



CITY OF NEWBURGH  
COUNCIL MEETING AGENDA  
*SESION GENERAL DEL CONSEJAL*  
September 22, 2014  
7:00 p.m.

Mayor: /Alcaldesa

1. Prayer/ *Oración*
2. Pledge of Allegiance/ *Juramento a la alianza*

City Clerk: / Secretaria de la ciudad:

3. Roll Call/ *Lista de asistencia*

Communications: / Comunicaciones:

4. Approval of the minutes of the meeting of September 8, 2014  
*Aprobación del acta de la reunión del 22 septiembre del 2014*

Presentations: / Presentaciones:

5. Certificates of Recognition will be presented to City Planner, Ian MacDougall for his time of service with the City of Newburgh at Monday's City Council Meeting.

*Un Certificado de Reconocimiento sera presentado al urbanista, Ian MacDougall por en su servicio a la ciudad de Newburgh en la reunión del Consejo el lunes.*

Comptroller's Report: / Reporte de el Contralor:

6. Monthly Financial Summary/ *Resumen Mensual Financiero*

Comments from the public regarding the agenda:

*Comentarios del público con respecto a la agenda:*

Comments from the Council regarding the agenda:

*Comentarios del Consejo con respecto a la agenda*

City Manager's Report: / Informe del administrador de la ciudad:

7. Resolution No. 233- 2014:

Authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) in the amount of \$8,740.00 for asbestos monitoring services in connection with the emergency abatement of the building located at 21 Johnston Street (Section 30, Block 2, Lot 19) and 23 Johnston Street (Section 30, Block 2, Lot 18)

*Autorizando el Erente de la ciudad a aceptar una propuesta y ejecutar un Acuerdo con Soluciones de la calidad Ambiental Technologies, Inc. (QUES & T) por la cantidad de \$8,740.00 para los servicios del estudio de eliminacion de asbestos de emergencia del edificio ubicado en Calle 21 Johnston (sección 30, bloque 2, lote 19) y 23 Johnston Street (sección 30, bloque 2 Lote 18)*

8. Resolution No. 234- 2014:

Authorizing a contract with PAR Environmental Corporation for emergency abatement in the amount of \$137,500.00 in connection with the collapse of the buildings located at 21 Johnston Street (Section 30, Block 2, Lot 19) and 23 Johnston Street (Section 30, Block 2, Lot 18)

*Autorizando un contrato con la corporación ambiental PAR para la eliminacion de asbestos de emergencia en la cantidad de \$137,500.00 en relación con el derrumbiamiento de los edificios situado en 21 Johnston Street (sección 30, bloque 2, lote 19) y 23 Johnston Street (sección 30, bloque 2, Lote 18)*

9. Resolution No. 235-2014:

Amending Resolution No: 247-2013, the 2014 budget for the City of Newburgh, New York to transfer \$172,561.00 from special items – contingency to property maintenance – other services to provide necessary funding for emergency abatement work at 21 Johnston Street (Section 30, Block 2, Lot 19) and 23 Johnston Street (Section 30, Block 2, Lot 18)

*Modificación de resolución No: 247-2013, el presupuesto de 2014 para la ciudad de Newburgh, Nueva York para transferir \$172,561.00 de especiales – contingencia para mantenimiento de bienes raices inmuebles – otros servicios para proveer los fondos necesarios para la eliminacionde emergencia de asbestos en 21 Johnston Street (sección 30, bloque 2, lote 19) y 23 Johnston Street (sección 30, bloque 2, Lote 18)*

10. Resolution No. 236-2014:

Authorizing the City Manager to enter into an agreement with Publicstuff, Inc. for the purpose of acquiring cloud based software for the citizen request management for a one-year subscription at a cost of \$8,300.00

*Autorizando el Gerente de la ciudad para entrar en un acuerdo con Publicstuff, Inc. con el fin de adquirir un programa basado en la para para manejar la solicitud ciudadana para una suscripción de un año al costo de \$8,300.00.*

11. Resolution No. 237-2014:

Authorizing approval of a general liability insurance policy for city-owned tax foreclosed properties for the period of September 27, 2014 to September 27, 2015.

*Autorizando la aprobación de una póliza de seguro de responsabilidad civil general impuesto sobre propiedad de la ciudad embargadas propiedades para el período del 27 de septiembre de 2014 a 27 de septiembre de 2015.*

12. Resolution No. 238-2014:

Authorizing the City Manager to enter into an agreement with Colby Kennels to provide for boarding services for dogs in the custody of the City of Newburgh.

*Autorizando Gerente el de la ciudad a entrar en un acuerdo con perreras Colby para proveer para servicios de custodia para perros bajo el manejo de la ciudad de Newburgh*

13. Resolution No. 239-2014

Authorizing the addition of one additional Administrative Assistant position on a temporary basis until October 30, 2014 to provide for front office support in the Executive Offices.

*Autorizando la adición de un puesto adicional para un asistente administrativo por un tiempo temparano 30 de octubre de 2014 para proveer apoyo en la recepcion de las oficinas ejecutivas.*

14. Resolution No. 240-2014

Authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to C L Dexter Properties, LLC to the premises known as 255 Powell Avenue (Section 7, Block 7, Lot 18)

*Autorizando la ejecución de un lanzamiento de pactos restrictivos el derecho de regreso de una acción emitida de a C L Dexter propiedades, LLC las propredade conocidos como 255 Powell Avenue (sección 7, bloque 7, Lote 18)*

15. Resolution No. 241-2014:

Authorizing the City Manager to accept a proposal and execute a contract with Mabey Inc. for rental of a temporary bridge during the repair of the Route 32/Metal Arch Culvert Bridge also known as the Lake Street Bridge at a cost of \$50,320.00 and amending Resolution No: 247-2013, the 2014 budget for the City of Newburgh, New York to transfer \$81,000 from special item s- contingency to engineering – consultant services to fund the Temporary Bridge Project.

*Autorizando al administrador de la ciudad para aceptar una propuesta y ejecutar un contrato con Mabey Inc. para el alquiler de un puente temporal durante la reparación de la ruta 32/Metal Arco alcantarilla puente también conocido como el puente de la calle lago a un costo de \$50.320,00 y modificación de resolución No: 247-2013, el presupuesto de 2014 para la ciudad de Newburgh, Nueva York para transferir \$81.000 del artículo especial s-contingencia ingeniería – servicios de consultoría para financiar el proyecto del puente temporal.*

16. Resolution No. 242-2014

Scheduling a public hearing for October 14, 2014 to hear public comment concerning a local law adding chapter 276 entitled “Tobacco” to the code of ordinances of the City of Newburgh.

*Programación de una audiencia pública para el 14 de octubre de 2014 a oír comentarios del público respecto a una ley local agregando capítulo 276 titulado "Tabaco" al código de ordenanzas de la ciudad de Newburgh.*

17. Resolution No. 243-2014

Authorizing the City Manager to apply for and accept if awarded funding form the New York State Department of Environmental Conservation Environmental Restoration Program in the amount of \$114,000.00 for the remediation of City owned property located at 350-352 Liberty Street and to execute a New State Assistance Contract.

*Autorizando al administrador de la ciudad para solicitar y aceptar si otorgó financiamientos del Nueva York Estado Departamento de conservación ambiental restauración programa ambiental por un monto de \$114,000.00 para la remediación de ciudad propiedad ubicada en la calle libertad 350-352 y ejecutar un nuevo contrato de asistencia estatal.*

18. Resolution No. 244-2014

Authorizing the City Manager to accept a proposal submitted by Leanfirm and execute an agreement for consulting services in connection with the business process analysis and assessment project at a total project cost of \$60,000.00

*Autorizando al administrador de la ciudad para aceptar una propuesta presentada por Leanfirm y ejecutar un acuerdo de consultoría en relación con el proyecto empresarial proceso análisis y evaluación a un costo total del proyecto de \$60.000,00*

19. Resolution No. 245-2014:

Authorizing the City Manager to enter into an agreement with Shamrock Shows, Inc. for Amusement Rides, attractions and concessions at the City of Newburgh Fall Festival.

*Autorizando el administrador de la ciudad a entrar en un acuerdo con trébol Shows, Inc. para paseos de diversión, atracciones y concesiones en la ciudad de Newburgh Fall Festival.*

20. Resolution No. 246-2014:

Authorizing the City Manager to reject the bids received in connection with Provan Ford Site Cap.

*Autorizando el Administrador de la ciudad para rechazar las ofertas recibidas en relación con Ford Provan Sitio Cap.*

Old Business: / Asuntos Pendientes:

New Business: / Nuevos Negocios:

Public Comments Regarding General Matters of City Business: / Comentarios del público sobre asuntos generales de la Ciudad:

Further Comments from the Council: / Nuevas observaciones del Consejo:

Adjournment: / Aplazamiento:

RESOLUTION NO.: 233 - 2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH  
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)  
IN THE AMOUNT OF \$8,740.00 FOR ASBESTOS MONITORING SERVICES  
IN CONNECTION WITH THE EMERGENCY ABATEMENT OF THE BUILDINGS  
LOCATED AT 21 JOHNSTON STREET (SECTION 30, BLOCK 2, LOT 19)  
AND 23 JOHNSTON STREET (SECTION 30, BLOCK 2, LOT 18)**

**WHEREAS**, the City of Newburgh must undertake certain emergency abatement work as a result of the collapse of the buildings located at 21 Johnston Street and 23 Johnston Street, more accurately described as Section 30, Block 2, Lots 19 and 18, respectively, on the official Tax Map of the City of Newburgh; and

**WHEREAS**, the abatement work presumes the presence of asbestos containing material which must be removed in compliance with law, rule and regulation; and

**WHEREAS**, Quality Environmental Solutions & Technologies, Inc. (QUES&T) is a qualified environmental remediation consultant and has submitted a proposal for ensuring compliance with applicable laws, rules and regulations related to the abatement work including applying for appropriate variances or other permits from the New York State Department of Labor and supervision and site monitoring of the abatement work; and

**WHEREAS**, the collapse of the buildings was an unforeseen occurrence affecting the life, health and safety of the City residents constituting a public emergency within the meaning of the General Municipal Law and the City staff has obtained approval to follow the emergency procurement procedures as set forth in Section VI of the City of Newburgh Procurement Policy in obtaining the QUES&T proposal; and

**WHEREAS**, the cost for these services will be \$8,740.00 and funding shall be derived from A.1440.0455; and

**WHEREAS**, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for asbestos abatement services in the amount of \$8,740.00 in connection with the emergency abatement of the buildings located at 21 Johnston Street and 23 Johnston Street.

# QuES&T

Quality Environmental Solutions & Technologies, Inc.

September 15, 2014

Jason C. Morris  
City Engineer - City of Newburgh  
83 Broadway  
Newburgh, NY 12550

Via E-mail: [jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)

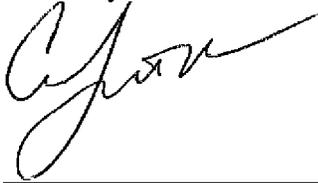
Re.: 21 Johnston Street – Demo with Asbestos in Place  
Request for Proposal – Variance Development/Submission  
& Abatement Monitoring Services

Dear Mr. Morris,

**Quality Environmental Solutions & Technologies, Inc. (QuES&T)** is pleased to submit the attached proposal to provide Variance Development/Submission and Abatement Monitoring Services for the above-referenced project(s).

Please feel free to contact us if we can be of any additional assistance to you. For additional information concerning any of our services, please contact us at (845) 298-6031. **QuES&T** looks forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,



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**Conor Lander**  
Project Manager, Technical Services  
NYS/AHERA Inspector  
Cert. 01-10306

**VARIANCE DEVELOPMENT/SUBMISSION  
& ASBESTOS ABATEMENT MONITORING SERVICES**  
for  
**CITY OF NEWBURGH**  
**83 Broadway**  
**Newburgh, NY 12550**  
at  
**21 Johnston Street**  
**Newburgh, NY 12550**

*QuES&T agrees to provide the following services:*

**1.) Petition for NYSDOL Site-Specific Variance**

- Meet onsite to identify areas impacted by potential demolition/renovation activities.
- Develop alternate work practices that will not expose the public or workers to elevated fiber levels.
- Develop a scope of work that will minimize the impact on the facility.
- Preparation and submittal of a Petition for Variance or Other Relief (DOSH-752) and supporting documentation to the NYSDOL regarding the proposed work scope.
- Act as the Petitioners Agent during the NYSDOL review process and incorporate any changes or additions requested by NYSDOL Engineering Services Unit during their review.
- Final determination regarding approved means and methods shall be as directed by NYSDOL Engineering Services Unit.

**2.) Asbestos Abatement Management and Monitoring**

**Item 1:** Supervision of Abatement Activities (Combined Project Monitor/Air Sampling Technician)

- Perform project monitoring, inspection and acceptance of the work.
- Provide coordination to ensure timely completion of the asbestos removal.
- Review construction phasing plans and assist in the coordination of the activities of the various contractors and building occupants to ensure compliance with applicable federal, state and municipal regulatory requirements and bid specifications.
- Complete work step lists and documentation packages for final closeout.

**Item 2:** Third Party Asbestos Air Monitoring

- **QuES&T** will provide collection and laboratory analysis of the required air samples, in conjunction with Item 1, on a cost per sample basis. To maintain compliance with the requirements of 56-4.3, analysis of the air samples shall be by "an independent laboratory conforming to the requirements of 12 NYCRR 56-4.2". The sampling frequency will be as specified in Title 12 NYCRR Rule 56; Subpart 56-4 and any NYS DOL Applicable Variance or Site Specific Variances utilized in the conduct of this project.

**VARIANCE DEVELOPMENT/SUBMISSION  
& ASBESTOS ABATEMENT MONITORING SERVICES**  
for  
**CITY OF NEWBURGH**  
**83 Broadway**  
**Newburgh, NY 12550**  
at  
**21 Johnston Street**  
**Newburgh, NY 12550**

**Abatement Management and Monitoring (Includes Item 1 and Item 2)**

The following is a cost estimate to perform Asbestos Abatement Monitoring for the project. These cost estimates are provided strictly for budgeting purposes. They assume particular work practices and grouping of contiguous work areas to minimize set-up and duration. Actual project costs may vary significantly based on factors such as abatement crew size, overtime work, division of work areas and duration of enclosures.

The assumptions utilized by **QuES&T** in developing these estimates were as follows:

- **PAR Environmental** will perform abatement within one (1) “Large” Exterior Work Area over, an estimated, eleven (11) eight (8) hour Weekday Shifts, excluding Weekends and Holidays.
- **QuES&T** will perform all abatement monitoring in compliance with Title 12 NYCRR Rule 56; Subpart 56-4 and any NYS DOL Applicable Variance or Site Specific Variances utilized in the conduct of this project.
- Turnaround time for “Background/Baseline”, “Work Area Prep”, and “Asbestos Handling” PCM Air Samples will be twenty-four (24) hours.
- Turnaround time for “Final Cleaning & Clearance” PCM Air Samples will be three (3) hours RUSH.
- **PAR Environmental** will provide GFI power for air monitoring adjacent to each work area.

