



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
July 17, 2013
7:00 pm

Mayor:

1. Prayer
2. Pledge of Allegiance

City Clerk:

3. Roll Call

Communications:

4. Approval of the minutes of the Work Session meeting of June 13, 2013, the City Council meeting of June 17, 2013 and the special City Council meeting of June 19, 2013.
5. City Clerk's report for the month of June
6. Registrar of Vital Statistics report for the month of June
7. Civil Service Administrators Report for the month of June

Proposed Public Hearings:

8. (Res. 141) A resolution scheduling a public hearing for August 19, 2013 to receive public comment concerning a local law amending Chapter 70 entitled "Parking Violations Bureau" of the Code of the City of Newburgh to increase fines for certain parking violations.
9. (Res. 142) A resolution scheduling a public hearing for August 19, 2013 to receive public comment regarding the housing and community development needs of the City of Newburgh in order to assist with the preparation of the Housing and Community Development Plan for fiscal year 2014.

Public Hearing:

10. State Environmental Quality Review Act (SEQRA) concerning rescinding Chapter 279, "Trees and Shrubs" and Chapter 296, "Waterfront Consistency Review", the adoption of Chapter 159 creating a Conservation Advisory Council and an amendment of Chapter 300, the Zoning Ordinance of the City of Newburgh, declaring the project to be an unlisted action, considering an Environmental Assessment Form (EAF), referring same to the Orange County Planning Department

as required by Section 239 of the General Municipal Laws and scheduling a public hearing.

Comments from the public regarding the agenda:

Comments from the Council regarding the agenda:

City Manager's Report:

11. Resolution No. 131 - 2013
A resolution authorizing the executive of a Release of Restrictive Covenants and Right of Reentry from a deed issued to Armando Caballero to the premises known as 202 Broadway.
12. Resolution No. 132-2013
A resolution authorizing the interim City Manager to accept a grant from the State of New York Division of Criminal Justice Services with no City match for the Operation Impact X Program to enhance law enforcement in the City of Newburgh to achieve sustained, long-term crime reduction through the continuation of the crime analyst position and the field intelligence officer, focused enforcement on targeting offenders who are know to be violent criminals, the purchase of a large screen to be used as digital signage with other impact partners and authorizing the interim City Manager to execute any documents and take such actions required to carry out such program.
13. Resolution No. 133 - 2013
A resolution authorizing the interim City Manager to apply for, accept if awarded and enter into an inter-municipal agreement between the County of Orange and the City of Newburgh in connection with the 2013 Byrne Memorial Justice Assistance Grant program.
14. Resolution No. 134 - 2013
A resolution authorizing the interim City Manager to enter into a memorandum of agreement with the 105th Security Forces Squadron, Stewart Air National Guard Base, Newburgh, New York for notification, reporting and other supportive services.
15. Resolution No. 135 – 2013
A resolution authorizing the interim City Manager to execute vendor service agreements at a cost of \$8,000.00 in order to closeout the Twenty First Century Learning Center grant program.

16. Resolution No. 136 – 2013
A resolution authorizing the interim City Manager to enter into an agreement with Pitney Bowes for an amount not to exceed \$22,380.00 for the lease of a new postage machine for City Hall.
17. Resolution No. 137 – 2013
A resolution authorizing the interim City Manager to enter into an agreement with Shamrock Shows, Inc. for amusement rides, attractions and concessions at the City of Newburgh International Festival.
18. Resolution No. 138 – 2013
A resolution authorizing the interim City Manager to enter into an amendment to the agreement with CT Male Associates, P.C. for professional environmental/engineering services and authorizing a change order to cover the additional work necessary for the completion of the required site management plan for the Consolidated Iron and Metal site.
19. Resolution No. 139 – 2013
A resolution authorizing the interim City Manager to execute a contract with Barton and Loguidice, P.C. for professional engineering services for the emergency reconstruction of the west trunk sewer line and related improvements at a cost not to exceed \$690,000.00.
20. Resolution No. 140 – 2013
A resolution amending Resolution No. 223-2012, the 2013 Budget for the City of Newburgh, New York to transfer the positions of parking enforcement officer from the on-street parking department and to re-appropriate the remaining budget balances to the Parking Violations Bureau.
21. Ordinance No. 7 – 2013
An ordinance amending Section 163-2 entitled “Miscellaneous Fees” of the Code of the City of Newburgh in order to increase the Civil Service examination fee from \$40.00 to \$50.00.
22. Resolution No. 143 - 2013
A resolution authorizing the interim City Manager to enter into an agreement with C.T. Male and associates, P.C. for professional engineering services related to dam safety for Silver Stream Reservoir Dam and Washington Lake Dam and amending Resolution No. 223-2012, the 2013 Budget for the City of Newburgh.
23. Resolution No. 144 - 2013
A resolution authorizing the award of a bid and the execution of a contract with DN Tanks, Inc. in the amount of \$1,983,720.00 for the Marne Avenue Water Storage Tank Replacement Project.

24. Resolution No. 145 - 2013
A resolution amending Resolution No. 223-2012, the 2013 Budget for the City of Newburgh, New York to transfer \$30,000.00 from water fund contingency to water fund repairs/other equipment for emergency repair to chlorine tanks.
25. Resolution No. 146 - 2013
A resolution authorizing the interim City Manager to execute an order on consent with the New York State Department of Labor to resolve violations for property located at One Liberty Street.
26. Resolution No. 147 - 2013
A resolution authorizing the interim City Manager to enter into a license agreement with the Youth Empowerment Center for the first floor of 104 South Lander Street for a term of one year.
27. Resolution No. 148 - 2013
A resolution approving the consent judgment and authorizing the interim City Manager to sign such consent judgment in connection with the tax certiorari proceeding against the City of Newburgh in the Orange County Supreme Court bearing Orange County Index No. 5795-2012, involving Section 36, Block 2, Lot 11 (117 Liberty Street, LLC).
28. Resolution No. 149 - 2013
A resolution approving the consent judgment and authorizing the interim City Manager to sign such consent judgment in connection with the tax certiorari proceeding against the City of Newburgh in the Orange County Supreme Court bearing Orange County Index No. 5794-2012, involving Section 24, Block 1, Lot 17 (120Grand Street, LLC).
29. Resolution No. 150 - 2013
A resolution to authorize the re-purchase of real property known as 63 Grove Street at private sale to Jon F. Turnquist.
30. Resolution No. 151 - 2013
A resolution to authorize a settlement in the matter of Kenneth Brune against the City of Newburgh in the amount of \$45,000.00.
31. Resolution No. 152 - 2013
A resolution to authorize a settlement in the matter of John Cestaro against the City of Newburgh in the amount of \$3,600.00.

32. Resolution No. 153 - 2013

A resolution authorizing the settlement of litigation regarding the in rem tax foreclosure of liens for the year 2011 relative to 18 Jamison Place.

33. Resolution No. 154 - 2013

A resolution authorizing the interim City Manager to retain the services of a qualified engineering firm and contractor to investigate and evaluate the stabilization and repair of the combined sewer overflow Outfall No. 12 to prevent the bypass discharge of combined sewage from Regulator 10 into the Hudson River.

Old Business:

New Business:

Public Comments Regarding General Matters of City Business:

Further Comments from the Council:

Adjournment:

RESOLUTION NO.: 14 - 2013

OF

JULY 15, 2013

RESOLUTION SCHEDULING A PUBLIC HEARING FOR AUGUST 19, 2013
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING
CHAPTER 70 ENTITLED "PARKING VIOLATIONS BUREAU"
OF THE CODE OF THE CITY OF NEWBURGH TO INCREASE FINES
FOR CERTAIN PARKING VIOLATIONS

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law Amending Chapter 70, entitled "Parking Violations Bureau" of the Code of the City of Newburgh to Increase Fines for Certain Parking Violations and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 19th day of August, 2013, in the 3rd Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

LOCAL LAW NO.: _____ - 2013

OF

_____, 2013

A LOCAL LAW AMENDING CHAPTER 70 ENTITLED "PARKING VIOLATIONS BUREAU" OF THE CODE OF THE CITY OF NEWBURGH TO INCREASE FINES FOR CERTAIN PARKING VIOLATIONS

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 70 Entitled 'Parking Violations Bureau' of the Code of Ordinances of the City of Newburgh to Increase Fines for Certain Parking Violations ."

SECTION 2 - AMENDMENT

Chapter 70 entitled "Parking Violations Bureau" is hereby amended to read as follows:

§ 70-17. Schedule of fines and penalties.

