

A regular meeting of the City Council of the City of Newburgh was held on Monday, December 14, 2015 at 7:00 PM in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

Prayer/Oración

The Prayer was led by Elder Jessie Howard from Cross International Ministries New Testament Church.

Pledge of Allegiance/Juramento a la Alianza

Roll Call/ Lista de asistencia

Present: Mayor Kennedy, presiding; Councilwoman Abrams, Councilwoman Angelo, Councilman Brown (arrived after roll call), Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia (arrived after roll call) – 7

### COMMUNICATIONS

Approval of the minutes of the meeting of November 23, 2015/Aprobación del acta de las reunión del 23 Noviembre del 2015

Councilwoman Abrams moved and Councilwoman Angelo seconded that the Minutes of the November 23, 2015 Council Meeting be approved.

Ayes– Councilwoman Abrams, Councilwoman Angelo, Councilwoman Holmes, Councilwoman Lee, Mayor Kennedy – 5

CARRIED

### ANNOUNCEMENTS

Mayor Kennedy announced that a solution has been found concerning our homeless on the streets as The First United Methodist Church at 245 Liberty Street will open its doors this Wednesday night, December 16th. This has been made possible by many partners that have come together to find a solution including the City of Newburgh, Orange County Social Services, Newburgh Ministries, the First United Methodist Church, the Hope Center, the Honor Group from Middletown and volunteers from Unions and private citizens. They have all come together to create a Shelter as well as an overnight stay for folks that are out on the street. This has been a tremendous outpouring of spirit and another example of people coming together for unity and community to find a solution.

Councilwoman Abrams noted that this effort was spearheaded by Councilwoman Holmes and Councilwoman Mejia also.

Mayor Kennedy added that there is a group called the Church at the Bridge who are collecting coats for homeless children by December 18th so if anyone has a coat that they would like to donate please contact them.

She announced that there will be an Inauguration for herself and Torrance Harvey on January 6th at 10:00 A.M. at N.E.A. North Campus. Perhaps the third Council member will join them also.

There will also be a Prayer Meeting on Saturday night, January 9th at 7:00 P.M. at the Armory and there will be more information forthcoming.

Lastly, she wanted to thank the DPW crew for getting the main arterial streets paved and the Council for setting aside the 1.2 million dollars last March. Many people are complimenting about the streets that have been done.

City Manager Update/Gerente de la Ciudad pone al día la audiencia de los planes de cada departamento

City Manager, Michael Ciaravino gave an update on some key highlights and progress in City departments.

## PRESENTATIONS

Presentation by Trestle Inc. concerning City Calendar for the City of Newburgh 150th Anniversary

Trestle Inc. presented a 2016 City calendar to the City Council for the City of Newburgh's 150th Anniversary. You can obtain one through order forms, phone or online at [www.trestle.org](http://www.trestle.org).

The City Council presented Certificates of Appreciation to contributing photographers chosen to be in the calendar.

## COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Kippy Boyle, Grand St., questioned Agenda items #8, #9, #10, #11, #12 and #13. She feels it is irresponsible to have eighteen and thirty-six month reverter clauses in property

sales without requiring progress performance reports. She noticed that tonight there are several eighteen month reverter clauses and there is one thirty-six month reverter clause and it was mentioned at the Work Session by Corporation Counsel that Banks like to see the longer period of time with construction loans so if that's the case why not make them all for thirty-six months which she feels is ridiculous. Regarding item #23 rescinding the vote to start the search she said was voted on illegally because rules and procedures were not passed. She encouraged the Council to rescind it otherwise they will continue protesting about the way it was done. She thinks they all know that they didn't follow procedure and that the Corporation Counsel clearly outlined that in her analysis. It would really be irresponsible for the Council to continue on that illegal path.

Nicholas Valentine, 350 Water St., thanked the Council for the traffic light. It took almost four years but it is definitely needed on that street. In regard to item #19 for Taylor Recycling he said that this goes back about four or five years but it's a project that is very important for the City of Newburgh and it's economics. This takes time to do and he gives him credit for pursuing it so he hopes they all vote for it. We were the first municipality in Orange County to sign on so he gives the Council credit for staying with that project. Lastly on item #23 rescinding the vote he said that he put together the Charter Review Commission which four years ago the City of Newburgh voters voted overwhelmingly to pass. The Charter has been changed and there are rules that any City Council has to abide by. If they don't do it tonight it will just fall on the new Council members and he doesn't think they want to start that way. If they want to change the City Manager there are procedures to do that so that we don't pay them when they leave and come back. When he was Mayor it happened three times and he doesn't even want to say the amount of money that was spent in order to get those contracts done with. Don't let it happen again and do the right thing tonight.

Lizzie, Montgomery Street, said "ditto" to what everyone has said in regard to item #23 to rescind the vote for a City Manager search. She feels that there is a clear reason why they are trying to get rid of Michael. There has been coercion and corruption and he has had the heart and the strength to stand up to it. We have generations after generations in Newburgh that have suffered by the corruption of City Councils such as this. She implored them to rescind this vote because we are finally moving in the right direction. Everyone is here tonight because they love this city and she sees someone who is trying to fight for it so as it was commented earlier don't leave tonight without rescinding this vote. New Council members are coming in but they will not stop fighting if this happens. They are here to make a better City of Newburgh and she thanked Michael for fighting for that.

Hillary Rayford, City of Newburgh thanked the City Council and for those who are leaving she thanked them for their years of service. She also wanted to thank all of the thirteen hundred and eight people who voted for her and for their support. She knows that there is a lot going on in the City of Newburgh but the residents come first. She told Mayor Kennedy that she will not be participating in the Inauguration on January 6th with her and Torrance Harvey. This way it has been communicated and she will be transparent and truthful to the seat that she is taking. She will fight for the City that she loves and was raised in.

Yaakov Sullivan, 21 Overlook Place said that he has been in this community for eight years and within that time we have had two City Manager's who both left in ways that did not

bring any honor to our city. Our current City Manager in his opinion has done our city proud. He supports him completely and he urged the Council to rescind this vote for a new City Manager. According to the City Charter as elected officials they have a certain authority and they are beholden to the residents as voters. In calling for this move they have overstepped their authority and violated the City Charter in both a way that is improper and illegal. There are people here who will not let this stand because it is not just and it is not fair and their reasons behind taking this action are not ones of integrity or becoming members of a City Council. He asked the Council to rescind this vote.

Ms. Brown, Poughkeepsie, said she came tonight to extend her love to Ms. Lee for a job well done.

Torrance Harvey, Overlook Place, thanked the entire City Council for all that they have done especially those who are leaving at the end of this year for their hard work and due diligence. He said he has been meeting with the City Manager and he thinks that Michael has been and continues to do a great job and he gives him his support. He feels that there is an over dramatization of what this Body has done because it takes five votes to remove the City Manager. The City Manager's contract expires in May of 2016 so one can look at the action of this Body as doing their due diligence to search and interview for a City Manager but it doesn't mean that Michael will be terminated. Pound for pound Michael's record will stand head and shoulders with anyone who interviews for the City Manager position. For people to over dramatize this and think that this is a referendum or a termination of Michael he disagrees. After talking with people in the community there are various different perspectives but the one that is not being spoken and heard is that Michael will stand up to anyone who applies for the job and his record will speak for itself. If this Council decided that they are going to interview for a position that expires in May, 2016 then they have that right. Whether or not they did it through the proper protocol or a legal matter is something that has to be dealt with by Corporation Counsel. He added that he does support Michael as City Manager but he doesn't agree with the over dramatization as if it's a termination of his position. They are looking to interview and do their due diligence to see what's out there which is what that vote was about.

Gabrielle Hill, 93 Ann Street said that her daughter, Jomae Hill, wanted to make a comment. She said, *"I grew up here and let's stop fighting"*. Miss Hill added that the Council should rescind the vote and she was very disappointed at the last meeting because we cannot be disrespectful to one another despite our disagreements. She told them to put aside their personal agendas and feelings because this is about the people and the people only.

Bill, 262 Montgomery Street, said in regard to item #23 that he and his wife bought a house here last August and they were drawn here by the new direction of this City and the positive things going on. He has had the privilege of working with the city closely as he works for the Orange County Partnership which is the Economic Development Office for the County. He has worked very closely with Mr. Ciaravino and his team and it seems like every week he is here for a meeting with a new business that is interested in coming to this area. They are not daunted by the challenges that we face here but the one thing that does turn them off is the infighting and the politics because the reputation of that has gone beyond the area. When people come here they get an amazing welcome at City Hall and they work very well together so he asked that they don't mess with what's working. Don't

fix what's not broken and let's keep moving forward and being positive and working together because to him that's what it's all about.

Barbara Smith, Powell Avenue said that the drama is not from the public it's from our Council. The drama is produced by people who say things like we have no money for this or that so let's see what we can get from this program to help our streets and sidewalks but yet we have an extremely efficient City Manager so why would we spend good money to find something to replace something that should not be replaced? We don't have the money to spend. We don't have the money to even do a "search". The last search they did they had to pay for people to come and for lodging which was a lot of unnecessary expenditures. To the new Council people coming on board she asked them to please take into consideration the money that we don't have and not discuss drama.

Ms. Diggs, Bay View Terrace, asked in regard to item #23 why are we spending time, money and energy looking for a new City Manager? The only conclusion she can come to is that the four people who voted for the search don't want him here but under the rules they can't terminate him because they don't have the supermajority that they need. To her it looks like they are trying to go around the rules. They don't have the votes that they need so they decided to look at what the Charter does not say; it does not talk about how many people they need to vote to start a search. The Charter does say that in the event of a vacancy in the office of the City Manager due to death, resignation or otherwise, the Council shall immediately commence the process to select a new City Manager. They have heard from so many people about why the City Manager should stay so given what the Charter says she doesn't know if they are looking for a loophole. Even if they spend the time and money looking for a new City Manager they can't hire one unless they have a supermajority and the reason the Charter was changed was the people stood behind it. They need five of the Council to agree which is a good rule so she doesn't understand why they are doing this other than it is their own personal agendas as opposed to what everybody is actually telling them. She reminded the Council that they are here to serve the people so please listen to the people.

Mr. Castro, 5 Grand Street said bravo to the City Council in regard to the Pilgrim Pipeline. A lot of people don't know what this is and they have no idea that a devastation could occur in our City if one of the trains that travels through our City were to derail. In terms of the City Manager he thinks that the process is wrong and when things are wrong there are ways to solve them so he is sure that the Council will solve that tonight.

Beatrice Harris, Newburgh Heights said in regard to item #23 that when she sees all of the people here tonight with their posters and their voices she couldn't be more proud. *"The City of Newburgh is finally standing up for what we believe in, what we want and what we need."* This is the first time that the City of Newburgh is moving forward so it's kind of suspicious to her that every time we have a good person that is trying to make the City better they get caught up in possible corruption. We have one man that is finally taking a stand to fix Newburgh and do the right thing and there is talk about replacing him. What is that about? She told the Council that they need to think first and about how far we have come because before we had Mr. Ciaravino we were in bad shape. We have two new Council members who swear that they are full of integrity and hope and she really wants to believe that. Actions speak better than words so she asked all of the Council members to rescind this vote before they drive Newburgh once again backwards.

Lillie Howard, City of Newburgh wanted to share with everyone a book by Mr. Fuller who is the Founder and President of Habitat For Humanity. She read in the book where the Mayor of a particular city had made a decision that they were no longer going to allow Habitat For Humanity to be able to conduct things the way they had. She was the dominant one that was going to say and rule what Habitat For Humanity did so Mr. Fuller called together some people and they Prayed about this and the next day the Mayor died. This shows you the power of Prayer and the bottom line is that there is something wrong with what is going on here now. Everyone needs to seriously think because some people are Praying and she doesn't want to see anyone die but other things can happen besides death. She was born and raised here and she has never seen the city moving in the direction that it is now so she told the Council to seriously think about what they are doing. They are talking about reversing instead of moving forward and we don't have time for things to go back any further.

Corey J. Allen, City of Newburgh, said that he has heard a lot of interesting terms such as corruption, lawsuits and some very serious phrases which he finds kind of disheartening. He has been coming to City Council meetings for a long time and whenever there is an issue or a hot topic is when we find a room full of people with a room full of opinions. When there is something going wrong we see herds of people but when things are going right we don't see them. He advised the audience to continue to stay involved for the sake of this city. If you really love this city like you say you do then be involved and stay involved.

Joe Alvarez, representing We Are Newburgh, said in regard to item #23 that everyone is bickering and fighting but has anyone even asked the man if he wants the position come May? Nobody is firing him they are just reviewing other options in case he doesn't want the job. He sees all of the picket signs about corruption but where are all the signs about saving the kids in the streets? We have kids who are starving out there. Where is everyone when they are giving out shoes, coats, gloves and hats? Where is everyone then? He hasn't seen any of them there. He has a truckload of coats and food to give out this Saturday so where is everybody? Because the Council is looking at things differently they are being attacked and it's corruption but where is the proof? The only corruption to him could be the City Comptroller because he controls all the money. How is the Council corrupt? When someone needs help and you see a man on the corner starving do you help or prejudge? We need to stop prejudging the Council and start doing something for this city. Everyone here needs to do something for the city that they love.

Judy Thomas, 297 Grand Street, said in regard to item #23 that everyone is aware that Mr. Ciaravino does love his job, wants to be here and has no intention of leaving this beautiful city. Why would they look for a new City Manager? Are they trying to discourage him and make it impossible to function so that he will leave? She said that they are not discouraged, they are going to stay here and they will be watching the Council.

There being no further comments this portion of the meeting was closed.

## COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Councilwoman Abrams said she will vote to rescind the vote to look for a new City Manager. She thinks the original vote was taken wrongly and it is a waste of time, money and energy. The City Manager does want to stay here and the new Council should be involved in those decisions. She will be voting to rescind. In regard to the Pilgrim Pipeline, they have heard many reasons why that should be stopped. The Thruway Authority has been no friend to Newburgh. We have had trouble with them in the past and they have done things that have endangered our water supply. The DEC should take the lead agency which is why she will be strongly supporting this vote tonight.

Councilwoman Angelo will not be rescinding her vote. She will be voting no. She is still going to have a meeting with Michael and it is not a matter of ethics. The City Manager will be in office until May and no one said he would be fired. If by chance we interview, we will still not have five votes and it will not cost a lot of money for a search. She is still going to meet with him and tell him her feelings because she has only met with him once in a year. When it's time to vote she will be voting no. She commended everyone for supporting him but they could also use some help in the city.

Councilman Brown commended everyone for supporting what they believe is a good cause and he respects that. Organizing is a form of protest but if you are going to protest understand what you are protesting for and what it will cost the city. They protested all day today in front of City Hall so what did that cost in police overtime and for the parking meters that were blocked? If you want to protest and get your picture in the paper, think about it. If you want to change this city, it should be changed through the voting process. He hears everyone speaking tonight about keeping the City manager and not firing him but they are not talking about firing. This is called continuation and we need to be in a position where we have a City Manager in place and ready to go the day his contract expires. If we allow Michael to stay on past his contract and we have no one else in place or the vote to keep him then all the progress everyone says he has made will be out the window. He did not hear anyone say exactly what the City Manager has done that was good for this City and he has sat here for four years with understanding and knowledge of whatever he is voting on. He has always voted on facts. In regard to item #23 he has some facts for the residents. When you bring a hundred people to fight one you distort the truth so the one, which right now is him, brings the truth. No one in this room or at this table can dispute what he is about to tell them. These are the reasons why he does not think Michael Ciaravino should continue in his contract here in the City of Newburgh:

1. Not to long ago we worked on putting our IDA back in order and they presented a project called the Littman Project to clean up our landfill at the DPW lot, which would have created some jobs and kept a number of jobs right here in the City of Newburgh. Michael had his outside paid Lawyers, which we probably paid about \$80,000.00 or \$90,000.00 to, to derail that project. Instead of working with Mr. Littman to make it a viable project he found ways to derail it so Mr. Littman decided he didn't want to do it. We had an opportunity to clean up our landfill which we have to clean up and will cost us

millions that we don't have and he derailed it. Now we are in the same position that we were in before with a landfill that we need to close and no property to develop and a developer who is now going to the Town of Newburgh or New Windsor and he took all of his jobs with him.

2. There is a lawsuit right now in Court that was generated by the Mayor and Michael to recover monies spent on the Courthouse. They have a developer in Court right now trying to get back some of the money that was spent on that Courthouse. That is not a bad idea but what will you get in recovery? That number is zero but yet we are currently paying another outside law firm to litigate this case which he guesses will cost us hundreds of thousands of dollars and we will get zero dollars back.

3. He had a plan to close the uptown Firehouse and was told it is not a good idea. Maybe that's the reason why that Grant money was not reapplied for so that we would have a reason to close that Firehouse.

4. He has started many fires that we don't have the money to put out. He went through City Hall investigating if this structure was safe or not. We didn't need an investigation to do that and that has cost more money, probably \$50,000, \$60,000.00 and now we have a problem that we have to fix. Either we fix City Hall or we get out and he doesn't have a plan to fix the problem here in City Hall so it will cost \$80,000.00 to \$100,000.00 to move all of the staff and equipment to wherever. Where do we get that money from? He went up to our DPW lot to investigate because there is some kind of sludge under the ground. You don't have to investigate the ground to know that there is a problem at our DPW because the roof is leaking. We talked about the roof on Thursday and the roof is going to cost about \$500,000.00 to fix and we don't have that money. In addition what about the sludge that he found under the ground? Why are we looking for it? Hundreds of thousand of dollars to fix those problems.

5. He has a closed door policy and any good manager has an open door policy. There was an employee who was the head of our Water Department and he hadn't met with Michael. A phone meeting was scheduled but since he was in City Hall that day he went to the Executive Office and told the City Manager's secretary that since he is here he can meet with the Manager face to face. He was told to find a phone in City Hall and call him to conduct that meeting. What kind of Manager is that? That employee ended up leaving the city and he had a license that we needed to operate our water plant and without that license it would leave us vulnerable to our water supply which effects everyone in this room.