**VARIANCE DEVELOPMENT/SUBMISSION  
& ASBESTOS ABATEMENT MONITORING SERVICES**  
for  
**CITY OF NEWBURGH**  
**83 Broadway**  
**Newburgh, NY 12550**  
at  
**21 Johnston Street**  
**Newburgh, NY 12550**

➤ **PETITION FOR NYSDOL SITE-SPECIFIC VARIANCE**

Development & Preparation of Site-Specific Variance Petition **\$ 1,800.00**

- Breakdown:

NYSDOL Variance Prep \$ 1,450.00  
NYSDOL Variance Filing Fees \$ 350.00

➤ **ASBESTOS ABATEMENT MANAGEMENT AND MONITORING SERVICES**

Project Manager Labor (1 PM, 5 Hours @ \$90/hour) \$ 450.00  
Project Monitor "Weekday" Labor (1 Tech, 11 Shifts @ \$400/shift) \$ 4,400.00  
24-hr. TAT "Back/Prep/Handling" PCM Air Sample Analysis (110 @ \$15/each) \$ 1,650.00  
3-hr. TAT "Clearance" PCM Air Sample Analysis (12 @ \$20/each) \$ 240.00  
Travel & Misc. Materials \$ 200.00  
**Estimated Total \$ 6,940.00**

1. Client shall be charged for actual samples analyzed and services rendered
2. Turnaround time begins when samples reach the laboratory and does not include holidays.
3. Additional services shall be billed at QuES&T 2014 Unit Rates (i.e. OT, labor, analysis, travel, etc.)

**ACCEPTANCE OF PROPOSAL #P14-4021**

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*To Execute This Agreement, Please Review, Sign, Date & Return to QuES&T.  
**Payment Terms: Payment Shall Be Net 15 Days; Following Delivery Of Final Report; Late Payments Shall Be Assessed a Penalty of 1.5% per Month.***

**City of Newburgh – Jason C. Morris:**

By \_\_\_\_\_  
Signature Print Name & Title Date

RESOLUTION NO.: 234 - 2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING A CONTRACT WITH  
PAR ENVIRONMENTAL CORPORATION FOR EMERGENCY ABATEMENT  
IN THE AMOUNT OF \$210,750.00 IN CONNECTION WITH THE COLLAPSE OF THE  
BUILDINGS LOCATED AT 21 JOHNSTON STREET (SECTION 30, BLOCK 2, LOT 19)  
AND 23 JOHNSTON STREET (SECTION 30, BLOCK 2, LOT 18)**

WHEREAS, the City of Newburgh must undertake certain emergency abatement work as a result of the collapse of the buildings located at 21 Johnston Street and 23 Johnston Street, more accurately described as Section 30, Block 2, Lots 19 and 18, respectively, on the official Tax Map of the City of Newburgh; and

WHEREAS, the collapse of the buildings was an unforeseen occurrence affecting the life, health and safety of the City residents constituting a public emergency within the meaning of the General Municipal Law and the City staff has obtained approval to follow the emergency procurement procedures as set forth in Section VI of the City of Newburgh Procurement Policy and obtained price quotes from three vendors qualified to perform the necessary abatement work; and

WHEREAS, PAR Environmental Corporation provided the lowest price for the necessary work in the amount of \$210,750.00 and funding for this work shall be derived from A.1365.0448 and CD1.8686.8049.448.2012; and

WHEREAS, this Council has determined that it is in the best interests of the City of Newburgh and the health and safety of its residents to enter into a contract for such abatement work;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he hereby is authorized to take necessary and appropriate action to enter into a contract for emergency abatement work with PAR Environmental Corporation in the amount of \$210,750.00 in connection with the collapse of the buildings located at 21 Johnston Street and 23 Johnston Street.

# PAR ENVIRONMENTAL CORPORATION

313 Spook Rock Road, Suffern, NY 10901 \* 845-369-7500 \* Fax 845-369-6682

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September 12, 2014

Mr. Jason C. Morris  
City Engineer  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

Re: Controlled Demolition with Asbestos in Place  
21 Johnston Street  
Newburgh, New York 12550

Dear Jason,

PAR Environmental Corporation is pleased to submit a proposal for the above referenced project site.

1. PAR Environmental Corporation will provide labor, materials, equipment, supervision and project management to remove all debris and building components associated with the building collapse with ACM in place at the above referenced site location as per the specifications dated September 11<sup>th</sup>, 2014 provided by QUEST and our on site walkthrough. PAR will also clean debris off adjacent building as per the specifications and on site walkthrough.
2. PAR will provide asbestos abatement general liability occurrence form insurance for this project (10 M G/L and 25 M Pollution).
3. All asbestos waste will be properly disposed of at an EPA approved landfill by a licensed asbestos hauler as required.
4. All work will be performed following New York State Industrial Code 56 demolition of building with asbestos in place and site-specific variance obtained by QUEST.
5. All existing foundation will remain and slabs will be cracked to allow for drainage as per walkthrough.
6. PAR will backfill with clean fill as requested (in 1' lifts).
7. PAR will provide generators for electrical needs as required.
8. All site security will be provided by others as required.
9. PAR will provide OSHA monitoring as required.
10. All third party air monitoring will be provided by others.
11. All plumbing needs will be provided by others as required (Hydrant use for dust control and one (1) ¾ inch cold water supply for decon facility as required).
11. At the end of this project, a detailed post job submittal package consisting of the following will be provided:
  - Insurance Certificate
  - Asbestos waste manifest(s), signed by the landfill operator
  - Workers medical information

Continued

City of Newburgh 21 Johnston Street, Newburgh, NY  
September 12, 2014 Page 2

12. PAR will honor prices for 90 Days from proposal date.
13. All work will be performed during normal working hours utilizing straight time prevailing wage labor as required.
14. PAR will proceed with this project upon issuance of a purchase order.
15. PAR will provide Fencing and Site Security as required.
16. All applicable sales taxes are excluded from this proposal and will be added upon invoicing unless a capital improvement certificate is issued.
17. TERMS: Net 10 Days

**TOTAL BASE PRICE: \$ 210,750.00**

**\*Quest will provide variance to allow operator without asbestos handler license inside the asbestos work area under the supervision of the on-site asbestos supervisor.**

If you have any questions or concerns about this proposal please do not hesitate to call me at (845) 369-7500.

Sincerely,



Benjamin Sanchez  
Director of Operations

**ASBESTOS ABATEMENT PROCEDURES  
CONTROLLED DEMOLITION WITH ASBESTOS IN PLACE**

**ESTIMATE OF ACM QUANTITIES**

\*\*\*\*\*  
EACH CONTRACTOR SHALL READ AND ACKNOWLEDGE THE FOLLOWING NOTICE. A SIGNED AND DATED COPY OF THIS ACKNOWLEDGMENT SHALL BE SUBMITTED WITH THE CONTRACTOR'S COMPLETED BID FORM FOR THIS PROJECT. FAILURE TO DO SO MAY, AT THE SOLE DISCRETION OF THE OWNER, RESULT IN THE PROPOSAL BEING CONSIDERED NON-RESPONSIVE AND RESULT IN DISQUALIFICATION OF THE CONTRACTOR'S PROPOSAL ON THIS PROJECT.  
\*\*\*\*\*

**NOTICE**

The linear and square footage listed is only approximate, and the Contractor is required to visit the buildings in order to take actual field measurements in each listed location. The Contractor shall base their proposal on actual quantities determined, by them, at the site walk through. Estimates provided in these specifications are for informational purposes only and shall not be considered a basis for Change Orders on this project.

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**Acknowledgment:** I have read and understood the above NOTICE regarding removal quantity estimates and understand that estimates provided in these specifications are for informational purposes only and shall not be considered a basis for Change Orders on this project. The Contractor's signatory represents to the Owner that he/she has the authority of the entity he/she represents to sign this agreement on its behalf.

Company Name: PAR ENVIRONMENTAL CORP.  
Type or Print

BY:  Director of Operations 9/12/14  
Signature Title Date

Print Name: BENJAMIN SANCHEZ

\*\*\*\*\*

**New York State - Department of Labor**

Division of Safety and Health  
License and Certificate Unit  
State Campus, Building 12  
Albany, NY 12240

**ASBESTOS HANDLING LICENSE**

PAR Environmental Corporation  
Unit A101  
313 Spook Rock Road  
  
Suffern, NY 10901

FILE NUMBER: 99-1039  
LICENSE NUMBER: 29698  
LICENSE CLASS: FULL  
DATE OF ISSUE: 11/15/2013  
EXPIRATION DATE: 11/30/2014

Duly Authorized Representative - Patrick B Mahoney

This license has been issued in accordance with applicable provisions of Article 30 of the Labor Law of New York State and of the New York State Codes, Rules and Regulations (12 NYCRR Part 56). It is subject to suspension or revocation for a (1) serious violation of state, federal or local laws with regard to the conduct of an asbestos project, or (2) demonstrated lack of responsibility in the conduct of any job involving asbestos or asbestos material.

This license is valid only for the contractor named above and this license or a photocopy must be prominently displayed at the asbestos project worksite. This license verifies that all persons employed by the licensee on an asbestos project in New York State have been issued an Asbestos Certificate, appropriate for the type of work they perform, by the New York State Department of Labor.



Eileen M. Franko, Acting Director  
For the Commissioner of Labor



# CERTIFICATE OF LIABILITY INSURANCE

PAREN-1 OP ID: 3PAT

DATE (MM/DD/YYYY)

11/08/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CLG Insurance 172 Main Street Nanuet, NY 10954 Edward F. Carpezz, CIC	Phone: 845-823-3434	CONTACT NAME:	
	Fax: 845-823-4332	PHONE (A/C No. Ext):	FAX (A/C No.):
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A : Starr Indemnity & Liability Co	38318
		INSURER B : Starr Surplus Lines Ins. Co	13604
		INSURER C : Federal Insurance Co.	20281
		INSURER D :	
		INSURER E :	
		INSURER F :	

INSURED  
Par Environmental Corporation  
Mr. Patrick Mahoney  
313 Spook Rock Road, Unit 101  
Suffern, NY 10901

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CLASS LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X	SISIEIL70120413	11/08/2013	11/08/2014	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Per occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 25,000
	<input checked="" type="checkbox"/> Contractual Liab.					PERSONAL & ADV INJURY \$ 2,000,000
A	<input checked="" type="checkbox"/> Professional E&O	X	SISIEIL70120413	11/08/2013	11/08/2014	GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					Emp Ben. \$ 1,000,000
						COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000
A	AUTOMOBILE LIABILITY	X	SISIPCA98278713	11/08/2013	11/08/2014	BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> ALL OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS					\$
A	UMBRELLA LIAB	X	SISIXNV71070813	11/08/2013	11/08/2014	EACH OCCURRENCE \$ 9,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB					AGGREGATE \$ 9,000,000
	<input type="checkbox"/> RETENTIONS \$					\$
	<input type="checkbox"/> DED					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A	0044727215	11/08/2013	11/08/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					E.L. EACH ACCIDENT \$ 1,000,000
	if yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	SISIEIL70120413		POLLUTION LIAB.	11/08/2013	11/08/2014	Occurrenc 2,000,000
B	SLSLXNV73029813		EXCESS POLL LIAB	11/08/2013	11/08/2014	Occurrenc 14,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

SAMPLE - PROOF OF COVERAGE

## CERTIFICATE HOLDER

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Edward F. Carpezz

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RESOLUTION NO.: 235 - 2014

OF

SEPTEMBER 22, 2014

A RESOLUTION AMENDING RESOLUTION NO: 247 - 2013,  
THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$172,561.00 FROM SPECIAL ITEMS - CONTINGENCY  
TO PROPERTY MAINTENANCE - OTHER SERVICES TO PROVIDE NECESSARY  
FUNDING FOR EMERGENCY ABATEMENT WORK AT  
21 JOHNSTON STREET (SECTION 30, BLOCK 2, LOT 19) AND  
23 JOHNSTON STREET (SECTION 30, BLOCK 2, LOT 18)

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 247-2013, the 2014 Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
A.1365	Property Management - Maintenance		
.0448	Other Services		\$172,561.00
A.1900	Special Items		
.1990	Contingency	\$172,561.00	
	<u>Total</u>	\$172,561.00	\$172,561.00

RESOLUTION NO. 236-2014

OF

SEPTEMBER 22, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH PUBLICSTUFF, INC.  
FOR THE PURPOSE OF ACQUIRING CLOUD BASED SOFTWARE  
FOR CITIZEN REQUEST MANAGEMENT FOR A ONE-YEAR SUBSCRIPTION  
AT A COST OF \$8,300.00

WHEREAS, PublicStuff, Inc. provides a workflow and request management suite which gives users the ability to report public issues in their communities, track the status of those issues, and interact with neighbors and public officials about what is important to them through a computer or mobile application; and

WHEREAS, the cost for a one year subscription will be \$8,300.00; and

WHEREAS, this Council has reviewed the attached agreement and has determined it to be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to enter into the annexed agreement, in substantially the same form as attached hereto with such other terms and conditions as may be required by the Corporation Counsel, with PublicStuff, Inc. for the purpose of acquiring cloud based software for citizen request management for a one year subscription at a cost of \$8,300.00.



Please complete the information highlighted in yellow below.

Date	8/25/14
------	---------

*Order form valid for 30 days*

## Pro Edition Order Schedule (OS) Confirmation

### General Information

Client Name	City of Newburgh, NY
Client Contact	Glenn Kurcon Information Systems Manager 83 Broadway Newburgh, NY 12550
Client Contact Email	gkurcon@cityofnewburgh-ny.gov

### Accounts Payable Information

Accounts payable contact will receive invoice via email. Please enter their information below:

AP Contact AP Address	
AP Contact Email	

### Agreement Term

Term Start	10/1/14
Term End	9/30/15

**PublicStuff, Inc.**

214 W 29th Street, Room 205, New York, NY 10001 | sales@publicstuff.com | phone: (347) 442-7227

## Description of Services

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PublicStuff, Inc. ("PublicStuff") will provide Client with access to PublicStuff's citizen engagement & workflow management suite (the "Services"), which includes the following:

- Custom branded smartphone applications
- Public-facing web portal
- Cloud-based CRM and administrative dashboard

Staff User Accounts	50 included
Mobile Application	City branded in-app store application for iOS & Android with Unlimited widgets. General Blackberry app.
Mapping Features	Google (standard) and ESRI (enhanced)
API & Integration Support	Yes, add-on
Voice & SMS Features	Toll Free Phone & Text #'s (add-on's)
Reporting	Enhanced reporting with analytics
System Configuration	Remote, account manager assisted
Training	Remote, account manager assisted
Account Support	Account Management support is available Monday through Friday between 9:00am and 6:00pm EST, excluding holidays.

**PublicStuff, Inc.**

214 W 29th Street, Room 205, New York, NY 10001 | sales@publicstuff.com | phone: (347) 442-7227

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## Products & Pricing Conditions

### Products & Services

Product	Billing Frequency	Price
PublicStuff Mobile & PRO	Annual	\$8,300
<b>2014 Total</b>		<b>\$8,300</b>

If billing frequency for any product or service above is Annual or any other period of time, the price shown for that item is the amount to be billed at each billing interval during the Agreement Term.

