

RESOLUTION NO.: 81 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
CONTRACT WITH WORKFORCE DEVELOPMENT INSTITUTE
TO DEVELOP A BUSINESS ADVISORY COUNCIL OF LOCAL EMPLOYERS TO
PROVIDE EMPLOYMENT OPPORTUNITIES FOR QUALIFIED CITY OF NEWBURGH
RESIDENTS AT A COST TO THE CITY OF \$50,000.00**

WHEREAS, by Resolution No. 185-2011 of September 12, 2011, the City Council of the City of Newburgh authorized the City Manager to execute a contract with the Workforce Development Institute (hereinafter "WDI") to recruit and hire a Program Coordinator, establish a specific selection and assessment criteria within the Newburgh population, review caseloads and establish enrollment, engagement and reporting requirements and protocols with community organizations; and

WHEREAS, the term of the initial contract for the first phase of such services was effective through December of 2011 and by Resolution No. 18-2012 of February 14, 2012, the City Council extended the term of this contract to April 30, 2012; and

WHEREAS, WDI completed the initial phase of the project and by Resolution No. 52-2012 of April 23, 2012, the City Council authorized the City Manager to execute a contract with WDI to provide the next phase of services; and

WHEREAS, WDI has completed the second phase of its services and now proposes to assist the City of Newburgh in developing a Business Advisory Council of local employers to provide employment opportunities for qualified City of Newburgh Residents as set forth in the "Scope of Services" of the contract annexed hereto and made part hereof; and

WHEREAS, this Council has determined that entering into a new contract with WDI for the purpose of developing a Business Advisory Council is in the best interests of the City of Newburgh and its residents and citizens alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to a contract with Workforce Development Institute to provide assistance in the development of a Business Advisory Council at a cost to the City of \$50,000.00.

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WHEREAS, this Council has determined that entering into a new contract with WDI for the purpose of developing a Business Advisory Council is in the best interests of the City of Newburgh and its residents and citizens alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to a contract with Workforce Development Institute to provide assistance in the development of a Business Advisory Council at a cost to the City of \$50,000.00.

CONTRACTUAL AGREEMENT

PARTIES

This **CONTRACT** is between the City of Newburgh as the **FUNDER** and the Workforce Development Institute (WDI) as the **CONTRACTOR**. The respective locations and contacts are as follows:

City of Newburgh
83 Broadway
Newburgh NY 12550

Workforce Development Institute
96 South Swan St.
Albany, NY 12210

PURPOSE OF CONTRACT

The City of Newburgh has suffered from high unemployment for a number of years, and residents have expressed frustration at an inability to find employment. The purpose of this agreement is for WDI to provide assistance to the City of Newburgh to develop a program to help City of Newburgh residents find employment. WDI contracted services will focus on outreach to employers to find positions (the demand side). The City of Newburgh will compensate WDI for WDI's efforts as outlined below.

SCOPE OF SERVICES

WDI will provide the following:

- Work with a City-based advisory group comprised of the City Manager, the Director of Community Development, two City Council members, and two CDBG Advisory Group members to develop a Business Advisory Council (BAC). The goal of the BAC is to engage local employers in discussions about employment trends, skills required, and potential openings, and ultimately obtain commitments from BAC members and other private and non-profit employers to hire qualified City of Newburgh residents. The BAC will represent a cross-section of major economic sectors representative of City and regional employers. It is intended that the BAC may be a collaborative BAC developed in conjunction with the Workforce Investment Board (WIB) and other entities.
- Report progress to the advisory group on a regular basis, every other month beginning in May of 2013.
- Engage a minimum of 20 employers and obtain commitments from 10 employers to participate on the BAC.
- The development of a demand-driven system that results in ongoing commitments of job opportunities to qualified City of Newburgh residents is the goal of the BAC. To that end, the number and type of employment opportunities committed by participating employers will be determined by the needs of the employers and will include temporary, part-time and full-time opportunities. This contract sets a target that all participating members of the BAC will commit employment opportunities to qualified Newburgh City residents as concrete evidence of their commitment to Newburgh. The larger BAC members will allocate a minimum of 3

positions each, for a minimum target number of 30 commitments (3 positions for a minimum of 10 employers).

- Hold regular BAC meetings every other month, beginning in July of 2013.
- Facilitate the BAC meetings – help develop agendas, keep employers engaged.
- Perform outreach to regional employers (over and above those on the BAC) with a goal of understanding employment trends, growth opportunities, skills requirements for various jobs. Obtain commitments from these businesses to hire qualified City of Newburgh residents.
- Develop business profiles on employers. Profiles will include background information about the company, types of jobs for which it hires, skills required of the jobs, turnover rates, barriers to finding employees, growth potential, and jobs for which it plans to hire in the future. Develop 20 profiles which will be shared in an aggregate manner.
- The information generated from the BAC and through outreach to employers will be shared with local vocational service providers, the NYS Department of Labor, and others in an effort to find qualified individuals to fill the positions.

TIMEFRAME

This agreement is valid from May 1, 2013 through April 30, 2014 and may be extended through mutual agreement.

COMPENSATION AND REPORTS REQUIRED FOR PAYMENT

The City of Newburgh has indicated it has limited funding, and that \$50,000 is available for this initiative. The cost of developing a BAC and performing outreach to employers as described above is significantly more than \$50,000. WDI acknowledges this discrepancy and is willing to commit other resources to support the differential.