The schedule of fines and penalties shall be as follows:

Violation	Fine
Failure to deposit required coins in a parking meter, overtime parking in a metered space or other meter violation	\$15.00
Parking prohibited beyond time limit allowed, other than parking meter	\$10.00
Parking over lines	\$10.00
Improper Angle Parking	\$10.00
Parking on the sidewalk	\$10.00
Parking prohibited upon publicly or privately owned premises without permission	\$10.00
Parking in City lot without permit	\$10.00 <u>25.00</u>
Restricted Parking near Newburgh Free Academy and St. Luke's Cornwall Hospital	\$10.00
Stopped, standing or parked facing wrong direction	\$10.00
Stopped, standing or parked more than 12 inches from curb	\$10.00

Underlining denotes additions

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Parking prohibitions:

Parking prohibited at any time	\$10.00
Parking prohibited during certain hours	\$10.00
Parking prohibited on alternate days	\$25.00
Parking prohibited on alternate days - snow emergency	\$50.00
Parking prohibited on alternate days - street cleaning	\$50.00
Parking prohibited on snow emergency routes	\$50.00
Parking prohibited in a taxi stand	\$10.00
Parking prohibited in a bus stop	\$10.00
Parking prohibited in a loading zone	\$10.00
Parking prohibited in boat trailer parking zone	\$10.00 <u>25.00</u>

Violation	Fine
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Standing prohibitions:

Standing prohibited at any time	\$10.00
Standing prohibited during certain hours	\$10.00
Standing prohibited from here to corner	\$20.00

Stopping prohibitions:

Stopping prohibited at any time	\$10.00
Stopping prohibited during certain hours	\$10.00
Stopping prohibited from here to corner	\$20.00
Stopped, standing or parked on a sidewalk	\$20.00
Standing or parked in front of a public or private driveway	\$25.00
Expired certificate of inspection or registration	\$20.00
Stopped, standing or parked within 15 feet of a fire hydrant	\$25.00 <u>100.00</u>

Double parking	\$25.00 <u>50.00</u>
Obstructing traffic	\$25.00
Interfering with snow removal	\$50.00
Public Safety Reserved Parking	\$10.00
Parking/Standing within 50 ft of Firehouse	\$10.00 <u>25.00</u>
Handicapped parking violations per § 1203-c of the Vehicle and Traffic Law	\$100.00

NOTE: In addition, a surcharge of \$30 has been levied by the state of New York for handicapped parking violations pursuant to § 1809-b of the Vehicle and Traffic Law.

SECTION 3 - VALIDITY

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

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SECTION 4 - EFFECTIVE DATE

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

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RESOLUTION NO.: 142 - 2013

OF

JULY 15, 2013

RESOLUTION SCHEDULING A PUBLIC HEARING
FOR AUGUST 19, 2013 TO HEAR PUBLIC COMMENT
REGARDING THE HOUSING AND COMMUNITY DEVELOPMENT
NEEDS OF THE CITY OF NEWBURGH IN ORDER TO ASSIST
IN THE PREPARATION OF ITS HOUSING AND COMMUNITY
DEVELOPMENT PLAN FOR FISCAL YEAR 2014

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments regarding the housing and community development needs of the City of Newburgh in order to assist in the preparation of its Housing and Community Development Plan for fiscal year 2014; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 19th day August 2013 in the third floor Council Chambers located at 83 Broadway, City Hall, Newburgh, New York

ORDINANCE NO.: _____ - 2013

OF

_____, 2013

AN ORDINANCE TO AMEND CHAPTER 300 ENTITLED "ZONING"
AND TO AMEND CHAPTER 234, ENTITLED "PROPERTY DAMAGE"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO CONFORM TO THE CREATION OF A CONSERVATION ADVISORY COUNCIL
IN THE CITY OF NEWBURGH

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 248 and Chapter 300 of the Code of Ordinances shall be amended as follows:

Section 1: Chapter 248: Property Damage

Section 234-8. Property owners' responsibilities.

D. Nothing herein shall be deemed to relieve any property owner from the continuing and ongoing obligation to comply with all provisions of all applicable codes, rules and regulations, including those of the State of New York and of the City of Newburgh. This obligation shall include compliance with the requirements of the City Code, and the Codes Compliance Supervisor, and of the Building Inspector, and of the Planning Board, and Zoning Board of Appeals, and if the property is located in the Historic District with the design standards and with the requirements of the Architectural Review Committee applicable thereto, and if the property is located in the Waterfront District with the design standards and with the local waterfront revitalization plan and with the requirements of the Conservation Advisory Council Waterfront Advisory Committee authorized by law and applicable thereto.

Section 2: Chapter 300: Zoning

Section 300-20. Uses in W-1 and W-2 Districts.

A. Incentive zoning; reduction in building coverage. The maximum building coverage of any use that abuts the Hudson River may be increased by 15% if said use provides some type of public access, such as but not limited to a marina whose boat slips are available for public rental, a public park or plaza area or an appropriate improved walkway having a width of at least 12 feet along the

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entire frontage of the subject property on the water in order to permit public pedestrian access. The access plans shall be approved by the Planning Board with advice from the Conservation Advisory Council ~~Waterfront Advisory Committee~~, and the access shall be available for public use under a mutually agreeable arrangement between the City and the property owner. The agreement between the City and the property owner will define where responsibility for insurance for that portion of the property over which an easement is granted for public use will be. Public access shall be dedicated in the form of a nonextinguishable public easement or other form of ownership satisfactory to the City Council.

B. Incentive zoning; reduction in off-street parking requirement. The off-street parking requirement of any use that abuts the Hudson River within the W-1 and W-2 Zoning Districts may be reduced by 30% if said use provides some type of public access, such as but not limited to a marina whose boat slips are available for public rental, a public park plaza area or an appropriate improved walkway having a width of at least 12 feet along the entire frontage of the subject property on the water in order to permit public pedestrian access. The access plans shall be approved by the Planning Board with advice from the Conservation Advisory Council ~~Waterfront Advisory Committee~~, and the access shall be available for public use under a mutually agreeable arrangement between the City and the property owner. The agreement between the City and the property owner will define where responsibility for insurance for that portion of the property over which an easement is granted for public use will be. Public access shall be dedicated in the form of a nonextinguishable public easement or other form of ownership satisfactory to the City Council.

C. Public access requirement for uses abutting the Hudson River or Quassaick Creek (hereinafter also referred to as "waterways"). The provisions of this section apply to special uses in the W-1 and W-2 Zoning Districts.

(1) Public access required. Public access shall be provided to said waterways, such as, but not limited to, a marina at least a portion of whose boat slips are available for public rental, park or plaza area, or an improved walkway of at least 20 feet in width along the entire frontage of the property on said waterways in order to permit pedestrian access. The access plans shall be approved by the Planning Board after review by the Conservation Advisory Council ~~Waterfront Advisory Committee~~ pursuant to Chapter 159-5 of the Code of Ordinances, and the access shall be dedicated for public use and maintained in the same manner as provided in the Charter of the City for dedication and maintenance of public streets or sidewalks.

Section 300-32. Uses and development.

B. Architectural Review Commission and Planning Board visual site plan standards and procedures.

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(1) Visual plan submission.

(a) When the Building Inspector receives an application to permit the erection of a building or structure, exterior reconstruction, restoration, alteration, demolition or permanent improvement in the View Preservation District which will impact a defined view plane, the Building Inspector shall require the applicant to submit a visual environmental assessment form (VEAF) and plan elevation in accordance with the requirements of this chapter. The application, together with the VEAF and plan elevation, shall be referred to the Architectural Review Commission in regard to properties within the City of Newburgh Historic District or to the Planning Board in regard to properties located outside the Historic District. The Architectural Review Commission or Planning Board shall evaluate the proposed activity so as to avoid impairment or significant loss of scenic public views of the Hudson River, Hudson Highlands and East Bank of the Hudson River. ~~To assist in the evaluation, the Waterfront Advisory Committee shall provide the Architectural Review Commission or the Planning Board with a written advisory opinion and recommendation concerning the impact of the proposed activity upon such views. If the Waterfront Advisory Committee fails to submit an advisory opinion within 30 days after the submission of the VEAF and elevation plan to it, the Architectural Review Commission or Planning Board may act without such opinion from the Waterfront Advisory Committee.~~

(2) Visual analysis procedures and standards. The Architectural Review Commission ~~and the~~ Planning Board ~~and the Waterfront Advisory Committee~~ shall be governed by the following standards and procedures in rendering a visual site plan approval or an opinion and recommendation, respectively.

(b) The Architectural Review Commission or Planning Board ~~and the Waterfront Advisory Committee~~ shall, where appropriate, utilize the following siting considerations:

(c) The Architectural Review Commission or Planning Board ~~and the Waterfront Advisory Committee~~ shall, where appropriate, utilize the following scale considerations:

(d) The Architectural Review Commission or Planning Board ~~and the Waterfront Advisory Committee~~ shall, where appropriate, utilize the following landscaping considerations:

Section 300-35. Special uses.

A. Power. The Planning Board shall have the power to hear and decide on applications to permit the proper integration into the community of uses which may be suitable only in specific locations in a zone or only if such uses are designed and laid out on the site in a particular manner, provided that this chapter otherwise permits such uses subject to the validation of the Planning Board.

B. Conditions to be fulfilled. In applying for a special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a special use permit, the Planning Board, with due regard to the nature and condition of all adjacent structures and uses, the zone within which the same is located, the Master Plan, the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans, shall find all of the following general conditions to be fulfilled:

(5) Consistency with policies.

(a) The special use, if undertaken within the waterfront area, will be consistent with the LWRP policies, standards and conditions, which are derived from and further explained and described in Section III of the City of Newburgh LWRP.

(b) If the proposed action is determined to have a positive declaration of significance after SEORA review the Planning Board will consider the recommendations of the Conservation Advisory Council ~~Waterfront Advisory Committee~~ when determining consistency with the above policies.

Section § 300-36. Procedures.