### Purchase Order Information

Is a purchase order (PO) required for the purchase or payment of the products on this order schedule?

No  Yes

If yes, please complete the following:

PO Number	
PO Amount	

---

## Payment

PublicStuff will send Client invoices on an upfront basis based on the PublicStuff Agreement Term Start Date. Payments will be due within 45 days of the PublicStuff Agreement Term Start Date. Any changes to the Term Start Date needs to be approved in writing by both parties. Should PublicStuff not receive payment when due, PublicStuff reserves the right to discontinue Services upon ten days prior with written notice. Client will be responsible for all costs and expenses (including, without limitation, reasonable attorneys fees) PublicStuff incurs in collecting late payments not disputed in good faith.

**PublicStuff, Inc.**

214 W 29th Street, Room 205, New York, NY 10001 | sales@publicstuff.com | phone: (347) 442-7227

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## Piggyback Option Clause

Inclusion is not mandatory and will have no bearing on the contract.

- Agree to extend to other State Municipalities
- Do not agree to extend prices to other State Municipalities

## Acceptance & Authorization

This Order Schedule ("OS") is entered into between Client and PublicStuff. Client accepts and agrees to adhere to the Terms and Conditions for PublicStuff Services hereby incorporated by reference and available at: <http://pro.publicstuff.com/terms> which, together with this OS will be referenced as the "Agreement." This Agreement between Client and PublicStuff, which Client hereby acknowledges and accepts, constitutes the entire agreement between PublicStuff and Client governing the Services referenced above. Client represents that its signatory below has the authority to bind Client to the terms of this Agreement. The terms of this Agreement are Confidential Information.

<b>PublicStuff, Inc</b>	<b>Client:</b>
By:	By:
Printed Name: Surya Yalamanchili	Printed Name:
Title: CEO	Title
Date:	Date:

**PublicStuff, Inc.**

214 W 29th Street, Room 205, New York, NY 10001 | [sales@publicstuff.com](mailto:sales@publicstuff.com) | phone: (347) 442-7227



## **Terms and Conditions for PublicStuff Services**

THESE TERMS AND CONDITIONS FOR SERVICES (“AGREEMENT”) AND ONE OR MORE WRITTEN ORDERS (“ORDER SCHEDULES”) GOVERN USE OF OUR SERVICES.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A MUNICIPALITY OR OTHER LEGAL OR GOVERNMENTAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. YOU ARE ENTERING INTO THIS AGREEMENT WITH PUBLICSTUFF INC., A DELAWARE CORPORATION (“PUBLICSTUFF”, “WE”, “US” OR “OURS”).

PublicStuff provides a tool that You can use to understand issues surfaced by users of the PublicStuff applications in respect of Your city, municipality, facility, complex, building or campus. By subscribing to the PublicStuff Service, PublicStuff allows You to interact directly with individuals in Your location by providing such individuals with tools and applications to report issues, concerns or problems to You for efficient resolution. The PublicStuff Services are made available to You through a password-protected hosted interface and dashboard provided by PublicStuff.

This Agreement was last updated on February 27, 2013.

This Agreement and the applicable Order Schedules (incorporated herein by reference) are effective between You and PublicStuff as of the date that You accept these Terms and Conditions.

### **1. DEFINITIONS**

“Implementation Services” means services provided to You to integrate and implement the PublicStuff Services, as may be mutually agreed upon by the parties.

“Platform” means all ideas, concepts, inventions, systems, platforms, software, dashboards, interfaces, tools, utilities, templates, forms, techniques, methods, processes, algorithms, know-

how, trade secrets and other technologies, implementations and information that are used by PublicStuff in providing the PublicStuff Services.

“PublicStuff Data” means all data and information created, received, processed or provided by PublicStuff in performing the PublicStuff Services, or that result from performance of the PublicStuff Services.

“PublicStuff Services” means, collectively, the interface and dashboard hosted by PublicStuff and provided to You from time to time, the PublicStuff Data, the Platform, the Implementation Services and the documentation. The PublicStuff Services include any change, improvement, extension or other new version thereof that is developed or otherwise made available to You.

“Third-Party Applications” means online, Web-based applications and offline software products that are provided by third parties, interoperate with the PublicStuff Services, and are identified as third-party applications.

"User Guide" means the online user guide for the Services, accessible via login at [accounts.publicstuff.com](http://accounts.publicstuff.com) as updated from time to time.

"Users" means individuals who are authorized by You to use the PublicStuff Services and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents.

"You" or "Your" means the Municipality or other legal or governmental entity for which you are accepting this Agreement.

"Your Data" means all electronic data or information submitted by You to the PublicStuff Services.

## **2. PUBLICSTUFF SERVICES**

2.1 Order Schedules. These Terms and Conditions will be implemented through one or more written orders that reference this Agreement and contain such other information as Your contact information, the PublicStuff Services to be accessed, any third-party applications to be accessed, subscription fees, implementation services, the term and agreed-upon termination provisions. Any change to the terms of this Agreement within an Order Schedule will apply only to the PublicStuff Service described therein. PublicStuff may provide the PublicStuff Services directly, or indirectly using contractors or other third party vendors or service providers. PublicStuff agrees that it shall be fully responsible for performance of PublicStuff Services for You by any such third party contractors, vendors or service providers.

2.2 PublicStuff Services. Subject to these terms and conditions and the Order Schedules, PublicStuff will use commercially reasonable efforts to operate and host the Platform in connection with making the PublicStuff Services available to Customer in accordance with the service levels which can be accessed on our website at <http://www.publicstuff.com/terms> as amended, from time to time. PublicStuff reserves the right to modify the PublicStuff Services (in whole or in part) at any time, provided that PublicStuff will not materially reduce the functionality of the PublicStuff Services.

2.3 Analytics. PublicStuff hereby grants You all necessary rights to access and analyze PublicStuff Data, solely via the PublicStuff Services during the term defined in the applicable Order Schedule.

2.4 Third-Party Products and Services. PublicStuff may offer Third-Party Applications for sale under Order Schedules. Any other acquisition by You of Third-Party Applications, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. PublicStuff does not warrant or support third-party products or services, except as specified in an Order Schedule. No purchase of third-party products or services is required to use the PublicStuff Services.

2.5 Third-Party Applications and Customer Content. If You install or enable Third-Party Applications for use with the PublicStuff Services, You acknowledges that PublicStuff may allow providers of those Third-Party Applications to access Your content as required for the interoperation of such Third-Party Applications with the PublicStuff Services. PublicStuff shall not be responsible for any disclosure, modification or deletion of Your content resulting from any such access by Third-Party Application providers.

2.6 Availability of Third Party Applications. PublicStuff Service features that interoperate with Third Party Applications depend on the continuing availability of such Third Party Applications. If such Third Party Applications cease to be available on reasonable terms for inclusion in the PublicStuff Services, PublicStuff may cease providing such Third Party Applications without entitling You to any refund, credit, or other compensation.

2.7 Support. PublicStuff will use commercially reasonable efforts to provide You with the necessary technical support and updates for the PublicStuff Services.

2.8 Limitations. PublicStuff will not be responsible or liable for any failure in the PublicStuff Services resulting from or attributable to (a) usage in excess of the usage for which You have ordered pursuant to an applicable Order Schedule, (b) failures in any telecommunications, network or other service or equipment that are not within PublicStuff's

reasonable control, (c) Your negligence, acts or omissions, (d) any force majeure or other cause beyond PublicStuff's reasonable control, or (e) unauthorized access, breach of firewalls or other hacking by third parties, except to the extent such access, breach or hacking is caused by PublicStuff's negligence or willful misconduct.

2.9 Privacy. PublicStuff shall collect, process and store personally identifiable information in accordance with PublicStuff's privacy policy located at <http://www.publicstuff.com/privacy>.

2.10 User Subscriptions. Unless otherwise specified in the applicable Order Confirmation, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users.

### **3. FEES AND PAYMENTS**

3.1 Fees. You agree to pay PublicStuff all fees and expenses in the amounts and at the times specified in the applicable Order Schedule.

3.2 Payment Terms. Unless specified otherwise or subject to a good faith dispute, all amounts due hereunder shall be paid in full (without deduction, set-off or counterclaim) within 45 days after Your receipt of invoice in US dollars at PublicStuff's address or to an account specified by PublicStuff.

3.3 Overdue Charges. If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Confirmations on payment terms shorter than those specified above.

3.4 Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.

#### **4. PROPRIETARY RIGHTS**

3.1 PublicStuff Services. Except for the limited rights and licenses expressly granted to You hereunder, no other license is granted, no other use is permitted and PublicStuff (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the PublicStuff Services.

3.2 Customer Content. You shall own all rights in all content and data created or provided by You, subject to the rights and licenses granted herein. During the term of this Agreement, You hereby grant PublicStuff and its successors a worldwide royalty-free, nonexclusive, sublicensable right and license to exploit and use Your content in connection with the provision or exploitation of the PublicStuff Services.

3.3 Restrictions. Except as expressly permitted in this Agreement, You shall not directly or indirectly (a) use any of PublicStuff's Confidential Information (as defined herein) to create any service, software, documentation or data that is similar to any aspect of the PublicStuff Services, provided that the foregoing does not prohibit independent development of similar functionality by You or third parties, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Platform, or the underlying ideas, algorithms or trade secrets therein, (c) encumber, sublicense, transfer, rent, lease, time-share or use the PublicStuff Services in any service bureau arrangement or otherwise for the benefit of any third party, (d) copy, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the PublicStuff Services, (e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction or (f) permit any third party to engage in any of the foregoing proscribed acts.

#### **5. CONFIDENTIALITY**

Each party agrees that the business, technical and financial information, that is designated in writing as confidential, or is disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed, shall be the confidential property of the disclosing party and its licensors ("Confidential Information"). Confidential Information does not include information that (a) is previously rightfully known to the receiving party without restriction on disclosure, (b) is or becomes known to the general public, through no act or omission on the part of the receiving party, (c) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving party. Except as expressly and unambiguously allowed herein, the receiving party will hold in

confidence and not use or disclose any Confidential Information and shall similarly bind its employees, consultants, and independent contractors. Upon the expiration or termination of this Agreement, all of the Confidential Information (including any copies) will be returned to the disclosing party, and receiving party will make no further use of such materials. If required by law, the receiving party may disclose Confidential Information of the disclosing party, but will give adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor.

## **6. LIMITED WARRANTY AND DISCLAIMERS**

6.1 General. Each party represents and warrants that: (a) it is a duly organized and validly existing under the laws of the jurisdiction in which it is organized; (b) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (c) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

6.2 PublicStuff. PublicStuff warrants to Customer that (i) the PublicStuff Services will be provided in a professional and workmanlike manner; (ii) the PublicStuff Services will perform in accordance with the documentation in all material respects; (iii) the PublicStuff Services as delivered by PublicStuff do not contain any Trojan horses, worms, or undocumented disabling devices; and (iv) PublicStuff scans the PublicStuff Services and the hosted environment for known viruses using industry standard virus detection techniques.

6.3 Disclaimers. PUBLICSTUFF DOES NOT WARRANT THAT THE PUBLICSTUFF SERVICES WILL MEET YOUR REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, PUBLICSTUFF HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PUBLICSTUFF SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

## **7. INDEMNIFICATION**

7.1 Infringement. Except as provided below, PublicStuff agrees to (a) defend You against any claim by a third party that the PublicStuff Service infringes a valid US patent (issued as of

the Effective Date), or any copyright or trade secret, of such third party and (b) indemnify You for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claim. If any PublicStuff Service becomes or, in PublicStuff's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, PublicStuff may, at its option (i) obtain for You the right to continue using the PublicStuff Service or (ii) replace or modify the PublicStuff Service so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to PublicStuff then it may (iii) terminate this Agreement upon written notice to You and refund to You any PublicStuff Service fees that were pre-paid for the then current term, pro-rated for the remainder thereof.

7.2 Exclusions. PublicStuff shall have no liability or obligation hereunder with respect to any claim based upon (a) use of any PublicStuff Service in an application or environment or on a platform or with devices for which it was not designed or contemplated, (b) modifications, alterations, combinations or enhancements of the PublicStuff Service not created by or for PublicStuff (c) any of your content, (d) any portion of the PublicStuff Service that implements Your requirements, (e) Your continuing allegedly infringing activity after being notified thereof or its continuing use of any version after being provided modifications that would have avoided the alleged infringement or (f) any intellectual property right in which You or any of its affiliates has an interest.

7.3 Procedures. Any claim for indemnification hereunder requires that (a) the indemnified party provides prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying party shall have sole control and authority to defend, settle or compromise such claim. The indemnifying party shall not make any settlement that requires a materially adverse act or admission by the indemnified party without the indemnified party's written consent (such consent not to be unreasonably delayed, conditioned or withheld). The indemnifying party shall not be liable for any settlement made without its prior written consent.

7.4 Entire Liability. The foregoing states the entire liability of PublicStuff and Your exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the PublicStuff Services, any part thereof or its use or operation.

## **8. LIMITATION OF LIABILITY**

EXCEPT FOR ANY BREACH OF SECTION 5 (CONFIDENTIALITY), INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 7 OR A PARTY'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THESE TERMS AND CONDITONS OR ANY

ORDER SCHEDULE, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (C) DAMAGES IN THE AGGREGATE, IN EXCESS OF THE AMOUNT PAID TO IT (IN THE CASE OF PUBLICSTUFF) OR PAID AND PAYABLE BY IT (IN THE CASE OF YOU) HEREUNDER DURING THE PREVIOUS 12 MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. TERM AND TERMINATION**

9.1 Term. These Terms and Conditions and each applicable Order Schedule shall commence upon your acceptance of the Terms and Conditions and each Order Schedule and shall continue in effect until terminated in accordance with the Order Schedule.

9.2 Termination. This Agreement may be terminated (in whole, or in respect of any Order Schedule) by a party (a) if the other party materially breaches a provision of these Terms and Conditions or the applicable Order Schedule and fails to cure such breach within 30 days (10 days in the case of non-payment) after receiving written notice of such breach from the non-breaching party or (b) as otherwise set forth in the Order Schedule.

9.3 Effects of Termination. Upon any expiration or termination of any Order Schedule or the termination of these Terms and Conditions, all corresponding rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive and (b) the provisions of Sections 3 (Fees and Payments), 4 (Proprietary Rights), 5 (Confidentiality), 6 (Limited Warranty and Disclaimers), 7 (Indemnification), 8 (Limitation of Liability), 10 (General Provisions) and this Section 9.3 shall survive.

## **10. GENERAL PROVISIONS**

10.1 Entire Agreement. These Terms and Conditions (including the Order Schedules) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of these Terms and Conditions (and all past dealing or industry custom). Any inconsistent or additional terms on any related writing or similar form, even if signed by the parties hereafter, shall have no effect under these Terms & Conditions. PublicStuff reserves the right to change these Terms and

Conditions from time to time upon written notice to You. The failure of either party to enforce its rights under these Terms and Conditions at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of these Terms and Conditions is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that these Terms and Conditions will otherwise remain in full force and effect and enforceable.