The \$50,000 that is available for the initiative will be paid in monthly installments from the City of Newburgh to WDI, upon submission of an invoice. The invoice will also include a declarative statement that 1/12 of the \$50,000 in costs has been incurred during the month in question.

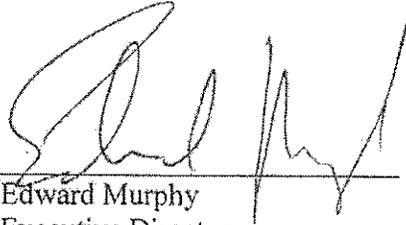
Note that implementation of the items as outlined under Scope of Services may be accomplished by a few WDI staff members, including a Project Director, the Hudson Valley Regional Director, the Director of Operations, and an Economic Development Specialist. All of these staff members will assist in the development of the BAC and in outreach to employers.

The WDI will submit a quarterly report to the City of Newburgh regarding the progress to date on July 15, October 15, January 15, and then a final report including a compilation of all business profiles and a recommendation for moving forward by April 15. Reports will include details on numbers of employers profiled, numbers of employers serving on the BAC, and numbers of positions that have been committed to the City of Newburgh residents (and filled).

TERMINATION

If either party fails to perform any material obligation under this Agreement or violates material terms or condition of this Agreement, and such failure or violation is not cured within ten (10) days following receipt of a notice from the non-breaching party describing the default or failure,

then the non-breaching party shall have the right to terminate this Agreement upon written notice to the other.



Edward Murphy
Executive Director
Workforce Development Institute

4/19/13

Date

Richard Herbek
City Manager
City of Newburgh, NY

Date



Workforce Development Institute

96 South Swan Street
Albany, NY 12210

Tel: 518.463.2141
Fax: 518.432.5609
www.wdiny.org

April 19, 2013

Mr. Richard Herbek
City Manager
City of Newburgh
83 Broadway
Newburgh, NY, 12550

Dear Mr. Herbek:

I am following up on our meeting with the City Council on April 4, where I stated that the Workforce Development Institute (WDI) is willing to devote resources, over and above that which is available from the City of Newburgh's CDBG grant, to development of a supply-demand employment model in Newburgh.

WDI knows the City of Newburgh has suffered from high unemployment for a number of years, and residents have expressed frustration at an inability to find employment. As discussed in the Council meeting, provided that the City of Newburgh contracts with WDI for a demand side project, WDI will provide additional assistance to the City of Newburgh to develop a program to help City of Newburgh residents find employment. The supplemental program will focus on outreach to employers to find positions (demand side) and then working with vocational service providers to find/screen appropriate candidates (supply side).

Supplemental tasks provided by WDI for residents of the City of Newburgh will not be reimbursed by the City. Rather, WDI will assume the costs associated with these tasks from WDI's own resources in order to complement work performed under a CDBG related contract for which the City is compensating WDI. These uncompensated costs are estimated at more than \$50,000.

WDI is willing to perform these additional tasks related to development of an employment program for the City of Newburgh because the project is within WDI's mission to create and retain good jobs in New York State. In addition, it is anticipated that creation of a successful employment model in Newburgh may be used by WDI in other parts of the state.

Mr. Richard Herbek
April 19, 2013
Page 2

To that end, WDI will provide the following tasks, *uncompensated*:

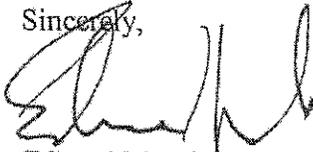
- Take information gathered from outreach to local employers/work of the Business Advisory Council (BAC) to local vocational service providers in order to find City of Newburgh residents qualified for the positions.
- Work with vocational service providers to ensure City of Newburgh residents/job candidates are adequately screened before candidates are put forward to local employers.
- Work with the City, vocational service providers, the NYSDOL, and others to develop an employment screening program (such as work readiness programs) that would direct applicants to programs and services that will help make them more employment-ready.
- Assist vocational service providers in the development of new training initiatives to meet the specific needs of employers.
- Assist potential job candidates in making the connection with employers.
- Track outcomes/progress of individuals placed into employment opportunities.
- Once a track record of placing City of Newburgh residents into employment has been established, seek outside funding for renewal of the project and additional staffing.

The time period in which WDI will perform these tasks is the same as that included under the compensated contract, or from May 1, 2013 through April 30, 2014.

Reporting associated with these tasks will be performed on a quarterly basis on the same schedule as that developed for the compensated contract.

Rick, I look forward to working with you, and hope that together we can make a real difference in the City of Newburgh.

