6) Nonpayment or being in arrears in paying any debt, judgment, taxes, charges, fees, fines or other moneys due and owing to the City or other municipal or government agency.

B. Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing.

C. Any permit issued under this chapter shall be promptly surrendered to the City Clerk upon its suspension or revocation.

§ 223-22. Appeals.

Any person aggrieved by the action of the Chief of Police or the Fire Chief or the City Clerk or the City Manager in the denial or revocation or suspension of an application for permit or license as provided in this chapter or in the decision with reference to the revocation of a license as provided in this chapter shall have the right of appeal to the Council of the City of Newburgh. Such appeal shall be taken by filing with the Council, within 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant, in writing, addressed to the address provided by the applicant for notice of hearing on denial, suspension or revocation. The decision and order of the Council on such appeal shall be final and conclusive.

§ 223-23. Penalties for offenses.

In addition to all other penalties provided under this chapter or of any provision of the City Code or of any other law, rule or regulation of the state or other municipality or agency with jurisdiction over the subject, the following schedule of penalties shall apply for each separate violation of this chapter.

Offense (within the same calendar year)	Penalty Amount
First conviction	\$ 50 <u>250</u>
Second conviction	\$ 100 <u>500</u> , and revocation of the license as provided under <u>§ 223-21</u>
Third conviction	\$250
Fourth and for each subsequent conviction	\$500, and suspension or revocation of the license as provided under <u>§ 223-21</u>

§ 223-24. Loss of license; duplicate license fee.

The holder of any license issued hereunder shall promptly report the loss, mutilation or destruction thereof, in writing, to the City Clerk, who, if satisfied as to the facts establishing or concerning same, may issue a duplicate license only to the individual to whom the original was issued. Such duplicate license shall have plainly marked upon the face thereof the word "DUPLICATE." The fee to be charged for the issuance of each duplicate license shall be as set forth in Chapter 163, Fees, of this Code. \$50~~100~~.

§ 223-25. License in addition to county, state and other licenses.

Notwithstanding the issuance of a license pursuant to the provisions of § 32 of the General Business Law or other laws, codes, rules or regulations of any municipal agency or of the State of New York, no person obtaining such a license shall be permitted to carry on the business of a vendor or peddler upon the streets and highways of the City of Newburgh without first obtaining a license pursuant to this chapter.

§ 223-26. Provisions cumulative with other laws.

The provisions of this chapter shall be in addition to and not instead of the provisions of any other laws, codes, rules or regulations of the federal, state, county or City government applicable to the subject.

§ 223-27. Severability.

If any of the provisions of this chapter shall be held invalid, the remainder shall remain valid and enforceable as provided by law.

THIS ORDINANCE SHALL TAKE EFFECT immediately as provided under the terms of the Municipal Home Rule and other applicable laws

ORDINANCE NO.: 3 - 2013

OF

_____, 2013

AN ORDINANCE AMENDING CHAPTER 163
ENTITLED "FEES" OF THE CODE
OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

Code Section	Type of Fee	Amount
Chapter 223, Peddlers, Vendors and Solicitors		
§ 223-6	Peddler's license	
	Nonrefundable application fee	\$75 <u>100.00</u>
	<u>Renewal application</u>	<u>Application fee waived if renewal made within 30 days of expiration</u>
	License fees:	<u>\$250.00 annually</u>
		<u>\$125.00 seasonal April 15 through October 15</u>
	Peddling on foot	Per week: \$10 Per month: \$25 Per year: \$100

Underlining denotes additions

~~Strikethrough~~ denotes deletions

<p>Peddling with handcart or pushcart</p>	<p>Per week: \$25 Per month: \$50 Per year: \$200</p>
<p>Peddling with vehicle (1 person)</p>	<p>Per week: \$25 Per month: \$50 Per year: \$200</p>
<p>Each helper to person peddling with a vehicle</p>	<p>Per week: \$5 Per month: \$40 Per year: \$50</p>
<p>Identification badge for canvassing and/or soliciting under §223-7(A)</p>	<p>\$20.00</p>
<p>§223-24 Duplicate license fee</p>	<p>\$100.00</p>

Section 2. This ordinance shall take effect immediately.

Underlining denotes additions
~~Strikethrough~~ denotes deletions