10.2 Prevailing Party. In any action or proceeding to enforce these Terms and Conditions, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

10.3 Remedies. Except as specifically provided otherwise herein, each right and remedy in these Terms and Conditions is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 4 or 5, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

10.4 Notices. All notices under these Terms and Conditions will be in writing, in English and delivered to the parties at their respective addresses stated herein or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

10.5 Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under these Terms and Conditions and Order Schedule(s) (except payment obligations) due to any cause beyond its reasonable control, the affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

10.6 Publicity. Neither party shall use the other party's trademarks, trade names or make any public statements concerning the relationship between the parties without the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, You hereby grant to PublicStuff the right to use, reproduce and publish, Your name, trademarks, service marks, brand names and brand marks in connection with advertising, marketing and sales.

10.7 Assignment. These Terms and Conditions and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld, conditioned or delayed. However, without consent, either party may assign their rights and obligations hereunder to any successor to all or substantially all of its business (whether by sale of assets or equity, merger, consolidation or otherwise). These Terms and Conditions shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

10.8 Independent Contractors. The parties shall be independent contractors, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

10.9 Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with these Terms and Conditions. If You learn of any violation of the above restriction, You agree to contact us immediately.

RESOLUTION NO.: 237 - 2014

OF

SEPTEMBER 22, 2014

A RESOLUTION AUTHORIZING APPROVAL OF A GENERAL LIABILITY INSURANCE  
POLICY FOR CITY-OWNED TAX FORECLOSED PROPERTIES FOR THE PERIOD OF  
SEPTEMBER 27, 2014 TO SEPTEMBER 27, 2015

WHEREAS, the City of Newburgh has maintained general liability insurance coverage for City-owned tax-foreclosed properties since 2010; and

WHEREAS, Arthur J. Gallagher of New York, Inc. has recommended a renewal of liability insurance coverage for Fiscal Year 2014-2015;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby approves the insurance coverage for the term beginning September 27, 2014 through September 27, 2015 with all liability insurance to be provided by Nautilus Insurance Company; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to execute agreements with Arthur J. Gallagher of New York, Inc. to provide for insurance coverage for the City-owned tax foreclosed properties for the period of September 27, 2014 to September 27, 2015.



## City of Newburgh

83 Broadway  
ATTN: Law Department  
Newburgh, NY 12550

Lines of Coverage Being Proposed:  
General Liability

### PRESENTED BY

**Kevin Barry** Area Vice President  
**Nicole Anstett** Account Executive

Arthur J. Gallagher Risk Management Services  
2 Westchester Park Drive, Suite 300  
White Plains, NY 10604-3408  
914-696-3700

[www.ajgrms.com](http://www.ajgrms.com)

September 2, 2014



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### Service Team

Kevin Barry has primary service responsibility for your company. We operate using a team approach. Your Service Team consists of:

NAME / TITLE	PHONE / ALT. PHONE	EMAIL	ROLE
Kevin Barry Area Vice President	914-697-6033 914-696-3700	Kevin_Barry@ajg.com	Producer
Nicole Anstett Account Executive	914-697-6066	Nicole_Anstett@ajg.com	Account Manager

Arthur J. Gallagher Risk Management Services {White Plains}  
Main Office Phone Number: 914-696-3700



**Named Insured**

NAMED INSURED	LINE OF COVERAGE
City of Newburgh	General Liability

**Note:** Any entity not named in this proposal may not be an insured entity. This may include partnerships and joint ventures.



## Market Place Review

We approached the following carriers in an effort to provide the most comprehensive and cost effective insurance program.

INSURANCE COMPANY	LINE OF COVERAGE	RESPONSE
Nautilus Insurance Company	General Liability	Quoted

\*The premium indicated is an estimate provided by the market. The actual premium and acceptance of the coverage requested will be determined by the market after a thorough review of the completed application.



### Insurance Carrier Ratings and Admitted Status

PROPOSED CARRIERS	A.M. BEST'S RATING	ADMITTED / NON-ADMITTED
Nautilus Insurance Company	A XV	Non Admitted

If the above indicated coverage is placed with a Non-Admitted Carrier, the carrier is doing business in the state as a surplus lines or non-admitted carrier. As such, this carrier is not subject to the same regulations which apply to an admitted carrier nor do they participate in any insurance guarantee fund applicable in that state.

\*The above A.M. Best Rating was verified on the date the proposal document was created.

#### Guide to Best Ratings Rating Levels and Categories

LEVEL	CATEGORY	Financial Size Categories <i>(In \$000 of Reported Policyholders' Surplus Plus Conditional Reserve Funds)</i>			
A++, A+	Superior	FSC I	Up to 1,000	FSC IX	250,000 to 500,000
A, A-	Excellent	FSC II	1,000 to 2,000	FSC X	500,000 to 750,000
B++, B+	Good	FSC III	2,000 to 5,000	FSC XI	750,000 to 1,000,000
B, B-	Fair	FSC IV	5,000 to 10,000	FSC XII	1,000,000 to 1,250,000
C++, C+	Marginal	FSC V	10,000 to 25,000	FSC XIII	1,250,000 to 1,500,000
C, C-	Weak	FSC VI	25,000 to 50,000	FSC XIV	1,500,000 to 2,000,000
D	Poor	FSC VII	50,000 to 100,000	FSC XV	2,000,000 or more
E	Under Regulatory Supervision	FSC VIII	100,000 to 250,000		
F	In Liquidation				
S	Suspended				

Best's Insurance Reports, published annually by A.M. Best Company, Inc., presents comprehensive reports on the financial position, history, and transactions of insurance companies operating in the United States and Canada. Companies licensed to do business in the United States are assigned a Best's Rating which attempts to measure the comparative position of the company or association against industry averages.

A Best's Financial Strength Rating opinion addresses the relative ability of an insurer to meet its ongoing insurance obligations. It is not a warranty of a company's financial strength and ability to meet its obligations to policyholders. View the A.M. Best Important Notice: Best's Credit Ratings for a disclaimer notice and complete details at <http://www.ambest.com/ratings/notice>.

Best's Credit Ratings are under continuous review and subject to change and/or affirmation. For the latest Best's Credit Ratings and Best Credit Reports (which include Best Ratings), visit the A.M. Best website at <http://www.ambest.com>. See Guide to Best's Credit Ratings for explanation of use and charges. Copies of the Best's Insurance Reports for carriers listed above are also available upon request of your Gallagher representative.

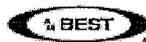
Best's Credit Ratings reproduced herein appear under license from A.M. Best and do not constitute, either expressly or impliedly, an endorsement of (Licensee's publication or service) or its recommendations, formulas, criteria or comparisons to any other ratings, rating scales or rating organizations which are published or referenced herein. A.M. Best is not responsible for transcription errors made in presenting Best's Credit Ratings. Best's Credit Ratings are proprietary and may not be reproduced or distributed without the express written permission of A.M. Best Company.

Gallagher companies use A.M. Best Company's rating services to evaluate the financial condition of insurers whose policies we propose to deliver. Gallagher companies make no representations and warranties concerning the solvency of any carrier, nor does it make any representation or warranty concerning the rating of the carrier which may change.



**Insurance Carrier Ratings and Admitted Status (Cont.)**

<b>GUIDE TO BEST'S FINANCIAL STRENGTH RATINGS</b>			
A Best's Financial Strength Rating is an independent opinion of an insurer's financial strength and ability to meet its ongoing insurance policy and contract obligations. The rating is based on a comprehensive quantitative and qualitative evaluation of a company's balance sheet strength, operating performance and business profile.			
<b>Financial Strength Ratings</b>			
	<b>Rating</b>	<b>Descriptor</b>	<b>Definition</b>
<b>Secure</b>	A++, A+	Superior	Assigned to companies that have, in our opinion, a superior ability to meet their ongoing insurance obligations.
	A, A-	Excellent	Assigned to companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations.
	B++, B+	Good	Assigned to companies that have, in our opinion, a good ability to meet their ongoing insurance obligations.
<b>Vulnerable</b>	B, B-	Fair	Assigned to companies that have, in our opinion, a fair ability to meet their ongoing insurance obligations. Financial strength is vulnerable to adverse changes in underwriting and economic conditions.
	C++, C+	Marginal	Assigned to companies that have, in our opinion, a marginal ability to meet their ongoing insurance obligations. Financial strength is vulnerable to adverse changes in underwriting and economic conditions.
	C, C-	Weak	Assigned to companies that have, in our opinion, a weak ability to meet their ongoing insurance obligations. Financial strength is very vulnerable to adverse changes in underwriting and economic conditions.
	D	Poor	Assigned to companies that have, in our opinion, a poor ability to meet their ongoing insurance obligations. Financial strength is extremely vulnerable to adverse changes in underwriting and economic conditions.
	E	Under Regulatory Supervision	Assigned to companies (and possibly their subsidiaries/affiliates) placed under a significant form of regulatory supervision, control or restraint - including cease and desist orders, conservatorship or rehabilitation, but not liquidation - that prevents conduct of normal, ongoing insurance operations.
	F	In Liquidation	Assigned to companies placed in liquidation by a court of law or by a forced liquidation.
	S	Suspended	Assigned to rated companies when sudden and significant events affect their balance sheet strength or operating performance and rating implications cannot be evaluated due to a lack of timely or adequate information.
<b>Rating Modifiers</b>			
<b>Modifier</b>	<b>Descriptor</b>	<b>Definition</b>	
u	Under Review	Indicates the rating may change in the near term, typically within six months. Generally is event driven, with positive, negative or developing implications.	
pd	Public Data	Indicates rating assigned to insurer that chose not to participate in A.M. Best's interactive rating process. (Discontinued in 2010)	
s	Syndicate	Indicates rating assigned to a Lloyd's syndicate.	
<b>Outlooks</b>			
Indicates potential direction of a Financial Strength Rating over an intermediate term, generally defined as 12 to 36 months.			
Positive	Indicates possible rating upgrade due to favorable financial/market trends relative to the current rating level.		
Negative	Indicates possible rating downgrade due to unfavorable financial/market trends relative to the current rating level.		
Stable	Indicates low likelihood of a rating change due to stable financial/market trends.		
<b>Not Rated Designation</b>			
NR: Assigned to companies that are not rated by A.M. Best.			
<b>Rating Disclosure</b>			
A Best's Financial Strength Rating opinion addresses the relative ability of an insurer to meet its ongoing insurance obligations. The ratings are not assigned to specific insurance policies or contracts and do not address any other risk, including, but not limited to, an insurer's claims-payment policies or procedures; the ability of the insurer to dispute or deny claims payment on grounds of misrepresentation or fraud; or any specific liability contractually borne by the policy or contract holder. A Best's Financial Strength Rating is not a recommendation to purchase, hold or terminate any insurance policy, contract or any other financial obligation issued by an insurer, nor does it address the suitability of any particular policy or contract for a specific purpose or purchaser. In arriving at a rating decision, A.M. Best relies on third-party audited financial data and/or other information provided to it. While this information is believed to be reliable, A.M. Best does not independently verify the accuracy or reliability of the information. For additional details, see A.M. Best's <i>Terms of Use</i> at <a href="http://www.ambest.com">www.ambest.com</a> .			
Best's Financial Strength Ratings are distributed via press release and/or the A.M. Best Web site at <a href="http://www.ambest.com">www.ambest.com</a> and are published in the <i>Credit Rating Actions</i> section of <i>BestWeek</i> ®. Best's Financial Strength Ratings are proprietary and may not be reproduced without permission. Copyright © 2013 by A.M. Best Company, Inc.			
			<b>Version 021712</b>





### Premium Summary

Coverages	2012	2013	2014
General Liability	45,914.00	47,539.00	50,284.00
Surplus Taxes	1,744.72	1,806.48	1,910.79
Policy Fees	1,000.00	1,000.00	500.00
Total Premium	\$48,658.72	50,345.48	\$52,694.79

Gallagher is responsible for the placement of the following lines of coverage:

General Liability, Excess Liability, Boiler & Machinery, Auto PD, TPA and Property

It is understood that any other type of exposure/coverage is either self-insured or placed by another brokerage firm other than Gallagher. If you need help in placing other lines of coverage or covering other types of exposures, please contact your Gallagher representative.

**Quote is valid until 09/27/14**



**Coverage Summary**

**Carrier:** Nautilus Insurance Company  
**Coverages:** General Liability  
**Policy Term:** 09/27/14-09/27/15  
**Policy Form:**  PER OCCURRENCE

**Limits of Liability:** \$2,000,000 General Aggregate Limit  
Incl in Gen Agg Products/Completed Operations Aggregate Limit  
\$1,000,000 Personal Injury and Advertising Injury Limit  
\$1,000,000 Each Occurrence Limit  
\$100,000 Damage to Premises Rented to You Limit  
\$5,000 Medical Expense Limit

**Deductible:** \$1,000 BI/PD Combined Per Claim

**Statement of Defense**  Does not Apply  
**Costs:**  Applicable  
 Within Policy Limit (expenses erode policy limit)

**Cancellation, Nonrenewal, or Material Modification:** 60 days written notice for non-renewal and cancellation  
**Major Exclusions:** 10 days non-payment of premium  
Violation of Statues that govern e-mails, fax, phone calls or other methods of sending material or information.  
Employment Related Practices  
Silica or Silica-Related Dust  
Nuclear Energy Liability  
Punitive or Exemplary Damages  
Total Pollution  
Toxic Metals  
Aminals  
Micoorganisms, Biological Organisms, Bioaerosols or Organic Contaminants  
Liquor Liability  
Asbestos  
All Construction Operations  
Contractors or Subcontractors  
Injury to Employees, Contractors, Volunteers or Other Workers  
Terrorism  
Water Damage



Policy is Auditable – Exposures:

- 68606 Vacant Buildings Exposure 63,147
- 49451 Vacant Land Exposure 1
- 60010 Apartment Buildings Exposure 30
- 61217 Bldgs or Premises Exposure 13,140
- 63010 Dwellings 1 Family Exposure 16
- 63011 Dwellings 2 Family Exposure 14
- 63012 Dwellings 3 Family Exposure 12
- 68705 Warehouse Exposure 27,893

General Endorsements:

- CG0001 (12/04) Commercial GL Coverage Form
- CG0163 (07/11) NY Changes – Commercial GL Coverage Form
- E001 (04/09) Nautilus Insurance Company Common Policy Declarations
- E00IJ (11/06) Nautilus Insurance Company Commercial Lines Policy Jacket
- E906 (06/07) Service of Suit
- E915 (07/13) US Treasury Dept.’s Office of Foreign Assets Control (OFAC) Advisory Notice to Policyholders
- IL0017 (11/98) Common Policy Conditions
- L216 (07/09) Amendment of Definitions-Insured Contract
- L408 (03/12) Changes – Civil Union or Domestic Partnership
- L601 (12/09) Amendment of Conditions-Premium Audit
- L850 (05/09) Deductible Liability Insurance
- S013 (07/09) Minimum Earned Premium Endorsement
- S902 (07/09) Schedule of Forms and Endorsements