Sincerely,



Edward Murphy
Executive Director



RESOLUTION NO.: 82 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO NATURAL GAS AND ELECTRIC CONTRACTS WITH HESS CORP.
THROUGH THE MUNICIPAL ELECTRIC AND GAS ALLIANCE ("MEGA")
FOR A TWO (2) YEAR TERM AT A FIXED RATE**

WHEREAS, by Resolution No. 276-2010 of December 13, 2010, the City Council of the City of Newburgh authorized the City Manager to execute contracts for the provision of natural gas and electric for a two (2) year term at a fixed rate with Hess Corporation as the Municipal Electric and Gas Alliance's ("MEGA") endorsed supplier for the Central Hudson Utility Service; and

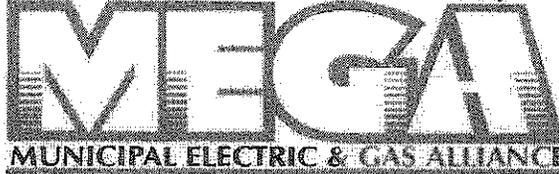
WHEREAS, , Municipal Electric and Gas Alliance ("MEGA") has been promoting utility savings to Municipalities across New York State and the purpose of entering into the contracts with Hess Corporation for the supply of natural gas and electric was to lower the City's utility costs; and

WHEREAS, pursuant to the last twelve (12) months of the initial two-year contract with Hess Corporation, the City of Newburgh has realized a savings of \$28,735.00; and

WHEREAS, this Council finds that continuing to maintain the City's utility cost savings through the renewal of such contracts is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute contracts for the provision of Natural Gas and Electric for a two (2) year term at a fixed rate to the City of Newburgh in the general form attached hereto with Hess Corporation, with all such terms and conditions as may be required by the Corporation Counsel.

The Power of Partnership



A Local Development Corporation

P.O. Box 88 • Ithaca, New York 14851

Phone: 1-518-465-1473

<http://www.megaenergy.org>

**ELECTRIC AND NATURAL GAS SUPPLY ENDORSEMENT
Winter-Spring 2013**

Dear MEGA Participant,

MEGA is pleased to provide this endorsement of Hess Corp.'s electricity and natural gas pricing program for Central Hudson utility customers, through January 31, 2016. Hess Corp.'s pricing, whether you opt for variable or fixed pricing will provide you with the best pricing, based on their competitive public bid received by MEGA in January. As you know, MEGA, the Municipal Electric and Gas Alliance, operates in partnership with the New York State Association of Counties, and serves more than 250 municipalities across New York State.

Electricity Program

Hess's approach offers two approaches for variable pricing, plus fixed pricing. A fixed price, including energy, capacity, ancillary services and losses, will stabilize your costs going forward up to nearly 3 years if you choose. Recent volatility in electric markets have prompted many MEGA participants to select fixed pricing so that "budget certainty" can be attained for public agencies.

Hess's variable pricing will allow you to save compared to utility rates, but without the stability provided by fixed pricing. Option 1 is to have the costs of capacity, ancillary and losses bundled together within the fixed "adder." Option 2 would have the cost of these elements passed through by Hess based on current market conditions, in addition to the variable price for energy. Savings might be increased, but variability will be increased too.

If you are considering whether to select fixed or variable pricing for any of Hess's supply options, please feel free to discuss with MEGA's consultants, EnergyNext, at 518-580-9244.

Natural Gas Program

We are delighted that Hess's basis price bid was significantly lower for this procurement, reflecting market conditions at the time of the bid. In addition to offering the lowest basis price bid, Hess also offers excellent approaches to help you manage your natural gas costs and reduce uncertainty in this sometimes volatile market. Two Hess programs, its PRiME and its Price Protection programs are available to all MEGA participants. The PRiME program will allow you to manage your natural gas pricing based on whether you want to take a Conservative, Moderate or Aggressive approach. Once you have made that choice, in consultation with Hess's representative and/or MEGA's consultants, Hess will procure your natural gas requirements based on your chosen risk profile.

The Price Protection program allows you to have variable pricing that is capped by an upper limit, not to be exceeded. In this case, your Hess representative will help you determine the pricing parameters that are best for your fiscal plans.

MEGA is delighted to offer these programs from Hess because we believe it will allow our participants to use the most advanced tools to manage natural gas costs .

Thank you for your continued participation in MEGA. We are delighted to bring you continued savings, and increased choices for managing your electric and natural gas requirements.