6. He is never in his office on Mondays. If you try to reach him he says he is working from home and we do not have policy in this city to work from home. He should be in his office every day to serve this city.

7. We have two bridges that are out and we have wondered where we are going to get the money. The solution was to put in a temporary bridge but for how long do you keep a temporary bridge? Is it supposed to be for a lifetime? There is another bridge not far from that one that he investigated and found to be unsafe and what is his solution to fix it? It's going to cost hundreds of thousands of dollars to fix that. We are now well over one million dollars in what he has found but he has no plan to fix.

8. If you go to our waterfront you see a dock that has been closed for a long time and that is a tourist attraction but all that Mr. Ciaravino could find was to go to Ebenezer Baptist Church and flush some dye down the toilet to see if it transfers into the river and then called an emergency to fix it. He doesn't know what it cost to fix it but it cost us a lot of money. While he was down there he should have looked at the dock that has been suffering for the last year and a half. He has not brought one plan to this Council to fix that problem which is a tourist attraction but now is an eyesore.

9. When Michael first came on board he spent thousands of dollars on expensive electronic equipment to put a blue screen in his office and this city has no reason for a blue screen to be in anybody's office unless you need to communicate with your people back in Ohio. He is not communicating with his staff and certain members of this Council so why was it needed?

10. We talk about the police in this city and Michael presented them with a Budget that had zero dollars set aside for binding arbitration that we are currently in with our police. We are in this binding arbitration because we met with Michael and our outside counsel, who is handling our contract with the PBA, and the lawyer handling the case said to this Council that we are going to offer them one percent. Why would he offer them one percent? Isn't that ridiculous? Why don't we put something on the table that we could maybe negotiate so that we can get them in contract? They didn't want to hear it but yet the PBA came to the last Council Meeting blaming the Council and they had nothing to do with it. That was Michael's negotiation with the outside attorney to give them one percent and not negotiate fairly. Now we are in binding arbitration and we will have to find the money to pay for it and we don't have it. He didn't put it in the Budget and he didn't allot for it but he knows it's out there so now what you should ask him is, *"Where are you going to get the money from when the arbitrators come back with a dollar amount that this city has to pay?"* That dollar amount may be close to a million dollars and we don't have it because of him.

11. Corruption. He says that he stopped corruption but he doesn't tell you what it cost and what it was. He brings a Councilman Elect into his office and shows him a video with a Lieutenant doing work outside of what he is supposed to do and says he caught him. He wanted this Lieutenant to sign an agreement but he never signed it so now all the money that was taken from that Lieutenant will have to be given back plus some. He spent over 70,000.00 to stop corruption when all he had to do was take one picture and give it to the DA to handle. We don't have the money for things like this. *"What I am telling you is fact and no one at this table can dispute it"*. That's the reason why he is not the manager for him. He told the new Council members to get their facts because facts tell it all. There is a story out there that says he and some co-conspirators conspired to have a particular Lieutenant become Chief and not Chief Cameron. When Lieutenant Cameron told him of his interests in becoming Police Chief he told him that he had six months to interview and that he wanted an outside Chief who lives in this city. His initial feeling that he presented to this Council was that we should create a Commissioner's position. He had a young man in mind who he thought would be perfect to turn this city around but he didn't meet our residency requirement but neither does the current Chief. Michael will tell you that he got a legal opinion to allow him to appoint Chief Cameron to that position but his legal opinion cannot supersede the laws of this city. There was a vote passed that all department heads live in this city.

For those who didn't know now you know. Michael is not good for this city and if you keep him your taxes will go up or you will have to lay people off. People are mad because this Council had to make a tough decision to keep the Firefighters and use money that we thought we could use to pay our Police Officers when their contract came through. We had to do what was right to keep them working. Before coming to the microphone to support him get your facts because he is not good for the city.

Councilwoman Holmes feels that everyone in the audience is being very disrespectful because when they spoke she listened to them without saying a word. When the Council spoke they were very unruly so she said that she will just vote.

Councilwoman Lee said that she has thought from the very beginning that Michael Ciaravino is not bringing anything to the city. They sat in Executive Session and listened to Mr. Ciaravino tell them that he didn't have to take direction from them which is wrong because he does not run this city by himself. Councilwoman Angelo said that she met with him one time and she met with him maybe two times and told him that she is not interested in seeing him fail so whatever she can do to help this city grow she is willing to help. He has done nothing but make nasty comments to her publicly and privately. He hasn't met with all of the staff here, only a few, in the past year and a half. She has a friend who attends the Distressed Properties meetings who told her that the treatment of Chief Vatter is despicable. The Fire Chief is the reason we have a Land Bank, a Distressed Property Committee and updates in Codes. These were not initiatives that Michael Ciaravino brought here. He and the Mayor almost single handedly destroyed them. We have had more problems with those three entities since she has been on the Council and we have more properties coming to us because there is no initiative to move the progress forward. The signs that say they are corrupt she gets and that everyone has had enough well they have had enough too. Michael Ciaravino and Mayor Kennedy led the charge using the illegal misdemeanor forfeiture law to seize the property of one of the Police Lieutenants because he said that while out on 207c he violated his right and that he was working. We asked for proof and for the nature of his investigation but he couldn't tell them yet he told Councilman Elect Torrance Harvey the contents of a private meeting. He shared that with him and discussed an employee and their record with a private citizen because he is not a Council Member yet. All to make him look like he has done something. He took about 78,000.00 from this man without an investigation. The District Attorney said that there was no wrong doing so now we will be sued. He took this man's money and depleted the Budget so that Corporation Counsel could not make the payments for issues that she was required to because he was out with some bogus investigation and using some friend's airplane to investigate. It is not the City Manager's job to investigate for the District Attorney so this is a problem. Worst of all he and the Mayor have been working with a man who is out on 207c as he has been working on her Campaign. It is completely unfair to take money from an employee when you don't have legal standing. This is not a matter of being mean and cruel to Michael, this is a matter of poor judgment. They have received numerous amounts of paperwork concerning lawsuits because of his bad judgment. Everyone is behaving as if they just don't like Michael and *"I don't like him but I think his judgment is extremely poor"*. We have children in this City committing crimes and we have cameras on every corner with no resolution to it but we have a City Manager who is looking for the big win. The big win is to find the corruption in employees and if you are going to do that then you have to give everyone the same treatment and from

what she has been told it needs to start with drug testing. If there is corruption, he is the Chief Executive Officer and we are your Legislative Body so everyone needs to get those facts straight. In terms of why she suggested the resolution to start the search is because they have a right to choose. When she wrote the City Manager's evaluations it was the poorest evaluation that she had ever seen and seven people evaluated him independently. The Mayor took it and then put it into a form to email back to the company reviewing it but it was very poor. He hasn't spoken to the City Council in a year and he leaves the city unsupervised. When he leaves town there should be someone on call.

Instead we have the Mayor who makes the worst decisions that anyone could make. We need someone here to manage the day to day operations and that is not being done. She spent the last four years being disliked by Council members and others but she stood her ground and she is not going to change now or let people manipulate her. She is not insulted by people calling her corrupt because "*Corrupt is your new word for the "N" word so go right ahead and have at it*".

Mayor Kennedy called for a point of order. Everyone including the Council members needs to be respectful.

Councilwoman Lee said that she is respectful. "*Your new word is corruption and you would rather say other things to me but I don't care. The only thing you did that even slightly resembles any kind of respect for yourselves was take your damn hoods off*". We have had several problems here in this city with people living and sleeping on the streets and being unemployed and this city hasn't done anything in the way of helping those problems. Most of the people in the audience tonight she has never seen before and if they see her on the street they don't even say hello so she is supposed to just respect their signs saying "corrupt"? She told Barbara Smith that if she were white she would eat dirt before she gave her a lame duck. "*You would never disrespect any white person*".

Mayor Kennedy told Councilwoman Lee that she is out of order.

Councilwoman Mejia asked if we could have cooler heads prevail here tonight please.

Councilwoman Lee said that they spent the last two Council meetings being attacked without one person saying it was not fair and now because they are getting it back it's unfair. "*I know I'm a bully, I get like that with a mob*".

Mayor Kennedy asked the audience to have cooler heads prevail. We need to get through an agenda so she asked them to be part of the solution and not part of the problem. She is not saying who is right and who is wrong but this is the last meeting of this Council so let's get through it.

Councilwoman Lee continued that in regard to resolution #324-2015 she had asked to restore the salary for the Director of Planning and Development but somehow everyone else got on this agenda. She is going to be asking to just vote on the one salary.

Councilwoman Mejia said that the extension of the Lease Agreement with the Ferry she feels is very important for our city. The fact that we have it for a year continues to speak to the fact that what we need for economic development is stability so she looks forward to passing that resolution tonight. In regard to the Pilgrim Pipeline, environmental issues are extremely important to the growth of our community and it impacts all of us. She feels again this is just a continuation and expansion of the educational process that was done

with the community about how environmental issues impact us locally. Last week there was a fire in Kingston with the same rail that passes through Newburgh so when you talk about Ground Zero that is us. If one of those trains happens to fall off the tracks here there would be no revitalization that could potentially bring us back which is why we have to be proactive and watchful of that. Regarding the reappointment of the CAC members she wanted to thank all of the people who have served this past year and for their willingness to serve again. There are a lot of Boards that have vacancies so this is another avenue where community engagement comes in to play for our city. On the Police Community Relations Board one of her Ward representatives had to step down so she is looking for someone to fill that vacancy. If anyone is interested they can contact her by phone or email. This is an extremely important Commission because it seeks to improve police community relations for our city as we move forward. In regard to item #23, she thinks she has been very vocal and very clear about where she stands in that process and she has asked questions in terms of procedure and how to move forward. The Council needs to be clear about what the process is, what city staff will be responsible for doing it, how will they carry it out and where is the money coming from? At a time when everybody is trying to come together to continue to move us forward it's really a disservice to the city and its residents to go down that path. If there is a majority of the Council that decides to move on that path, she will not be participating in any interviewing and she will not legitimize that process. Two Council members went through their lists about "*how they have experienced their facts*" so we do have to go back to those facts but you have to speak on them accurately. Her sentiment as we end this year is to start the next year on a new foot. This back and forth exchange just doesn't work for our community and our families. There was a shooting on Friday so close to Horizons on the Hudson School and this is just the latest example of how we need to have more outreach, education and awareness of what is going on. She hopes that our meetings going forward will be more on how we can do that instead of whether or not we should start a search for a man who is doing his job. She added that she will bring her list of accomplishments and facts in January as she would like to start the sentiment there.

Mayor Kennedy said that she is sorry she could not make the last meeting but her ninety year old mother desperately needed her daughter to be there for her and that took precedence. She is glad the Pilgrim Pipeline resolution is on tonight's agenda and she definitely supports the idea that the DEC becomes the Lead Agency. In regard to the authorization to transfer a portion of Ellis Avenue, there has been a little piece of land sitting there for thirty years where our water tower sat on a piece of property owner's land and he has been unable to do anything with it because we couldn't get through this little transaction. She is glad that we are finally going to get this done as it cleans up a problem that has been sitting here. We have had so many things that have not been completed for so long but one by one we are getting them done. She is also grateful to have another year and one month lease for the Ferry because if the Ferry were to stop it would be a real problem. She wanted to explain the City Manager situation. Per our Charter it takes five people to appoint a new City Manager and at this point we do not have the majority to do that. We have three people here who want to work with our current City Manager and until we have that majority all efforts to interview, have people come here and pay for the cost is a waste of time, money and energy. Every time somebody is unhappy, they have a personal agenda or something isn't right the search starts over. He is not being fired and she wanted to clarify that can't happen but also under the current situation no one will be hired either because we have a City Manager. They just have to continue working with

him. She has asked him if he wants to stay and she stated, "*Nobody's perfect and there is room for improvement*". You have to work on improvements and it takes a long time to bring somebody up to speed. She wanted to clarify some things that were said tonight.

1. In regard to the IDA and the Littman Project she was a driver for this project and for two years she worked on every angle she could to get the Littman Project under way. For two years she worked with Dave Littman and our Planning and Development and it was *not* the City Manager that ended that project. We had some meetings and this City Council wanted them to pay more money. They needed to make a decision as we were stuck in a place where we had an environmental issue where they had to start cutting trees down before March 31st of last year because of bats. At the same time our State had not extended the tax credits for Brownfields beyond this December 31st and they didn't know they could get an extension. We were caught in a time crunch that said if we don't get the tax credits then we can't pursue this because it's too much money and we have to start now to get these trees down. This is a multi million dollar business and they have to make decisions and this whole process that was going on around that became a very problematic situation. The environmental issue that came up was that they had to grade a hill and there was a big discussion around what was underneath that hill because it is a dump. They had no idea what was going to be under that ground and what they were going to find so the risks started increasing and there were a whole lot of issues. To stand here and say that the City Manager caused that whole project to fail is absolutely incorrect. There were a whole lot of extenuating circumstances surrounding all of that.

2. In regard to the lawsuit to recover money from the Courthouse she told everyone listening that the reason our taxes are at the rate they are is because we overspent the Courthouse Project by ten million dollars. They had a twelve million dollar budget to do the Courthouse and it cost over twenty-two million dollars. There was a huge issue around asbestos there and we had a contractor who did all kinds of things that needed to be sued for. We all sat in an Executive Session, we have been briefed on this, yes it is taking time but if we get some money back, even the cost of the lawsuit, it will make her feel better because she is paying taxes to take care of things that contractor and engineer created.

3. In response to closing the uptown Firehouse, that's a whole situation that will probably be up for discussion but before that we have to discuss what to do with our downtown Firehouse. We have a Firehouse and a Public Safety Building that we really need to figure out what to do and yes we have no money so yes we have a problem.

4. In regard to investigating problems in City Hall, it seems like the situation is that we don't want to investigate problems in City Hall because it's going to cost us too much money. When we have issues going on here she doesn't care who it is or what the reason is we need to find out and get to the bottom of it and in this particular case there was very good reason to believe that we had a problem with somebody out on disability running a business. As far as she knows, no friend of the City Manager's did anything with an airplane. It had nothing to do with some friend of his going out and doing a search there were other people involved and other reasons that search was done *and* it uncovered the truth by the way. If they want to sue us because we found out the truth she thinks they are going to have a hard time winning that lawsuit because the evidence stands pretty strong.

5. She is hearing that Mr. Ciaravino does too much investigating and yes we have

environmental issues, yes we have problems and bridges out, yes we have sewer problems and problems at City hall. We have lots of problems and where are we going to get the money to fix it? Not knowing what the problems are is not helpful either. Do we stick our heads in a hole and say we don't have any money so I don't want to know. We have to know what our situation is and what we have going on so that we can figure out what problems need to be fixed. Covering our heads and saying I don't want to know so I don't have to deal with it is not a way to manage anything. She agrees that we have lots of problems.

6. She doesn't know about him never being in the office on Mondays. She has been here and she has seen him on Mondays.

7. In regard to the bridges we had one bridge out and had to do a temporary bridge and remember that we voted to keep the temporary bridge in so that we could use the money to do other things like fix our streets? The temporary bridge would last for ten years and we need to buy some time in order to get things done. For fifty years politicians in this city have kicked the can down the road and it seems that it's this administration where everything is going to fall apart and it's all caught up to us now. It has happened and they have to look the dragon straight in the face and figure out how to fix it and by working together is the only way we are going to get it done. Not by fighting and creating more drama and chaos here.

8. The illicit sewer problems are all over and they have found sewers that have been running into the river ever since they were not connected. When they changed to a sewer system they thought they connected everybody and we were happy back in the 60's but unfortunately that is not true. This started coming to light as Riverkeeper is patrolling the river and they found these sites and we had to figure out where it was coming from. It wasn't because one morning Michael Ciaravino woke up and said let's dump some blue dye down the toilet. That isn't what happened.

9. As for corruption she has already talked about the whole police officer issue so she thinks they all know what that's about.

10. Yes the dock is out at the waterfront. She also heard that Michael Ciaravino appoints her to be the one in charge when he is out of town so when did that happen? That is not what happens. Generally what happens is that Michael Ciaravino uses technology to be online and work remotely whenever he can. We need to bring this city into the twenty first century because we are about thirty years behind and we have been doing that with different technology. She knows that the screen that's in his office was used for all kinds of local problem solving and it helps bring us into the twenty first century and it's about time.

11. There was mention of the Fire Chief and Codes. We passed the Landlord Registry a year before Michael Ciaravino came here and the person responsible in implementing that code was the Fire Chief. Not her and not this Council because all they do is pass policy. It was the City Manager at the time and in particular the Fire Chief's responsibility to implement that piece of legislation. That did not happen for a year and it did not happen until Michael Ciaravino came on board and it had to move forward. The fact that he and Michael Vatter and many other people in a room together sat down and figured out how to implement it as it's a very tough piece of legislation. that may have to be modified as

implementation actually takes place.

12. There was something mentioned about more properties coming to us but we don't take distressed properties. The last thing that any of them on this Council wants to do is take anybody's property. That is the very last thing any of them wants to do. We need to figure out a way to raise more money and more revenue in this city so that we don't have to do that and none of them, no matter which side of the fence they are on regarding other issues, she knows for a fact that none of them wants to take more properties.

13. In terms of evaluations of the City Manager going to the Clerk, "*Absolutely Not*" that's an HR issue and evaluations don't get posted into the city records. That is actually improper and illegal so it doesn't happen.

She agrees with Councilwoman Mejia that we really need to come together and work on this gunfire. She knows that our Police Chief is working on the G.I.V.E. Project to help these young people by bringing in their families and Social Services or we come down hard on them. They have a choice to either get their life back on track or it's going to be tough on them. Those are the kinds of problems we have to work on so we have a lot of work to do and she looks forward to working with the new Council next year. She does have a list of accomplishments for the City Manager and she is going to address those at the next meeting in January.