Binding Conditions:

- Inspection within 45 days, on 5 locations
- Vacant Buildings Must be Locked/Secured
- Vacant Land Must be Fenced
- 25 % Minimum Earned Premium
- Premium Due within 20 Days of Binding

Annual Premium:	\$50,284.00
Policy Fee:	\$500.00
Surplus Taxes:	\$1,810.22
Stamping Fee	\$100.57
TRIA:	\$129.75



## Location Schedule

- Loc # 1: 96 Carter Street / Code 68606 / basis 840 a rea
- Loc # 2: 141 Chambers Street/ Code 68606/basis 2,484 area
- Loc # 3: 49 Dubois Street/ Code 68606 / basis 1,200 area
- Loc # 4: 28 Hasbrouck Street / Code 68606/ 1779 area
- Loc # 5: 141 Johnson Street-Code 68606 / basis 2,500 area
- Loc # 6: 135 Lander Street-Code 68606 / basis 1,349 area (amended to 1506 area)
- Loc # 7: 137 Lander Street-Code 68606- -basis 1,506 area
- Loc # 8: 139 Lander Street-Code 68606- -basis 1,452 area
- Loc # 9: 168 Lander Street-Code 68606- -basis 2,025 area
- Loc # 11: 16 Lutheran Street-Code 63011- -basis 1 -Two family dwelling
- Loc # 12: Pierces Road-Code 49451- less than 1 acre
- Loc # 14: 130 Third Street-Code 68606- -Basis 1,928 area
- Loc # 15: 132 Third Street- Code 68606- -Basis 1,928 area
- Loc # 16: 140 Third Street-Code 68606- -basis-2,448 area
- Loc # 17: 39 Dubois Street-Code 68606 -basis 1,587 area
- Loc #18: 55 Farrington Street-Code 63010- -Basis 1- One family dwelling
- Loc # 20: 162 Broadway Bldg 1-Code 61217- basis 3,840 area
- Loc #21: 162 Broadway Bldg 2- Storage R/A Code 68706- basis 4872 area
- Loc # 22: 61 Campbell Street/ Garage R/A code 68706 / 300 area
- Loc # 23: 54 Dubois Street-Code 63012-1-Three family dwelling
- Loc # 24: 7 Giney Avenue-Code 60010- 3 units
- Loc # 25: 288 Grand Street-Code 63012- 1 -Three family dwelling
- Loc # 26: 112 Johnston Street-Code 63010—1- One- family dwelling
- Loc # 27: 117 Johnston Street-Code 63011- 1-Two family dwelling
- Loc # 28: 118 Johnston Street-Code 68606- basis-425 area
- Loc # 29: 93 Lander Street-Code 63010- 1-One family dwelling
- Loc # 30: 153 Lander Street-Code 63010- 1 -One family dwelling
- Loc # 32: 76 Lander Street-Code 68606- basis 1,850 area
- Loc # 33: 85 Lander Street-Code 63011- 1-Two family dwelling
- Loc # 34: 360 Liberty Street / Storage R/A Code 68706- 22,721 area
- Loc # 35: 374 Liberty Street-Code 63012- 1-Three family dwelling
- Loc # 36: 199 South Street-Code 61217- basis 3,900 area
- Loc # 37: 545 South Street-Code 63010- 1- One family dwelling
- Loc # 41: 104 Washington St-Code 61217- 5,400 area
- Loc # 42: 122 William St-Code 63011- 1 – Two family dwelling
- Loc #43: 22 Bay View Terrace / Code 63011 / 1 Two Family dwelling
- Loc#44: 62 Campbell Street / Code 68606 /1548 area
- Loc #45: 63 Carson Avenue / Code 68606 /1440 area
- Loc #46: 95 Carson Avenue / Code 63010 / 1 – One family dwelling
- Loc #47: 34 Carter Street / Code 63010 /1 – One family dwelling
- Loc #48: 36 Carter Street / Code 68606 / 3400 area
- Loc #49: 233 First Street / Code 68606 / 1980 area
- Loc #50: 459 First Street / Code 68606 / 1440 area
- Loc #51: 234 First Street / Code 68606 / 1200 area
- Loc #52: 274 First Street / Code 68606 / 2112 area
- Loc #53: 279 Grand Street / Code 68606 / 2375 area



- Loc #54: 63 Grove Street / Code 68606 /2307 area
- Loc #55: 28 Hasbrouck Street / Code 68606 / 1188 area
- Loc #56: 72 Hasbrouck Street/ Code 63011 / 1 – Two Family Dwelling
- Loc #57: 81 Henry Avenue / Code 63010 / 1 – One Family Dwelling
- Loc #58: 64 Johnston Street / Code 63011 / 1 – Two Family Dwelling
- Loc #59: 120 Johnston Street / Code 63012 / 1-Three Family Dwelling
- Loc #60: 21 Johnston Street / Code 60010 / 4 Units
- Loc #61: 23 Johnston Street / Code 60010 / 4 Units
- Loc #62: 127 Johnston Street / Code 68606 / 2735 area
- Loc #65: 8 Larter Street / Code 63010 / 1 – One Family Dwelling
- Loc #66: 317 Liberty Street / Code 68606 / 1272 area
- Loc #67: 326 Liberty Street / Code 68606 / 1320 area
- Loc #68: 328 Liberty Street/ Code 68606 / 280 area
- Loc #69: 382 Liberty Street / Code 68606 / 1360 area
- Loc #70: 11 Lutheran Street / Code 68606 /2120 area
- Loc #71: 41 Lutheran Street / Code 68606 /1696 area
- Loc #72: 119 Montgomery Street / Code 63012 / 1-Three Family Dwelling
- Loc #75: 15 1/2 Overlook Place / Code 63011 / 1 – Two Family Dwelling
- Loc #76: 184 Renwick Street / Code 68606 / 1584 area
- Loc #79: 152 South Street / Code 68606/ 1088 area
- Loc #80: 368 South Street / Code 68606/ 558 area
- Loc #81: 221 Third Street / Code 68606 / 1454 area
- Loc #82: 387 Third Street / Code 68606 / 1352 area
- Loc #86: 69 William Street / Code 60010 / 1 unit
- Loc #87: 105 William Street / Code 63011 / 1 – Two Family Dwelling
- Loc #88: 279 Liberty Street / Code 60010 / 8 units
- Loc #90: 205 Broadway / Code 60010 / 4 Units
- Loc #91: 266 Carpenter Avenue / Code 63010 / 1 – One Family Dwelling
- Loc #92: 66 Carson Avenue / Code 63010 / 1 – One Family Dwelling
- Loc #93: 35 Concord Street / Code 63010 / 1 – One Family Dwelling
- Loc #94: 100 Courtney Avenue / Code 63012 / 1-Three Family Dwelling
- Loc #95: 246 First Street / Code 60010/ 4 units
- Loc #96: 44 Johnes Street / Code 60010/ 1 unit – 58-1-1-10
- Loc #97: 44 Johnes Street / Code 60010 / 1 unit – 58-1-1-21
- Loc #98: 25 Johnston Street / Code 63010 / 1 – One Family Dwelling
- Loc #99: 39 Johnston Street / Code 63010 / 1 – One Family Dwelling
- Loc #100: 61 Liberty Street, W.H. / Code 63011 / 1 – Two Family Dwelling
- Loc #101: 164 N. Miller Street / Code 63011 / 1 – Two Family Dwelling
- Loc #102: 170 Renwick Street / Code 63011 / 1 – Two Family Dwelling
- Loc #103: 183 Renwick Street / Code 63011 / 1 – Two Family Dwelling
- Loc #104: 7 Richman Avenue / Code 63010 / 1 – One Family Dwelling
- Loc #105: 143 Washington Street / Code 63010 / 1 – One Family Dwelling
- Loc #106: 126 William Street / Code 63011 / 1 – Two Family Dwelling
- Loc #107: 236 First Street / code 63010 / 1 – One Family Dwelling
- Loc #108: 87 Carson Avenue /code 63011/1 – Two Family Dwelling



Policy Changes and Developments

It is important that we be advised of any changes in your operations that may have a bearing on the validity and/or adequacy of your insurance. The types of changes that concern us include, but are not limited to, those listed below:

1. Changes in any operation such as expansion to other states or new products.
2. Mergers and/or acquisition of new companies.
3. Any newly assumed contractual liability, granting of indemnities, or hold harmless agreements.
4. Circumstances which may require increased liability insurance limits.
5. Any changes in fire or theft protection, such as the installation of or disconnection of sprinkler systems, burglar alarms, etc. This includes any alterations to same.
6. Immediate advice of any changes to scheduled equipment such as contractors' equipment, electronic data processing, etc.
7. Property of yours that is in transit, unless we have previously arranged for the insurance.
8. Any changes in existing premises including vacancy, whether temporary or permanent, alterations, demolition, etc. Also, any new premises either purchased, constructed, or occupied.

No Changes and/or Developments

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Proposal Disclosures

The following disclosures are hereby made a part of this proposal. Please review these disclosures prior to signing the Client Authorization to Bind or e-mail confirmation.

**Proposal  
Disclaimer**

**IMPORTANT:** The proposal is an outline of certain terms and conditions of the insurance proposed by the insurers, based on the information provided by your company. It does not include all the terms, coverages, exclusions, limitations and/or conditions of the actual policy contract language. The insurance policies themselves must be read for those details. Policy forms for your reference will be made available upon request.

We will not be operating in a fiduciary capacity, but only as your broker/agent, obtaining a variety of coverage terms and conditions to protect the risks of your enterprise. We will seek to bind those coverages based upon your authorization; however, we can make no warranties in respect to policy limits or coverage considerations of the carrier. Actual coverage is determined by policy language, so read all policies carefully. Contact us with questions on these or any other issues of concern.

**Compensation  
Disclosure**

One of the core values highlighted in The Gallagher Way states, “We are an Open Society,” and our open society extends to the compensation Gallagher receives. In general, Gallagher may be compensated as follows:

1. Gallagher Companies are primarily compensated from the usual and customary commissions or fees received from the brokerage and servicing of insurance policies, annuity contracts, guarantee contracts and surety bonds (collectively “insurance coverages”) handled for a client’s account, which may vary from company to company and insurance coverage to insurance coverage. As permitted by law, Gallagher companies occasionally receive both commissions and fees.
2. In placing, renewing, consulting on or servicing your insurance coverages, Gallagher Companies may participate in contingent and supplemental commission arrangements with intermediaries and insurance companies. Contingent commissions provide for additional contingent compensation if underwriting, profitability, volume or retention goals are achieved. Such goals are typically based on the total amount of certain insurance coverages placed by Gallagher with the insurance company and/or through the intermediary, not on an individual policy basis. Some insurance markets, including Gallagher-owned intermediaries, have modified their commission schedule with Gallagher, resulting in an increase in some commission rates. These additional commissions, commonly referred to as “supplemental commissions” are known as of the effective date, but some insurance companies are paying this commission later and apart from when commission is normally paid at policy issuance. As a result, Gallagher may be considered to have an incentive to place your insurance coverages with a particular insurance company. Note: Upon request, your Gallagher representative can provide more specific market information regarding contingent and supplemental commission related to your insurance coverage.
3. Gallagher Companies may also receive investment income on fiduciary funds temporarily held by them, such as premiums or return premiums.
4. Gallagher Companies may access other facilities, including wholesalers, reinsurance intermediaries, captive managers, underwriting managers and others that act as intermediaries for both Gallagher and other brokers in the insurance marketplace. Gallagher Companies may own some of these facilities, in whole or in part. If such a facility was utilized in the placement of a client’s account, the facility may have earned and retained customary brokerage commission or fees for its work.
5. Gallagher assists its customers in procuring premium finance quotes and unless prohibited by law may earn compensation for this value added service.
6. From time to time, Gallagher may participate in insurance company promotional events or training and development that insurers provide for Gallagher employees.
7. Gallagher strives to find appropriate coverage at a competitive price for our customers. In order to achieve these goals, we gather and analyze data about our customers and their insurance coverage. This data and the resulting analytical tools help us better understand the current marketplace, more accurately predict future trends and offer tailored solutions to our customers. The data may also be provided to insurers pursuant to consulting service agreements from which we earn fees.

If you have specific questions about the compensation received by Gallagher and its affiliates in relation to your



**Proposal Disclosures (Cont.)**

insurance placements, please contact your Gallagher representative for more details.

In the event you wish to register a formal complaint regarding compensation Gallagher receives from insurers or third parties, please send an e-mail to [Compensation\\_Complaints@ajg.com](mailto:Compensation_Complaints@ajg.com) or send a letter to:

Compliance Officer  
Arthur J. Gallagher & Co.  
Two Pierce Place, 20th Floor  
Itasca, IL 60143

**TRIA/TRIPRA  
Disclaimer**

If this proposal contains options to purchase TRIA/TRIPRA coverage, the proposed TRIA/TRIPRA program may not cover all terrorism losses. While the most recent legislation eliminated the distinction between foreign and domestic acts of terrorism, a number of lines of coverage excluded under the TRIEA legislation passed in 2005 remain excluded including commercial automobile, burglary and theft insurance; surety insurance, farm owners multiple perils and professional liability (although directors and officers liability is specifically included). If such excluded coverages are required, we recommend that you consider purchasing a separate terrorism policy. Please note that a separate terrorism policy for these excluded coverages may be necessary to satisfy loan covenants or other contractual obligations. The Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) includes a \$100 billion cap on insurers' aggregate liability.

TRIPRA is set to expire on December 31, 2014. There is no certainty of extension, thus the coverage provided by your insurers may or may not extend beyond December 31, 2014. In the event you have loan covenants or other contractual obligations requiring that TRIA/TRIPRA be maintained throughout the duration of your policy period, we recommend that a separate "Stand Alone" terrorism policy be purchased to satisfy those obligations.

**Actuarial  
Disclaimer**

The information contained in this proposal is based on the historical loss experience and exposures provided to Arthur J. Gallagher Risk Management Services {White Plains}. This proposal is not an actuarial study. Should you wish to have this proposal reviewed by an independent actuary, we will be pleased to provide you with a listing of actuaries for your use.



**Claims Reporting By Policy**

**Report all claims IMMEDIATELY as follows:**

Daniel Summa  
2 Westchester Park Drive, 3<sup>rd</sup> Floor  
White Plains, NY 10604  
Ph 914-697-6041  
Fax 914-323-45641  
daniel\_summa@ajg.com



## AUTHORIZATION TO BIND COVERAGE

After careful consideration of your proposal dated 08/22/14, we accept your insurance program subject to the following exceptions/changes:

### POLICY OPTIONS:

YES	NO	OPTION DESCRIPTION
		<b>Bind As Shown Herein Below:</b>
		General Liability
		Terrorism

It is understood this proposal provides only a summary of the details; the policies will contain the actual coverages.

We confirm the values, schedules, and other data contained in the proposal are from our records and acknowledge it is our responsibility to see that they are maintained accurately.

We were unable to obtain more advantageous terms and conditions for you directly from the insurance carrier(s), so this quotation was obtained through an intermediary/wholesaler.