Sincerely,



Ron Feldstein
Executive Director

Contract Quantity (Dth)	<p>Buyer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed below, provided, that for purposes of determining whether a Material Usage Deviation has occurred and for purposes of calculating Contract Quantities remaining to be delivered under Section 12 of the Agreement, Contract Quantity shall be determined by reference to the applicable estimated quantity(ies) listed below.</p> <table border="1" data-bbox="365 289 1096 556"> <thead> <tr> <th></th> <th>Daily</th> <th>x</th> <th>Monthly</th> <th></th> </tr> </thead> <tbody> <tr> <td>May</td> <td>562</td> <td></td> <td>November</td> <td>1,530</td> </tr> <tr> <td>June</td> <td>174</td> <td></td> <td>December</td> <td>2,472</td> </tr> <tr> <td>July</td> <td>72</td> <td></td> <td>January</td> <td>2,778</td> </tr> <tr> <td>August</td> <td>72</td> <td></td> <td>February</td> <td>2,320</td> </tr> <tr> <td>September</td> <td>269</td> <td></td> <td>March</td> <td>2,005</td> </tr> <tr> <td>October</td> <td>974</td> <td></td> <td>April</td> <td>1,160</td> </tr> </tbody> </table>		Daily	x	Monthly		May	562		November	1,530	June	174		December	2,472	July	72		January	2,778	August	72		February	2,320	September	269		March	2,005	October	974		April	1,160
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Tax Exemption	<input type="checkbox"/> Non-exempt <input type="checkbox"/> Exempt If exempt, must attach certificate.																																			
Purchase Price	See special provisions below.																																			
Special Provisions	<p>For inquiries related to your purchase, or for any other questions or complaints against Hess, please contact Hess at the address above.</p> <p>For general inquiries related to the sale and delivery of gas you may contact the New York Public Service Commission ("PSC"), Department of Public Service ESCO hotline at 1-888-697-7728; write the PSC at the Office of Consumer Education & Advocacy, Three Empire State Plaza, Albany, NY 12223, or visit the PSC's website at http://www.dps.state.ny.us. For consumer complaints, contact the New York Department of Public Service at 1-800-342-3377.</p> <p>Customer represents and acknowledges that: (a) any rights to a rescission period, longer grace periods or notice periods afforded to residential customers do not apply; and (b) upon any discontinuance of service by Hess, Hess will return the Customer to full Utility service by the next effective drop date permitted by the Utility and upon at least fifteen (15) days prior notice.</p> <p>Furthermore, the Parties agree that the following representations will be added to Section 13(B)(f) of the Agreement, as a new subsections (v) and (vi), respectively: "(v) it may rescind the authorization for release of such information at any time, upon prior written notice; provided however, that such rescission will be considered a Default under Section 11(iv); and (vi) neither it, nor any Transaction, has been solicited through "door-to-door sales" (as such term is defined under the Uniform Business Practices of the New York Public Service Commission and the State of New York General Business Law § 349-d), and Buyer acknowledges that this representation is a material inducement to Seller entering into any Transaction."</p> <p>Customer Disclosures:</p> <p>A. Length of the agreement and end date: The Agreement may only terminate upon notice (i) as a result of a Default (provided that notice is not required in a Bankruptcy situation); (ii) for any reason so long as the Agreement remains in effect with respect to Transactions entered into prior to the effective date of the termination; and (iii) at the end of the above Delivery Period or any successive Renewal Term. For the exact length of the Transaction and end date, please see the "Delivery Period" Section above and/or this "Special Provisions" Section. For the specific text relating to the termination of the Agreement, please see Sections 12 and 14 of the Agreement.</p> <p>B. Process Customer may use to rescind the agreement without penalty: There are no contractual rights to rescind without penalty or without calculation of a settlement amount and Net Settlement Amount.*</p> <p>C. Amount of Early Termination Fee and method of Calculation: In "Section 12. Remedies" of the Agreement the non-defaulting Party has the right to terminate all Transactions, calculate a settlement amount and Net Settlement Amount for each Transaction and aggregate all amounts owing between the Parties under this Agreement or any other agreements between the Parties and their affiliates. For the specific text contained in this provision, please see Section 12 of the Agreement. Notwithstanding the foregoing, for any Transaction solicited through "door-to-door sales" (as such term is defined under the Uniform Business Practices of the PSC and the State of New York General Business Law § 349-d), the termination or early cancellation fee applicable to such Transaction is subject to limitation.**</p> <p>D. Amount of Late Payment Fee and method of calculation: "Section 4. Billing and Payment" of the Agreement sets forth the amount of days in which payment is due from the date of the invoice, the Interest Rate used to calculate late payments, and the calculation of any costs and expenses incurred in collecting</p>																																			

payment, including reasonable attorney's fees. For the specific text contained in this provision, please see Section 4 of the Agreement.

* According to the State of New York Public Service Commission's Uniform Business Practices residential customers have the right to cancel a sales agreement, without penalty, within three business days after its receipt.

** According to the State of New York Public Service Commission's Uniform Business Practices and the State of New York General Business Law § 349-d for transactions solicited through "door-to-door sales" customers may not be charged a termination or early cancellation fee in excess of the greater of: (i) \$100 if the remaining term is 12 months or less and \$200 if the remaining term exceeds 12 months, or (ii) twice the estimated commodity supply bill for an average month, provided that an estimate of an average monthly bill was provided to the customer when the offer was made by the Seller along with the amount of any early termination fee based on such estimate.

Change in Utility Account Numbers:

The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations section above or as attached, as applicable, or any replacement account number issued by the Utility from time to time.

Price Protection: The Purchase Price for the Contract Quantity, unless otherwise specified in this Transaction Confirmation, during each month of the Delivery Period (excluding the Renewal Term) will equal the fixed Basis charge of \$2.616 per Dth, plus the applicable Commodity charge for that month. Buyer acknowledges that the Basis charge includes costs associated with setting the Commodity charge. Unless the Commodity charge has been set by agreement of the Parties per the restrictions below, for each month the "Commodity charge" shall be the per Dth price equal to the lesser of (1) \$4.500 or (2) the New York Mercantile Exchange ("NYMEX") settlement price on the expiration date for that month's NYMEX Henry Hub natural gas futures contract.

Commodity charge restrictions:

The Commodity charge may be set by agreement of the Parties at any time prior to 1:00 PM on the expiration date of the applicable month's NYMEX futures contract.

Buyer acknowledges that the Commodity charge may not be set (fixed) for more than 36 months but in no event beyond the "Max Commodity Date". The Max Commodity Date is defined as the latest date up to which the Parties may fix the Commodity charge, and is posted on the secure section of HessEnergy.com. The Max Commodity Date is currently 4/30/2015. The Seller reserves the right to amend these date restrictions at its sole discretion.