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

~~I. Waterfront Advisory Committee. Whenever a request for a special use permit involves a use to be located within the City's waterfront districts, the Planning Board shall refer a copy of a completed coastal assessment form (CAF) to the Waterfront Advisory Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Advisory Committee with reference to the consistency of the proposed action as set forth in Chapter 296 of the Code of the City of Newburgh, known as the "City of~~

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~~Newburgh Waterfront Consistency Review Law." In the event that the Waterfront Advisory Committee recommendation is not forthcoming within 30 days following referral of the CAF, the Planning Board shall make its decision without the benefit of the Waterfront Advisory Committee recommendation.~~

I. Waterfront Consistency Review. Whenever a request for a special use permit involves a use to be located within the City's waterfront districts, the Planning Board shall determine the consistency of the proposed action as set forth in Chapter 159-5 of the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law," with advice from and/or referral to the CAC. When the requested special use permit is determined to have a positive declaration of significance after SEQRA review, the Planning Board shall refer a copy of a completed coastal assessment form (CAF) and other appropriate application materials to the Conservation Advisory Council within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Conservation Advisory Council with reference to the consistency of the proposed action. In the event that the Conservation Advisory Council recommendation is not forthcoming within 30 days following referral of the CAF, the Planning Board shall make its decision without the benefit of the Conservation Advisory Council recommendation.

Section 300-80. Procedures.

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

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

J. Waterfront Consistency Review. Whenever a request for appeal or application for variance involves the City's waterfront area, the Zoning Board of Appeals shall determine the consistency of the proposed action as set forth in Chapter 159-5 of

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the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law:" with advice from and/or referral to the CAC. When the requested appeal or application for variance is determined to have a positive declaration of significance after SEQRA review, the Zoning Board of Appeals shall refer a copy of a completed coastal assessment form (CAF) and other appropriate application materials to the Conservation Advisory Council within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Conservation Advisory Council with reference to the consistency of the proposed action. In the event that the Conservation Advisory Council recommendation is not forthcoming within 30 days following referral of the CAF, the Planning Board shall make its decision without the benefit of the Conservation Advisory Council recommendation.

Section 3:
2013 of

This ordinance shall take effect immediately upon the adoption of Local Law No. -
, 2013.

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LOCAL LAW NO.: _____ - 2013

OF

_____, 2013

A LOCAL LAW RESCINDING CITY CHARTER SECTION C15.11 THROUGH C15.17 ENTITLED "BOARD OF PARKS, RECREATION AND CONSERVATION, CHAPTER 279 ENTITLED "TREES AND SHRUBS" AND RESCINDING CHAPTER 296 ENTITLED "WATERFRONT CONSISTENCY REVIEW" AND ADDING CHAPTER 159 ENTITLED "CONSERVATION ADVISORY COUNCIL" TO THE CODE OF THE CITY OF NEWBURGH

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Rescinding City Charter Section C15.11 through C15.17 Entitled "Board of Parks, Recreation and Conservation, Chapter 270 Entitled 'Trees and Shrubs' and Rescinding Chapter 296 Entitled 'Waterfront Consistency Review' and Adding Chapter 159 Entitled 'Conservation Advisory Council' to the Code of Ordinances of the City of Newburgh."

SECTION 2 - PURPOSE AND INTENT

The purpose of this local law is to create a Conservation Advisory Council in the City of Newburgh. The City of Newburgh wishes to create a more investment ready community and to achieve this goal, the City focused, in part, on streamlining the land use approval process. The streamlined land use approval process should attract real estate investment from current and potential residents, business owners, and developers by offering faster and more predictable land use processes and approvals. Streamlining these approvals will also encourage existing uses and structures to be maintained and upgraded.

Part of the streamlining process, recommended in the Pace Land Use Law Center Streamlining Report, includes the consolidation of the Waterfront Advisory Committee (WAC) and Shade Tree Commission (STC) into a new advisory council, in the form of a Conservation Advisory Council, which would act as an advocate for the City of Newburgh's natural resources.

Under this local law, the WAC and the STC would be integrated into a new Conservation Advisory Council, which would advocate for Newburgh's many valuable natural resources including open spaces, wetlands, coastal areas, and trees. In addition, the proposed CAC will create an inventory of Newburgh's natural resources, make recommendations to City agencies and

boards on environmental policies and practices, and promote the City's environmental goals to the public.

SECTION 3 - AMENDMENT

The City Charter is hereby amended to rescind City Charter Sections C15.11 through C15.17 entitled "Board of Parks, Recreation and Conservation and the Code of Ordinances is hereby amended to rescind Chapter 279 entitled "Trees and Shrubs" and to rescind Chapter 297 entitled "Waterfront Consistency Review" in their entirety. The Code of Ordinances is hereby further amended to add Chapter 159 entitled "Conservation Advisory Council" to read as follows:

Chapter 159: Conservation Advisory Council

Section 159-1: Title

This Chapter will be known as "Chapter 159 of the Code of Ordinances" and shall be entitled "The City of Newburgh Conservation Advisory Council."

Section 159-2: Authority and Purpose

A. This section is adopted under the authority of the Municipal Home Rule Law, New York General Municipal Law Article 12-F, the New York General Municipal Law Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law), and New York General Municipal Law Article 5, Section 96-B Tree Conservation.

B. The City of Newburgh ("City") is renowned for its scenic beauty and bucolic open spaces, urban and historic character, natural resources and outstanding quality of life. The City is also known for the care it takes to ensure that its nationally recognized resources are protected and preserved. The preservation and improvement of the quality of the natural environment within the City are of vital importance to the health, welfare and economic well-being of present and future residents and require action by the City Council. The City recognizes its vulnerabilities to changing weather patterns and the need to take measures to both mitigate and adapt to them; the City also acknowledges that green infrastructure tempers warming, sequesters carbon and helps to absorb storm water. It is recognized that the biologic integrity of the natural environment, on which residents depend for survival and the natural and functional beauty of our surroundings, which affect the quality of our life experiences, ~~must~~ cannot be protected without the full cooperation and participation of all the people of the City working in partnership with local, state and federal officials and with various public and private institutions, agencies and organizations. Recognizing the ~~effects increase in temperature as a result of climate change,~~ the preservation, enhancement, remediation, and utilization of the natural and man-made resources ~~of the~~ of the City, including its unique coastal area, must take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and

economic development. Accordingly, this section is intended to achieve such a balance, permitting the beneficial use of natural resources while preventing: loss of living estuarine and riparian resources and wildlife; diminution of open space areas or public accesses to the waterfront; erosion of shoreline and stream-banks; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; encroachment on such other lands owned by the City that would negatively impact its drinking water sources; or permanent adverse changes to ecological systems.

—Establishment of a Conservation Advisory Council is a necessary step in fostering coordinated action on environmental issues, and it is essential that the City Council designate one entity for coordinating and communicating, in a timely manner, all relevant information on the natural environment among the Planning Board, Zoning Board of Appeals, City Counsel, City Manager, Corporation Counsel, City Engineer, Water Department, Department of Public Works, City Planner, Architectural Review Commission, the Arborist, Code Compliance Bureau, and Building Inspector.

Section 159-3: Definitions

As used in this section, the following terms shall have the meanings indicated:

ACTIONS - Action as defined in NYCRR §617.2(b).

AGENCY - Any board, agency, department, office, other body or any officer of the City of Newburgh.

ARBORIST - The professional retained by the City to perform services with regard to the selection, identification, treatment and removal of trees.

COASTAL ASSESSMENT FORM (CAF) - The form contained in Appendix A, used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

CONSISTENT - That the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP) - The Local Waterfront Revitalization Program is both a plan and a program. The term refers to both the planning document prepared by the City, as well as the program established to implement the plan. The LWRP contains the City's policies and recommendations, consistent with the coastal management policies of the state, to promote beneficial waterfront development enhanced by or dependent of the City's waterfront resources and in balance with protection of its natural coastal resources. The Local Waterfront Revitalization Program of the City of Newburgh, approved by the

Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law Article 42), a copy of which is on file in the office of the Clerk of the City of Newburgh.

NATURAL RESOURCE INVENTORY - A compilation of the natural resources of the City including locations appropriate for expansion of natural resources, areas appropriate for green infrastructure, and open areas, as defined by N.Y. Gen. Mun. Law § 239(y), and of the ownership, present use and proposed use of such areas, described and listed according to the priority of preservation. This compilation shall be maintained in a useable format; the primary purpose of the Natural Resource Inventory is to provide data that can provide a basis for municipal planning to maintain or enhance the conservation of natural or scenic resources.

OPEN SPACE MAP - A visual and geographically accurate representation of the natural resources and open areas contained in the Natural Resource Inventory that has been accepted and approved by the City Council.

PARK - All public parks that have individual names.

PUBLIC AREAS - All other grounds owned by the City of Newburgh, County of Orange.

PUBLIC TREES - All shade and ornamental trees growing in the City's right-of-way, parks or any public areas where otherwise indicated.

SHRUB - Woody plants with many more or less erect stems.

SIGNIFICANT ACTIONS - An action that may have a significant adverse impact on the environment as determined under NYCRR §617.7.

STREET AND RIGHT-OF-WAY - The entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

TREE - All woody plants having one well-defined stem or a more or less definitely formed crown and attaining a height of at least 15 feet and a diameter of not less than two inches at maturity.