We agree that your liability to us arising from your negligent acts or omissions, whether related to the insurance placed pursuant to these binding instructions or not, shall not exceed \$20 million, in the aggregate. Further, without limiting the foregoing, we agree that in the event you breach your obligations, you shall only be liable for actual damages we incur and that you shall not be liable for any indirect, consequential or punitive damages.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Dated



## **SURPLUS LINES INSURERS**

THIS PROPOSAL CONTAINS QUOTATIONS FROM INSURANCE COMPANIES THAT OPERATE AS SURPLUS LINES CARRIERS WITHIN THE STATE OF PLACEMENT. SURPLUS LINES CARRIERS ARE:

1. NOT LICENSED IN THE STATE OF PLACEMENT.
2. ARE REQUIRED TO HAVE A TAX FILED FOR AND PAID BY THE INSURED.
3. ARE NOT COVERED BY STATE INSURANCE COMPANY INSOLVENCY FUNDS.
4. IF AN ALIEN CARRIER, AN ADDITIONAL FEDERAL EXCISE TAX IS APPLICABLE.

THE SURPLUS LINES INSURANCE CARRIER OFFERING COVERAGE IN THIS PROPOSAL IS:

Nautilus Insurance Company



### Bindable Quotations & Compensation Disclosure Schedule

Client Name: City of Newburgh

COVERAGE(S)	CARRIER NAME(S)	ESTIMATED ANNUAL PREMIUM <sup>1</sup>	COMM. % OR FEE <sup>2</sup>	WHOLESALER, MGA OR INTERMEDIARY		
				NAME <sup>3</sup>	COMMISSION % / FEE \$ <sup>4</sup>	AJG OWNED? YES/NO
General Liability Terrorism	Nautilus Insurance Company	\$50,284.00 \$129.75	10 %	Risk Placement Services / RPS Uniondale	10 %	Yes

Some carriers pay Gallagher supplemental or contingent commissions in addition to the policy commission. Contingent commissions are typically contingent upon performance factors such as growth, profit, volume or retention, while supplemental commissions are not. These supplemental or contingent commissions may range from less than 1% up to 10% of the policy premium. Please refer to the Compensation Disclosure or contact your Gallagher representative for additional information.

1 \*A verbal quotation was received from this carrier. We are awaiting a quotation in writing. The premium indicated is an estimate provided by the market. The actual premium and acceptance of the coverage requested will be determined by the market after a thorough review of the completed application.

\*\* A written quotation was received from this carrier. The premium indicated is an estimate provided by the market. The actual premium and acceptance of the coverage requested will be determined by the market after a thorough review of the completed application.

2 The commission rate is a percentage of annual premium excluding taxes & fees.

\* Gallagher is receiving \_\_\_\_\_% commission on this policy. The fee due Gallagher will be reduced by the amount of the commissions received.

3 We were able to obtain more advantageous terms and conditions for you through an intermediary/ wholesaler.

4 \* The non-Gallagher intermediary/wholesaler did not provide their compensation information for this proposal. The usual and customary compensation to a wholesaler/ intermediary ranges from 5% to 12%, but we cannot verify that range is applicable in connection with this proposal.

RESOLUTION NO.: 238 - 2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH COLBY KENNELS  
TO PROVIDE FOR BOARDING SERVICES FOR DOGS IN  
THE CUSTODY OF THE CITY OF NEWBURGH**

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

WHEREAS, Colby Kennels has submitted a revised proposal to provide boarding services such as clean housing, feeding and rehabilitation of dogs in the custody of the City of Newburgh; and

WHEREAS, this Council has reviewed the revised proposed agreement with Colby Kennels and has determined that entering into the same would be in the best interests of the City of Newburgh, its citizens and the animals alike;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement, in substantially the same form annexed hereto with such other terms and conditions as may be required by the Corporation Counsel, with Colby Kennels to provide boarding services for the dogs in the custody of the City of Newburgh.

# AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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 COLBY KENNELS, a firm with principal offices at \_\_\_\_\_, New York 12550 hereinafter referred to as "VENDOR."

## ARTICLE 1. SCOPE OF WORK

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

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties.

## ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning as of October 1, 2014, and ending September 30, 2015. This contract may be renewed by the City for each of five (5) successive one-year terms.

## 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.

## 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.

**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.

**ARTICLE 7. FAIR PRACTICES**

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies that 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; and that 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.

**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. NON-EXCLUSIVITY, ASSIGNMENT AND SUBCONTRACTING**

The parties recognize and agree that VENDOR is providing specialized professional services to assist CITY in performing its obligations under the Agricultural & Markets Law and other state and local laws, rules and regulations; and that VENDOR will provide its services in accordance with same. The parties agree that this agreement is non-exclusive, and that CITY shall be entitled to secure the same services and/or goods from another

vendor as provided by **VENDOR** hereunder at any time including during the term of this Agreement.

**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.

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 of a minimum of \$2,000,000 per occurrence, naming the City as additional insured, and other insurance with stated minimum coverages, as required by law: 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 commercially-available policies of insurance.

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

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.

#### 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.

#### ARTICLE 16. 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 17. TERMINATION

Either party may, by written notice to the other effective ninety (90) days after mailing, terminate this Agreement in whole or in part at any time (i) for convenience, (ii) upon the failure of a party 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.

**ARTICLE 18. 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 19. NO ARBITRATION**

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

**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. 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 22. 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 both parties. 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.

{THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK}

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

THE CITY OF NEWBURGH

COLBY KENNELS

BY: \_\_\_\_\_  
Michael G. Ciaravino,  
City Manager  
Per Resolution No. -2014

BY: \_\_\_\_\_  
Title:

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

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

APPROVED:

\_\_\_\_\_  
JOHN J. ABER,  
CITY COMPTROLLER

\_\_\_\_\_  
MICHELLE KELSON,  
CORPORATION COUNSEL

## SCHEDULE A

## SCOPE OF SERVICES / FEES &amp; EXPENSES

COLBY KENNELS shall receive from and take temporary custody of dogs brought to the kennel by the CITY OF NEWBURGH ANIMAL CONTROL officer, or by any police officer or other authorized officer, official, agent or employee of City of Newburgh. Colby Kennels shall provide shelter, food, treatment and care, and shall otherwise serve the needs of all such dogs as shall be required by the Agriculture and Markets Law of the State of New York, and by the laws, rules, regulations and policies of the City Of Newburgh and its officials and officers in connection therewith.

All dogs MUST be vaccinated for Rabies, DHLPP and Bordetella and arrive at the kennel with the appropriate records.

All dogs must be brought to and picked up during Colby Kennels office hours:

Monday thru Friday 8 am to 12:30 pm and 4 pm to 5:30 pm

Saturday 8 am to 12:30 pm

The office is closed Saturday afternoons, Sundays and major holidays.

For each dog brought to or caused to be placed in the physical custody of Colby Kennels by the City of Newburgh, Colby Kennels shall be paid a one-time fee as follows:

- A. For each such dog determined to be suitable for adoption, the fee will be Three Hundred Fifty (\$350.00) Dollars for fourteen (14) day hold.
- B. For each such dog determined to be unsuitable for adoption, the fee will be One Hundred Twenty-Five (\$125.00) Dollars for five (5) day hold.
- C. For each such dog required to be held for rabies quarantine, the fee shall be Two Hundred Fifty (\$250.00) Dollars for ten (10) day hold.
- D. For each such dog which shall not have been spayed or neutered and are at Colby Kennels for seven (7) days must be picked up by City Of Newburgh to have procedure done at the City of Newburgh's expense and then can be returned to Colby Kennels.
- E. No more than six (6) dogs may be left in the custody of Colby Kennels at any one time without the consent of Colby Kennels manager, Mabel Finley and/or Linda Jobson.
- F. The City of Newburgh Animal Control Officer, no other person or entity; shall be responsible for determining whether each such dog is suitable for adoption and shall be responsible for the tasks associated with the adoption of such dogs.
- G. For each such dog determined to be suitable for adoption and that remains at Colby Kennels past the fourteen (14) day hold period the fee will be Fifteen (\$15) Dollars per day.

RESOLUTION NO.: 239-2014

OF

SEPTEMBER 22, 2014

A RESOLUTION AUTHORIZING THE ADDITION  
OF ONE ADDITIONAL ADMINISTRATIVE ASSISTANT POSITION ON A  
TEMPORARY BASIS UNTIL OCTOBER 30, 2014 TO PROVIDE FOR  
FRONT OFFICE SUPPORT IN THE EXECUTIVE OFFICES

WHEREAS, due to retirement, it has become necessary to create one additional Administrative Assistant position so that there is sufficient personnel to perform the day-to-day operations in the Executive Offices located in City Hall; and

WHEREAS, the creation of the additional Administrative Assistant position will be on a temporary basis until October 30, 2014; and

WHEREAS, this Council has determined that the creation of such position is in the best interests of the operations of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2014 be amended, and that there be and hereby is created one additional Administrative Assistant position on a temporary basis until October 30, 2014 to provide for front office support in the Executive Offices.

RESOLUTION NO.: 240-2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY  
FROM A DEED ISSUED TO C L DEXTER PROPERTIES, LLC  
TO THE PREMISES KNOWN AS 255 POWELL AVENUE  
(SECTION 7, BLOCK 7, LOT 18)**

**WHEREAS**, on November 15, 2012, the City of Newburgh conveyed property located at 255 Powell Avenue, being more accurately described on the official Tax Map of the City of Newburgh as Section 7, Block 7, Lot 18, to C L Dexter Properties, LLC; and

**WHEREAS**, Timothy P. Dexter, Jr., of C L Dexter Properties, LLC, has advised that a full building permit was issued on June 6, 2014; and

**WHEREAS**, in order to obtain a construction loan to complete the rehabilitation of 255 Powell Avenue, Mr. Dexter 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 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.: 241 - 2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE A CONTRACT WITH  
MABEY INC. FOR RENTAL OF A TEMPORARY BRIDGE  
DURING THE REPAIR OF THE ROUTE 32/ METAL ARCH CULVERT BRIDGE  
ALSO KNOWN AS THE LAKE STREET BRIDGE AT A COST OF \$50,320.00  
AND AMENDING RESOLUTION NO: 247 - 2013,  
THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$81,000 FROM SPECIAL ITEMS - CONTINGENCY TO ENGINEERING -  
CONSULTANT SERVICES TO FUND THE TEMPORARY BRIDGE PROJECT**

WHEREAS, the City of Newburgh wishes to accept a proposal and execute a contract with Mabey Inc. for the rental of a temporary bridge during the repair of the Route32/Metal Arch Culvert Bridge also known as the Lake Street Bridge; and

WHEREAS, the proposal includes bridge rental for 30 weeks and freight delivery to Newburgh at a cost of \$50,320.00; and

WHEREAS, in addition to the temporary bridge rental, there will be other costs associated with the installation of the temporary bridge, including but not limited to materials, pavement and equipment for a total project cost of \$81,000.00 and funding for the total project shall be derived from A. 1440.0455; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that accepting the proposal and installing the temporary bridge is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Mabey Inc. for rental of a temporary bridge during the repair of the Route 32/Metal Arch Culvert Bridge also known as the Lake Street Bridge at a cost of \$50,320.00; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, that Resolution No: 247-2013, the 2014 Budget of the City of Newburgh, is hereby amended as follows to provide funding for the full cost of the rental and installation of the temporary bridge:

		<u>Decrease</u>	<u>Increase</u>
A.1440	Engineering		
.0455	Consultant Services		\$81,000.00
A.1900	Special Items		
.1990	Contingency	\$81,000.00	
	<u>Total</u>	\$81,000.00	\$81,000.00

RESOLUTION NO.: 242 - 2014

OF

SEPTEMBER 22, 2014

RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR OCTOBER 14, 2014 TO HEAR PUBLIC COMMENT  
CONCERNING A LOCAL LAW ADDING CHAPTER 276 ENTITLED  
"TOBACCO" TO THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH

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 Adding Chapter 276 entitled 'Tobacco' and Enacting Article I entitled 'Tobacco Retail License' to the Code of Ordinances of the City of Newburgh"; 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 14<sup>th</sup> day of October, 2014, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

LOCAL LAW NO.: \_\_\_\_\_ - 2014

OF

\_\_\_\_\_

A LOCAL LAW ADDING CHAPTER 276 OF THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH ENTITLED "TOBACCO" AND ENACTING ARTICLE I  
ENTITLED "TOBACCO RETAIL LICENSE"

BE IT ENACTED, by the Council of the City of Newburgh, New York that Chapter 276  
"Tobacco" be and is hereby added as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Adding Chapter 276 entitled 'Tobacco'  
and Enacting Article I entitled 'Tobacco Retail License' to the Code of Ordinances of the City of  
Newburgh".

SECTION 2 - PURPOSE AND INTENT

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States,  
and according to the 2014 Surgeon General Report, causes over 480,000 deaths in the United States  
each year; and

WHEREAS, tobacco companies sell products that are addictive and inherently dangerous, causing  
cancer, heart disease, and other serious illnesses; and

WHEREAS, the City of Newburgh has a substantial interest in reducing the number of individuals  
of all ages who use cigarettes and other tobacco products, and a particular interest in protecting  
adolescents from tobacco dependence and the illnesses and premature death associated with tobacco  
use; and

WHEREAS, an overwhelming majority of Americans who use tobacco products begin using such  
products while they are adolescents and become addicted to those products before reaching the age  
of 18 and the 2014 Surgeon General Report states that more than 3,200 young people under the age  
of 19 smoke their first cigarette each day in the United States; and

WHEREAS, the prevention of adolescent tobacco product use is detailed in Article 13-F of the New  
York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act (ATUPA)  
which expressly prohibits the sale of tobacco products to minors; and

WHEREAS, although it is unlawful to sell tobacco products to minors, New York State Department of Health, The New York Youth Tobacco Survey 2008 finds that 8.4% middle school and 28% of high school students in the Hudson Valley Area who use cigarettes report that they usually purchase their cigarettes from a retail store; and

WHEREAS, research has found that higher tobacco retail outlet density is significantly associated with higher rates of youth smoking initiation and experimentation; and

WHEREAS, The New York State Tobacco Control Evaluation Program Tobacco Retail Outlet Density by Proximity to Schools and in Low Income Areas Orange County, New York Findings, a report by the Department of Health Behavior, Division of Cancer Prevention and Population Sciences, at Roswell Park Cancer Institute found that in 2012 of the 319 validated tobacco retail outlets located in Orange County, 110 or 34.5% are located in the Newburgh area and in Orange County, 16.3% (n=52 of 319) are located within a distance of 1,000 feet of a school; and

WHEREAS, research shows that a high concentration of tobacco outlets near schools provides our most vulnerable populations with ready access to tobacco and increases their exposure to tobacco retail marketing, which may increase their uptake of tobacco usage and creates an environment that promotes the social acceptability of tobacco use; and

WHEREAS, City of Newburgh has a substantial and important interest in reducing the illegal sale of tobacco products to minors; and

WHEREAS, studies have found a higher prevalence of current smoking at schools with more tobacco outlets within walking distance, and researchers suggest that limiting the proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates; and

WHEREAS, licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors; and

WHEREAS, restricting the number and the location of tobacco retailers and the associated marketing of tobacco products within those retail stores in the City is necessary to protect the public health, safety, and welfare of our youth; and

WHEREAS, a local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of our residents, particularly children, and will help ensure that retailers comply with the ATUPA, other tobacco control laws, and the business standards of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED THAT,** it is the intent of the City of Newburgh to implement effective measures through this Chapter to reduce the number of its tobacco retail outlets, regulate the location of its tobacco retail outlets, stop the sale of tobacco products to its youth, prevent the sale or distribution of contraband tobacco products in Newburgh, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 276 entitled "Tobacco", Article I entitled "Tobacco License" to read as follows:

ARTICLE I.