Buyer's "Responsible Trigger Contact(s)" have been identified as Richard Herbeck [citymanager@cityofnewburgh-ny.gov]. Seller will generate a confirmation to be sent to your Responsible Trigger Contact when the Commodity charge is fixed ("Trigger Confirmation"). Such Trigger Confirmations are to be regarded as a part of this Transaction Confirmation. All Trigger Confirmations are binding upon receipt by Buyer. Any notices regarding those Trigger Confirmations must be sent to trigger@hess.com. Changes to the Responsible Trigger Contact must be communicated in writing through your Hess Account Manager.

Buyer acknowledges that it is acting for its own account, and that it has made its own independent decisions with respect to this Transaction Confirmation and that Seller is not acting as a fiduciary, financial, investment or commodity trading advisor for it in connection with the negotiation and execution of this Transaction Confirmation, nor will any communication (written or oral) received from Seller be deemed to be an assurance or guarantee as to any results expected from executing this Transaction Confirmation.

Delivery Point:

Consistent with FERC requirements, Seller shall have the right (but not the obligation), to select or change a Delivery Point to a point where Buyer may receive Gas that is outside the jurisdictional limits of the municipality or other jurisdiction where a Service Location under this Transaction Confirmation is located, which shall constitute a Delivery Point at which title, control, possession and risk of loss will pass to Buyer

as further provided in the Agreement.

PLEASE SIGN AND RETURN THIS TRANSACTION CONFIRMATION LETTER BY FACSIMILE TO 2013564928 .

BUYER: City of Newburgh

SELLER: Hess Corporation

By: _____

By: _____

Print Name: Richard F. Herbek

Print Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____



HESS CORPORATION

48450 - 0

1 Hess Plaza Woodbridge, NJ 07095

Phone: 1-800-Hess-USA

www.hessenergy.com

Marketer Name: Todd Loucks Date: 04-08-2013 Time: 11:16:33 AM

CUSTOMER INFORMATION

New Renewal Mixed

Customer: City of Newburgh

Contact Name:

Address: City Hall 83 Broadway NEWBURGH NY 12550

Telephone: Fax:

ELECTRICITY TRANSACTION CONFIRMATION AND CUSTOMER DISCLOSURES

This Transaction Confirmation confirms the terms of the Transaction entered into between Hess Corporation ("Seller"), and the customer above ("Buyer" or "Customer") pursuant to the terms of the Commodity Master Agreement ("CMA") between Buyer and Seller dated 12/23/2010, as may be amended. The Purchase Price excludes Utility distribution charges and Taxes that are or may be the responsibility of Buyer. The prices listed below are based on market conditions as of the time, stated above, that this Transaction Confirmation was issued and may be adjusted by Seller to reflect market conditions as of the date it is executed and returned by Buyer. THIS TRANSACTION CONFIRMATION WILL NOT BE EFFECTIVE UNTIL SIGNED BY BOTH PARTIES.

Service Locations: See attached Exhibit A for details.

Delivery Period: Term (# of months): 24 Months Start: For each Service Location, the first meter read date on or after 05/01/2013
The service start date hereunder will be the date that the Utility enrolls Customer for Seller's service. Seller will request the Utility to enroll Customer on the first meter read date within the Delivery Period.
Upon the expiration of the Delivery Period, this Transaction shall continue for successive one month terms (collectively the "Renewal Term") until either Party notifies the other Party in writing of its intention to terminate, at least 15 days prior to the end of the Delivery Period or 15 days prior to the end of each successive month Renewal Term. The termination date shall be the next effective drop date permitted by the Utility. All terms of the Agreement will remain in effect through the termination date as set by the applicable Utility. During the Renewal Term, the Purchase Price for each successive month Renewal Term will be the then Market Price for delivery to the Delivery Point, unless otherwise agreed to in writing by the Parties.

Delivery Point: See attached Exhibit A for details.

Contract Quantity: Buyer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed below, provided, that for purposes of determining whether a Material Usage Deviation has occurred and for purposes of calculating Contract Quantities remaining to be delivered under Section 12 of the Agreement, Contract Quantity shall be determined by reference to the applicable estimated quantity(ies) listed on the attached Exhibit A.

Tax Exemption Status: Non-Exempt Exempt If exempt, must attach certificate.

Purchase Price: Fixed Adder @ 1.70 ¢/kWh
Fixed Adder includes Losses, Unforced Capacity, Ancillaries, Transmission (if applicable), Renewable Portfolio Standards (RPS) (if applicable). Energy is grossed up by losses and indexed to Day Ahead market.

Bill Type: Consolidated Dual

Definitions: "On-Peak" hours are 7:00am to 11:00pm Monday through Friday, excluding the North American Electric Reliability Council (NERC) holidays. All other hours are "Off-Peak" hours.