WATERFRONT AREA - That portion of New York State coastal waters and adjacent shorelands, as defined in Article 42 of the Executive Law, which is located within boundaries of the City of Newburgh, as shown on the Coastal Area Map on file in the office of the Secretary of State and as delineated in the City of Newburgh Local Waterfront Revitalization Program.

Section 159-4: Conservation Advisory Council

A. A Conservation Advisory Council is created and shall be hereafter known as the "Conservation Advisory Council of the City of Newburgh." The Conservation Advisory Council is authorized to review materials and make recommendations to appropriate agencies regarding the development, management, and protection of the City's natural resources; designated in the Natural Resource Inventory, including but not limited to, coastal resources, the City's drinking water sources, and City trees, as well as make recommendations on the consistency of significant actions proposed within the City's waterfront area according to LWRP policy standards and conditions. The Conservation Advisory Council shall be charged with the duties as set forth in this section.

B. The City Council of the City of Newburgh is hereby authorized to appoint seven persons to said Conservation Advisory Council, all of whom shall be residents of the City of Newburgh. Of the members of the Conservation Advisory Council first appointed, three shall hold office for a term of one year and four for terms of two years from and after their appointment. Their successors shall be appointed for terms of two years from and after the expiration of the terms of their predecessors in office. Members may be removed by the City Council for cause and after public hearing. Vacancies shall be filled by the City Council by appointment for the unexpired term.

C. The City Council shall annually appoint one Conservation Advisory Council member to serve as Chairperson of the Committee. The current chair shall continue to serve until a replacement is appointed.

D. The Conservation Advisory Council may employ or retain such persons or firms as may be needed as authorized by the City Council.

E. The Conservation Advisory Council shall have the power to adopt rules of procedure for the conduct of all business within its jurisdiction.

F. The members of the Conservation Advisory Council shall serve without compensation, but may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties within the appropriations made available therefor.

G. The Conservation Advisory Council shall advise various City agencies on greening the City's infrastructure and matters affecting the preservation, development, and use of the lands listed in the Natural Resource Inventory and natural features and conditions of such lands in the City insofar as aesthetics, quality, biologic integrity, and other environmental factors are concerned, including, in the case of human activities and developments, with regard to any major threats posed to environmental quality, so as to enhance the long-range value of the environment to the people of the City.

H. The Conservation Advisory Council shall study problems and determine the needs of the City of Newburgh in connection with urban forestry and the tree planting program and make

recommendations to the City Council as to desirable policy, promotion activities, and legislation concerning the urban forest and tree planting and promotion activities for the municipality.

I. The Conservation Advisory Council shall develop and conduct a program of public information in the community which shall be designed to foster increased understanding of the nature of environmental problems and issues and support for their solutions. The Conservation Advisory Council shall include information regarding the selection, planting and maintenance of trees within the corporate limits.

J. The Conservation Advisory Council shall conduct studies, surveys and inventories of the natural and man-made features within the City to ~~create and maintain~~ a Natural Resource Inventory and Open Space Map using a computer-based geographic information system (GIS) as may be necessary to carry out the general purposes of this section.

K. The Conservation Advisory Council shall ~~maintain~~ an up-to-date Natural Resource Inventory and Open Space Map for the City of Newburgh.

L. The Conservation Advisory Council shall be authorized to coordinate, assist and unify the efforts of private groups, institutions and individuals with the City in accord with the purposes of this section.

M. The Conservation Advisory Council shall ~~communicate and~~ act as liaison with public and private agencies and organizations of local, state and national scope whose programs and activities have an impact on the quality of the environment or who can be of assistance to the Conservation Advisory Council.

N. The Conservation Advisory Council shall obtain and maintain in an orderly timely fashion maps, reports, books and other publications to support the necessary research of the Conservation Advisory Council into local environmental conditions in a space within a municipal building with a designated phone number, mailbox, email address, access to a photocopy machine, printer, fax machine, scanner, and a City computer configured with the City's GIS system.

O. The Conservation Advisory Council shall further assist the City in the development of sound environmental planning and ensure preservation of natural and scenic resources on the local level throughout the City as follows:

- (1) Review each proposed application for action by the City Council, Planning Board, and Zoning Board of Appeals which seeks approval for the use or development of open space. Nothing contained herein shall be interpreted to require applications to the Code Compliance Bureau, , the Building Inspector or the Superintendent of Public Works to be referred to the Conservation Advisory Council. Applications, including their accompanying State Environmental

Quality Review Act (SEQRA) environmental assessment forms and/or environmental impact statements, if any, shall be referred by the City Council, Planning Board, and Zoning Board of Appeals, as applicable, to the Conservation Advisory Council, at such time as the application is accepted for review. In the event an application is located within the Local Waterfront Revitalization Area, and is determined to be a significant action, the Conservation Advisory Council shall issue an advisory consistency recommendation in accordance with the LWRP policy standards and conditions set forth in Section 159-5.3(G).

(2) Submit a written report promptly to the referral body after receipt by the Conservation Advisory Council of such application, so that the referral body will have the report prior to substantive consideration of the application, but in no event later than 30 days after receipt by the Conservation Advisory Council of such application. If the Conservation Advisory Council fails to report within such period, the referring body may take final action on the proposed action without such report. Such report shall evaluate the proposed use or development of the open space in terms of the environmental planning objectives of the City and shall include the effect of such use or development on the City's environment. The report shall make recommendations as to the most appropriate use or development of the applicable open space and may include recommendations of preferable alternative uses consistent with open space conservation. A copy of every report shall be filed with the City Council.

(3) Make available for public inspection at the office of the Conservation Advisory Council and on the City's website copies of all such reports of the Conservation Advisory Council.

(4) Nothing herein shall prevent the City Council or other City agency or department from requesting advice from the Conservation Advisory Council.

P. Working in cooperation with the Planning Board, a designated member of the Conservation Advisory Council shall attend, when necessary, Planning Board meetings and provide to the Planning Board the Conservation Advisory Council's recommendations concerning features, plans and programs relating to environmental planning. The Conservation Advisory Council shall also review industrial, commercial, institutional and subdivision proposals for their environmental impact, and similarly recommend to the City Council appropriate and desirable changes in existing local laws and ordinances relating to environmental conservation or recommend new local laws and ordinances. When appropriate, the CAC shall provide a similar function to other boards and agencies in the City of Newburgh.

Q. The Conservation Advisory Council shall advise and make recommendations to the Superintendent of Public Works, at his request, as to:

(1) The planting of new, pruning and removal of trees, including advice on City infrastructure to maximize tree survival.

(2) The type and kind of trees to be planted upon such municipal streets or parts of municipal streets or in parks as are designated or requested.

(3) Applications for the planting of shade or ornamental trees with the purpose of populating the City of Newburgh with desirable tree types.

(4) Proposed street or sidewalk reconstructions to recommend whether such actions would result in the planting of new, replacement, or removal of trees, to recommend whether such replacement and removal is necessary and to recommend the type and kind of tree, if any, with which such trees should be replaced.

(5) Implementation and incorporation of a qualified Tree Maintenance Program meeting state-funding requirements.

(6) Funding and training opportunities for tree maintenance and plantings and green infrastructure techniques.

R. The Conservation Advisory Council shall hold regular and special meetings at which the subject of trees and vegetation, urban forestry, and green infrastructure, inasmuch as it relates to the City of Newburgh, may be discussed by the Commissions, City officials and employees, and all others interested in such the tree programs.

S. The Conservation Advisory Council may advise the Superintendent of Public Works, the Engineering Department, and the Water Department, as to stormwater management relating to green infrastructure.

T. The Conservation Advisory Council may act as an Interested Agency, representative of the City's environmental concerns, by commenting on actions outside of the City, that may impact the City's drinking water resources, that are subject to SEQRA review.

U. The Conservation Advisory Council shall advise the City Manager, the City Council and the Recreation Department with respect to the maintenance of all parks, playgrounds, recreation fields, swimming pools and other recreational facilities.

V. The Conservation Advisory Council shall keep accurate records of its meeting and actions and shall file an annual report with the City Council on or before the thirty-first day of December of

each and every year. Once approved by the City Council, the annual report shall be forwarded to the state commissioner of environmental conservation[C2].

Section 159-5: Waterfront Consistency Review Law

Section 159-5.1 Title.

This section will be known as "Section 159-5 of the Code of Ordinances" and shall be entitled "The City of Newburgh Waterfront Consistency Review Law."

Section 159-5.2 Authority and purpose.

A. This section is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).

B. The purpose of this section is to provide a framework for agencies of the City of Newburgh to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to assure that such actions and direct actions are consistent with the said policies and purposes.

C. It is the intention of the City of Newburgh that the preservation, enhancement, and utilization of the natural and man-made resources of the unique coastal area of the City take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this section is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of living estuarine resources and wildlife; diminution of open space areas or public accesses to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

D. The substantive provisions of this section shall only apply while there is in existence a City Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

Section 159-5.3 Review of actions.

A. Whenever a proposed action is located in the City's waterfront area, an agency shall, prior to approving, funding, or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Subsection G herein. When multiple agencies are reviewing the same proposed action in the City's waterfront area, the Planning Board shall be designated to perform the coastal consistency determination. In the case that the Planning Board

is not a reviewing agency, the Zoning Board of Appeals shall be designated to make a coastal consistency determination.