There being no further comments this portion of the meeting was closed.

#### **CITY MANAGER'S REPORT**

Resolution No. 306- 2015 NYS Department of Homeland Security and Emergency Services

Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7

**Adopted**

Resolution No.307-2015 - 23 Gardner Street

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Resolution No.308-2015 43-44 Williamsburg Drive

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Resolution No. 309-2015 - 50 William Street

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Resolution No. 310-2015 - 63 Grove Street

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Resolution No. 311-2015 - 69 Courtney Avenue

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Resolution No.312-2015 - 199 South Street

**Mayor Kennedy said that there was a very good reason why they gave this property thirty six months. They are working with this person and she asked that Community Development get progress reports on this as they go along.**

**Corporation Counsel, Michelle Kelson, said that the Terms of Sale has already been amended to mandatory progress inspections at specific times during that three year period.**

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Resolution No.313-2015 Transfer from Sewer Contingency to Engineering & WWTP

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**

**ADOPTED**

Res. 314-2015 authorizing the City to apply for a Municipal Sewage System Asset Management Pilot Program Grant from the NYSDEC

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman**

**Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**  
**ADOPTED**

Ordinance No. 13-2015 - Chapter 248 Sewers

**Councilwoman Abrams moved and Councilwoman Lee seconded that the ordinance be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**  
**ADOPTED**

Resolution No. 315-2015 - Approval of Various Insurance Policies

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**  
**ADOPTED**

Resolution No. 316-2015 - Authorization to transfer a portion of Ellis Avenue

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**  
**ADOPTED**

Resolution No.317-2015 - Direct Agreement TBE-Montgomery LLC Citibank NA

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7**  
**ADOPTED**

Res. 318-2015 - Extension of Lease Agreement Memorare Realty Holding Corp.

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7  
ADOPTED**

Resolution No. 319- 2015 CAC

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy- 7  
ADOPTED**

Resolution No. 320-2015 Pilgrim Pipeline Project - SEQRA

**Councilwoman Abrams asked if tomorrow morning first thing we can get this letter out to the appropriate people.**

**Corporation Counsel, Michelle Kelson, said that she has already spoken with the Clerk's Office and they will certify several copies of the resolution first thing in the morning and we will call overnight delivery service and make sure that the resolutions are delivered to the Thruway Authority and the Department of Environmental Conservation bright and early Wednesday morning.**

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7  
ADOPTED**

Resolution No.321- 2015 - Rescind the Vote to Start the Search for a New City Manager

**Councilwoman Holmes said that you get more respect out of her when she is respected. The City Manager told the Mayor that he wants to stay but he never told her. She voted for the City Manager and supported him. She spoke with the City Manager on several occasions with Councilwoman Mejia, Councilwoman Abrams and the Mayor for effective communication. A lot of the people sitting here tonight are not in her Ward, which is Ward**

4, and those are the people she has to talk to. The City Manager spends a lot of time down here but her Ward needs to see him and she knows he can't be everywhere. She has asked for effective communication for over a year and some people say that he doesn't have to communicate with her but they are wrong. He has to communicate with her and this whole Body and they need to collaborate and communicate with each other. He is the appointing authority and she still has a problem with someone being hired at \$30.00 per hour when there was no application or paperwork for that. The one that really hits her hard is the FEMA Grant for \$340,000 that could have reduced the tax levy. Next year she might not be in her house and no one here is going to pay her taxes or help her keep her house. There was 2.4 million dollars that also could have been gotten if that application was put in on time but no one is held accountable. There is no transparency. So when she loses her house next year will everyone here be out with their posters helping her keep her home? She has been here for twenty-three years and she is not going anywhere. They can say what they want to say and she told Mr. Ciaravino that she tried to get along with him but she is not humbling herself anymore. She is not rescinding this City Manager search. Just like the Mayor said it takes five people to hire or terminate the City Manager. When they are out there gang banging and killing each other she hopes everyone has their posters out then trying to save someone's' life. It takes five people and we can still search for a City Manager and if he is so impeccable and great then he will still have the job. She is upset with that and with the Police Department because they get \$40,000.00 a year to do what? Go get shot? If it was her husband or son she wouldn't want them out there. With what went on with the Fire Department our taxes are going to be raised and jobs will be cut. Until Michael Ciaravino can communicate with her and this whole Body effectively her vote will be to search for a new City Manager.

Councilman Brown stated that what Councilwoman Holmes said is the truth. Michael only speaks about sewers and such but he never says anything about the kids that are being murdered in this city. We have over seventy unsolved murders in this city right now and over twenty five hundred open warrants. There is a problem and he is not addressing it. When we have people being robbed near the College at gunpoint and shootings in board daylight there is a problem and he is not addressing that. Does he not care about our people and the kids in this city? If we have to look a thousand times for the right City Manager to solve those problems, then that's what we need to do. Tonight he will be voting no to this resolution.

Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Abrams, Councilwoman Mejia, Mayor Kennedy - 3

Nays - Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee - 4

**DEFEATED**

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7  
ADOPTED**

Resolution No.323-2015 - 23 South Miller St.

**Councilwoman Abrams moved and Councilwoman Lee seconded that the resolution be adopted.**

**Ayes - Councilwoman Abrams, Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee, Councilwoman Mejia, Mayor Kennedy - 7  
ADOPTED**

Res.No. 324- 2015 Amending Personnel Analysis Book

**Councilwoman Holmes said that this is not the resolution she asked for.**

**Councilman Brown asked how this resolution got on the Agenda because it is not the resolution that was discussed in our work session on Thursday.**

**City Manager, Michael Ciaravino said that it is really in the best interest that the Council vote on all of these because there is a major Civil Rights question under Title VII.**

**Councilman Brown said that they understood that on Thursday and they said "no" so how did it make it to the Agenda? That's corruption.**

**City Manager, Michael Ciaravino said it is not corruption. He is trying to protect the city by giving them one final chance to do the right thing to follow Civil Rights Law Title VII.**

**Mayor Kennedy said that they can have discussion, vote to amend, vote to table or just vote it down.**

**Councilwoman Lee said that she will just vote to amend it. She made a motion that they remove all of the titles and salaries with the exception of the Director of Planning and Development which was what she requested.**

**Councilwoman Abrams said that she doesn't understand.**

**Councilwoman Lee said that they discussed on Thursday that that they would restore her salary. Just the Director of Planning and Development. She said no a few times to combining this resolution.**

**Mayor Kennedy asked for a second on the amendment.**

Councilman Brown seconded the motion.

Councilwoman Mejia said that this was arbitrary in the first place; selective and targeted and once again they are targeting one individual making it arbitrary. It is extremely blatant and to whoever put the resolution together she wanted to thank them for looking out for the best interests of the city and giving the Board another opportunity to do the right thing. Targeting selected positions of the Non Bargaining Unit opens the city up for potential discrimination lawsuits.

Councilwoman Lee added that there is much more discrimination in this city than this.

Councilwoman Abrams asked if there is a way to add back in and restore Director of Planning and Development *and* the Community Development Director?

Councilwoman Lee said that they can't amend it again. They have to vote on the motion.

Mayor Kennedy said that they have to vote on the amended motion as it stands at this moment.

Councilman Brown asked City Manager, Michael Ciaravino, what is the status of the binding arbitration with the police contract.

City Manager, Michael Ciaravino said it is pending. There is money in reserve funds for that and it is in the Budget that they saw.

Councilman Brown asked him what Budget he's looking at because the City Comptroller specifically said at the last meeting that there are no funds budgeted for the settlement of that binding arbitration.

City Manager, Michael Ciaravino, said that there are reserve funds and they cannot allocate a dollar amount with this pending which is why it's not specifically identified as such. *"We do not know the number"*.

Councilman Brown asked the City Manager how much money is in the reserve fund for next year's Budget?

City Manager, Michael Ciaravino said that the reserve fund is over three million.

Councilman Brown said, *"Absolutely not"*.

City Manager, Michael Ciaravino said "Absolutely" There is reserve funding but we cannot allocate a dollar amount if we don't know the dollar amount. It would be irresponsible to issue a range and budget for that range when we do not know what the arbitrator is going to decide. We do have the money in reserve and he told Councilman Brown that he is aware of that.

Councilman Brown said that he is not aware of that.

City Manager, Michael Ciaravino asked, *"We have zero funds?"*

Councilman Brown said that we have zero reserve funds because it was used to settle the Firemen's and CSEA Contracts. That is a fact. If we had three million dollars in reserve funds, this Council would know about it and we wouldn't have had to revert that \$300,000.00 to reduce our tax levy back to rehire these Firefighters. Why did we have to do that to balance our Budget if we have three million dollars in reserves? He wants the City Manager to prove to him that we have three million dollars in reserve and he will be awaiting an email tomorrow. Not one dollar was put in the 2016 Budget to settle that contract.

City Manager said that is correct because they don't know the outcome of Arbitration and they are trying to resolve this so that we don't have to wait for that decision but they cannot budget for a number that they do not know.

Councilman Lee said that the motion is to restore the salary of only the Director of Planning and Development.

Mayor Kennedy said that we have a motion that has been seconded to restore the salary, step and grade for the Director of Planning and Development only. This is amending resolution #324-2015. She added that we have had a lot of discussion about saving the city money and this one's probably going to cost us money in a lawsuit unless we fix this next year.

Councilwoman Lee moved and Councilman Brown seconded that the amended resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Holmes, Councilwoman Lee - 4

Nays - Councilwoman Abrams, Councilwoman Mejia, Mayor Kennedy - 3

**ADOPTED**

#### **OLD BUSINESS**

There was no old business to discuss.

#### **NEW BUSINESS**

There was no new business to discuss.

#### **PUBLIC COMMENTS REGARDING GENERAL MATTERS OF CITY BUSINESS**

Barbara Smith, Powell Avenue said that she was insulted this evening by someone saying that she directed something to them because they were a particular color and she said, "*I know no color*". The only thing she judges them by is their attitudes, opinions, the things that they say and the things that they do. They are making policy for people that are coming in behind them which could effectively be changed so they are wasting everyone's time by pining on what they believe is right and it has nothing to do with color.

Michael Gabor, City of Newburgh said that he had to wait in the hallway downstairs to get in here tonight and that is one of the things that needs to be addressed. This meeting needs to be taking place somewhere that is accessible to more people if they are going to have this kind of turnout. They should be held at the Activity Center where it is safer and will hold more people. He hopes they can expect this kind of turnout at every meeting in 2016. The former Mayor discussed earlier the working light on a road that is used for people who don't live in the City. They bypass our City but he congratulated our City Manager for finally getting this done. He complained about this back in 2005 when the Ferry first started and he took his life into his hands trying to cross that street to catch the Ferry. The Mayor at that time basically dismissed his comments stating that it is a State road and we couldn't do anything about it yet our City Manager managed to get it done. It's kind of funny to hear people say that he doesn't do anything but it took ten years for something very simple to happen. He also complained at the time that there was only one side of the street parking by the restaurants down there and they weren't enforcing it but it took a new Fire Chief and Police Chief to get that enforced as it was actually a fire hazard. He asked why our restaurants, who would gain a lot by having that Ferry run on the weekends, aren't talking to Metro-North? They would get so much business if the Ferry ran on the weekend because Beacon doesn't have restaurants on the river. Are these restaurants really in business to make money or are we missing something?

Leanna Rivers said that she lives at 69 Grand Street between Broadway and First Street where the parking ordinance has been changed. There is nowhere for the residents to park on that street because no one thought about the street sweeping and snow removal alternate side of the street parking. There is talk about not enough money being in the Budget for a lot of things, however, they are not enforcing the *No Parking* rules as people are parking on both sides of the street. The rules should be enforced for everyone so she is asking that something be done with that. There should be parking allowed during certain hours because to have no parking at all says that they don't matter.

Yaakov Sullivan, 21 Overlook Place, said that they have heard a lot of "*so called*" facts tonight and as a private citizen he brought concerns to the City Manager who was extremely helpful to his neighborhood in the Heights. He had been fighting for code violations at a very prominent house in the Heights for three years through the Codes Department. He followed procedure, obtained the documents, made the phone calls and it wasn't until he brought it to the attention of City Manager Ciaravino that they really got something done and all of those violations were corrected. They talk about having respect but at the Work Session he was called a racist by one of the Council people. That is a slander and a slur and it was made because he wrote a letter in which he called four members of this Body the "*Hapless Four*" but he didn't mention names. He was called a racist by one Council member here, "*You certainly are not examples of respect for other people*".

Beatrice Harris, City of Newburgh Heights, said that after listening to everyone tonight it has come to her attention that there is a great deal of disrespect. "*When we get angry and stand up for something does that make us disrespectful? No, it makes us within our rights to stand up for what we believe in, what we want and what we need.*" When it comes to dogging the City Manager she feels that means that the Council has something to hide. They can search for a City Manager all they want but they will never do as good a job as Mr. Michael Ciaravino did.

Ms. Diggs, City of Newburgh said that she had a conversation with her son as she drove him home so that he could understand why his mother was bringing him to these meetings and she feels he got it. He said that to him it seems like Michael is doing a good job but

there are some people who think he should go but the law says that they have to have five votes and they don't have that. He understands that there is money at stake and asked why we should spend any money on that when we could use it for something else. She noted that at the last meeting Councilwoman Lee stated that they didn't represent the people but she doesn't know how they couldn't represent the people when they have heard so many voices across this City. The lady who just spoke about respect made a very good point. She told Mr. Ciaravino that she hasn't even met him but she was moved by what he said about having a vision because that counts for a lot. She respects that he has come to this City to do a job and that most people think he is doing a good job. She told him not to feel like he is not supported just because there are some people on their way out who want to change things. She is glad that the City Charter was changed by the people so that it will take five votes and no less to really make a change.

Lizzie Maya, City of Newburgh said that this has been a strange meeting as they were called the Klan and were told that they were trying to say the "N" word. She has been in the Civil Rights Movement for over twenty years and fought day and night on the streets of New York against Police Violence. She really takes offense that they can so easily throw that out at people who are protesting. Civil Rights was won by protesting, holding signs and speaking their minds. That they can turn that around into something so ugly is really amazing to her. It only proves the point of what they are saying about corruption. She thanked them for all of the facts because she found them helpful. She sees racism all around her and assured them that as a Latino woman this is not about race. This is about a city trying to get back on its feet and she appreciates the people who are out helping the kids who are on the streets starving and being shot. That is what we should be talking about instead of getting rid of someone who is trying to turn things around.

Gwen Johnson, Dutchess County Legislator from Poughkeepsie, said that she has been in Government for about a decade. She was the first Chairwoman of the City Council and her son is the youngest City Councilman elected in the City of Poughkeepsie. She said that she has never witnessed anything like this and to her it is disgraceful and dangerous. It is alright to agree and disagree but there is so much violence. She loves the City of Newburgh and the people here but this back and forth hateful animosity is terrible. You can get up to speak against something but give respect to the City Council because they were elected to this position. If you don't like what they are doing then you should run for office because it is a whole different ball game when you are on the other side of the table. She said that we have a lot of violence in the Country and what they are doing here is a breeding ground for disaster. She is ashamed that she even came to this meeting but she came to support her friend, Gay Lee, as this is her last day on the City Council.

Brian, City of Newburgh said that he has seen a lot of mischief here over the years especially in the City Manager's Office but he has never had more hope for the City of Newburgh than he does today. He applauded all of the citizens who came out to support Michael because that's a great thing. He also applauded the City Council who are leaving and have done a lot of service for Newburgh and he has great hope for the new members coming on board. He has his camera and he is keeping track of everybody but Newburgh is becoming a beautiful place.

Michelle Basch, City of Newburgh, said that she, her husband nor her kids were born here but they all love the City of Newburgh. Her oldest son who grew up in Italy and has been a Chef there for ten years came here for a visit, fell in love with it and wanted to live here. He is now living here taking the Ferry and the train to New York where he is working. He fell in love with the people here by what he heard, felt and saw in the acceptance that he received. Let us not talk about differences of color, Religion or sexual preference and let's

talk about us as a city. Once and for all with the new Council coming in let us work together and not put wedges in to pull us apart because that doesn't work anymore. The young people today don't give two hoots about what color you are, who you fall in love with or where you come from. Let us learn from the young people.

Terracina Brown, Poughkeepsie, said that with everything going on in this World all color and all lives matter. The rules apply to everybody and the sooner we all get it together that's the way it's supposed to be. We are all just one and everyone needs to be respected. There are things happening around us that should not be happening and it has to begin here at home with everybody.

Mona, 272 Liberty Street, said in keeping with the Holiday spirit she is reminded of a song, "You Better Watch Out" that talks about making a list. It would be a good thing to make a list on, "*Why We Like Newburgh and Why We Love Newburgh*". Can we come up with a list of fifty reasons and then compare them? If we have similar items on our lists, what a wonderful way to begin to exchange and discuss how wonderful Newburgh can be in the future. There is always room for improvement but there is so much here that we can be grateful and proud of. She wished everyone a Happy Holiday.

There being no further comments this portion of the meeting was closed.

#### FURTHER COMMENTS FROM THE COUNCIL

Councilwoman Abrams thanked Councilman Brown and Councilwoman Lee for their service and welcomed the new Council members coming in. She hopes that they all work together in the future and thinks that they will as she has a good feeling about that. One of her great joys is walking through her Ward and seeing all of the new business that are coming in reenergizing our City. She read the Poem "*To Jesus on His Birthday*" aloud. She wished everyone a Merry Christmas.

Councilwoman Angelo said that one of her neighbors is near one of the businesses that just opened and in the wee hours of the morning there are forty to fifty people outside drinking and smoking and the residents can't sleep. She told her that she would follow up and maybe the Police Chief could check it out because there is an open bottle ordinance in this City. It is not good for them in the Historic District to have that going on. She wished everyone a Happy Holiday.