<p>Special Provisions</p>	<p>Service Locations:</p> <p>The account number for a Service Location shall be the Utility Account Number set forth on the Exhibit A attached to this Transaction Confirmation, or any replacement account number issued by the Utility from time to time.</p> <p>If, as determined by Seller (in its sole reasonable discretion), at any time during the Delivery Period of this Transaction Confirmation, Buyer receives or loses an allocation for a portion of the supply of Electricity from the New York Power Authority ("NYPA") under the Recharge NY program, or other similar program, and such receipt or loss results in a deviation from the Contract Quantity (or, as applicable, estimated Contract Quantities) as set forth herein, Buyer will be responsible for the losses and costs incurred by Seller as a result thereof, including the costs of obtaining and/or liquidating the allocation quantity.</p> <p>For inquiries and information regarding ESCOs and the competitive energy market, please contact the New York State Department of Public Service Commission's ("PSC") toll-free retail access number - 1(888) 697-7728, write the PSC at the Office of Consumer Education & Advocacy, Three Empire State Plaza, Albany, NY 12223, or e-mail the PSC at http://www.dps.state.ny.us. For consumer complaints, contact the New York Department of Public Service at 1-800-342-3377.</p> <p>For inquiries related to your purchase, or for any other questions or complaints, please contact Hess at the address above. In case of emergencies or outages please contact your local Utility directly.</p> <p>Customer represents and acknowledges that: (a) any rights to a rescission period, longer grace periods or notice periods afforded to residential customers do not apply; and (b) upon any discontinuance of service by Hess, Hess will return the Customer to full Utility service by the next effective drop date permitted by the utility and upon at least fifteen (15) days prior notice.</p> <p>Furthermore, the Parties agree that the following representation will be added to Section 13(B)(f) of the Agreement, as a new subsections (v) and (vi), respectively: "and (v) it may rescind the authorization for release of such information at any time, upon prior written notice; provided however, that such rescission will be considered a Default under Section 11(iv) and (vi) neither it, nor any Transaction, has been solicited through "door-to-door sales" (as such term is defined under the Uniform Business Practices of the New York Public Service Commission and the State of New York General Business Law § 349-d), and Buyer acknowledges that this representation is a material inducement to Seller entering into any Transaction."</p> <p>Customer Disclosures:</p> <p>A. Length of the agreement and end date: The Agreement may only terminate upon notice (i) as a result of a Default (provided that notice is not required in a Bankruptcy situation); (ii) for any reason so long as the Agreement remains in effect with respect to Transactions entered into prior to the effective date of the termination; and (iii) at the end of the above Delivery Period or any successive Renewal Term. For the exact length of the Transaction and end date, please see the "Delivery Period" Section above and/or this "Special Provisions" Section. For the specific text relating to the termination of the Agreement, please see Sections 12 and 14 of the Agreement.</p> <p>B. Process customer may use to rescind the agreement without penalty: There are no contractual rights to rescind without penalty or without calculation of a settlement amount and Net Settlement Amount.¹</p> <p>C. Amount of Early Termination Fee and method of Calculation: In "Section 12. Remedies" of the Agreement the non-defaulting Party has the right to terminate all Transactions, calculate a settlement amount and Net Settlement Amount for each Transaction and aggregate all amounts owing between the Parties under this Agreement or any other agreements between the Parties and their affiliates. For the specific text contained in this provision, please see Section 12 of the Agreement. Notwithstanding the foregoing, for any Transaction solicited through "door-to-door sales" (as such term is defined under the Uniform Business Practices of the PSC and the State of New York General Business Law § 349-d), the termination or early cancellation fee applicable to such Transaction is subject to limitation.²</p> <p>D. Amount of Late Payment Fee and method of calculation: "Section 4. Billing and Payment" of the Agreement sets forth the amount of days in which payment is due from the date of the invoice, the Interest Rate used to calculate late payments, and the calculation of any costs and expenses incurred in collecting payment, including reasonable attorney's fees. For the specific text contained in this provision, please see Section 4 of the Agreement.</p> <p>1 According to the State of New York Public Service Commission's Uniform Business Practices residential customers have the right to cancel a sales agreement, without penalty, within three business days after its receipt.</p> <p>2 According to the State of New York Public Service Commission's Uniform Business Practices and the State of New York General Business Law § 349-d for transactions solicited through "door-to-door sales" customers may not be charged a termination or early cancellation fee in excess of the greater of: (i) \$100 if the remaining term is 12 months or less and \$200 if the remaining term exceeds 12 months, or (ii) twice the estimated commodity supply bill for an average month, provided that an estimate of an average monthly bill was provided to the customer when the offer was made by the Seller along with the amount of any early termination fee based on such estimate.</p>
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Settlement Sheet

Total Charge = Energy + Fixed Adder

Energy Formula is as follows:

$$\sum_{n=1}^n (Q_n (1+LF)) * LBMP_{DZ}$$

Fixed Adder Formula is as follows:

$$\sum_{n=1}^n Q_n * \text{Fixed Adder}$$

Legend:

n=hours in the month
 Q=Actual energy used in hour n (kWh)
 Bn = Volume of block purchased each hour (kWh)
 BP = Block Price (\$/kWh)
 LF= Line Loss Factor
 LBMP_{DZ} = Hourly NYISO Zonal LBMP Delivery Zone (\$/kWh)
 LBMPHUB = Hourly NYISO Zonal LBMP Hub (ISO reference point) (\$/kWh)
 UCAP = Unforced Capacity (kW)

Units:

Energy - \$/kWh
 Block - \$/kWh
 Basis - \$/kWh
 Capacity - \$/kW - month
 Ancillaries - \$/kWh
 Fixed Adder - \$/kWh

PLEASE SIGN AND RETURN THIS TRANSACTION CONFIRMATION BY FACSIMILE TO (201) 356-4923

Buyer City of Newburgh

By: _____
Print Name: Richard F. Herbek
Title: City Manager
Date: _____

Seller Hess Corporation

By: _____
Print Name: _____
Title: _____
Date: _____

Pricing Date Stamp: 4/8/2013 11:16:33 AM using 4/8/2013 11:00:45 AM forwards Proposal Id : 48450 - 0 Printed By: Rebecca Auresto On 4/8/2013 11:16:33 AM