B. Whenever an agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action to be located in the waterfront area, the applicant, or, in the case of a direct action, the agency, shall prepare a coastal assessment form (CAF) to assist in the consistency review of the proposed action.

C. If the proposed action, located in the City's waterfront area, is determined to have a positive declaration of significance after SEQRA review, the agency responsible for the LWRP consistency determination shall seek an advisory consistency recommendation from the Conservation Advisory Council. In such case the agency shall forward applications promptly, and include sufficient additional information, such as the CAF, as is necessary for the Conservation Advisory Council to make an advisory recommendation of coastal consistency. The agency referring the application, prior to making its determination, shall consider the recommendation of the Conservation Advisory Council with reference to the consistency of the proposed action. In the event that the Conservation Advisory Council recommendation is not forthcoming within 30 days following referral of the application, the agency responsible for the LWRP consistency determination shall make its decision without the benefit of the Conservation Advisory Council recommendation..

D. After referral from an agency, the Conservation Advisory Council shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Subsection G herein. The Conservation Advisory Council may request an applicant submit all completed applications, CAFs and any other information deemed to be necessary to its consistency recommendations.

E. Recommendation.

(1) The Conservation Advisory Council shall render its written recommendation to the agency within 30 days following referral of the CAF from the agency, unless extended by mutual agreement of the Conservation Advisory Council and the applicant or, in the case of direct action, the agency. The recommendation shall indicate whether, in the opinion of the Conservation Advisory Council, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate, in writing, the basis for its opinion.

(2) The Conservation Advisory Council shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

(3) In the event that the Conservation Advisory Council recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Conservation Advisory Council recommendation.

F. The agency shall make the determination of consistency based on the CAF, the Conservation Advisory Council recommendation, when applicable, and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within 30 days following receipt of any additional required information required from the applicant and the Coastal Advisory Council's recommendation. The agency shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with this section.

G. Actions to be undertaken within the coastal waterfront area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the City of Newburgh LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy:

- (1) To restore and revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D and 1E).
- (2) To retain and promote commercial and recreational water-dependent uses (Policy 2).
- (3) To strengthen economic base of smaller harbor areas by encouraging traditional uses and activities. (Policies 4 and 4A).
- (4) To ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
- (5) To streamline development permit procedures (Policy 6).
- (6) To protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 8 and 8A).
- (7) To maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (Policies 9, 9A and 10).
- (8) To minimize flooding and erosion hazards through nonstructural means, carefully selected long-term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 16, 17 and 28).

(9) To safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policies 18 and 18A).

(10) To maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 19A, 20, 20A, 21, 21A, 21B, 22 and 22A).

(11) To protect and restore historic and archeological resources (Policies 23 and 23A).

(12) To protect and upgrade scenic resources (Policy 25).

(13) To site and construct energy facilities in a manner in which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 27, 29 and 40).

(14) To prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28).

(15) To protect surface water and groundwaters from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 33, 34, 35, 36, 36A, 37 and 38).

(16) To perform dredging and dredge spoil in a manner protective of natural resources (Policies 15 and 35).

(17) To handle and dispose of solid and hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (Policies 39 and 39A).

(18) To protect air quality (Policies 41, 42 and 43).

(19) To protect freshwater wetlands (Policy 44).

H. Inconsistency; findings.

(1) If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the agency makes a written finding with respect to the proposed action that:

(a) No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;

(b) The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;

(c) The action will advance one or more of the other LWRP policy standards and conditions; and

(d) The action will result in an overriding City, regional or statewide public benefit.

(2) Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

I. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Conservation Advisory Council. Such files shall be made available for public inspection upon request.

Section 159-5.4 Enforcement.

The City Building Inspector shall be responsible for enforcing this Section. No work or activity on a project in the waterfront area which is subject to review under this section shall be commenced or undertaken until the Building Inspector has been presented with a written determination from an agency that the action is consistent with the City's LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this section or any conditions imposed hereunder, the Building Inspector shall issue a stop-work order, and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect.

Section 159-5.5. Penalties for offenses.

A. A person or entity who violates any of the provisions of or who fails to comply with any conditions imposed by this section shall have committed a violation, punishable by a fine ~~not exceeding of~~ \$500 for a conviction of a first offense and punishable by a fine of \$1,000 for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.

B. The Corporation Counsel is authorized and directed to institute any and all actions and proceedings necessary to enforce this section. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

Section 159-6: Tree Protection

Section 159-6.1. Planting of trees.

No person shall plant any tree, shrub or other vegetation within the limits of any public street, park or public area without first obtaining a permit from the Superintendent of Public Works and complying with the following requirements: such permit shall be granted ~~only~~ upon the determination of the Superintendent of Public Works, after consulting with the Police Department and the Conservation Advisory Council, that such a planting will not create a traffic hazard and will not interfere with the use of such a street, park, or public area by the public, ~~and~~ that such planting will enhance the beauty and appearance of the street, park or public area and the surrounding area, and that such planting meets the goals and objectives of the City with regard to green infrastructure and urban forestry objectives. The Conservation Advisory Council may also consult with any other City department which may provide information relating to the planting of the tree.

(1) Trees planted within the limits of any public street, park or public area shall be of the species and quality approved by the Conservation Advisory Council and shall be planted at least 30 feet apart unless otherwise authorized by the Superintendent in consultation with the Conservation Advisory Council and Arborist. Each tree planted shall measure not less than 2-1/2 inches nursery caliper.

(2) Should any tree, shrub or plant planted within the limits of any public street, park or public area, in the opinion of the Superintendent of Public Works, after consultation with the Police Department, the Arborist and the Conservation Advisory Council, at any time constitute a traffic hazard, interfere with the use of such street, park or public area by the public or detract from the beauty and appearance of the street, park or public area or the surrounding area, such tree, shrub or plant will be pruned or removed as necessary.

Section 159-6.2. Authority of Superintendent of Public Works.

The general care, pruning and maintenance of all trees and shrubs planted within the limits of any public street or public place shall be vested in the Superintendent of Public Works.

Section 159-6.3. Permit for treating public trees.

No shade or ornamental tree or shrub in any public street, park or public area in the City shall be cut, pruned, broken, climbed, injured, sprayed, cabled, fertilized, treated, damaged, destroyed or removed, nor shall the roots, stems, branches or leaves of any such tree or shrub be cut, broken or

otherwise disturbed until or unless a permit therefor has been approved by the Superintendent of Public Works. Such a permit is not necessary for the usual periodical removal of small branches to allow the free passage of wires, but any such work will be subject to the inspection of the Superintendent of Public Works and, where such work is not up to standard, any expense incurred by the City in repairing the same will be charged to the public utility responsible.

Section 159-6.4. Tampering with trees.

No person not duly authorized by the Superintendent of Public Works shall place any rope, sign, poster or other fixture on either a tree or guard thereof standing in the public street, park or public area or damage, misuse or remove any device placed to protect such tree or shrub.

Section 159-6.5. Injuries to public trees.

A. No person shall pour salt water or other injurious chemicals upon any public highway or place within the City in such a way as to injure any tree planted or growing thereon.

B. No horse or other animal shall be permitted to stand in any public street, park or public area within the City in such a manner or position that it may cut, deface or mutilate any tree or shrub standing thereon.

C. In the erection or repair of any building or structure, the owner thereof shall place such guards around all nearby trees standing in any public street, park or public area to effectually prevent injury thereto.

Section 159-6.6. Use of spurs, insulated wires and guy wires.

A. Any person, including public utilities, their agents, servants and employees, is prohibited from climbing trees with the aid of spurs.

B. Any wires of the public utilities passing among the branches of City trees shall be properly insulated so as to prevent damage to said trees.

C. No person shall, without the written permission of the Superintendent of Public Works, attach any electrical or other wire, insulators or any device for the holding of an electric or other wire to any tree growing or planted upon any public street, park or public area, nor shall the approved attachments be attached to the tree in such a manner as to girdle or restrict growth.

Section 159-6.7. Discontinuance of electric current during work on trees and shrubs.

Every person having any wire charged with electricity extending over a public street, park or public area within the City shall, upon written notice from the Superintendent of Public Works, temporarily remove such wire or discontinue the transmission of the electric current through the

same when necessary for the safety of workmen engaged upon the trees or shrubs growing on such public street, park or public area. The work of removing such wire or ceasing of the transmission of electricity through it shall be completed within 24 hours after the service of a written notice by said Superintendent making such request.

Section 159-6.8. Interference with work prohibited.

No person shall prevent, delay or interfere with the Superintendent of Public Works or any of his employees in the planting, pruning, spraying, removing or otherwise treating of any tree or shrub standing or growing in the public street, park or public area within the City or in the removal of stone, cement or other substance about the trunk of any such tree or shrub which, in the opinion of said Superintendent, tends to retard its growth.

Section 159-6.9. Prohibited planting of trees.

Property owners and other persons are prohibited from planting silver maples and allied species, ailanthus and poplars of any variety within a distance of 20 feet from any public street, sidewalk, park or public place.

Section 159-6.10. Permit for removal of trees.

A. No person shall remove a tree greater than eight inches in diameter, measured 54 inches from the base of said tree, in an historic district, without first having a tree removal permit approved by the Superintendent of Public Works.