§ 276-1 Definitions.

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

ADMINISTRATIVE HEARING means a hearing by the City Manager or his designee.

ADULT-ONLY ESTABLISHMENT means a facility where the operator ensures or has a reasonable basis to believe (such as checking identification of any person appearing to be under the age of 26) that no person under the Legal Age is permitted entrance.

AGE-VERIFIED CUSTOMER means any individual who has presented a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is of Legal Age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided however that such appearance shall constitute a defense in any proceeding alleging a violation of this Chapter. It shall be an affirmative defense to a violation of this Chapter that the Tobacco Retailer successfully performed a Transaction Scan of an individual's identification as defined by New York Public Health Law Section 1399-cc and that a Tobacco Product or Tobacco-Related Product was provided to such individual in reasonable reliance upon such identification and transaction scan.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

CITY CLERK means the City Clerk or Deputy City Clerk.

LEGAL AGE means the minimum age at which individuals are permitted to legally purchase tobacco products or tobacco-related products.

NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

POLICE DEPARTMENT means the City of Newburgh Police Department.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public or private pre-kindergarten, kindergarten, elementary, middle, junior high or high school or alternative school.

TOBACCO PRODUCT or TOBACCO-RELATED PRODUCT means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, shisha, powdered and/or dissolvable tobacco products, liquid nicotine and electronic cigarette cartridges, whether packaged or not; any packaging that indicates it might contain any substance containing tobacco or nicotine; or any object utilized for the purpose of smoking or inhaling tobacco or nicotine products. However, "Tobacco Product" or "Tobacco-Related Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

TOBACCO RETAILER means any Person who sells or offers for sale any Tobacco Product or Tobacco-Related Product or any employee of such a Person.

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale of Tobacco Products or Tobacco-Related Products in the City of Newburgh.

#### § 276-2 Tobacco Retail License

A. Starting February 1, 2015, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Tobacco-Related Products to consumers in the City of Newburgh, without a valid Tobacco Retail License issued by the City Clerk. A Tobacco Retail License is not required for a wholesale dealer who sells Tobacco Products or Tobacco-Related Products to retail dealers for the purpose of resale only and does not sell any Tobacco Products or Tobacco-Related Products directly to consumers.

B. All Tobacco Retail Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address at which Tobacco and Tobacco-Related Products are sold or offered for sale. Any change in business ownership or business address requires a new Tobacco Retail License.

C. All Tobacco Retail Licenses issued pursuant to this section are valid for no more than one year and expire on February 1 following the effective date of the Tobacco Retail License. As set forth in Section 276-8, a Tobacco Retail License may be revoked by the Police Department prior to its expiration date for cause.

D. Applications for a New Tobacco Retail License shall be made on a form specified by the City Clerk, at least 30 days prior to February 1, 2015. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

E. Applications for a Renewed Tobacco Retail License shall be made on a form specified by the City Clerk at least 30 days prior to the expiration of the current license. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

F. Applications for a new or renewed Tobacco Retail License shall be accompanied by the fee set forth in Section 276-7.

G. The issuance of any Tobacco Retail License pursuant to this Chapter is done in the discretion of the City of Newburgh and shall not confer upon licensee any property rights in the continued possession of such a license.

### § 276-3 Issuance of Licenses

A. Upon the receipt of a completed application for a New or Renewed Tobacco Retail License and the fee required by Section 276-7, the Police Department shall inspect the location at which tobacco sales are to be permitted. The Police Department also may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

B. No Tobacco Retail License shall be issued by the City Clerk to an Applicant if one or more of the following bases for denial exists:

- (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
- (2) The fee for the application has not been paid as required;
- (3) The Applicant does not possess a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance at the location for which an application is requested;
- (4) The Applicant seeks a New Tobacco Retail License at a location for which this Chapter prohibits the issuance of a New Tobacco Retail License;
- (5) The Applicant has previously had a Tobacco Retail License issued under this Chapter revoked;
- (6) A Tobacco Retail License issued under this Chapter for the same address or location previously has been revoked;

- (7) The Applicant has been found by a court of law or administrative body to have violated any federal, state or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs; (b) the payment or collection of taxes on Tobacco Products; (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Products; or (d) the sale of Tobacco Products;
- (8) The Applicant is not in compliance with all applicable New York State Uniform Building Code, Fire Prevention Code, Property Maintenance Code, Electrical Code and Plumbing Code and the Code of Ordinances of the City of Newburgh; and
- (9) The Applicant has not paid to the City of Newburgh outstanding fees, fines, penalties, or other charges owed to the City of Newburgh.

§ 276-4      Limitation on Number of Licenses Issued

A. In the first year subsequent to the effective date of this Chapter, a Tobacco Retail License shall only be issued to an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this Chapter.

B. Except for the first year subsequent to the effective date of this Chapter, the total number of New and Renewed Tobacco Retail Licenses issued by the City Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.

C. Starting on February 1, 2016, the City Clerk shall issue only one New Tobacco Retail License for every two Tobacco Retail Licenses that were revoked during the previous year or for which no renewal application was submitted.

D. Whenever the number of valid applications for a New Tobacco Retail License exceeds the number of New Tobacco Retail Licenses that may be issued under this Section, licenses shall be granted using the following priorities:

- (1) New Tobacco Retail Licenses shall be granted, first, to any Applicant who will sell Tobacco Products or Tobacco-Related Products at an Adult-Only Facility.
- (2) New Tobacco Retail Licenses shall be granted, second, to any Applicant that was not granted a license in the first year after the effective date of this Chapter because of an ineligible location for an establishment at different eligible location. If there are more valid applications from such Applicants for New Tobacco Retail Licenses than the number of available New Tobacco Retail Licenses, the New Tobacco Retail Licenses shall be granted to those Applicants by lottery.
- (3) Any remaining available New Tobacco Retail Licenses shall be granted to eligible Applicants by lottery.

§ 276-5 Certain Locations

- A. No Tobacco Retail License shall be issued to any seller of tobacco products or tobacco-related products that is not in a fixed, permanent location.
- B. No Tobacco Retail License shall be issued to any establishment within 1,000 feet of the nearest point of the property line of a School.

§ 276-6 Required License Display

- A. Any Tobacco Retail License issued pursuant to this Local Law shall be displayed prominently at the location where the Tobacco Products or Tobacco-Related Products are sold so that it is readily visible to customers.
- B. Selling, offering for sale, or permitting the sale of any Tobacco Product or Tobacco-Related Product without a valid Tobacco Retail License displayed in accordance with Section 276-6(A) constitutes a violation of this Local Law.

§ 276-7 Required Fee

- A. Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set forth in Chapter 163 "Fees" of the Code of Ordinances of the City of Newburgh.
- B. Starting two years after the effective date of this Chapter, the City Council may, on an annual basis, modify the fee required pursuant to Section 276-7(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

§ 276-8 Revocation or Suspension of Licenses

Any Person who is found to be in violation of the terms and conditions of this Local Law or for violation of any federal, state, or local law or regulation pertaining to (a) the display of Tobacco Products or Tobacco-Related Products or of health warnings pertaining to Tobacco Products or Tobacco-Related Products, or (b) the sale of Tobacco Products or Tobacco-Related Products shall have their City of Newburgh License suspended for up to 3 months for a first offense, 6 months for a second offense, or revoked for a third offense, after notice and an opportunity to be heard at an administrative hearing before the City Manager or his designee.

§ 276-9            Violations and Enforcement

A. The Police Department shall enforce the provisions of this Chapter. The Police Department may conduct periodic inspections in order to ensure compliance with this Chapter.

B. In addition to the penalties provided for in Section 276-8, any Person found to be in violation of this Chapter shall be guilty, upon conviction, of an offense punishable by a fine of not less than \$500.00 for the first violation; not more than \$1,000 for a second violation; and not more than \$2,000.00 for the third and each subsequent violation within a two-year period or by imprisonment for a period not exceeding 1 year, or by both such fine and imprisonment. Each day on which a violation occurs shall be considered a separate and distinct violation.

§ 276-10            Severability

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

SECTION 4 - 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.

SECTION 5 - EFFECTIVE DATE

This Local Law shall be effective on February 1, 2015 and upon the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

RESOLUTION NO. 243 -2014

OF

SEPTEMBER 22, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED FUNDING FROM  
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ENVIRONMENTAL RESTORATION PROGRAM IN THE AMOUNT OF \$114,000.00  
FOR THE REMEDIATION OF CITY OWNED PROPERTY  
LOCATED AT 350-352 LIBERTY STREET AND TO EXECUTE A  
NEW STATE ASSISTANCE CONTRACT

WHEREAS, the City of Newburgh has entered into a State Assistance Contract (SAC) C303486 with the New York State Department of Environmental Conservation (the "DEC") to address environmental concerns at 350-352 Liberty Street, and

WHEREAS, by Resolution No. 100-2013 of May 13, 2013, the City Council authorized the City Manager to execute a SAC amendment to complete the scope of work to complete the site investigation, and

WHEREAS, the DEC Environmental Restoration Program has funding available for remediation of enrolled sites where the investigation is complete; and

WHEREAS, the estimated total cost of the remediation is \$114,000.00, of which ERP funds will provide up to 90% reimbursement of total eligible costs, and the remaining costs of will be provided by the City match of 10%; and

WHEREAS, funding for the City's 10% match shall be derived from H1.1440.0208.5403.2010; and

WHEREAS, if awarded, the grant funding will require a new SAC with the DEC to cover said remediation costs; and

WHEREAS, this Council has determined that applying for and accepting the ERP funds if awarded and entering into a new SAC is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a funding from the New York State Department of Environmental Conservation Environmental Restoration Program in an amount up to \$114,000.00 with a 10 percent match, and upon the award of such funding to enter into and execute a State Assistance Contract for such remediation and to carry out and comply with the terms of such project agreement(s).

RESOLUTION NO.: 244 - 2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL  
SUBMITTED BY LEANFIRM AND EXECUTE AN AGREEMENT FOR  
CONSULTING SERVICES IN CONNECTION WITH  
THE BUSINESS PROCESS ANALYSIS AND ASSESSMENT PROJECT  
AT A TOTAL PROJECT COST OF \$60,000.00**

WHEREAS, the City of Newburgh is working with Pace University Land Use Law Center and the Center for Community Progress to overhaul land use and code compliance processes in order to make the City more development friendly; and

WHEREAS, at the suggestion of university professors, the City retained LeanFirm to conduct an initial assessment of our data systems and processes, and as a result of that study it has been determined that an in-depth review of our core services in the Code Compliance Bureau as well as determining how to improve the current code enforcement technology; and

WHEREAS, senior staff members have suggested that other departments might benefit as well from such in-depth review; and

WHEREAS, LeanFirm has submitted a proposal, a copy of which is attached to this resolution, to provide these services; and

WHEREAS, the total project cost shall be \$60,000.00; and

WHEREAS, as a partner, Pace University Land Use Law Center has received a \$15,000.00 grant from the Ford Foundation to pay for a portion of the total project cost, and the remaining funds in the amount of \$45,000.00 will be appropriated from the 2013 BAN; and

WHEREAS, this Council has reviewed such proposal and has determined that accepting the same to conduct the Business Process Analysis and Assessment is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to accept a proposal submitted by LeanFirm and execute an agreement for consultant services in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require for consulting services in connection with the Business Process Analysis and Assessment Project at a total project cost of \$60,000.00.

# AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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 LEANFIRM INC., with offices at 730 West Barry, Suite #2W, Chicago, Illinois 60657, hereinafter referred to as "CONSULTANT."

## ARTICLE 1. SCOPE OF WORK

CONSULTANT 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. CONSULTANT 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 CONSULTANT for any SERVICES and/or goods provided outside those specifically identified in the Proposal annexed hereto as 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 CONSULTANT 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 CONSULTANT or to third parties. CONSULTANT 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. CONSULTANT agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

## ARTICLE 2. TERM OF AGREEMENT

CONSULTANT agrees to perform the SERVICES and/or supply goods beginning October 1, 2014, and ending January 31, 2015.

## 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 CONSULTANT shall be paid a consultancy fee of \$60,000 of which \$45,000.00 shall be paid by the CITY and \$15,000.00 shall be paid by Pace University through grant funding. CONSULTANT 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 CONSULTANT within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify CONSULTANT, in writing, of the CITY'S

reasons for objecting to all or any portion of the invoice submitted by CONSULTANT.

A not-to-exceed cost of \$60,000.00 has been established for the scope of SERVICES and/or the supply of goods rendered by CONSULTANT. 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT or to anyone else beyond funds appropriated and available for this Agreement.

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

CONSULTANT represents and warrants that no person or selling agency has been employed or retained by CONSULTANT 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. CONSULTANT 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. CONSULTANT 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 CONSULTANT 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**

CONSULTANT 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. CONSULTANT 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 CONSULTANT 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

CONSULTANT and each person signing on behalf of the CONSULTANT 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 CONSULTANT 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 CONSULTANT have not been knowingly disclosed by CONSULTANT 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 CONSULTANT 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 CONSULTANT (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, CONSULTANT 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, CONSULTANT 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 CONSULTANT'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, CONSULTANT 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

CONSULTANT 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 CONSULTANT 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 CONSULTANT, 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 CONSULTANT'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by CONSULTANT 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

CONSULTANT 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

CONSULTANT 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. CONSULTANT 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 CONSULTANT 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. CONSULTANT 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, CONSULTANT 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 CONSULTANT and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, CONSULTANT 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 CONSULTANT shall not in any way limit CONSULTANT'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	\$1,000,000 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

CONSULTANT shall attach to this Agreement certificates of insurance evidencing CONSULTANT'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 CONSULTANT.

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 CONSULTANT'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);
- B. CONSULTANT 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, CONSULTANT 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**

CONSULTANT 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 CONSULTANT, 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 CONSULTANT either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of CONSULTANT'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**

CONSULTANT 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 CONSULTANT, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by CONSULTANT 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.

CONSULTANT 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. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES and/or goods hereunder, CONSULTANT may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. CONSULTANT 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. CONSULTANT'S 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 17. TERMINATION**

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

Upon termination of this Agreement, the CONSULTANT 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 CONSULTANT pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by CONSULTANT 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 CONSULTANT 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 CONSULTANT and/or set-off against any sums due CONSULTANT.