Councilman Brown said that he has done four years at this table and as someone said earlier it's easy when you are on the other side. It is very hard on this side because you have to make tough decisions and a lot of times people don't agree, which is fine, but you have to respect the fact that they have made those decisions. Through his journey here he fought for the youth of this City because he thought that was important. Those were the people who will be sitting here one day trying to make changes to this City and he hopes that those kids won't have it as hard as he did. He fought for the first two years with a City Manager who was disconnected with this city and then in his last year he is fighting again with a City Manager who he believes is disconnected from this city. It is his truth and he asked everyone to please respect that. Only time is going to tell if the person at the end of the table was doing a good job and he will never come back to this Council and say, "*I told you so*". There will be enough people eating humble pie when it comes to fruition.

Anything he said or did at this table has never been personal. If you can separate personal from politics, you will understand that what he does here is politics but when he walks outside he leaves it here. He doesn't want to hear about the streets when he is out having a beer but what is going to be done to fix them? If you don't have a plan and you keep doing all of these investigations, you will fail. He thanked everyone for coming out to voice their opinion and said that he respects them for that. He thanked everyone for loving this city as he does but he knows that it is hard to change it because of people who sit at this table. He wished everyone a Happy Holiday and a Happy New Year.

Councilwoman Holmes thanked Councilwoman Lee for her service and told Councilman Brown that she is going to miss him. She respects what Ms. Johnson said about people not having a clue when you are sitting at this table. She wished that this was her last day but her Pastor told her that this is her season and it is not time for her to quit. Just like one lady said that she was offended by the "K" word she gets offended when people ignore her. She is part of this Governing Body and she has a responsibility to people in Ward 4 to answer to. When she doesn't have an answer for them then she is not doing her job as an elected official. She has horrible streets where people call her because they are afraid to call the police. She even has issues on her street that she has to go to the Chief about so nobody knows what it is like to sit behind this table. She is glad that Michael Gabor said something about the traffic light and told Kippy Boyle that she was a thorn in her side but they got it up. That wasn't her Ward but it was a priority for her to do. She told Mr. Sullivan that she is glad the City Manager helped him with each code violation that he had but she has about a thousand of them in Ward 4. Chief Vatter has been helping her diligently to get them done and she hopes that she gets the same help that he got for her constituents. She thanked everyone for coming and wished them a Merry Christmas and a Happy New Year.

Councilwoman Lee said that she has been here for four years and never in her life did she meet with such disgusting bigotry. In four years she has had more horrible things said to her than she has ever had as long as she has been on this Planet. She looks around this city and she sees dirt poor people like we are living in a Third World Country. She has been called everything from "idiot" to "loser" only because she didn't agree with some people and she doesn't have to agree. We sit and have an Agenda that is partially in Spanish, which is good but she has never heard anyone outside of some of the Council talk about the condition that Blacks are living in. She never heard anybody call out the County Executive because there are no Black department heads. Times have changed and many people don't see in color but every day of her life she gets up and looks in the mirror and sees a Black woman. She sees in color and she sees the discrimination. She hears when people say that they don't want her to look at everything as if it's black or white but you can't point to any one thing that has been done to help Blacks. As long as Black children are having the problems they are having and their parents are struggling and suffering, then we are going to have problems. You can't fix the Latino problem without fixing the Black problem because our problems are massive and deep and they have gone on for years. This problem is very real and these are problems that we have. Every initiative to make some kind of change has been pushed back not by the Whites but by Blacks because they have been beat down for so long that even bringing something good doesn't sound good or trustworthy. She is forever changed from this experience. From having all sorts of things said to her and by being called corrupt. They spend a lot of time trying to fix some problems here but one thing that hasn't changed is Black Department Heads. The

unemployment rate is extremely high and there is a Black woman in the room tonight with a Master's Degree who hasn't been able to get a job. Their claim to fame is that they made it on the Council but their pay is only \$9,000.00 and you can't imagine the work that she has done. Her goal is to help people and not piggyback on the backs of the poor. She has a private practice and she is a Black woman and eighty five percent of her business is White. There are Black mothers here who don't know which way is up and can't get jobs and fathers who are unemployed. Then she comes to sit on the City Council and pretends that someone is interested in what she is interested in although she knows they are not. Everyone came here tonight to tell her to keep Michael but she has never heard anyone ask her if she saw the amount of homeless people around and if she can help them. Every Holiday she is giving out money for something and she doesn't make a lot of money yet they judge her because she disagrees with them. She makes her own decisions. Just because it is their truth doesn't mean it's hers. This has been a valuable experience for her but she is in this fight and she will stay in it because in her World Black lives matter and poor people matter. She walks all through this city and she sees the same poor people. She would like to see how everyone represents a mother whose son has been riddled with bullets. Tell her who they helped. She has been walking around asking people to help her bring a Christmas together for people who don't qualify for Public Assistance yet, *"You come here tonight and because I don't agree with you I'm a bully"*. When she gets pushed she pushes back because she is not afraid of them. She told everyone in the audience that they have made no tremendous contributions. They come and hold up signs and they might as well hold up signs with the "N" word on them because that's all she hears and sees. They are not pushing a real issue. We have families here who are living on top of one another but as long as they don't live on top of you it doesn't matter. There is a real class problem here among a lot of people but her learning experience here is that no matter what she does she cannot close her eyes to certain facts. We have people here in the City of Newburgh who live like they are in a Third World Country and that is wrong. They are unemployed but they are not unemployable. When she sees that there are Department Heads of color or a movement to hire more Blacks then perhaps she will have felt like her job is done but until such time she doesn't feel that way. If speaking her truth offends anyone, she is really from the bottom of her heart sincerely sorry but it's her truth and they won't change it.

Councilwoman Mejia commented in Spanish. She wished everyone a Happy Holiday and looks forward to seeing everybody in 2016. She wants to leave with the sentiment that we Reawaken Newburgh!

Mayor Kennedy thanked the two exiting Council members for their service yet she is saddened that they have to part on such a contentious note. When we focus on the negativity, it creates more negativity so we have to focus on the good and continue to look at the vision that we want. We want a city that works for everyone and that's clean for everyone but we are not there yet. She is glad that so many people are passionate about that though. She has been working with the School to make changes because helping the children change their lives is what it's all about. she has been working to help people who don't qualify for Public Assistance get Christmas gifts for their children and this year over two hundred kids will have gifts. There are people working on projects all over this city and good things are happening. She encouraged everyone to continue focusing on what is good and working together. She announced again that there will be a Prayer Meeting on January 9th and there will be an Inauguration for two of them on January 6th at N.F.A.

North at 10:00 A.M. as well as the Veterans Holiday Meal at the Newburgh Activity Center on December 19th from 12:00 P.M. to 3:00 P.M. She wished everyone a Happy Holiday.

There being no further comments this portion of the meeting was closed.

#### **ADJOURNMENT**

There being no further business to come before the Council the meeting adjourned at 10:55 pm

**LORENE VITEK  
CITY CLERK**

RESOLUTION NO.: 306 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
AN INTERGOVERNMENTAL MEMORANDUM OF AGREEMENT  
BETWEEN THE NEW YORK STATE DIVISION OF HOMELAND SECURITY  
AND EMERGENCY SERVICES OFFICE OF FIRE PREVENTION AND CONTROL  
AND THE CITY OF NEWBURGH FIRE DEPARTMENT FOR TEMPORARY LOAN  
OF FIRE SUPPRESSION FOAM EQUIPMENT

WHEREAS, on January 28, 2014, Governor Andrew Cuomo issued Executive Order 125 directing State agencies to conduct a review of safety procedures and emergency response preparedness related to the shipments of volatile crude from the Bakken Oil fields in North Dakota and other sources; and

WHEREAS, the State has formed the New York State Foam Task Force ("Task Force"), which is a state and local partnership, to support and supplement existing local foam capabilities to assure that trained personnel and the appropriate equipment is available at strategic locations throughout the State based on risk; and

WHEREAS, as a result of the review, Division of Homeland Security and Emergency Services ("DHSES") has acquired a quantity of foam trailers, equipment and supplies, and pre-positioned such equipment at strategic locations with participating agencies that agree to support the efforts of the Task Force; and

WHEREAS, an Intergovernmental Memorandum of Agreement (the "Agreement") is required to establish the responsibilities, guidelines and procedures for the assignment deployment and use of the equipment to the City of Newburgh by DHSES; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to enter into an Agreement with DHSES;

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 Intergovernmental Memorandum of Agreement in substantially the same form as annexed hereto and made part hereof and take such actions as may be appropriate and necessary for the temporary loan of fire suppression foam equipment pursuant to this Agreement.



**Agreement No. X200007**

**INTERGOVERNMENTAL  
MEMORANDUM OF AGREEMENT**

**By and Between**

**NYS DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES**

**Office of Fire Prevention and Control**

**and**

**CITY OF NEWBURGH FIRE DEPARTMENT**

**for**

**TEMPORARY LOAN OF FIRE SUPPRESSION FOAM EQUIPMENT**

This Intergovernmental Memorandum of Agreement (Agreement) is entered by and between the State of New York **Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control** ("DHSES", "OFPC" or "State of New York") with offices located at 1220 Washington Avenue, State Office Campus, Building 7A, Albany, New York 12226 and the **City of Newburgh Fire Department** ("Contractor" or "Participating Agency") with offices located at 22 Grand Street, Newburgh, NY 12550. The foregoing DHSES and/or Participating Agency shall sometimes be referred to herein individually as "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, on January 28, 2014, Governor Andrew Cuomo issued Executive Order 125 directing State agencies to conduct a review of safety procedures and emergency response preparedness related to the shipments of volatile crude from the Bakken Oil fields in North Dakota and other sources; and

**WHEREAS**, the State has formed the New York State Foam Task Force (Task Force), which is a state and local partnership, to support and supplement existing local foam capabilities to assure that trained personnel and the appropriate equipment is available a strategic locations throughout the State based on risk;

**WHEREAS**, as a result of the review, DHSES has acquired a quantity of foam trailers, equipment and supplies, and pre-positioned such equipment at strategic locations with participating agencies that herein agree to support the efforts of the Task Force;

**WHEREAS**, this Agreement establishes the responsibilities, guidelines and procedures for the assignment, deployment and use of the equipment to the Participating Agency by DHSES;

**WHEREAS**, the Participating Agency acknowledges receipt of said equipment;

**NOW, THEREFORE**, in consideration of the promises set forth herein, be it known that a DHSES hereby grants a temporary revocable permit to Participating Agency to use the Equipment designated in Section 3, and the Parties agree to the terms and conditions as follows:



## 1. PURPOSE

DHSES is providing Class B foam trailers and equipment, further identified in Appendix B ("Equipment"), to participating agencies to receive, hold, maintain and use in order to pre-position the equipment for rapid response to incidents resulting in a spill or fire involving crude oil and other ignitable liquids, when activated by the State as a component of the New York State Foam Task Force.

The Equipment is being provided on a loan basis. Regardless of possession, title to all equipment identified in Appendix B shall remain with the State at all times. The State has the right to recall the Equipment at any time upon notification. As such, any permanent granting of the Equipment must be provided for in a separate written agreement signed by both Parties. The Parties understand and acknowledge that the Equipment issued under the terms and conditions of this Agreement is intended to enhance the ability of the Participating Agency and the State to assist in and support fire control and vapor suppression efforts at incidents involving crude oil and other ignitable liquids and is not intended to provide all the equipment appropriate and necessary to do so.

## 2. APPENDIX A

Appendix A, Standard Clauses for All New York State Agreements, is hereby attached and made part of this Agreement and shall take precedence over all other terms of this Agreement.

## 3. DESCRIPTION OF EQUIPMENT

DHSES agrees to provide to the Participating Agency on a temporary loan basis: foam trailers, equipment and supplies under the terms of this Agreement. All items, equipment and resources shall be collectively referred to herein as "Equipment." The specific Equipment loaned to the Participating Agency is specifically listed in Appendix B, which is hereby attached and incorporated into this Agreement.

## 4. TERM AND TERMINATION OF AGREEMENT

- 4.1 The Participating Agency specifically agrees that this Agreement shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the State beyond the monies available for the purpose. Section 112 of the State Finance Law requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount, or if the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds ten thousand (\$10,000), it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office before becoming effective. The Contract will be deemed executed upon, and will not be considered fully executed and binding until, receipt of approval by the AG and OSC.
- 4.2 The term of this Agreement, unless amended or extended by written mutual consent of the Parties, shall commence on the first Monday immediately following approval by the Office of State Comptroller and shall terminate after twenty-four (24) months from the day therefrom, unless terminated earlier



pursuant to sections 4.3 – 4.5 below. This Agreement may be extended in writing for an additional two (2) year period upon mutual agreement between the Parties.

- 4.3 DHSES may terminate this Agreement immediately, upon written notice of termination to the Participating Agency, if the Participating Agency fails to comply with the terms and conditions of this Agreement and/or with any laws, rules, regulations, policies or procedures affecting this Agreement. Written notice of termination shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice outlined in Section 17.
- 4.4 Either Party shall have the right to terminate this Agreement early for: (i) unavailability of funds; (ii) cause; or (iii) convenience upon ten (10) business days' written notice.
- 4.5 The Participating Agency may terminate this Agreement, upon written notice of termination to the State, if the Participating Agency is unable or unwilling to comply with the terms and conditions of the Agreement.
- 4.6 Upon termination of this agreement by either the State or Participating Party, the Participating Agency shall return all equipment, less ordinary wear and tear, to DHSES.

## 5. TERMS OF USE

The Parties agree that the Participating Agency shall maintain possession of the Equipment provided the Participating Agency complies with the following conditions:

- 5.1 The Participating Agency understands and agrees that for incidents necessitating deployment of the Task Force time is of the essence and therefore it shall identify and assign personnel to deploy and operate as part of the Task Force, and will remain ready, willing and able to immediately deploy the equipment and personnel, as identified below, pursuant to activation by the State and shall immediately notify the State of the inability to respond to that request.
- 5.2 The Participating Agency agrees to make personnel available to participate in the initial and in-service training specified by New York State. The number of personnel trained shall be sufficient to provide for the response of 2 to 4 personnel with the Equipment when activated as part of the NYS Foam Task Force and deployed by the State., To the extent possible, scheduling of required training by OFPC will be undertaken to limit overtime for participating agency career staff and consistent with the availability of volunteer staffing. At a minimum the training shall include the following:
  - 5.2.1 Initial Training: Approximately 20 – 24 hours;
  - 5.2.2 Annual Refresher Training: Approximately 4 – 8 hours;
  - 5.2.3 Annual Drill or Exercise: Approximately 4 – 8 hours.



- 5.3 In addition to ensuring availability and participation in the annual refresher training provided by OFPC, Participating Agency agrees that it shall participate, upon reasonable advance notice, in drills, exercises or other events as requested by the State.
- 5.4 The Participating Agency shall ensure that there are two (2) to four (4) trained persons available at all times (24hours/7days) to respond with the pre-positioned foam trailer and equipment within 30 minutes or less; however, it is understood and agreed that, at no time, shall there be less than two (2) trained persons available to respond. The Participating Agency acknowledges and agrees that it shall be responsible for all salaries, costs and fees associated with response or activities requested by OFPC and/or the New York State Foam Task Force.
- 5.5 Participating Agency agrees to be responsible to provide and make available or provide for the following:
- 5.5.1 All personal protective equipment (PPE) appropriate and necessary for its personnel to respond with and operate as part of the NYS Foam Task Force, including but not limited to structural firefighting turnout gear.
- 5.5.2 The 1.75" and 2.5" hose required for the appliances and foam attack lines associated with each trailer (estimated 200 feet of each type).
- 5.5.3 Participating Agency shall provide, and Participating Agency personnel shall retain the insurance coverage and protection provided by the Participating Agency for its personnel including but not limited to, the provisions established by General Municipal Law 207-a or the Volunteer Firefighter's Benefit Law.
- 5.5.4 A vehicle suitable for towing the assigned foam trailer during a response and approved by OFPC in advance.
- 5.5.5 Maintaining the Equipment covered under this Agreement in a state of readiness for use and response at all times (24 hours/7 days).
- 5.5.6 Immediate notification to the State of any condition or issue necessitating placing the Equipment out of service or of any condition or circumstance which prevents the Participating Agency from responding with the Equipment.
- 5.5.7 Comply with procedures and guidelines, established by DHSES, for the activation, deployment, and operations of the Task Force.
- 5.6 The Parties agree that the trailer may be used by the Participating Agency, as needed, for any local response under the following conditions:



- 5.6.1 The Participating Agency must notify OFPC of all local responses undertaken within twenty-four (24) hours of the commencement of activity.
- 5.6.2 The Participating Agency agrees to replace any foam concentrate or supplies used in local response, as specified by OFPC.
- 5.6.3 The Participating Agency agrees to repair any damage or wear to the trailer or equipment associated with or required after local use.
- 5.6.4 The Participating Agency shall assume all liability associated with operation or use of any loaned equipment during any local response.
- 5.7 The Participating Agency shall ensure that all intended users and operators of the Equipment successfully complete the training specified and provided by the State for that purpose.
- 5.8 The Participating Agency understands and agrees to be solely responsible to understand any and all safety or security issues surrounding the use of the Equipment and accommodate its use according to its capabilities and limitations.
- 5.9 The Participating Agency understands and agrees that, on occasion, the State will perform inventory and maintenance, routine and emergency, to the Equipment, which may be conducted with advance notice or no notice at all. The Participating Agency agrees that it shall provide DHSES, OFPC and its vendors and subcontractors with reasonable time and opportunity to properly maintain the Equipment in accordance with the manufacturer's recommendations and all applicable laws and regulations.
  - 5.9.1 Additionally, the Participating Agency shall be prepared for use of alternative Equipment during planned and unplanned out servicing. Furthermore, it is hereby understood that the State has no obligation to provide alternate equipment to be available for local responses when Equipment is removed from service for maintenance or repairs, although it reserves the right to provide alternate equipment to maintain NYS Foam Task Force operational capabilities if resources are available to do so.
- 5.10 The Participating Agency understands and agrees that the State may take back the Equipment at any time for any reason or may redeploy the Equipment if it is determined to be needed in another area as directed by DHSES. Upon notification by the state the Participating Agency must make the Equipment immediately available. DHSES shall provide reasonable advance notice, or the maximum notice possible under the circumstances, to the Participating Agency Point of Contact.
- 5.11 The Participating Agency agrees that DHSES reserves the right to take back the Equipment in the event of a breach of this Agreement, if the Equipment is not being used to its full potential, is being misused or has been returned for reissuance by DHSES. In the event of reissuance, the Participating Agency agrees to undertake whatever actions are reasonably requested by DHSES to return possession of the Equipment to DHSES.