B. The Superintendent of Public Works is authorized and empowered to obtain the assistance, when necessary, of the Arborist or other persons especially qualified by reason of training or experience in tree planting, preservation and landscaping.

Section 159-6.11. Removal of branches overhanging public areas.

Where privately owned trees encroach upon any public street, park or public area, the Superintendent of Public Works or the Building Inspector may serve, personally or by mail, upon the owner of such property, a written notice to trim the encroaching branches. If such owner fails to comply with such notice, the City may abate such condition and assess a lien against the property for the costs of such abatement, together with an administrative fee of 15%, pursuant to the procedures set forth in Chapter 226 of the City Code.

Section 159-6.12. Removal of dead trees.

Where any dead tree or trees located on private property adjacent to a public street, park or public area constitute a danger or are potentially dangerous to the traveling public, the Superintendent of

Public Works or Building Inspector may serve personally or by mail upon the owner of such property a written notice to remove the dead tree. If such owner fails to comply with such notice, the City may abate such condition and assess a lien against the property for the costs of such abatement, together with an administrative fee of 15% pursuant to the procedures set forth in Chapter 226 of the City Code.

Section 159-6.13. Protected trees.

A. A tree may be designated as protected by the Architectural Review Commission after after consultation with the CAC and a public hearing. Such designation may be made because of the tree's age, history, uniqueness or special beauty. Such designation may be made anywhere within the limits of the City. No protected tree designation may be made without written consent of the tree's owner.

B. Trees designated as protected may not be removed unless the Superintendent of Public Works, as advised by the Arborist, determines, because of their condition, they are a danger to persons or property or that they are diseased and cannot be saved.

Section 159-6.14. Penalties for offenses.

A. Whenever any tree or trees are removed, cut down, damaged or destroyed in violation of this chapter, the removal, cutting, damaging or destroying of each and every tree shall be construed as a separate and independent offense. Any person, firm or corporation violating any of the provisions of this chapter will be required to replace in kind each and every tree removed, cut down or destroyed. If the tree was so large and so mature that it cannot be replaced, the Superintendent of Public Works may require the planting of multiple trees. If multiple trees cannot be planted on the site of the violation, other available planting spaces on public property will be used to accommodate the balance of the penalty. No certificate of occupancy shall be issued for any new construction on property on which occurred any violation of this chapter unless and until the provisions of this subsection have been complied with.

B. In addition to any other penalty, any person, firm or corporation or the individual hired by such person, firm or corporation violating any provision of this chapter shall be subject to prosecution as a violation and, upon conviction, shall subject the violator to penalties prescribed by § 1-12 of the City Code of Ordinances or shall be subject to a civil penalty of \$500, collectable by the City in a civil action, and shall be subject by an action in a court of competent jurisdiction to compel compliance or to restrain by injunction, notwithstanding the fact that the above penalties are also provided for, sought or imposed for such violation.

C. In addition to the foregoing, any person, firm or corporation engaged in the business of tree removal or care who or which shall aid, assist or abet in the violation of this chapter may be denied the status of a permittee under this chapter for a reasonable period of time to ensure future

compliance, in the discretion of the Superintendent of Public Works, subject to appeal to the City Manager.

Section 159-6.15. Enforcement.

The Superintendent of Public Works and the Building Inspector, with the assistance of the police, shall enforce this Section.

Section 159-6.16. Board of Parks, Recreation and Conservation^[BM1A3].

Nothing in this section is intended to interfere with or supersede the jurisdiction of the Board of Parks, Recreation and Conservation authorized in the Section Charter C15.14-19.

Section 159-7 Severability

The provisions of this section are severable. If any provision of this section is found invalid, such finding shall not affect the validity of this section as a whole or any part of provision hereof other than the provision so found to be valid.

Section 159-8 Effective Date

This section shall take effect immediately upon its filing in the office of the Secretary of State.

RESOLUTION NO.: 131 -2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO ARMANDO CABALLERO
TO THE PREMISES KNOWN AS 202 BROADWAY
(SECTION 29, BLOCK 7, LOT 8)**

WHEREAS, on February 4, 1982, the City of Newburgh conveyed property located at 202 Broadway, being more accurately described on the official Tax Map of the City of Newburgh as Section 29, Block 7, Lot 8, to Armando Caballero; and

WHEREAS, the property owner, by his attorney, Stephen P. Duggan, III, Esq., has requested a release of the restrictive covenants contained in said deed; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim 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.: 132 - 2013

OF

JULY 15, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER ACCEPT
A GRANT FROM THE STATE OF NEW YORK DIVISION OF
CRIMINAL JUSTICE SERVICES WITH NO CITY MATCH FOR THE OPERATION
IMPACT X PROGRAM TO ENHANCE LAW ENFORCEMENT IN THE CITY OF
NEWBURGH TO ACHIEVE SUSTAINED, LONG-TERM CRIME REDUCTION
THROUGH CONTINUATION OF THE CRIME ANALYST POSITION AND THE FIELD
INTELLIGENCE OFFICER, FOCUSED ENFORCEMENT ON TARGETING OFFENDERS
WHO ARE KNOWN TO BE VIOLENT CRIMINALS, THE PURCHASE OF A LARGE
SCREEN TO BE USED FOR DIGITAL SIGNAGE WITH OTHER IMPACT PARTNERS
AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ANY
DOCUMENTS AND TAKE SUCH ACTIONS REQUIRED TO CARRY OUT SUCH
PROGRAM

WHEREAS, the City of Newburgh Operation Impact Partnership has been awarded a grant in an amount not to exceed \$324,550.00 under the Operation IMPACT X Program; and

WHEREAS, Operation IMPACT X is part of a comprehensive strategy to reduce crime in New York State by enhancing law enforcement by enabling local police agencies to better analyze crime patterns and data, expand the scope of the positions of Crime Analyst and Field Intelligence Officer, expand focused enforcement on targeting offenders who are known to be violent criminals; and

WHEREAS, the Program will enhance enforcement and prosecution efforts against crime in the City of Newburgh and no City matching funds are required;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he hereby is authorized to accept a grant award, from the New York State Division of Criminal Justice Services under the Operation IMPACT X Program, in an amount not to exceed \$324,550.00 with no City match required, to be used to carry out the program and implement the purposes set forth herein; and to execute all such further contracts and documentation, and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: 133 - 2013

OF

JULY 15, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO APPLY FOR, ACCEPT IF AWARDED AND
ENTER INTO AN INTER-MUNICIPAL AGREEMENT BETWEEN
THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH IN CONNECTION
WITH THE 2013 BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM

WHEREAS, the Justice Assistance Grant ("JAG") Program provides funds for various law enforcement agencies throughout the State of New York; and

WHEREAS, the City of Newburgh joined the County of Orange and other local law enforcement agencies in applying for the 2013 Byrne Memorial JAG, which provides funds for various important law enforcement functions as provided by the terms of the award including but not limited to street surveillance cameras, undercover vehicle availability, unmarked patrol vehicles, acquisition of an evidence management system, upgrade to the Live Scan fingerprinting system and related database compilation and access, technology and equipment, record-keeping, training and the enhancement of other important police functions; and

WHEREAS, the County has agreed to set aside \$35,000.00 from the 2013 Local JAG Award for the City of Newburgh to be used to enhance security in and around the City of Newburgh Police Department, which shall include but not be limited to a key scan system and a video surveillance system installed with interior and exterior cameras;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an inter-municipal agreement between the County of Orange and the City of Newburgh in connection with the 2013 Byrne Memorial JAG Program Award to receive funds through the County of Orange under the terms of the grant program and under the terms and conditions of the agreement, a copy of which is attached hereto, for various important law enforcement functions for the City of Newburgh and other local law enforcement agencies.

RESOLUTION NO.: 134-2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH
THE 105TH SECURITY FORCES SQUADRON, STEWART AIR NATIONAL GUARD
BASE, NEWBURGH, NEW YORK FOR NOTIFICATION, REPORTING AND
OTHER SUPPORTIVE SERVICES**

WHEREAS, the 105th Security Forces Squadron, Stewart Air Nation Guard Base, Newburgh, New York wishes to enter into a Memorandum of Agreement ("MOA") with the City of Newburgh Police Department to provide notification, reporting and other supportive services; and

WHEREAS, said MOA is annexed hereto and made part hereof and it is deemed to be in the best interests of the City of Newburgh to enter into a MOA for such purposes;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into a Memorandum of Agreement with the 105th Security Forces Squadron, Stewart Air Nation Guard Base, Newburgh, New York for notification, reporting and supportive services.

MEMORANDUM OF
UNDERSTANDING BETWEEN
105th SECURITY FORCES SQUADRON, STEWART
AIR NATIONAL GUARD BASE
AND
CITY OF NEWBURGH POLICE DEPARTMENT

1. PURPOSE: This Memorandum of Understanding outlines a framework of cooperation and mutually beneficial support activities between the City of Newburgh Police Department (CNPD) and the 105th Security Forces Squadron (105 SFS), Stewart Air National Guard Base, Newburgh, New York.