HESS CORPORATION

One Hess Plaza Woodbridge, NJ 07095

Phone: 1-800-Hess-USA

www.hessenergy.com

Exhibit A Service location : Details

Estimated Monthly Contract Quantities (kWh)

	1	2	3	4	5
ACCOUNT NUMBER	8666037000	8666042000	8666076000	8672082003	8673049000
ADDRESS	83 Broadway NEWBURGH NY 12550				
UTILITY	CHUD	CHUD	CHUD	CHUD	CHUD
Delivery Zone	G	G	G	G	G
Capacity Oblg (kW)	67	163	203	126	93
Transmission Oblg (kW)	0	0	0	0	0
Meter Read Date	05/06/2013	05/06/2013	05/03/2013	05/08/2013	05/30/2013
May 2013	11,286	52,454	115,731	29,500	2,535
June 2013	16,720	71,143	141,689	45,105	43,071
July 2013	20,554	81,488	140,190	50,249	51,567
August 2013	19,640	80,405	144,988	47,288	45,675
September 2013	15,393	111,842	107,009	38,030	31,501
October 2013	10,480	11,280	107,034	34,421	29,278
November 2013	9,695	52,213	106,055	33,080	24,223
December 2013	10,953	52,164	111,742	35,021	30,550
January 2014	11,614	55,106	113,881	35,476	39,917
February 2014	10,161	50,331	103,538	31,869	44,620
March 2014	11,614	53,119	99,948	35,782	39,591
April 2014	10,140	48,956	104,923	35,394	27,958
May 2014	13,303	61,992	123,616	37,757	36,096
June 2014	16,867	71,662	143,119	45,481	43,399
July 2014	20,569	81,506	140,179	50,239	51,632
August 2014	19,499	79,902	144,089	46,958	45,407
September 2014	15,512	112,920	107,837	38,337	31,733
October 2014	10,480	11,280	107,079	34,421	29,264
November 2014	9,598	51,848	105,055	32,750	23,972
December 2014	11,042	52,405	112,083	35,294	30,813
January 2015	11,523	54,760	113,306	35,179	39,504
February 2015	10,161	50,331	103,538	31,869	44,620
March 2015	11,718	53,432	100,573	36,074	40,039
April 2015	10,137	48,954	105,127	35,436	27,950
May 2015	2,136	9,972	7,885	8,593	33,871
Total	320,795	1,461,465	2,810,214	919,603	888,786

**HESS CORPORATION**

One Hess Plaza Woodbridge, NJ 07095

Phone: 1-800-Hess-USA

www.hessenergy.com**Exhibit A Service location : Details****Estimated Monthly Contract Quantities (kWh)**

	6	7	
ACCOUNT NUMBER	8681095700	8683144000	TOTAL
ADDRESS	83 Broadway NEWBURGH NY 12550	83 Broadway NEWBURGH NY 12550	
UTILITY	CHUD	CHUD	
Delivery Zone	G	G	
Capacity Oblg (kW)	25	206	
Transmission Oblg (kW)	0	0	
Meter Read Date	05/13/2013	05/21/2013	
May 2013	2,004	26,908	240,418
June 2013	5,951	78,399	402,078
July 2013	13,496	87,437	444,981
August 2013	7,828	92,974	438,798
September 2013	2,396	96,317	402,488
October 2013	3,017	81,682	277,192
November 2013	8,825	78,022	312,113
December 2013	16,621	83,987	341,038
January 2014	17,775	84,167	357,936
February 2014	14,130	73,218	327,867
March 2014	11,175	79,533	330,762
April 2014	8,191	76,264	311,826
May 2014	3,220	75,298	351,282
June 2014	6,027	78,958	405,513
July 2014	13,530	87,453	445,108
August 2014	7,789	92,355	435,999
September 2014	2,401	96,835	405,575
October 2014	3,031	81,707	277,262
November 2014	8,727	77,493	309,443
December 2014	16,707	84,435	342,779
January 2015	17,627	83,664	355,563
February 2015	14,130	73,218	327,867
March 2015	11,278	79,999	333,113
April 2015	8,177	76,261	312,042
May 2015	1,293	48,880	112,630
Total	225,346	1,975,464	8,601,673

RESOLUTION NO.: 83 - 2013

OF

APRIL 22, 2013

RESOLUTION AMENDING RESOLUTION NO: 223 - 2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$1,004,000.00 FROM
GENERAL "FUND BALANCE" TO CAPITAL FUND
FOR THE PURPOSE OF PURCHASING VEHICLES

WHEREAS, by Resolution No. 24-2013 of January 28, 2013, the City Council of the City of Newburgh authorized the issuance of bond anticipation notes to finance the purchase of replacement vehicles for the Fire Department and the Department of Public Works; and

WHEREAS, the City of Newburgh has the opportunity to purchase the replacement vehicles through a New York State contract; and

WHEREAS, the purchase orders for the replacement vehicles must be submitted prior to the closing of the bond financing; and

WHEREAS, the funds for the purchase of the vehicles is available from the General Fund and will be replaced when the bond anticipation notes have been issued; and

WHEREAS, this Council finds that it is in the best interests of the City of Newburgh to make the funds available to purchase the replacement vehicles from the New York State contract.