- 5.12 The Parties acknowledge that sustaining the Equipment issued or issuing additional resources shall be contingent upon an evaluation of need by DHSES and be subject to the availability of funding. The Parties reserve the right to expand the scope of this Agreement or the type and amount of the pre-positioned Equipment provided, subject to available funding, as agreed to by both Parties, and addressed within an updated and amended agreement .
- 5.13 DHSES shall be responsible for the following:
- 5.13.1 Ordering, purchasing and accepting Equipment from the vendor;
  - 5.13.2 Conduct routine maintenance, repair and/or replacement of Equipment resulting from response activities pursuant to State activations. Participating Agency shall be responsible for costs relating to maintenance and repair required resulting from local deployment;
  - 5.13.3 Testing and recertification of the Equipment provided, as required;
  - 5.13.4 Replacement of foam supplies utilized during State specified training or deployment of the Foam Task Force [as directed by the State];
  - 5.13.5 Reimbursement of costs incurred directly by the Participating Agency as the employer, with the exception of those costs that would otherwise have been incurred by the Participating Agency (such as deployment within the jurisdiction of the Participating Agency), for the cost of backfilling to provide shift coverage, including overtime, for personnel responding pursuant to activation by the State. The reimbursement shall not exceed costs for four (4) persons, except as approved by the State Fire Administrator;
  - 5.13.6 Providing the initial training and annual refresher training required for the use of the Equipment. Consideration will be given to reimburse backfill costs associated with participation of Participating Agency's personnel in training, drills and exercises, subject to the availability of funds.
  - 5.13.7 Organizing drills and exercises.
  - 5.13.8 Activation, deployment, management and operations of the New York State Foam Task Force.

## 6. LOAN OF RESOURCES

- 6.1 The Equipment shall be loaned exclusively to the Participating Agency only for the purposes set forth in this Agreement. No other use of the equipment shall be authorized.
- 6.2 DHSES shall retain title to the Equipment loaned under this Agreement at all times.
- 6.3 The Participating Agency agrees that it has no claim in law or equity concerning the Equipment or associated training.



- 6.4 The Participating Agency agrees that it shall not sell, move or otherwise transfer the Equipment to any other party without the express written permission of DHSES.
- 6.5 In all instances, except where otherwise agreed to by DHSES, the Participating Agency is responsible for all costs associated with preparing, packing and transporting the equipment, including all applicable costs. Possession, but not title, of the equipment will pass from DHSES to the Participating Agency at the time of receipt of the equipment. All transportation to and from the site of the equipment and all associated costs will be covered exclusively by the Participating Agency. DHSES financial responsibility is limited to that identified in 5.13.

#### **7. COMPENSATION**

As compensation for loan of this equipment, the Participating Agency shall pay DHSES a one-time administrative fee of \$1.00; payment of same waived. As such, this Agreement shall not be construed to have any monetary value. The Participating Agency is responsible for peripheral and maintenance costs of the Equipment as described in this Agreement.

#### **8. PARTICIPATING AGENCY POINT OF CONTACT**

The Participating Agency will designate its own member Point of Contact ("Participating Agency POC") for the purpose of arranging for and the installation, maintenance and return of the equipment to DHSES. The Participating Agency's POC shall also be responsible as a 24-hour point of contact for this Agreement and any issues arising from its existence and be responsible for maintaining the current status of the contact information. The Participating Agency Point of Contact shall be listed in Appendix B of this Agreement.

#### **9. DHSES POINT OF CONTACT**

State Fire Administrator  
New York State Office of Fire Prevention and Control  
NYS Division of Homeland Security and Emergency Services  
State Office Campus  
1220 Washington Ave, Building 7A  
Albany, NY 12242  
Office: 518-474-6746

#### **10. CONDITION AND MAINTENANCE OF EQUIPMENT**

- 10.1 DHSES will make its best effort to ensure that the Equipment loaned under this Agreement is furnished to the Participating Agency in a serviceable condition suitable for its intended use.

However, DHSES makes neither warranty nor guarantee of fitness of the property for any particular purpose or use.



10.2 The Participating Agency shall be responsible to receive the Equipment and certify that the Participating Agency's orientation with the Equipment occurred. Additionally, the Participating Agency shall, as appropriate, 1) provide equipment inventory reports to DHSES upon request; 2) assist in resolving equipment related issues, such as defective equipment; 3) conduct any maintenance, as determined by DHSES, in accordance with the manufacturer's recommendations and all applicable laws and regulations to assist in its operational functionality; and 4) satisfaction of any State or federal reporting requirements.

#### 11. EQUIPMENT SECURITY

Upon acceptance of the Equipment, Participating Agency shall notify OFPC of the location where the equipment is to be stored and assumes all responsibility for secure storage, maintenance, and property accountability. Any change in the storage location must be approved in advance by DHSES.

#### 12. NO THIRD-PARTY TRANSFERS

This Agreement or the Equipment loaned hereunder shall not be transferred to any other party by the Participating Agency without the express written permission of DHSES.

#### 13. RETURN OF EQUIPMENT

Upon expiration of the Agreement, the Participating Agency shall be responsible to return all Equipment to DHSES in the same condition as it was issued, less and except ordinary wear and tear caused by response activities pursuant to state activations. If the Equipment is not returned, or not returned in good working order and repair, the Participating Agency may be responsible to reimburse DHSES the replacement value or repair of the Equipment, which shall be determined by the estimated replacement value for each item of equipment listed in Appendix B.

#### 14. LIABILITY AND INSURANCE

14.1 The Participating Agency shall indemnify and hold harmless the State of New York for any and all claims arising out of the local use of the Equipment, including but not limited to deployment, training, drills and exercises. DHSES does not agree to any indemnification provisions in any documents attached hereto that require DHSES or the State of New York to indemnify or hold harmless the Participating Agency or third parties.

14.2 In consideration of the Participating Agency's agreement to deploy and respond during a State activation of the Task Force, the State, subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act and Section 17 of the Public Officers Law, shall hold the Participating Agency harmless from, and indemnify it for, any final judgment of a court of competent jurisdiction to the extent attributable to the acts and omissions of its officers or employees when acting within the course and scope of their employment.

14.3 Notwithstanding anything to the contrary in this Agreement, DHSES shall not be liable to the Participating Agency for any special, consequential, or punitive damages, or loss of profits or revenues, whether such



damages are alleged as a result of tort (including strict liability), Agreement, warranty, or otherwise, arising out of or relating to DHSES's acts or omissions under this Agreement. Participating Agency remains liable for direct damages attributable to their respective negligence, misconduct and omissions without limitation.

14.4 Nothing contained herein is intended limit the rights and privileges afforded to either Party by operation of law.

14.5 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. The Participating Agency shall at all times remain an "Independent Participating Agency" with respect to the efforts to be performed under this Agreement. DHSES shall not be responsible for any payment of Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Participating Agency is an independent Participating Agency.

14.6 Participating Agency shall carry general liability insurance in the amount of \$1,000,000 per occurrence and \$3,000,000 dollar in the aggregate. Such insurance shall remain in effect throughout the term of the Agreement.

14.6.1 The Participating Agency shall name the State of New York and DHSES as an "additional insured."

14.6.2 The Participating Agency shall provide certification of insurance to DHSES and must include: 1) the insurance policy number; 2) the name and address of the broker and title of authorized official of broker; and 3) the signature of the authorized official or broker.

14.6.3 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee or any other between the Parties.

## 15. INTERPRETATION

This Agreement shall be interpreted according to the laws of the State of New York.

## 16. NOTICES

Any and all notifications, consents and other communications to DHSES regarding the implementation, production, or operational production or operational processes or procedures of this Contract shall be in writing. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.



17. AMENDMENTS

This Agreement may not be changed, altered or modified except in writing and signed by both Parties and, if required, approved by both the Attorney General and Comptroller of the State of New York.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded.

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of the Parties.

State Agency Certification

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

ON BEHALF OF PARTICIPATING AGENCY:

ON BEHALF OF DHSES:

Signed, \_\_\_\_\_

Signed, \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Participating Agency Acknowledgement for Agreement No. X200007

State of New York )
)ss.
County of \_\_\_\_\_)

On this \_\_\_ day of \_\_\_\_\_ 2015, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that she/he resides in \_\_\_\_\_, that she/he is the \_\_\_\_\_ of the municipal fire department described in and which executed the above instrument; and that she/he is duly authorized by the governing body of said municipality to sign her/his name thereto.

(Signature and office of the person taking acknowledgement)



## APPENDIX A

### Standard Clauses for All New York State Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be



performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.



**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment



**Homeland Security  
and Emergency Services**

**Fire Prevention  
and Control**

opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or



public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: mwbecertification@esd.ny.gov  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;



(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification



**Homeland Security  
and Emergency Services**

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at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.



APPENDIX B

Equipment Inventory and Participating Agency Point of Contact

<u>Quantity</u>	<u>Item</u>	<u>Estimated Replacement Value</u>
1	Dual Tote Chariot II Foam Trailer, 330 gal totes Including: 1 TFT Blitzfire Portable Monitor with Foam Shaper 1 350 gpm in-line eductor 1 125 gpm 1.5" nozzle 1 95 gpm in-line eductor 1 National Foam Gladiator Tri-Flow Foam Nozzle 1 23 gpm Foam Transfer Pump Kit	\$39,840.01
	Misc. Fittings and Adapters	\$543.50
1	Radio Controlled Monitor (RF) upgrade	\$8,895.00
1	National Foam Universal Gold 1x3, 660 gallons	\$28,115.74
	TOTAL	\$77,394.25

Participating Agency Point of Contact

Organization: Newburgh Fire Department  
Name: Michael Vatter  
Title: Chief  
Address: 22 Grand Street, Newburgh, NY 12550  
Phone: (845) 569-7412  
Email: firechief@cityofnewburgh-ny.gov

RESOLUTION NO.: 307 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 23 GARDNER STREET (SECTION 2, BLOCK 16, LOT 3)  
AT PRIVATE SALE TO MATTHEW GAYTON FOR THE AMOUNT OF \$25,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 23 Gardner Street, being more accurately described as Section 2, Block 16, Lot 3 on the official tax map of the City of Newburgh; and

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

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before March 14, 2016, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
23 Gardner Street	2 - 16 - 3	Matthew Gayton	\$25,000.00

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

# Terms and Conditions Sale

## 23 Gardner Street, City of Newburgh (2-16-3)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid 2015-2016 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2015-2016 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the five (5) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said five (5) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.
7. Notice is hereby given that the property is vacant and unoccupied. This parcel is being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.

8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 14, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.

17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 308 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 43-44 WILLIAMSBURG DRIVE (SECTION 1, BLOCK 2, LOT 22)  
AT PRIVATE SALE TO LEROY FOSTER FOR THE AMOUNT OF \$10,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 43-44 Williamsburg Drive, being more accurately described as Section 1, Block 2, Lot 22 on the official tax map of the City of Newburgh; and

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

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before March 14, 2016, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
43-44 Williamsburg Drive	1 - 2 - 22	Leroy Foster	\$10,000.00

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

# Terms and Conditions Sale

## 43-44 Williamsburg Drive, City of Newburgh (1-2-22)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid taxes for the tax years of 2016 City/County Tax and 2015-2016 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2016 City/County Taxes and 2015-2016 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property is vacant and unoccupied. This parcel is being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 14, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* The City is not required to send notice of acceptance or any other notice to a purchaser. At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
14. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
15. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
16. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any

deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 309 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 50 WILLIAM STREET (SECTION 38, BLOCK 2, LOT 36) AT PRIVATE SALE TO ELDER IVAN LOZANO FOR THE AMOUNT OF \$1,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 50 William Street, being more accurately described as Section 38, Block 2, Lot 36 on the official tax map of the City of Newburgh; and

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

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before March 14, 2016, being ninety (90) days from the date of this resolution; and

<u>Property Address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
50 William Street	38 - 2 - 36	Elder Ivan Lozano	\$1,000.00

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

# Terms and Conditions Sale

## 50 William Street, City of Newburgh (38-2-36)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid 2016 City/County Taxes and 2015-2016 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2016 City/County Taxes and 2015-2016 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
6. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
7. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
8. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
9. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 14, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees. The City is not required to send notice of acceptance or any other notice to a purchaser.* At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and

shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.

10. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
11. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
12. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
13. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
14. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
15. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
16. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 310 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 63 GROVE STREET (SECTION 26, BLOCK 6, LOT 7.1)  
AT PRIVATE SALE TO PATRICK COUSINS FOR THE AMOUNT OF \$70,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 63 Grove Street, being more accurately described as Section 26, Block 6, Lot 7.1 on the official tax map of the City of Newburgh; and

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

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before March 14, 2016 being ninety (90) days from the date of this resolution; and

<u>Property Address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
63 Grove Street	26 - 6 - 7.1	Patrick Cousins	\$70,000.00

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

# Terms and Conditions Sale

## 63 Grove Street, City of Newburgh (26-6-7.1)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid 2016 City/County Tax, 2015-2016 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2016 City/County Taxes and 2015-2016 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation and apportionment of the 2015 City and County taxes shall be made as of the date of closing. Water and sewer charges and sanitation fees will be paid by the City to the date of closing except that where the water meter reading nets a usage to the purchaser of less than 6 units for the quarterly bill, the purchaser shall be responsible for a minimum water and sewer bill of six units.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
7. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

8. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
9. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 14, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees. The City is not required to send notice of acceptance or any other notice to a purchaser.* At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
10. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
11. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
12. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
13. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
14. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
15. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
16. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any

deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 311 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 69 COURTNEY AVENUE (SECTION 48, BLOCK 11, LOT 1) AT PRIVATE SALE  
TO HOWARD ELDER FOR THE AMOUNT OF \$1,200.00

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

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

WHEREAS, the City of Newburgh desires to sell 69 Courtney Avenue, being more accurately described as Section 48, Block 11, Lot 1 on the official tax map of the City of Newburgh; and

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

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before March 14, 2016, being ninety (90) days from the date of this resolution; and

<u>Property Address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
69 Courtney Avenue	48 - 11 - 1	Howard Elder	\$1,200.00

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

# Terms and Conditions Sale

## 69 Courtney Avenue, City of Newburgh (48-11-1)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid 2015-2016 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2015-2016 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
6. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
7. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
8. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
9. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 14, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees. The City is not required to send notice of acceptance or any other notice to a purchaser.* At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and

shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.

10. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
11. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
12. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
13. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
14. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
15. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
16. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 312 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 199 SOUTH STREET (SECTION 18, BLOCK 1, LOT 3)  
AT PRIVATE SALE TO DAVID FISHEL FOR THE AMOUNT OF \$3,800.00

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

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

WHEREAS, the City of Newburgh desires to sell 199 South Street, being more accurately described as Section 18, Block 1, Lot 3 on the official tax map of the City of Newburgh; and

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

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before March 14, 2016, being ninety (90) days from the date of this resolution; and

<u>Property Address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
199 South Street	18 - 1 - 3	David Fishel	\$3,800.00

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

## Terms and Conditions Sale 199 South Street, City of Newburgh (18-1-3)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid 2016 City/County Taxes and 2015-2016 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2016 City/County Taxes and 2015-2016 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to obtain a building permit within six (6) months of the date of the deed and to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within thirty-six (36) months of the date of the deed. Within such thirty-six (36) month time period the purchaser must obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule a mandatory inspection by City officials at twelve (12) months from the dated of the deed and at twenty-four (24) months from the date of the deed and before the end of the thirty-six (36) month period. If the purchaser has not complied with the deed provisions regarding building permit, inspection or rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by the time period so specified in the deed, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the six (6) month building permit period; twelve (12) and twenty-four (24) month inspection requirement; or the thirty-six (36) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel per period for which each request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time per request in the rehabilitation period of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
7. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and

it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.

8. Notice is hereby given that the property is vacant and unoccupied. This parcel is being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 14, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees. The City is not required to send notice of acceptance or any other notice to a purchaser.* At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 313 - 2015

OF

DECEMBER 14, 2015

RESOLUTION AMENDING RESOLUTION NO: 296 - 2014,  
THE 2015 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$43,500.00 FROM SEWER FUND CONTIGENCY  
TO WASTEWATER TREATMENT PLANT - CONTRACTUAL EXPENSES  
RELATED TO SEWER MONITORING AND REPAIR

BE IT RESOLVED, by the Council of the City of Newburgh, New York that Resolution No: 296-2014, the 2015 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
G.1900:1990 Contingency	\$43,500.00	
G.8130.0400 Wastewater Treatment Plant Contractual Expenses		\$43,500.00
TOTALS:	\$43,500.00	\$43,500.00

RESOLUTION NO.: 314 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED A GRANT FROM THE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
FOR PARTICIPATION IN A THREE YEAR MUNICIPAL SEWAGE SYSTEM  
ASSET MANAGEMENT PILOT PROGRAM

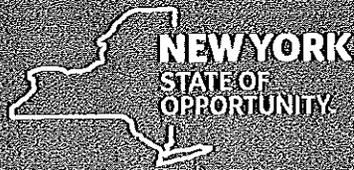
WHEREAS, the New York State Department of Environmental Conservation has announced a New York State Municipal Sewage System Asset Management (MSSAM) Pilot Program for the purpose of providing municipalities the opportunity to provide valuable input in shaping the final guidance and approach that will be set forth in the State's new MSSAM Program; and

WHEREAS, the Pilot program requires a three-year commitment from a maximum of 20 municipalities selected to participate, which at the conclusion of the program can expect to have a completed Asset Management Plan for their sewage system and the tools to implement the program; and

WHEREAS, selection for the MSSAM requires a commitment of in-kind services from the municipality without any out-of-pocket expenses; and

WHEREAS, this Council has determined that applying to and accepting entry into the MSSAM if selected is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a grant from the New York State Department of Environmental Conservation for participation in New York State Municipal Sewage System Asset Management (MSSAM) Pilot Program; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and participate in and administer the programs funded thereby.