2. AUTHORITY:

- a. Department of Defense (DOD) Directive 5525.5, *Cooperation with Civilian Law Enforcement Officials*
- b. Air Force Policy Directive (AFPD) 10-8, *Air Force Support to Civil Authorities*
- c. Air Force Instruction (AFI) 10-801, *Assistance to Civilian Law Enforcement Agencies*
- d. AFI 25-201, *Support Agreement Procedures*
- e. 10 United States Code (U.S.C.), *Chapter 18, §§ 371-378, Military Cooperation with Civilian Law Enforcement Officials*
- f. 18 U.S.C., § 1385, *Use of Army and Air Force as Posse Comitatus*
- g. AFI 31-201, *Law Enforcement Procedures*
- h. AFI 40-301, *Family Advocacy*

3. RESPONSIBILITIES:

a. City of Newburgh PD will:

(1) Notify 105 SFS if a military member is arrested off base, the responding officer(s) will contact Security Forces Base Defense Operations Center (BDOC) at 845-536-2355 and note on the top of the incident/investigation report "Copy to the Stewart Air National Guard Base (SANGB), 105 SFS" and the designated records personnel will ensure the copy is forwarded.

(2) Notify 105 SFS if Local Police Department receives any information that implicates SANGB personnel or resources in any criminal plan, drug activity, or indicates a threat to SANGB (e.g., terrorist plot).

(3) Notify 105 SFS of any commercial establishments in their jurisdiction that are off-limits locations and are known to be involved in the Trafficking of Persons.

(4) Facilitate pick-up of detained civilian(s) wanted by CNPD on SANGB once notified by 105 SFS.

(5) Notify 105 SFS of any commercial establishments in their jurisdiction that are off-limits locations and are known to be involved in the Trafficking of Persons.

b. Stewart ANGB 105 SFS will:

(1) BDOC will make notifications to the Security Forces Investigations section when CNPD contacts 105 SFS regarding incidents involving active duty service members/AGR and family members.

(2) Notify the CNPD when a civilian who is a person of interest in any ongoing investigations conducted by CNPD who is detained on Stewart ANGB grounds. CNPD will pick up detained civilians as soon as possible.

(3) The 105 SFS Reports & Analysis section will designate an individual to act as liaison to the CNPD and to receive copies of incident/investigation reports stemming from incidents occurring off of the installation and CPOs involving active duty service members, AGRs and their family members.

(4) Upon receipt of a copy of an incident/investigation report stemming from incidents occurring off of the installation or a CPO involving an active duty service member, AGR and his/her family member, the 105 SFS shall immediately notify the service member's Commander and First Sergeant.

(5) When the 105 SFS receives a copy of an MPO from a service member's commander, and if that service member is living off of the installation and within the jurisdiction of CNPD, the 105 SFS shall forward a copy of the MPO to CNPD with jurisdiction over the area in which the service member resides.

(6) The 105 SFS shall provide the CNPD with an area for police department officers or investigators to conduct interviews of active duty service members, AGRs and their family members who are involved in domestic violence incidents if needed.

(7) The 105 SFS will, when appropriate, conduct joint investigations and provide any assistance to the CNPD if incidents of domestic violence involve active duty service members, AGRs and their family members.

(8) The 105 SFS will assist the CNPD when investigating cases that occurred off base by providing information such as incident/investigation reports from incidents occurring under the jurisdiction of the 105 SFS in accordance with the provisions of the Privacy Act, 5 USC 552a.

(9) The 105 SFS shall provide the CNPD with basic information, in the form of quick reference cards or brochures, about installation resources available to domestic violence victims.

(10) As new personnel begin duty with the 105 SFS, their immediate supervisor will provide them with copies of this MOU and basic instructions on effectuating the provisions of this MOU.

4. FUNDING AND REIMBURSEMENT:

DOD Directive 5525.5 requires local civilian agencies to reimburse the Air Force for support provided to them. CNPD authorities may apply for a reimbursement waiver, in accordance with AFI 10-801, Para. 5.2, when the support provided is based on either of the two exceptions below:

- a. Would otherwise be provided in the normal course of military training or operations
- b. Results in a benefit to 105 SFS in that experience gained through cooperation with CNPD are substantially equivalent to experience gained from military law enforcement operations training.

5. AGREEMENT, REVIEW, and ADMINISTRATION: This Memorandum of Understanding shall be reviewed at least biannually to determine adequacy, and shall continue in force until terminated, as provided below. This MOU may be modified at any time by mutual written consent of the parties. This agreement may be terminated by either party, with submission of a 90-day notice. I have read the agreement and concur to the conditions presented.

For the 105th Security Forces Squadron; For the City of Newburgh Police Department;

BRUNO R. GAITA, MAJOR, NYANG
Commander

CHIEF MICHAEL D. FERRARA
City of Newburgh Police Department

This document expires two years from date signed.

RESOLUTION NO.: 135 -2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO EXECUTE VENDOR SERVICE AGREEMENTS WITH
VARIOUS SERVICE PROVIDERS AT A COST NOT TO EXCEED \$8,000.00
IN CONNECTION WITH THE CLOSEOUT OF THE
TWENTY FIRST CENTURY GRANT PROGRAM**

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

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

WHEREAS, the five (5) year grant period is ending, it is necessary and appropriate to enter into vendor service agreements to close out the Twenty First Century Grant Program with various service providers for the period beginning July 1, 2013 and ending on September 30, 2013 for the following amounts:

MTD Consultants	\$ 4,000.00
Eric Buxton	\$ 4,000.00

WHEREAS, the Council has reviewed the attached Agreements and has determined that it is in the best interest of the City of Newburgh and its residents expend such funds to close out said grant program;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he is hereby authorized to execute Vendor Service Agreements with the service providers referenced herein above at a cost not to exceed \$8,000.00 in connection with the closeout of the Twenty First Century Grant Program.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2013, by and between the CITY OF NEWBURGH, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and MTD Consultants, a firm with principal offices at 29 Chestnut Avenue, Middletown, NY 10940, hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

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

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$4,000.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

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

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

ARTICLE 13. INDEMNIFICATION

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

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

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

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

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

ARTICLE 16. TERMINATION

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

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

- A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and
- B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

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

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

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

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

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

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

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
JAMES SLAUGHTER,
CITY MANAGER

BY: _____
MADELINE TORRES-DIAZ
MTD CONSULTANT

DATE: _____

DATE: _____

SCHEDULE A
SCOPE OF SERVICES

Scope of Work:

Closeout the 21st Century CLC program for the City of Newburgh effective July 1 -
September 30, 2013.

SCHEDULE B

FEES AND EXPENSES

Contract Duration: July 1 2013- September 30, 2013

Contract Amount: \$4,000.00

Approved as to form:

MICHELLE KELSON
Corporation Counsel

KATHERINE NIVINS
Acting City Comptroller

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2013, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **Eric Buxton**, a firm with principal offices at PO Box 1931, Newburgh, NY 12550, hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

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

ARTICLE 3. COMPENSATION

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

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

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

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

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

ARTICLE 13. INDEMNIFICATION

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

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

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

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

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

ARTICLE 16. TERMINATION

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

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

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

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

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

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

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

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

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

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

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
JAMES SLAUGHTER,
CITY MANAGER

BY: _____
ERIC BUXTON

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

Scope of Work:

Closeout the 21st Century CLC program for the City of Newburgh effective July 1 -
September 30, 2013.

SCHEDULE B

FEES AND EXPENSES

Contract Duration: July 1 2013- September 30, 2013

Contract Amount: \$4,000.00

Approved as to form:

MICHELLE KELSON
Corporation Counsel

KATHERINE NIVINS
Acting City Comptroller

RESOLUTION NO.: 136 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH PITNEY BOWES
FOR AN AMOUNT NOT TO EXCEED \$22,380.00
FOR THE LEASE OF A NEW POSTAGE MACHINE FOR CITY HALL**

WHEREAS, the City of Newburgh has an existing lease with Pitney Bowes for the postage machine in City Hall; and

WHEREAS, a machine is available at a competitive price from Pitney Bowes; pursuant to the terms of a contract attached hereto; and

WHEREAS, entering into a new lease will yield a total savings of \$6,000.00; and

WHEREAS, this Council has reviewed such agreement and finds that the execution of such agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an agreement with Pitney Bowes, in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by Counsel, to lease a new postage machine for City Hall.

TERM RENTAL TERMS AND CONDITIONS

This is a term rental agreement with Pitney Bowes Global Financial Services LLC (PBGFS), Pitney Bowes' financing company. PBGFS provides financing options to our customers. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI) as stated in the Pitney Bowes Terms. Due to federal regulations, only PBI can own an IntelliLink® Control Center or Meter. Therefore, those items are rented to you, rather than leased or sold.

L1. DEFINITIONS

L1.1 All capitalized terms that are not defined in this document are defined in the "Definitions" section of the Pitney Bowes Terms.

L2. AGREEMENT

- L2.1 You will make each Monthly Payment by the due date shown on our invoice.
- L2.2 **You may not cancel this Agreement for any reason except as expressly set forth in Section L10 below. All payment obligations are unconditional.**
- L2.3 Our remedies for your failure to pay on time or other defaults are set forth in the "Default and Remedies" section of the Pitney Bowes Terms.
- L2.4 You authorize us to file a Uniform Commercial Code financing statement naming you as debtor/lessee with respect to the Equipment.