Notwithstanding any other provision of this Agreement, CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of CONSULTANT'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to CONSULTANT for the purposes of set-off until such time as the exact amount of damages due to the CITY from CONSULTANT 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 18. GENERAL RELEASE**

The acceptance by CONSULTANT 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 CONSULTANT arising out of the performance of this Agreement.

#### **ARTICLE 19. 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 CONSULTANT (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 20. 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 21. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. CONSULTANT 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 22. CURRENT OR FORMER CITY EMPLOYEES**

CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 23. ENTIRE AGREEMENT**

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by

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

THE CITY OF NEWBURGH

CONSULTANT

BY: \_\_\_\_\_  
Michael G. Ciarvino,  
City Manager  
Per Resolution No. 244-2014

BY: \_\_\_\_\_  
Mark Frater

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

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

Proposal for:

City of Newburgh, NY  
Department of Code Enforcement

Business Process Analysis and Assessment

By:

lean**FIRM**

730 West Barry Avenue

Suite #2W

Chicago, IL 60657

Phone: 216/577-1782

Email: [mfrater@leanfirm.com](mailto:mfrater@leanfirm.com)

Website: <http://www.leanfirm.com>

# lean**FIRM**

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## **Business Process Analysis and Assessment:**

### **Purpose**

The purpose of this engagement is to standardize, document and optimize core code enforcement processes. This will be used both as training material and to define technical requirements of changes to the software systems.

The city is currently considering purchasing a new code enforcement software; replacing the current system IPS. Before making this crucial decision, there are some very specific tasks that will be completed in this engagement, which will help guide the city through the transformation of code enforcement in Newburgh.

In any organization, there are 3 stages of improvement: standardization, continuous improvement and automation. Before implementing software automation, world class organizations first standardize their systems and look for ways to simplify their processes. In doing a process review, the city's decision of whether or not to buy or create new software systems or to modify those already in place, will become clear. Documented procedures also allow for quantifying the ROI of the proposed solution.

Consultants assigned to complete tasks: Mark Frater, Doug Leeper

City of Newburgh Departments participating in this study:

- Code Enforcement
- Assessor
- Tax Collector
- Law Department

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## Task and Deliverables

**Task 1: Conduct a Business Process Analysis to analyze and document the current and proposed process.**

We will perform a business process analysis on the core code enforcement functions. First, we will collaborate with City staff review the processed that we will document and define the starting and ending point of each process. We will document the Current State Process Flow, the “As-Is” state of the organization. In this stage, we will also spend time conducting staff interviews, work shadowing and process mapping. This information and analysis is made to answer questions like the following:

- Who is doing each step, at what stage of the process?
- How does the process flow from step to step and from person to person?
- Are there process steps which are in place that are not federally or locally mandated/ regulated?
- How can streamlining and continuous improvement work smoothly and collaboratively with Federal and Local regulations?
- What happens when there are errors in the process?
- How is information communicated internally as well as externally?
- How is the process measured for success?
- Where are individuals or other partnering organizations/departments working in duplicate?
- What are the current baseline measurements and output goals?

We will utilize Lean Thinking, Six Sigma and principles to perform a value-analysis on each step to uncover the waste and variation in the process.

We will also review the current organizational structure with recommendations to changes to job duties and/or structure to achieve maximum productivity and efficiency and to provide reasonable workloads. From the above analysis, we will create the Future State Process flows. The Future State Process flows will document the optimal organizational structure and workflow, including:

- A streamlined work flow
- Recommendations to enhance operations using technology
- Revised organizational procedures
- A revised organizational model or job responsibilities

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Below is a list of the core services that will be evaluated:

## Vacant/Abandoned

- Complaint Intake and Evaluation
- Service/Response Priorities
- Inspections
  - Routine
  - Urgent/Imminent Threat
- Case Management
  - Research—due diligence
  - Notice
  - Extensions
  - Repeat Offender
- Data-Management/Tracking
- Enforcement Options
  - Administrative
  - Civil
  - Criminal
  - Summary Actions
- Post Hearing Actions
  - Abatement Actions
  - Liens and Recordations
  - Cost  
Recovery/Collection/Lien  
Foreclosure
- Changes in property value to the Assessor

## Occupied

- Complaint Intake and Evaluation
- Service/Response Priorities
- Inspections
  - Interior Housing
  - Exterior Maintenance
  - Owner Occupied
  - Tenant Occupied
  - Routine
  - Urgent/Imminent Threat
- Case Management
  - Research—due diligence
  - Notice
  - Extensions
  - Repeat Offender
  - Hardship Cases
  - Relocation/Closure
- Data-Management/Tracking
- Enforcement Options
  - Administrative
  - Civil
  - Criminal
  - Summary Actions
- Post Hearing Actions
  - Abatement Actions
  - Liens and Recordations
  - Cost  
Recovery/Collection/Lien  
Foreclosure
- Changes in property value to the Assessor

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## **Task 1: Deliverables:**

- A functional “Current State” process flow for Code Enforcement core services; outlining potential areas for process streamlining. This is the “As-Is” state of the organization. It is vital that the organization first document its current processes in order to establish a place to begin.
- A review of paperwork and forms, with recommendations for simplification or consolidation
- Recommended changes to the current organizational structure and process with recommendations to changes to job duties, work flow and/or structure to achieve maximum productivity and efficiency and to provide reasonable workloads
- Quantifying the potential savings for reconfiguring the process
- A functional “Future State” process flow for maintenance, inventory and procurement. At this stage the organization determines what modifications can be made to current policies, processes, procedures and technology that will streamline operations and/or improve customer service

## **Task 2: Decide on how to improve the current Code Enforcement software solution.**

We will calculate the return on investment (ROI) for improvements or purchasing of Code Enforcement software.

## **Task 2: Deliverable:**

Make a business case to either:

- **Modify IPS** – The city would contract to have IPS modified to streamline procedures and address some data management issues. Modifications might include: adding fields to track timelines and frequency of complaints, violations and court actions, scheduling functionality, and case management.
- **Purchase a new Code Enforcement software** –Numerous commercial options exist for code enforcement systems. Consideration must be given to systems with open database systems for future interoperability and extension. Before choosing this option; a ROI should be calculated.
- **Build a custom code enforcement software** –Design and implement a system using available open-source technology. Again, before choosing this option; a ROI should be calculated.

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## Task 3: Assessment Report

We will write a report detailing observations, support for those observations, recommendations and projected future outcomes and savings. We will include options for changes in job duties, work flow and/or structure, technology, as well as an action plan showing how recommended changes can be implemented. Changes will be broken down into attainable goals based on priority and will indicate the resources and key staff needed to implement.

## Deliverable 3: Assessment Report

- A report detailing observations, support for those observations, recommendations and projected future outcomes and savings. Recommendations will include specific changes to workflow, job duties, technology or organizational models to improve efficiency.
- Current State Process Flows
- Future State Process with streamlined workflow, revised organizational procedures and technology recommendations
- A cost benefits analysis that will quantify the projected savings of the recommended changes to process, policy and technology.
- A Transition Plan with a detailed project timeline including action items and implementation dates

## Proposed Project Schedule

Assuming an award date of October 1, 2014; below is the proposed project schedule:

- Site Visit 1: Week of November 3, 2014
- Site Visit 2: Week of December 1, 2014

<b>Tasks</b>	<b>Start Date</b>	<b>Completion Date</b>
<b>Task 1:</b> Conduct a Business Process Analysis to analyze and document the current and proposed process.	10/1/2014	12/8/2014
<b>Task 2:</b> Decide on how to improve the current Code Enforcement software solution.	11/3/2014	1/30/2015
<b>Task 3:</b> Assessment Report	11/3/2014	1/30/2015

## Cost Estimate for Business Process Analysis and Assessment:

### Consulting fees: \$60,000

The above quote is fully inclusive of all costs associated with labor, company overhead, administration, employee benefits, profit, other direct costs (e.g. travel, lodging, per diem costs), etc.

The quote includes 2 site visits to Newburgh NY, for 2 consultants.

RESOLUTION NO.: 245 - 2014

OF

SEPTEMBER 22, 2014

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

WHEREAS, the City of Newburgh will be holding a Fall Festival on Thursday, October 2, 2014 through Sunday, October 5, 2014, dates inclusive;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into 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 Fall Festival.

# AGREEMENT FOR VENDOR SERVICES

**THIS AGREEMENT** is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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 October 2, 2014, and ending October 5, 2014.

## 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, October 6, 2014. However, in the event of unforeseen delays or other circumstances beyond the control of the parties, Shamrock shall have until October 7, 2014 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

SHAMROCK SHOWS, INC.

BY: \_\_\_\_\_  
Michael G. Ciaravino,  
City Manager  
Per Resolution No.: \_\_\_\_ - 2014

BY: \_\_\_\_\_  
Colin O'Keefe

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

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

APPROVED AS TO FORM

\_\_\_\_\_  
Michelle Kelson  
Corporation Counsel

\_\_\_\_\_  
John J. Aber  
City Comptroller

**SCHEDULE A**

**SCOPE OF SERVICES**



Agreement to place, by the above, amusement rides, attractions, and/or concessions under the following terms and conditions. Shamrock Amusements, Inc. is hereinafter referred to as Show, Sponsoring Organization will be referred to as Sponsor.

For Show Sponsoring Organization: The City of Newburgh  
 Contact Person: Regina Angelo Telephone: 845 565 5429  
 Date(s) of event: OCT 2-5 2014 Location: GULLY'S NEWBURGH  
 Number of rides to be placed: 15 Percent to Sponsor: 25%  
 Number of games to be placed: 6-7 Fee to Sponsor: 75.00 EACH  
 Number of food concessions: 3 Type: Cotton Candy, Popcorn, Snow Cone, Soda.  
Candy Apples Percent to Sponsor: None (See item 3)  
 Number of other concessions: \_\_\_\_\_ Fee to Sponsor: \_\_\_\_\_  
 Type(s): FUNNEL CAKE LEMONADE  
 Times of Operation: 5:00 PM - 11:00 FRI THUR. 1:00 PM - 11:00 SAT SUN  
 Other Conditions, if any: \_\_\_\_\_

**CONTRACT FOR PERFORMANCE**

1. Ticket sellers will be furnished by <sup>SPONSOR</sup> ~~Show~~. Tickets sold on the grounds are off standard numbered rolls and/or strips and Show expects to be reimbursed for all tickets distributed from these rolls and/strips.
2. Show will furnish Certificate of Insurance which covers Show equipment. The Show assumes no responsibility for liability for any Sponsor or independently operated venture. Volunteer workers are not covered by Workman's Compensation and Sponsor accepts all liability.
3. The Show has the exclusive rights to sell cotton candy, popcorn, candy and caramel apples, sno-cones and novelties and pays no rental fee for these concessions.
4. It is understood that no competitive ride, game, concession or attraction of the type of attraction operated by the Show will be permitted on the grounds, no any independent concession unless approved in advance by the Show. Show requests Certificates of Insurance in an equal amount to the amount supplied by the Show.
5. The Show will not be held responsible for any unforeseen mechanical failure resulting in loss of revenue. The Show will also determine if rides and/or other equipment are unsafe to operate due to inclement weather or disorderly crowds.
6. The Show has the right to refuse admission to any person suspected of being under the influence of any alcohol or drug product, or any other person that might place the Show, Sponsor, or Public at risk. It is understood that all necessary permits and clearances required by Sponsor's municipality have been arranged by Sponsor at no cost to Show.
7. Adequate security should be maintained by Sponsor during operating hours at no cost to Show.
8. It is understood that this agreement is the agreement in entirety and that no other conditions either verbal or otherwise can be made without the express written consent of Sponsor and Show.
9. This contract will be void if not signed and returned within 15 days of \_\_\_\_\_ and Show will be free to look for another Sponsor for these dates.

[Signature]  
 Officer or Representative - Shamrock Amusements, Inc.

\_\_\_\_\_  
 Representing Sponsor

338 Willow Tree Rd.  
 Milton, NY 12547  
 Phone: 845-795-1263

Address \_\_\_\_\_  
 City: \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_

Date: 7/20/14

Telephone: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**ALLIED SPECIALTY INSURANCE, INC.**  
**10451 GULF BOULEVARD, TREASURE ISLAND, FL. 33706**  
**Toll Free 1-800-237-3355 National**  
**1-800-282-6776 Florida**

Certificate Number: 1

**CERTIFICATE OF INSURANCE**

This certificate neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policy(ies) described hereon and is issued as a matter of information and confers no right upon the holder.

The policy(ies) identified below by a policy number is in force on the date of certificate issuance. Insurance is afforded only with respect to those coverages for which a specific limit of liability has been entered and is subject to all terms of the policy having reference thereto. Nothing herein contained shall modify any provision of said policy.

In the event of cancellation of the policy, the company issuing said policy will make all reasonable effort to send Notice of Cancellation to the certificate holder at the address shown herein, but the Company assumes no responsibilities for any mistake or failure to give such notice.

Any insurance made a part of the policy includes as a person insured with respect to an occurrence taking place at a Carnivals site,  
 (1) the fair or exhibition association, sponsoring organization or committee  
 (2) the owner or lessee there of (3) a municipality granting the Named Insured permission to operate a(n) Carnivals, but only as respects bodily injury or property damage caused by or contributed to by the negligence of the Named Insured while acting in the course and scope of their employment.

**NAME & ADDRESS OF INSURED:**  
 Shamrock Shows & Amusements, Inc.  
 338 Willow Tree Road  
 Milton NY 12547

**ADDITIONAL INSURED:**

**NAME & ADDRESS OF CERTIFICATE HOLDER:**

**DATES:** \_\_\_\_\_ to \_\_\_\_\_

	<u>PRIMARY COVERAGE</u>	<u>EXCESS COVERAGE</u>	
Company:	T.H.E. Insurance Company	T.H.E. Insurance Company	
Policy Number:	CPP0100961-04	ELP0010221-04	
LIABILITY LIMITS			
BI/PD AGG:	\$2,000,000	\$4,000,000	
OCC:	\$1,000,000	\$4,000,000	
Food Products:	\$1,000,000	Excess of \$1,000,000	Excess of
Policy period:		\$1,000,000	
From:	5/01/14	5/01/14	0/00/00
To:	5/01/15	5/01/15	0/00/00
		* - COMBINED SINGLE LIMIT	

Coverage shown herein applies only to those items scheduled on or endorsed to the policy.

*Carl A. Serra*

April 02, 2014  
 DATE OF CERTIFICATE ISSUANCE

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

RESOLUTION NO.: 246 - 2014

OF

SEPTEMBER 22, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO REJECT THE BIDS RECEIVED IN CONNECTION  
WITH PROVAN FORD SITE CAP**

**WHEREAS**, the City of Newburgh has advertised for bids with respect to capping the Provan Site with clear crushed stone; and

**WHEREAS**, only one bid was received and far exceeded the Engineer's cost estimate for the necessary work; and

**WHEREAS**, this Council feels it is in the best interests of the City of Newburgh to reject all bids received and re-advertise and re-bid for said project,

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that this Council hereby rejects all bids for the capping of the Provan Site; and

**BE IT FURTHER RESOLVED**, that the City Manager be and is hereby directed to re-advertise for bids for the demolition of a building on the Provan Site.