**Department of  
Environmental  
Conservation**

# **MUNICIPAL SEWAGE SYSTEM ASSET MANAGEMENT (MSSAM) PILOT PROGRAM**

**Guidelines for Participating Municipalities**

November 2015

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER**

625 Broadway, Albany NY 12233  
P: (518) 402-8233 | F: (518) 402-9029 | [MSSAM@dec.ny.gov](mailto:MSSAM@dec.ny.gov)

[www.dec.ny.gov](http://www.dec.ny.gov)

# **MUNICIPAL SEWAGE SYSTEM ASSET MANAGEMENT (MSSAM) PILOT PROGRAM**

## **Guidelines for Participating Municipalities**

### **Pilot Program Overview**

Municipalities that participate in the New York State Municipal Sewage System Asset Management (MSSAM) Pilot Program have the unique opportunity to provide valuable input in shaping the final guidance and approach that will be set forth in the state's new MSSAM Program under the direction and guidance of the NYS Department of Environmental Conservation (DEC).

The pilot is expected to run for three years, and will have up to 20 municipalities who volunteered to participate. Municipalities should be aware that filing an application does not guarantee that they will be selected for the program. The DEC will evaluate all complete applications and will select municipalities to participate. The DEC will notify all applicants as to whether they have been selected or not. Applicants with questions can contact the DEC through the municipal sewage system asset management mailbox: [MSSAM@dec.ny.gov](mailto:MSSAM@dec.ny.gov)

The state will select and hire an environmental engineering firm(s) to work with each selected municipality to develop and begin the implementation of their asset management plan (AMP). The state will develop a work plan for the firm(s) to complete within the given timeframes.

At the conclusion of the pilot, the participating municipalities can expect to have a completed AMP for their sewage system and the tools (e.g. computerized asset management system) to implement the program. The AMP will be based on the framework outlined in the DEC's draft Municipal Sewage System Asset Management Guide. For municipalities that have already developed an AMP, this pilot can help them to enhance their plan and to fill in the gaps between their existing plan and the state's guide.

## **Municipal Contribution**

This is a voluntary program, and there will be no out-of-pocket costs to participating municipalities for developing their AMP. However, municipalities that participate will be expected to commit staff resources and time to the process for the entire three years.

## **Staff Commitments**

The municipality will be responsible for committing staff to work with the environmental engineering firm to prepare and implement the AMP. The state will be asking the participating municipalities to assign their chief operator and the operator's back-up to work on the pilot and to allow a portion of their time to be dedicated to the program. These staff will be the liaison between the municipality, the environmental engineering firm(s) and the state.

The staff should have the following qualifications and characteristics:

- Willing to provide descriptive feedback to the state.
- Able to give presentations and talk with others about how the AMP is working in their municipality and for their wastewater treatment facility.
- Daily access to the internet and email.

## **Other Resource Commitments**

The municipality will be expected to supply meeting space (e.g., conference room), and provide the environmental engineering firm with facility records and site access.

## **Anticipated Activities**

Below is a breakdown of the activities that the state expects each municipality to complete during the pilot program.

### **Year 1**

- The municipality will work with the environmental engineering firm to complete an AMP for the municipal sewage system.
- As part of preparing the AMP, the municipality will be responsible for providing information to the state and the environmental engineering firm about the municipal sewage system. Below is a list of the types of information the environmental engineering firm may request from the municipality. Municipalities who do not have all the information are still eligible to volunteer for the pilot program.

Examples of background information that may be requested:

- Existing service area agreements and policies, design and performance standards, sewer development guidelines
  - Existing municipal ordinances
  - Related municipal development plan updates in progress
  - Most current size and location of system infrastructure (e.g., GIS, CAD files, or record drawings)
  - Flow monitoring data collected by the municipality
  - Staff certifications and municipal organizational chart, with specific focus on those individuals with both direct and indirect involvement with the operation and management of the sewage system
  - System operation maintenance and control, including routine operations current FTEs, preventive maintenance, inventories of equipment and supplies, and related information
  - Existing Capital Improvement Plan (CIP) and ranking criteria
  - Recent construction cost data for municipal projects
  - Sewage system operating costs. Current and anticipated future budgets
  - Available revenue sources (e.g., fees for service and connection charges)
  - Municipal policies related to level of reserves and debt service coverage targets
- The municipality will be responsible for providing feedback to the state about the AMP and the process. Municipal staff will be required to:
    - Meet with the state in advance of the pilot program to review the environmental engineering firm's asset management program work plan.
    - Participate in meetings with the state to discuss program status and any outstanding questions or concerns. The exact frequency of these meetings has not been determined.
    - Respond in a timely manner to the state's questions.
  - The municipality will be responsible for notifying their community of the facility's participation in the pilot program.
  - The municipality will be responsible for providing the state with a copy of the municipality's asset inventory and system maps in the format prescribed by the

state at the end of the plan development process. The engineering firm will assist with this task.

### **Years 2 and 3**

- The municipality will work toward implementing the first two years of their AMP. The municipality will be responsible for committing staff to this task and to implement the plan to the maximum extent practicable. The state and the environmental engineering firm will be available to provide advice. The environmental engineering firm and the state will provide an assessment and feedback on the development and implementation of the AMP.
- The municipality will be responsible for providing constructive and descriptive feedback to the state on a regular basis about implementing the AMP. Methods of feedback will include phone calls, emails, meeting and written reports.
- The municipality will conduct outreach to the public regarding progress on implementing the AMP. Some examples of outreach include flyers, webpage updates, and public meetings. The environmental engineering firm will provide assistance with preparing the outreach materials, including a presentation template for the municipal staff to use for public meetings.
- The municipality will work with the environmental engineering firm to provide the state with a Final Assessment Report based on their participation in the pilot program.

### **Opting Out of the Program**

DEC is looking to work with municipalities who are committed to all three years of the program. However, DEC recognizes that there may be extenuating circumstances that cause a municipality to need to opt-out of the pilot. In these rare instances, the municipality will be required to notify DEC in writing of their decision to end their participation in the Program. Within 30 days of the date of the notification, the municipality will be required to set up a meeting for all municipal staff that participated in the pilot to discuss with DEC staff and the engineering firm staff their part in the pilot and why the municipality choose to opt-out.

# Municipal Sewage System Asset Management Pilot Program Application



Department of  
Environmental  
Conservation

To volunteer for the opportunity to be a part of the Municipal Sewage System Asset Management Pilot Program, municipalities must fill out and electronically **submit this form by January 20<sup>th</sup>, 2016**. Municipalities should be aware that filing an application does not guarantee that they will be selected for the program. The DEC will notify all applicants as to whether they have been selected or not.

After filling out all mandatory fields on the application, submit the application by using the Submit button at the end of the application, or email the saved completed application to [MSSAM@dec.ny.gov](mailto:MSSAM@dec.ny.gov). All submissions will receive acknowledgment of receipt. Please do not email a scanned copy of the application.

Municipal Information		
1. Name of Municipality:	_____	
2. Mailing Address:	_____	
	<i>Street Address</i>	<i>Unit #</i>
	_____	_____
	<i>City</i>	<i>State</i> <i>ZIP Code</i>
3. Contact Name:	_____	
	<i>Last</i>	<i>First</i> <i>M.I.</i>
4. Contact Title:	_____	
5. Contact Phone:	_____	6. Contact Email: _____
	<i>(###) ###-####</i>	<i>Ext.</i>

Certification of Applicant		
The person listed below certifies that he/she is authorized to submit this application on behalf of the applicant and that to the best of his/her knowledge, information and belief, all statements in the application are true and accurate:		
1. Applicant Name:	_____	
	<i>Last</i>	<i>First</i> <i>M.I.</i>
2. Applicant Title:	_____	
3. Applicant Phone:	_____	4. Applicant Email: _____
	<i>(###) ###-####</i>	<i>Ext.</i>

### Municipal Agreement

To participate in this pilot program, municipalities must agree to the *Municipal Sewage System Asset Management (MSSAM) Pilot Program: Guidelines for Participating Municipalities*, which can be found on DEC's *Municipal Sewage System Asset Management Pilot Program* web page at the following address: <http://www.dec.ny.gov/chemical/101419.html>

1. I have read and agree to the Guidelines for Participating Municipalities:

- Yes  No

Additionally, municipalities must submit responses to both of the following data surveys for each wastewater treatment facility in their sewage system to be eligible:

- Wastewater Treatment Plant Rating Worksheet for Wastewater Treatment Plant Certification (Ref: Part 650.3, 650.6)
- Collection System Survey

The surveys can be found on DEC's *Municipal Sewage System Asset Management Pilot Program* web page at the following address: <http://www.dec.ny.gov/chemical/101419.html>.

If you have questions about the surveys, please contact the Division of Water's Bureau of Water Compliance at (518) 402-8177.

2. Responses to both data surveys have been submitted electronically to [MSSAM@dec.ny.gov](mailto:MSSAM@dec.ny.gov):

- Yes  No

### Statement of Need

1. Provide a brief explanation why your municipality should be selected to be part of this pilot program. Include how participating in the pilot program would help your municipality maintain and improve its level of service and long-term sustainability.

### Sewage System Information

1. List the facility name and SPDES number for each wastewater treatment facility in your sewage system. If your system is a satellite system, provide the name and SPDES number of the treatment facility that your sewer system is connected to.

Facility Name	SPDES Number

2. Does your municipality have a dedicated funding source for Operations and Maintenance (O&M)?

- Yes  
 No

3. Briefly describe the municipality's current and planned sources of funding for its sewage system.

4. List the number of staff and certification level of the chief operator and assistant or shift operator for each wastewater treatment facility in the system.

5. Does your municipality currently offer regular training opportunities for wastewater facility staff?

- Yes  No

6. If your municipality has worked with an engineering firm to develop and implement a municipal sewage system asset management plan, list the name of the firm.

Name of Firm: \_\_\_\_\_

Not Applicable

7. Does your municipality have maps of the wastewater treatment facility and sewage collection system?

Yes

No

a. If yes, what type of maps are primarily used?

Paper maps

Geographic Information System (GIS)-based maps

Computer-Aided Design (CAD)-based maps

Other (include a description) \_\_\_\_\_

ORDINANCE NO.: \_\_\_\_\_<sup>13</sup> - 2015

OF

DECEMBER 14, 2015

AN ORDINANCE AMENDING SECTION 248-39(B)  
ENTITLED "PRETREATMENT" OF THE CODE OF THE CITY OF NEWBURGH TO  
TO COMPLY WITH THE ANNUAL INDUSTRIAL PRETREATMENT REPORT  
PREPARED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 248, entitled "Sewers", Article III, entitled "Wastewater Discharge", Section 248-39, entitled "Pretreatment" of the Code of the City of Newburgh be and is hereby amended to read as follows:

Section 1. Chapter 248. Sewers

Article III. Wastewater Discharge

§ 248-39. Pretreatment.

A. Users shall provide necessary wastewater treatment to make wastewater acceptable under the limitations established herein and shall achieve compliance with all Federal Categorical Pretreatment Standards within the time limitations as specified by the Federal Pretreatment Regulations before discharging into any community sewer. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City prior to the user's initiation of the changes.

~~B. The City shall publish annually in the official newspaper of the City a list of the users who were not in compliance with any pretreatment requirements or standards at least once during the 12 previous months. The notification shall also summarize any enforcement actions taken against the user(s) during the same 12 months.~~

~~Strikethrough~~ denotes deletions

Underlining denotes additions

B. The City shall publish annually in the official newspapers of the City of Newburgh, a list of the industrial users, which at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

1. Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
2. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
3. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under Section 248.46 through Section 248.53 of this Article, to halt or prevent such a discharge;
5. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
6. Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
7. Failure to accurately report noncompliance.
8. Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

~~Strikethrough~~ denotes deletions

Underlining denotes additions

C. All records relating to compliance with pretreatment standards shall be made available to officials of the City, the Environmental Protection Agency or approval authority upon request.

**Section 2.** This ordinance shall take effect immediately.

~~Strikethrough~~ denotes deletions  
Underlining denotes additions

RESOLUTION NO.: 315 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AUTHORIZING APPROVAL OF VARIOUS INSURANCE  
POLICIES FOR THE PERIOD OF  
JANUARY 1, 2016 TO DECEMBER 31, 2016

WHEREAS, the City of Newburgh has solicited proposals for insurance coverage for the fiscal year 2016; and

WHEREAS, Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. have recommended a package of insurance coverage for property and liability insurance coverage for Fiscal Year 2016;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby approves the insurance coverage for the term beginning January 1, 2016 through December 31, 2016 with the self-insured retention amounts and premium rates as set forth in the attached Insurance Quotation; 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. and Gallagher Bassett Services, Inc. to provide for insurance coverage and third-party claims administration services, respectively, for the period of January 1, 2016 to December 31, 2016.

RESOLUTION NO.: 316-2015

OF

DECEMBER 14, 2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK  
AUTHORIZING THE TRANSFER OF A PORTION OF 141 ELLIS AVENUE IN  
EXCHANGE FOR A PORTION OF 139 ELLIS AVENUE

WHEREAS, the City of Newburgh and Donald A. Whitfield, Robert McCoy, Aziz Mureebe and Girardo Tojino, also known as The Overview Partnership, own adjacent properties located at 141 Ellis Avenue and 139 Ellis Avenue, identified as Section 42, Block 2, Lot 4 and Section 42, Block 2, Lot 6.22 on the official Tax Map of the City of Newburgh; and

WHEREAS, as a survey prepared by Daniel J. O'Brien, Professional Land Surveyor, indicates that the construction of a water storage tank owned by the City of Newburgh encroaches upon the property owned by Donald A. Whitfield, Robert McCoy, Aziz Mureebe and Girardo Tojino; and

WHEREAS, Mr. Witfield, on behalf of the The Overview Partnership, appeared before the City of Newburgh Planning Board on July 21, 2015 with an application requesting a lot line revision to alleviate the encroachment and the Planning Board approved the lot line revision; and

WHEREAS, by Resolution No. 202 -2015 of August 10, 2015, the City Council consented to and supported the application of Mr. Witfield to the City of Newburgh Planning Board for a lot line revision at the boundary of Section 42, Block 2, Lot 4 and Section 42, Block 2, Lot 6.22 on the official Tax Map of the City of Newburgh and the Planning Board's approval of said lot line revision; and

WHEREAS, upon the completion of the lot line revision, it is in the best interests of the City of Newburgh and its further development for the City and Donald A. Whitfield, Robert McCoy, Aziz Mureebe and Girardo Tojino to exchange portions of the Ellis Avenue parcels so that the City is the record owner of the entire parcel on which the water storage tank is constructed and The Overview Partnership will own its parcel free of any encroachments;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Council hereby authorizes the transfer of that portion of 141 Ellis Avenue, Section 42, Block 2, Lot 4 on the official Tax Map of the City of Newburgh as described in the "City of Newburgh & Witfield McCoy Murebe & Tojino Map" reflecting the boundary lot line change filed with the Orange County Clerk on October 9, 2015 to Donald A. Whitfield, Robert McCoy, Aziz Mureebe and Girardo Tojino in exchange for that portion of 139 Ellis Avenue, Section 42, Block 2, Lot 6.22 on the official Tax Map of the City of Newburgh as described in the "City of Newburgh & Witfield McCoy Murebe & Tojino Map" reflecting the boundary lot line change filed with the Orange County Clerk on October 9, 2015; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute any documents necessary in order to effectuate the transfer and exchange of the portions of said parcels.



RESOLUTION NO.: 317 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A DIRECT AGREEMENT WITH TAYLOR-MONTGOMERY LLC AND CITIBANK, N.A.  
IN CONNECTION WITH THE SOLID WASTE DISPOSAL AND PROCESSING  
AGREEMENT BETWEEN THE CITY OF NEWBURGH AND TBE-MONTGOMERY LLC

WHEREAS, by Resolution No. 121-2011 of July 11, 2011, the City of Newburgh authorized an agreement with TBE-Montgomery LLC for the disposal of municipal solid waste through a renewable electrical energy process at a substantially lower cost than the City currently pays for disposal of solid waste at the Orange County Transfer Station; and

WHEREAS, by Resolution No. 25-2015 of January 28, 2015, the City of Newburgh authorized the City Manager to enter into an extension agreement to extend the term of the start-up period of the agreement for a new three year period to December 31, 2017 with all remaining terms of the agreement to continue; and

WHEREAS, the financing requirements of the project and Section 16.07 "Further Assurances" of the City's agreement with TBE-Montgomery, LLC, require a Direct Agreement between Citibank, N.A., Taylor-Montgomery LLC, as the successor to TBE-Montgomery, LLC, which permits the lender to assume rights and obligations under the City's agreement with TBE-Montgomery, LLC if it becomes necessary under the financing agreements; and

WHEREAS, the Direct Agreement extends the term of the City's agreement with TBE-Montgomery, LLC for one additional year until December 31, 2018; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a Direct Agreement between the City of Newburgh, Taylor-Montgomery, LLC, as successor to TBE-Montgomery LLC, and Citibank, N.A. as annexed hereto pursuant to Section 16.07 of the City's agreement with TBE-Montgomery, LLC for the disposal of municipal solid waste.