L3. PAYMENT TERMS AND OBLIGATIONS

- L3.1 We will invoice you in arrears each month for all payments on the Order (each, a "Monthly Payment"), except as provided in any SOW attached to this Agreement.
- L3.2 Your Monthly Payment may include a one-time origination fee, amounts carried over from a previous unexpired lease, and other costs.
- L3.3 If you request, your IntelliLink Control Center/Meter Rental fees, Service Level Agreement fees, and Soft-Guard® payments ("PBI Payments") will be included with your Monthly Payment and begin with the start of the Term. Your Monthly Payment will increase if your PBI Payments increase.
- L3.4 Your obligations, including your obligation to pay the Monthly Payments due in any fiscal year during the term of this Agreement, shall constitute a current expense for such fiscal year and shall not constitute indebtedness within the meaning of the constitution and laws of the state in which you are located. Nothing herein shall constitute a pledge by you of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for your benefit for this Agreement) to the payment of any Total Payment due under this Agreement.

L4. EQUIPMENT OWNERSHIP

L4.1 PBI owns any IntelliLink Control Center or Meter. Title to the Equipment shall pass to you upon installation. However, you and we agree that title shall automatically revert to us in the event of default, or termination due to your non-appropriation under Section L10.

L5. TERM

L5.1 This Agreement shall commence on the date of delivery and shall continue until the earlier of (i) termination at our option upon the occurrence of an event of default, or (ii) the occurrence of an event of a non-appropriation under Section L10, or (iii) the expiration of the Term and your payment of all Monthly Payments and other sums due and your fulfillment of all other obligations under this Agreement.

L6. SURRENDER OF EQUIPMENT

L6.1 If you default, or terminate this Agreement by non-appropriation under Section L10, you, at your expense, shall return all Equipment by delivering it to us in the same condition as when delivered to you, reasonable wear and tear excepted, to such place or on board such carrier, packed for shipping, as we may specify. Until the Equipment is returned as required above, all terms of this Agreement remain in effect including, without limitation, your obligations to make payments relating to your continued use of the Equipment and to insure the Equipment.

L7. WARRANTY AND LIMITATION OF LIABILITY

- L7.1 WE (PBGFS) MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT.
- L7.2 PBI provides you with (and we assign to you our rights in) the limited warranty in the Pitney Bowes Terms.
- L7.3 WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

L8. EQUIPMENT OBLIGATIONS

- L8.1 Condition and Repairs. You will keep the Equipment free from liens and encumbrances and in good repair, condition, and working order.
- L8.2 Inspection. We may inspect the Equipment and any related maintenance records.
- L8.3 Location. You may not move the Equipment from the location specified on the Order without our prior written consent.

L9. RISK OF LOSS

- L9.1 You bear the entire risk of loss to the Equipment from the date of shipment by PBI until the end of the Term (including any extensions), regardless of cause, ordinary wear and tear excepted ("Loss").
- L9.2 No Loss will relieve you of any of your obligations under this Agreement. You must immediately notify us in writing of the occurrence of any Loss.
- L9.3 You will keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement with an insurer of your choice, provided that it is reasonably satisfactory to us ("Insurance"). **YOU MUST CALL US AT 1-800-732-7222 AND PROVIDE US WITH EVIDENCE OF INSURANCE.**

L10. NON-APPROPRIATION

L10.1 You warrant that you have funds available to pay all payments until the end of your current fiscal period, and shall use your best efforts to obtain funds to pay all payments in each subsequent fiscal period through the end of the Term. If your appropriation request to your legislative body, or funding authority ("Governing Body") for funds to pay the payments is denied, you may terminate this Agreement on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation reasonably satisfactory to us evidencing the Governing Body's denial of an appropriation sufficient to continue this Agreement for the next succeeding fiscal period, and (ii) satisfaction of all charges and obligations under this Agreement incurred through the end of the fiscal period for which funds have been appropriated, including the return of the Equipment at your expense.

L11. REPRESENTATIONS

L11.1 You hereby represent and warrant that (a) you are a state or political subdivision thereof within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"); and (b) you have the power and authority under applicable law to enter into this Agreement and you have been duly authorized to execute and deliver this Agreement and carry out your obligations hereunder. You acknowledge that a portion of each Monthly Payment you shall pay includes interest and that this Agreement is entered into based on the assumption that the interest portion of each Monthly Payment is not includible in gross income of the owner thereof for Federal income tax purposes under Section 103(a) of the Code. You shall, at all times, do and perform all acts and things necessary and within your control in order to assure that such interest component shall be so excluded. If any interest is determined not to be excludible from gross income, your Monthly Payment shall be adjusted in an amount sufficient to maintain our original after tax yield utilizing our consolidated marginal tax rate, which adjusted Monthly Payments you agree to pay as provided in this Agreement, subject to Section L10. The rate at which the interest portion of Monthly Payments is calculated is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If such interest portion exceeds such maximum, then at our option, if permitted by law, the interest portion will be reduced to the legally permitted maximum amount of interest, and any excess will be used to reduce the principal amount of your obligation or be refunded to you. You shall not do (or cause to be done) any act which will cause, or by omission of any act allow, this Agreement to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or a "private activity bond" within the meaning of Section 141(a) of the Code. At the time of your execution of this Agreement, you shall provide us with a properly prepared and executed copy of the appropriate US Treasury Form 8038-G or 8038-GC and you appoint us as your agent for the purpose of maintaining a registration system as required by Section 149(a) of the Code. This Section shall survive the termination of this Agreement.

L12. MISCELLANEOUS

- L12.1 If more than one customer is named in this Agreement, liability is joint and several.
- L12.2 **YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS AGREEMENT WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD.**
- L12.3 We may sell, assign, or transfer all or any part of this Agreement or the Equipment. Any sale, assignment, or transfer will not affect your rights or obligations under this Agreement.

RESOLUTION NO.: 137 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH SHAMROCK SHOWS, INC.
FOR AMUSEMENT RIDES, ATTRACTIONS AND CONCESSIONS AT
THE CITY OF NEWBURGH INTERNATIONAL FESTIVAL**

WHEREAS, the City of Newburgh will hold its annual International Festival on Friday, August 30, 2013 through Monday, September 2, 2013, dates inclusive;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an agreement, a copy of which is annexed hereto, and in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with Shamrock Shows, Inc. for services in connection with the City of Newburgh International Festival.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of August, 2011, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **SHAMROCK SHOWS, INC.**, a firm with principal offices at 338 Willow Tree Road, Milton, New York 12547, hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning August 30, 2013, and ending September 2, 2013.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule A, and prepared in such

form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$0.00 ZERO Dollars has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation,

partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

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

ARTICLE 7. FAIR PRACTICES

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

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

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

indirectly, to any other bidder, proposer or to any competitor; and

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

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

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance

covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Except for Workers' Compensation and professional liability, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
Worker's Compensation	Statutory
Employer's liability or similar insurance	\$1,000,000 each occurrence
Automobile liability	\$1,000,000 aggregate
Bodily Injury	\$2,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Comprehensive General Liability, including Broad form contractual Liability, bodily injury and property damage	\$1,000,000 aggregate \$2,000,000 each occurrence
Professional liability (If commercially available for your profession)	\$1,000,000 aggregate \$2,000,000 each claim

VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 16. TERMINATION

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

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon

such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from

the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

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

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

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

ARTICLE 24: CLOSE OUT & CLEAN UP

The parties agree that Shamrock (VENDOR) shall make its best effort to remove all property and equipment from the site no later than the end of the day, September 4, 2013. However, in the event of unforeseen delays or other circumstances beyond the control of the parties, Shamrock shall have until September 5, 2013 to remove all such property and equipment from the site.

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

THE CITY OF NEWBURGH

SHAKROCK SHOWS, INC.

BY: _____
JAMES A. SLAUGHTER,
INTERIM CITY MANAGER

BY: _____
COLIN O'KEEFE

DATE: _____

DATE: _____

APPROVED AS TO FORM

MICHELLE KELSON
Corporation Counsel

City Comptroller

SCHEDULE A
SCOPE OF SERVICES



336 Willow Tree Rd. • Milton, NY 12547
Phone: 845-795-1263 • Fax: 845-795-2345

June 1, 2013

Re: 25th annual international waterfront festival

August 30th – September 2nd

To the City of Newburgh:

Shamrock shows and amusements Inc. is submitting a proposal to the City of Newburgh for this year's 25th annual international waterfront festival.

The fees payable and services provided to the city by shamrock shows and amusements inc, shall be as followed:

1. 40% of the total gross receipts for all rides.
2. 14-16 adult & children's rides, space permitting.
3. \$ 150.00 per game concession.
4. 7-10 games, space permitting.
5. 100 advertising posters.
6. Tickets will be supplied by shamrock shows and amusements inc.
7. Ticket sellers will be furnished by shamrock shows and amusements inc. beginning and ending numbers will be tallied daily.
8. Shamrock shows and amusements will provide a certificate of insurance naming the city of Newburgh additionally insured.
9. Shamrock shows will begin set up on wed. August 28th at 12 p.m. and have all rides out by 12 p.m. wed. Sept. 4th
10. Shamrock shows will provide amusement rides and concessions at no cost to the city of Newburgh
11. Shamrock shows will provide their own electricity.
12. Shamrock shows will be responsible for maintenance & cleanliness of the immediate amusement area

Respectfully,

Colin O'Keeffe