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**DIRECT AGREEMENT**

among

**CITY OF NEWBURGH**

a New York municipality and political subdivision of the State of New York  
(Contracting Party)

**TAYLOR-MONTGOMERY, LLC**

a New York limited liability company  
(Borrower)

and

**CITIBANK, N.A.**

(Trustee)

**Dated as of December \_\_, 2015**

This DIRECT AGREEMENT, dated as of December \_\_, 2015 (this "Agreement"), is entered into by and among the CITY OF NEWBURGH, a New York municipality and political subdivision of the State of New York (the "Contracting Party"), TAYLOR-MONTGOMERY, LLC, a New York limited liability company and successor in interest to TBE-MONTGOMERY LLC (the "Borrower"), and CITIBANK, N.A., a national banking association in its capacity as trustee pursuant to the Indenture, as defined below (together with its successors, designees and assigns in such capacity, the "Trustee").

#### RECITALS

A. The Borrower intends to develop, construct, install, finance, own, operate and maintain a mixed solid waste separation and recycling facility which will convert the organic biomass portion of mixed solid waste to electricity through gasification, to be located in the Town of Montgomery, Orange County, New York (the "Project").

B. The Contracting Party and the Borrower have entered into that certain Solid Waste Processing and Disposal Agreement, dated July 22, 2011 (the "Supply Contract") relating to the supply of mixed solid waste and related services with respect to the Project, as such may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, are referred to herein jointly as (the "Assigned Agreements").

C. In order to finance the Project, the Borrower will enter into certain documents providing for the borrowing of funds by, and the performance of certain other obligations of, the Borrower (the "Secured Obligations"), and the securing of the repayment of and satisfaction of such Secured Obligations, by the Borrower, and such documents include the Loan Agreement, dated as of December 1, 2015, by and between the Borrower and the Town of Montgomery Capital Resource Corporation (the "Issuer"), as amended, amended and restated, supplemented or otherwise modified from time to time (the "Financing Agreement"), and the Indenture of Trust, dated as of December 1, 2015, by and between the Issuer and the Trustee, as amended, amended and restated, supplemented or otherwise modified from time to time (the "Indenture"). Pursuant to the Indenture, the Issuer is issuing \$ \_\_\_\_\_ of its Municipal Solid Waste Bonds (Taylor-Montgomery, LLC Project) Series 2014 (the "Series 2015 Bonds") and the proceeds of the Series 2015 Bonds are being loaned to the Borrower pursuant to the Financing Agreement. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings ascribed to them in the Indenture.

D. Pursuant to the Security Agreement, dated as of December 1, 2015, entered into between the Borrower and the Trustee (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), the Borrower will agree, among other things, to assign, as collateral security for the Secured Obligations, all of its right, title and interest in, to and under the Assigned Agreement to the Trustee.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything in the Assigned Agreements to the contrary, as follows:

### 1. Assignment and Agreement.

1.1 Consent to Assignment. The Contracting Party (a) is hereby notified and acknowledges that the Issuer will enter into the Financing Agreement in reliance upon, among other things, the execution and delivery by the Contracting Party of this Agreement, (b) consents to the collateral assignment under the Security Agreement of all of the Borrower's right, title and interest in, to and under the Assigned Agreements, including, without limitation, all of the Borrower's rights to receive performance, benefits and all payments (if any) due and to become due to the Borrower under or with respect to the Assigned Agreements (collectively, the "Assigned Interests"), and (c) acknowledges the right (but not the obligation) of the Trustee (or its designee), in the exercise of its rights and remedies pursuant to, and in accordance with, the Security Agreement, upon written notice to the Contracting Party, to make all demands, give all notices, take all actions and exercise all rights of the Borrower under the Assigned Agreements and agrees that in such event the Contracting Party shall continue to perform its obligations under the Assigned Agreements.

1.2 Subsequent Borrower. The Contracting Party agrees that, if the Trustee notifies the Contracting Party in writing that, pursuant to the Security Agreement, it has assigned, foreclosed or sold the Assigned Interests or any portion thereof to a purchaser or assignee of the Borrower's right, title and interest in, to and under the Project, then (a) the Trustee, if in possession of the Project, or any purchaser or assignee of the Project (such purchaser or assignee, a "Subsequent Borrower") shall be substituted for the Borrower under the Assigned Agreements, and (b) the Contracting Party shall (i) recognize the Trustee or the Subsequent Borrower, as the case may be, as its counterparty under the Assigned Agreements, and (ii) continue to perform its obligations under or in connection with the Assigned Agreements in favor of the Trustee or the Subsequent Borrower, as the case may be; provided, however, that the Trustee or the Subsequent Borrower, as the case may be, has assumed in writing, and shall perform, all of the Borrower's rights and obligations (including, without limitation, the obligation to cure any then existing payment and performance defaults within a reasonable time after such assumption, but excluding any obligation to cure any then existing performance defaults which by their nature are incapable of being cured) under the Assigned Agreements.

1.3 Performance of the Borrower's Obligations. The Trustee or any Subsequent Borrower, may, but shall have no obligation (other than as set forth in Section 1.2 above) to, perform one or more of the obligations of the Borrower under the

Assigned Agreements and the Contracting Party will accept such performance, if otherwise in accordance with the terms of the Assigned Agreements and this Agreement, in lieu of performance by the Borrower and in satisfaction of the obligations of the Borrower under the Assigned Agreements.

1.4 Right to Cure. The Trustee or any Subsequent Borrower shall have the right (without the obligation) to cure any default or event of default which is capable of being cured under or in respect of the Assigned Agreements and/or make any payments listed in any notice from the Contracting Party. Without prejudice to the generality of the foregoing, if the Borrower defaults in the performance of any of its obligations under any Assigned Agreement, or is otherwise in material breach of any of its obligations thereunder, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Contracting Party to terminate or suspend any benefits to the Borrower pursuant to, under, in connection with, or in respect of, the Assigned Agreement, to terminate, discontinue or suspend its performance under the Assigned Agreement, or to terminate any of the Assigned Agreements (each hereinafter a "default"), the Contracting Party shall, notwithstanding anything in the Assigned Agreements to the contrary, not terminate, discontinue or suspend such benefits, such performance, or any of the Assigned Agreements until it first gives written notice of such default to the Trustee and affords the Trustee the opportunity to cure such default within the later of (a) thirty (30) days from receipt of such notice, or (b) if such default is a nonmonetary default, such longer period (not to exceed ninety (90) days) as may be required so long as the Trustee or any Subsequent Borrower has commenced and is diligently pursuing appropriate action to cure such default; provided, however, that (i) if possession of the Project is necessary to cure such nonmonetary default and the Trustee has commenced foreclosure proceedings, the Trustee shall be allowed a reasonable time to complete such proceedings, and (ii) if the Trustee is prohibited from curing any such nonmonetary default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Borrower, then the time periods specified herein for curing a default shall be extended for the period of such prohibition. The Contracting Party shall not hinder the Trustee's or any Subsequent Borrower's efforts, as the case may be, to cure and shall provide reasonable cooperation to the Trustee or any Subsequent Borrower, as the case may be, in effecting any cure of any default under the Assigned Agreements.

1.5 Replacement Agreements. If any Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting the Borrower, the Contracting Party shall, at the option of the Trustee exercised within one hundred and twenty (120) days after such rejection or termination, enter into a new agreement with the Trustee or any Subsequent Borrower having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree); provided, however, that (a) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement, and (b) upon execution of such new agreement, the Trustee or any Subsequent Borrower cures

any outstanding payment and performance defaults under the Assigned Agreement within a reasonable time, excluding any performance defaults which by their nature are incapable of being cured.

1.6 Limitations on Liability. The Contracting Party acknowledges and agrees that the Trustee shall not have any liability or obligation under the Assigned Agreements as a result of this Agreement, the Assigned Agreements or otherwise (other than pursuant to Section 1.2 or any agreement entered into pursuant to Section 1.5), nor shall the Trustee be obligated or required to (a) perform any of the Borrower's obligations under the Assigned Agreements, except during any period in which the Trustee has assumed the Borrower's rights and obligations under the Assigned Agreements pursuant to Section 1.2 above, or (b) take any action to collect or enforce any claim for payment assigned under the Assigned Agreements. If the Trustee or a Subsequent Borrower succeeds to the interest of the Borrower or enters into a new Assigned Agreement and such person is for any reason required to acquire title to the Project in its own name (i.e., is not able to vest ownership of the Project in a special purpose entity whose purpose is ownership of the Project), then such person acquiring such title shall have no personal liability to the Contracting Party for the performance of such obligations, and the only recourse of the Contracting Party in recovering damages for the breach of default of such obligations against such person shall be to such person's interest in the Project.

1.7 Delivery of Notices. The Contracting Party shall deliver to the Trustee concurrently with the delivery thereof to the Borrower, a copy of each document, notice, request or demand given by the Contracting Party to the Borrower pursuant to, in respect of, or in connection with, the Assigned Agreements relating to (a) a default or other breach by the Borrower under any Assigned Agreement, and (b) an "Uncontrollable Circumstance" event as described in any Assigned Agreement, in each case to the addresses set forth in and further in accordance with Section 5.2 hereof.

1.8 Transfer. The Trustee shall have the right to assign all or a portion of its interest in the Assigned Agreements or a new agreement entered into pursuant to the terms of this Agreement; provided, however, that such transferee assumes in writing the obligations of the Borrower or the Trustee, as applicable, under the Assigned Agreements or such new agreement. Upon such assignment, the Trustee shall be released from any further liability under the Assigned Agreements or such new agreement to the extent of the interest assigned.

## 2. Payments under the Assigned Agreements.

2.1 Payments. The Contracting Party shall pay all amounts payable by it under, in connection with, or in respect of, the Assigned Agreements in the manner and as and when required by the Assigned Agreements directly into the account specified on Exhibit A hereto, or to such other person, entity or account as shall be specified from time to time by the Trustee to the Contracting Party in writing. Notwithstanding the foregoing, if any entity or person has become a Subsequent Borrower pursuant to the terms hereof, then the Contracting Party shall pay all such amounts directly to such

Subsequent Borrower or an account designated by the Subsequent Borrower. Nothing in this Section 2.1 shall impose an obligation upon the Contracting Party to make payments under the Assigned Agreements other than such obligations as may arise under, or in respect of, or in connection with the Assigned Agreements.

2.2 No Offset, Etc. All payments required to be made by the Contracting Party under, in connection with, or in respect of, the Assigned Agreements shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

3. Representations and Warranties of the Contracting Party. The Contracting Party hereby represents and warrants, in favor of the Trustee, as of the date hereof, that:

(a) the Contracting Party (i) is a [corporation][municipality and political subdivision of the State of New York] duly organized and validly existing under the laws of the State of New York, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreements and this Agreement, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreements, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance by the Contracting Party of this Agreement and the Assigned Agreements have been duly authorized by all necessary corporate or other action on the part of the Contracting Party and do not require any permits, approvals, filings with, or consents of any entity or person (including any government body, agency, subdivision or other government authority) which have not previously been obtained or made;

(c) each of this Agreement and the Assigned Agreements is in full force and effect, has been duly executed and delivered on behalf of the Contracting Party, and constitutes the legal, valid and binding obligations of the Contracting Party, enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(d) there is no pending or threatened (in writing) action, suit, proceeding or investigation by a governmental authority, of any kind, before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, individually or in the aggregate, (i) could reasonably be expected to materially and adversely affect the performance by the Contracting Party of its obligations hereunder or under the Assigned Agreements, or to modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business or operations of the Contracting Party, or (iii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreements, any action taken

or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

(e) the execution, delivery and performance by the Contracting Party of this Agreement and the Assigned Agreements, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, breach of, or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it, in each case other than any such violation, breach or default which could not reasonably be expected to have a material adverse effect on the rights and benefits of the Borrower, or the Contracting Party's ability to perform its obligations, under, in respect of, or in connection with, the Assigned Agreements;

(f) neither the Contracting Party nor the Borrower is in default of any of its obligations under the Assigned Agreements;

(g) to the best of the Contracting Party's knowledge, (i) no "Uncontrollable Circumstance" event (as such term is defined in any Assigned Agreement) exists, and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or the giving of notice, or both, enable either the Contracting Party or the Borrower to terminate, discontinue or suspend its obligations under any Assigned Agreement; and

(h) the Assigned Agreements and this Agreement are the only agreements between the Borrower and the Contracting Party, and all of the conditions precedent to effectiveness thereunder have been satisfied or waived.

Each of the representations and warranties set forth in this Section 3 shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and by the Assigned Agreements.

#### 4. Additional Covenants and Agreements.

(a) The Contracting Party and the Borrower further covenant and agree that notwithstanding anything to the contrary in the Assigned Agreement (i) neither party has previously provided thirty (30) days' prior written notice to the other party, to terminate the Assigned Agreement pursuant to Section 9.02 thereof; (ii) the obligations of the Borrower under Section 4.01(a) of the Assigned Agreement have been satisfied; and (iii) the date in Section 9.02 thereof shall be changed to December 31, 2018.

#### 5. Miscellaneous.

5.1 Inconsistencies or Conflicts. Notwithstanding anything herein or in the Assigned Agreements to the contrary, in the event of any inconsistency or conflict between any provisions herein and any provisions in the Assigned Agreements, the provisions herein shall govern in all cases, without exception.

5.2 Notices. Any communications between the parties hereto or notices provided herein to be given shall be in writing and shall be deemed to have been duly given on the date of receipt by the applicable party hereto if personally delivered; when transmitted by the applicable party hereto if transmitted by telecopy, electronic or digital transmission method, subject to the sender's facsimile machine receiving the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; and when received by the applicable party hereto, if sent for next day delivery to a domestic address by recognized overnight delivery service or if sent by certified or registered mail, return receipt requested. Either party may change its notification address or person at any time, by notice given in writing.

Notices shall be given:

If to Borrower:

Taylor-Montgomery, LLC  
350 Neelytown Road  
Montgomery, New York 12549-9900  
Attn: James W. Taylor, Jr.  
Telephone: (845) 457-4021  
Facsimile: (845) 457-1917  
Email: [jim.taylor@taylorbiomassenergy.com](mailto:jim.taylor@taylorbiomassenergy.com)

With a copy to:

Catania, Mahon, Milligram & Rider, PLLC  
One Corwin Court  
Newburgh, New York 12550  
Telephone: (845) 565-1100  
Facsimile: (845) 565-1999  
Attn: Michelle F. Rider, Esq.  
Email: [mrider@cmmrlegal.com](mailto:mrider@cmmrlegal.com)

If to Contracting Party:

City Manager  
City of Newburgh  
83 Broadway  
Newburgh, New York 12550

With a copy to:

Corporation Counsel  
City of Newburgh  
83 Broadway  
Newburgh, New York 12550

If to the Trustee:

Citibank, N.A.  
Agency & Trust  
388 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10013  
Attn: Agency Trust – Taylor-Montgomery LLC  
Phone (212) \_\_\_\_\_  
Email: \_\_\_\_\_

5.3 Governing Law; Waiver of Jury Trial. This Agreement shall be governed and construed in accordance with the substantive laws of the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any federal or state courts of the State of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

5.4 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Executed counterparts transmitted by facsimile shall be binding on the parties hereto.

5.5 Headings Descriptive. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

5.6 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

5.7 Amendment, Waiver. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Contracting Party and the Trustee.

5.8 Successors and Assigns. This Agreement shall bind and benefit the Contracting Party, the Trustee, and their respective successors and assigns.

5.9 Entire Agreement. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior

writings between the parties hereto in respect of the subject matter hereof. In the event of any conflict or inconsistency between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument (including, without limitation, the Assigned Agreement), the terms, conditions and provisions of this Agreement shall prevail.

5.10 Rights of Trustee. All rights, privileges, indemnities, immunities, benefits and protections given to the Trustee in the Indenture shall apply to all actions taken or omitted to be taken by the Trustee pursuant to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Agreement to be duly executed and delivered as of the date first above written.

TAYLOR-MONTGOMERY, LLC

By: \_\_\_\_\_

Name:

Title:

Date:

CITY OF NEWBURGH

By: \_\_\_\_\_

Name:

Title:

Date:

Accepted and Agreed to:

CITIBANK, N.A.,  
as Trustee

By: \_\_\_\_\_

Name:

Title:

Date:

RESOLUTION NO.: 318 - 2015

OF

DECEMBER 14, 2015

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXTENSION UNTIL JANUARY 31, 2017 TO THE FIRST AMENDED AGREEMENT OF LEASE WITH MEMORARE REALTY HOLDING CORP. FOR THE CONTINUED LEASE VACANT REAL PROPERTY KNOWN AS SECTION 31, BLOCK 5, LOTS 13.2 AND 14 FOR THE PURPOSE OF PROVIDING PARKING FOR THE NEWBURGH-BEACON FERRY COMMUTERS AND OTHER PARKERS DURING NON-COMMUTING HOURS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH METRO-NORTH COMMUTER RAILROAD COMPANY TO PROVIDE REIMBURSEMENT OF PARKING LOT LEASE PAYMENTS RELATED TO THE NEWBURGH-BEACON FERRY SERVICE

WHEREAS, the City of Newburgh ("City") and Memorare Realty Holding Corp. ("Memorare") executed a Lease on July 30, 2004 for the lease and use of approximately 3.65 acres of vacant real property situated on the Hudson River known as Section 31, Block 5, Lots 13.2 and 14, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours, with the City being reimbursed by New York State for the rental payments and improvements provided under such Lease; and

WHEREAS, by Resolution No. 142 - 2010 of June 14, 2010, the City Council authorized the City Manager to execute a First Amended Agreement of Lease with Memorare to accord with the amended reimbursement agreement with New York State that was effective April 21, 2010; and

WHEREAS, by Resolution No. 169 - 2014 of July 14, 2014, the City Council authorized an extension of the renewal term of the First Amended Lease for a four month period from August 1, 2014 until November 30, 2014; by Resolution No. 308-2014 of December 15, 2014, the City Council authorized an extension of the renewal term of the First Amended Lease for an additional six month period from December 1, 2014 to May 3, 2015; and by Resolution No. 75 - 2015 of April 13, 2015 the City Council authorized an additional extension from May 4, 2015 to December 31, 2015; and

WHEREAS, the parties desire to continue the lease for parking to be used for ferry service between the City of Newburgh and Beacon and uses associated therewith and the parties agree that it is necessary to further extend the renewal term of the First Amended Lease for the period January 1, 2016 through January 31, 2017; the same being in the best interests of the City of Newburgh; and

WHEREAS, by Resolution No. 111-2015 of May 11, 2015, the City Council authorized a Memorandum of Understanding with Metro-North Commuter Railroad (MNR) to provide reimbursement to the City of Newburgh for payments made under the First Amended Lease for

the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours; and

WHEREAS, the City and MNR wish to working cooperatively to ensure the continuation of the ferry service between the Cities of Newburgh and Beacon by providing continued reimbursement to the City for payments under the First Amended Lease consistent with the term of the proposed extension of said Lease; the same being 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 on behalf of the City of Newburgh, be and he is hereby authorized to execute an additional extension from January 1, 2016 to January 31, 2017 to the First Amended Agreement of Lease with Memorare in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager on behalf of the City of Newburgh, be and he is hereby authorized to execute an MOU coterminous with the period of extension to the First Amended Lease with such other terms and conditions as may be recommended by the Corporation Counsel, for Metro-North Commuter Railroad to provide reimbursement to the City of Newburgh for payments made under the First Amended Lease for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours.

## MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING ("MOU") dated May 26, 2015, by and between Metro-North Commuter Railroad Company ("Metro-North"), a public benefit corporation of the State of New York and a subsidiary of the Metropolitan Transportation Authority ("MTA"), with its principal offices at 420 Lexington Avenue, 11<sup>th</sup> floor, New York, New York 10170 and the City of Newburgh ("City"), a municipal corporation with its principal offices located at City Hall, 83 Broadway, Newburgh, New York 12550 (collectively, the "Parties").

WHEREAS, the Parties entered into an Agreement dated August 16, 2004 (the "Agreement"), concerning the mooring, docking and use of facilities in the City in connection with commuter ferry service to be operated by Metro-North or its contractor between the City of Beacon and the City of Newburgh ("Ferry Service"); and

WHEREAS, the Agreement states that the City will enter into a lease with the owner of certain premises to provide a docking facility and 250 space parking lot for the Ferry Service (the "Lease"), and the City did enter into such Lease, beginning July 30, 2014 and superseded by a First Amended Lease effective April 21, 2010 and extended through December 31, 2015 (the "Amended Lease"); and

WHEREAS, the City and the New York State Department of Transportation ("NYSDOT") had entered into a contract dated July 12, 2006, by which NYSDOT reimbursed the City for the rent payments under the Lease, but this contract has expired; and

WHEREAS, the City represents that it lacks funding to make the rent payments under the Amended Lease for the period from May 2015 through December 2015 ("May-December Period") and has requested that Metro-North reimburse the City for the rent payments under the Lease for the May-December Period; and

WHEREAS, NYSDOT has indicated to the City that it will reimburse the City for the rent payments under the Lease up to and including April 2015, and thereafter has committed to provide Congestion Mitigation and Air Quality ("CMAQ") funds to Metro-North, which can be used to reimburse Metro-North for assistance payments made to the City by Metro-North to fund the Lease for the May-December Period; and

WHEREAS, unless the rent payments under the Amended Lease are made to the landlord for the May-December Period, the Ferry Service is in danger of being discontinued; and

WHEREAS, the Ferry Service is important to the City as well as being an important part of Metro-North's provision of commuter service to its ridership, especially for commuters from Orange and Dutchess Counties; and

WHEREAS, the Parties desire to prevent the discontinuance of the Ferry Service.

NOW THEREFORE, in consideration of the benefits accruing to each of the Parties hereto, the Parties agree as follows:

1. Supplement. Unless otherwise stated herein, this MOU supplements the terms set forth in the Agreement.

2. Lease Rent Payments: Metro-North agrees to reimburse the City for the rent payments made by the City under the Amended Lease for the May-December Period only, at the rate of \$ 21,278 per month. For the May-December Period, the City will make timely monthly rent payments to the lessor under the Lease. The City will submit proof of each timely monthly rent payment along with an invoice for that monthly rent payment to Metro-North within ten (10) days of making the rent payment. Metro-North agrees to pay the City within thirty (30) days of receipt of the City's invoice for the monthly rent payment and proof of timely payment of the monthly rent payment under the Lease.

3. During the May-December Period, the City agrees to comply with all terms under the Amended Lease, not to terminate the Amended Lease and not cause the landlord to terminate the Lease.

4. Metro-North is not required to reimburse the City for any late fees, interest or other charges under the Lease.

5. This MOU does not create any obligations for Metro-North in connection with the Lease, or create any landlord-tenant relationship between the Parties.

6. Assignment: Neither party shall assign, transfer or delegate any of its rights or obligations under this MOU without the written consent of the other party, provided that Metro-North may so assign, transfer or delegate to the MTA any such right or obligation upon written notice to the City.

7. Personal Liability: No officer, director, member or employee of either of the parties hereto shall be liable personally or be sued individually for damages under or by reason of this MOU.

8. Notices: (a) Any notice, request, approval, demand or other communication under this MOU shall be in writing and given by (i) hand delivery, (ii) mailing the same by registered or certified mail, return receipt requested, (iii) reputable overnight courier service, or (iv) facsimile transmission with an original sent by any manner above described, addressed in each case as follows:

If to Metro-North:

Metro-North Commuter Railroad Company  
420 Lexington Avenue, 11<sup>th</sup> floor  
New York, New York 10170  
Attention: General Counsel  
(Fax No. 212-697-9079)

If to the City:

City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550  
Attn: City Manager  
(Fax No. 845-569-7370)

With a copy to:

City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550  
Attn: Corporation Counsel  
(Fax No. 845-569-7338)

(b) Any party may by notice to the other change the addresses to which notice to such party or copies of such notices shall thereafter be sent. Notices shall be deemed to have been given (i) immediately upon acknowledgement of receipt when delivered by personal service on the person(s) designated to receive notice, (ii) on the fourth (4<sup>th</sup>) business day after the same shall have been deposited in the United States mails as aforesaid, (iii) on the next business day after the same shall have been sent by overnight courier service and (iv) upon receipt of the telecopy; provided that no notice shall be deemed to have been given until a copy thereof has been given to each person entitled thereto as set forth above.

(c) The Notice provision in the Agreement for Metro-North is hereby changed to the address set forth above.

9. No Third-Party Rights. No provision of this MOU shall create or give to third-parties any claim or right of action against the Parties hereto.

10. Board Approval Necessary. This MOU will only become effective upon approval of the Boards of the respective parties.

9. Miscellaneous:

a) This MOU contains the entire agreement of the Parties respecting the subject matter hereof.

b) This MOU may be amended, modified or supplemented only by an instrument in writing signed by the Parties hereto.

c) The headings of the various paragraphs, exhibits and attachments of this MOU are for the convenience of reference only and do not in any way define or limit the scope of intent of any provision hereof.

d) If any provision of this MOU is to any extent invalid or unenforceable, the remainder of this MOU, and the application of such provision to matters as to which it is not invalid or unenforceable, shall not be affected thereby.

e) This MOU shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

f) This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g) This MOU shall be governed by and construed in accordance with the laws of the State of New York.

h) Either party may terminate this MOU upon sixty (60) days written notice, provided that any obligations incurred by either party prior to the termination date, shall survive such termination.

**IN WITNESS WHEREOF**, Metro-North and the City have caused this Memorandum of Understanding to be duly executed as of the date first above written.

METRO-NORTH COMMUTER RAILROAD COMPANY

Catherine Rinaldi for Joseph Guilletti

BY:

APPROVED  
AS TO FORM DP

CITY OF NEWBURGH

  
BY: Michael G. Ciaravino, City Manager

Per Resolution No. 111-2015

RESOLUTION NO.: 319-2015

OF

DECEMBER 14, 2015

**A RESOLUTION REAPPOINTING RICHARD HARPER, KIPPY BOYLE,  
CHUCK THOMAS AND KAREN EBERLE-MCCARTHY TO THE  
CONSERVATION ADVISORY COUNCIL FOR TWO YEAR TERMS**

WHEREAS, the City Council of the City of Newburgh adopted Local Law No. 1-2013 of August 19, 2013 which added new Chapter 159 of the City Code of Ordinances entitled "Conservation Advisory Council"; and

WHEREAS, Chapter 159 provides for a seven-member Conservation Advisory Council, the members of which, when first appointed, three shall hold office for a term of one year and four for terms of two years; and

WHEREAS, the two-year terms of Richard Harper, Kippy Boyle, Chuck Thomas and Karen Eberle-McCarthy expired on November 30, 2015 and the incumbent members wish to continue to serve new two-year terms; the same being 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 following individuals be and are hereby re-appointed to the Conservation Advisory Council for a two (2) year term commencing December 1, 2015 and ending on November 30, 2017; and

Richard Harper  
Kippy Boyle  
Chuck Thomas  
Karen Eberle-McCarthy

RESOLUTION NO.: 320 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK,  
OBJECTING TO THE THRUWAY AUTHORITY AS LEAD AGENCY AND  
RECOMMENDING THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION SERVE AS LEAD AGENCY FOR THE PILGRIM PIPELINE PROJECT

WHEREAS, by Resolution No. 27-2015 of February 9, 2015, the City of Newburgh unanimously objected and opposed the proposed Pilgrim Pipeline project; called upon the New York State Thruway Authority to reject use of its right-of-way for the purpose of transporting oil or gas by pipeline; and further called upon the New York State Department of Transportation to deny an exception to its Accommodation Plan for said purpose; and urged Governor Cuomo and the State Legislature to oppose construction of the Pilgrim Pipeline in New York State; and

WHEREAS, the Pilgrim Pipeline project will be considered a State Environmental Quality Review Act (SEQRA) Type 1 action under 6 NYCRR Part 617; and,

WHEREAS, the City of Newburgh is an "Involved" agency in SEQR, which means that the City of Newburgh will be able to have a voice in determining who is Lead Agency of this project; and,

WHEREAS, the Thruway Authority is considering SEQRA lead agency status for this project; and

WHEREAS, the City of Newburgh declines to consent to the Thruway Authority's SEQRA lead agency status for this project; and

WHEREAS, this is a timely matter as a decision on lead agency will be made once comments have been received and after the 30-day review period ends on December 16, 2015; and,

WHEREAS, more than 20 New York municipalities, including the City of Newburgh, have passed resolutions (both memorializing and otherwise) of opposition to this project after concluding that the risks and costs to our communities far outweigh any potential benefits, and that the project contradicts local and State energy goals; and,

WHEREAS, the proposed pipeline threatens important resources of statewide concern, including the Hudson River and important surface water resources, including Gidneytown Creek, Chadwick Lake and the Quassaick Creek on the northern-most lateral line; and Muchattoes Lake and Quassaick Creek on the southern-most lateral line, State-regulated wetlands and other resources that the New York State Department of Environmental Conservation (DEC) is responsible for

protecting and is best equipped to ensure a full and adequate evaluation of environmental impacts; and,

WHEREAS, the DEC is one of the State agencies responsible for State efforts to mitigate climate change, and is best positioned to lead an evaluation of this project's potential impacts on climate; and,

WHEREAS, the DEC, as the state environmental agency, is best suited to guide the environmental review of this large, multi-jurisdictional project that has the potential to impact environmental resources in 6 New York counties and 29 towns, and is the agency with the power and the expertise to ensure a comprehensive and coordinated review; and,

WHEREAS, the pipeline will traverse and impact private lands and resources outside of the Thruway right-of-way, including lands within the City of Newburgh, and it is therefore more appropriate for the DEC than the Thruway Authority to play the lead role in evaluating the impacts to those lands and resources; and,

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Newburgh, New York, that the City Council of the City of Newburgh declines to consent to the NY Thruway Authority to serve as lead agency in the SEQR review of the proposed Pilgrim Pipeline Project, and further strongly recommends DEC Acting Commissioner Basil Seggos and the NYS Department of Environmental Conservation serve as lead agency; and

BE IT FURTHER RESOLVED, that the City Clerk of the City of Newburgh, New York forward copies of this resolution by overnight mail service for delivery on December 16, 2015 to the NYS Thruway Authority Chair Howard P. Milstein, NYS DOT Commissioner Joan McDonald, U.S. Senators Charles Schumer and Kirsten Gillibrand and U.S. Representative Sean Patrick Maloney, Governor Andrew Cuomo, N.Y. Public Service Commission Chairwoman Audrey Zibelman, N.Y. Assembly Member Frank Skartados, N.Y. Senator William Larkin, and NY State DEC Acting Commissioner Basil Seggos and Executive Deputy Commissioner Marc Gerstman.

RESOLUTION NO.: 321 - 2015

OF

DECEMBER 14, 2015

**A RESOLUTION TO RESCIND THE VOTE TO START  
THE SEARCH FOR A NEW CITY MANAGER**

WHEREAS, the decision to start a search for a new city manager is one of utmost importance to the entire City and pro and cons should be carefully discussed; and

WHEREAS, amendments to Article V of the City Charter addressing the selection, appointment and removal of the City Manager were adopted by a referendum of the City electors on November 8, 2011; and

WHEREAS, the purpose of the referendum of November 8, 2011 was to ensure greater stability in city government and prevent a few Council members from firing City Managers because of personal agendas; and

WHEREAS, the commencement of a City Manager search was introduced as a new agenda item at the end of the November 9, 2015 Council meeting under new agenda items; then pushed to a vote the same night; and

WHEREAS, this topic was not considered at a work session before the November 9, 2015 Council meeting and was not listed on the written agenda of said meeting; the public had no opportunity to give input and it did not follow the standard process; and

WHEREAS, Rule III(D) of the City Council Rules and Order of Procedure requires the Council, first, to vote to allow the new item to be introduced, considered, and then second, to vote on the substance of the new item; and

WHEREAS, it is recommended that the method and means of a City Manager search be discussed by the City Council at a work session or regular meeting to ensure the entire Council and the public understand the process; and

WHEREAS, Section C5.00(A) of the City Charter now provides that the City Council shall appoint a City Manager by a majority plus one vote of the entire membership; and

WHEREAS, the City Manager of the City of Newburgh is a public officer and therefore Public Officers Law Section 5 applies where the City Manager is appointed for a definite term with or without an employment contract and the City Manager's term expires without the City Council reappointing the City Manager for a new term or appointing a

new City Manager by a vote of a majority plus one of the Council members and the incumbent City Manager will hold over and continue to perform the duties of the position until such time as the Council makes a proper reappointment or new appointment pursuant to City Charter Section C5.00.

WHEREAS, three council members strongly disagree that grounds for starting a new search have merit and moreover approve of the work by the current City Manager thus preventing a majority plus one vote for the appointment of a new City Manager; and

WHEREAS, there is no vacancy in the City Manager position at this time; and

WHEREAS, new council members will be joining in January; and

WHEREAS, no budget has been determined for the City Manager search; and

WHEREAS, it would be a waste of taxpayer dollars; a waste of employee time and energy; and a waste of applicant time and energy to pursue a City Manager search under the above conditions;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newburgh that the November 9, 2015 motion and vote to start a search for a new City Manager be rescinded.

RESOLUTION NO.: 322 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AUTHORIZING THE SETTLEMENT OF  
LITIGATION REGARDING THE IN REM TAX FORECLOSURE  
OF LIENS FOR THE YEAR 2013 RELATIVE TO  
123 WILLIAM STREET (SECTION 45, BLOCK 15, LOT 15)

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2013-10248; and

WHEREAS, the property owner has advised the City that he is prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer be and he is hereby authorized to withdraw all liens on the property located at 123 William Street (Section 45, Block 15, Lot 15), in the City of Newburgh, from the Lists of Delinquent Taxes, provided that the sum of Thirty Nine Thousand Five Hundred Fifty And 84/100 (\$39,550.84) Dollars representing the past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2014-2015 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before December 31, 2015.

RESOLUTION NO.: 323 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AUTHORIZING THE SETTLEMENT OF  
LITIGATION REGARDING THE IN REM TAX FORECLOSURE  
OF LIENS FOR THE YEAR 2013 RELATIVE TO  
23 S. MILLER STREET (SECTION 30, BLOCK 1, LOT 18) AND  
25 S. MILLER STREET (SECTION 30, BLOCK 1, LOT 17)

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2013-10248; and

WHEREAS, the property owner has advised the City that he is prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer be and he is hereby authorized to withdraw all liens on the properties located at 23 S. Miller Street (Section 30, Block 1, Lot 18) and 25 S. Miller Street (Section 30, Block 1, Lot 17), in the City of Newburgh, from the Lists of Delinquent Taxes, provided that the sum of Sixty Four Thousand Four Hundred Thirty One And 33/100 (\$64,431.33) Dollars representing the past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2014-2015 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before December 31, 2015.

RESOLUTION NO.: 324 - 2015

OF

DECEMBER 14, 2015

A RESOLUTION AMENDING THE 2016 PERSONNEL ANALYSIS BOOK  
AND AMENDING RESOLUTION NO.: 300 - 2015,  
THE 2016 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO CHANGE THE GRADE, STEP AND SALARY  
OF THE DIRECTOR OF PLANNING AND DEVELOPMENT

WHEREAS, this Council finds that it is in the best interests of the City of Newburgh to adjust the 2016 Personnel Analysis Book and the 2016 Budget for the City of Newburgh, New York to change the grade, step and salary of the Director of Planning and Development from a Grade 6, Step 1 and salary of \$78,991.00 to a Grade 7, Step 1 and salary of \$89,061.00;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that 2016 Personnel Analysis Book and 2016 Budget be and hereby is amended to change the grade, step and salary of the Director of Planning and Development from a Grade 6, Step 1 and salary of \$78,991.00 to a Grade 7, Step 1 and salary of \$89,061.00.