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

	<u>Decrease</u>	<u>Increase</u>
A.0000.0911 Fund Balance	\$1,004,000.00	
H1.3412 Fire Department		
.0202.8101.2013 Motor Equipment		\$ 465,000.00
H1.5132 DPW-Garage		
.0202.8101.2013 Motor Equipment		\$ 144,000.00

H1.5133	DPW-Police Garage	
	.0202.8101.2013 Motor Equipment	\$ 175,000.00
HS.8160	Sanitation	
	.0202.8101.2013 Motor Equipment	\$ 220,000.00

RESOLUTION NO.: 84 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH
INTERNATIONAL DATA BASE CORP D/B/A
INTERACTIVE PROCUREMENT TECHNOLOGIES BY BIDNET
TO PROVIDE FOR WEB-BASED SOLICITATION AND BIDDING SERVICES**

WHEREAS, the City of Newburgh wishes to enter into the attached Agreement with International Data Base Corp., d/b/a Interactive Procurement Technologies by BidNet ("iPT"); and

WHEREAS, this agreement will authorize iPT to provide web-based solicitation and bidding services, including maintenance and support services; and

WHEREAS, these services will expand the City's vendor base for competitive bidding and streamlining some of the documents for the solicitations; and

WHEREAS, there is no subscription fee for the services with the exception of reimbursement for postage fees incurred to produce the mailing to suppliers and a programming fee if customized work is requested at a rate of One Hundred and Twenty-Five (\$125.00) Dollars per hour; and

WHEREAS, this Council has reviewed such agreement and has determined it to be in the best interest of the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute the attached agreement to provide for web-based solicitation system, providing on-line bidding services, including maintenance and support services in the general form attached hereto, with such other terms and conditions as may be required by Corporation Counsel and the City Manager, same as being in the best interest of the City of Newburgh.

AGREEMENT FOR SERVICES

Parties to this Agreement: The parties to this Services Agreement (hereinafter referred to as “the Agreement”) are City of Newburgh (hereinafter referred as the “Participating Organization”) and International Data Base Corp., doing business under the trade name Interactive Procurement Technologies by BidNet, a legally incorporated body having its principal place of business at 20A Railroad Avenue, Albany, New York 12205 (hereinafter referred to as “IPT”).

RECITALS:

WHEREAS the Participating Organization is in need of web-based solicitation and bidding services, including maintenance and support services;

WHEREAS under the Agreement, IPT has developed a web-based solicitation system, providing on-line bidding services, including maintenance and support services (hereinafter referred to as “The Network”)

WHEREAS the Participating Organization wishes to join The Network and benefit from the services provided by IPT;

THE PARTIES AGREE:

1. **Description of Services:** System Membership: The Participating Organization has agreed to join The Network. It is understood that IPT will provide the Participating Organization with access to The Network.
2. **Term of Agreement:** This Agreement shall become effective on the date of the execution for an initial term of twelve (12) months (the “Initial term”). The Initial Term of this Agreement may be extended in one-year increments, without notice unless terminated by either party.
3. **Payment for Services:**

3.1 Participating Organization Fees:

- 3.1.1. **Subscription Fees:** There will be no subscription fees incurred by the Participating Organization under this Agreement.
- 3.1.2. **Mailing Fees:** IPT will send an invoice to the Participating Organization for reimbursement of postage fees incurred to produce the mailing to suppliers.
- 3.1.3. ~~Press Release Fees: IPT will send an invoice to the Participating Organization for reimbursement of Press Release distribution fees incurred to distribute Press Release.~~
- 3.1.4. **Programming Fees:** The Participating Organization agrees to use The Network on an “as is” basis. Any customized work requested by the Participating Organization shall be made available at One Hundred and Twenty-five dollars (\$125) per hour.

- 3.1.5. **Surplus Auction Fees:** Should the Participating Organization choose to use the Surplus Auctions program to sell unwanted goods and equipment, a 5% commission will be paid to IPT for items sold.
- 3.1.6. **Future Enhancements:** IPT reserves the right to offer future services to the Participating Organization which may or may not include service fees.

3.2 Supplier Registration Fees:

- 3.2.1. **Basic Service:** This option gives suppliers access to search for documents of interest for all Participating Organizations actively using The Network at no charge, but requires them to remember to login frequently to ensure they are able to view opportunities before they close. This includes bids, addendums and awards.
 - 3.2.2. **Optional Value Added Service:** Suppliers that choose to register for the value added service option will be charged a nominal annual subscription fee. This includes notification from all Participating Organizations when bids, addendums and awards are posted on The Network that matches their profile.
 - 3.2.3. **Future Enhancements:** IPT reserves the right to offer future services to all registered suppliers which may or may not include separate service fees.
- 4. **Termination:** This Agreement may be terminated by either party upon sixty (60) days notice. Notice shall be in writing, sent by certified mail, return receipt requested.
 - 5. **Entire Agreement:** This Agreement constitutes the entire understanding of the parties and the parties agree that there are no other understandings, representations or warranties, either expressed or implied, whether written or oral, made by either party, except as stated within this Agreement.
 - 6. **Amendments:** No alteration of this Agreement shall be valid unless made in writing and signed by the parties and no oral understanding or agreements not incorporated herein shall be binding on the parties.
 - 7. **Governing Law:** This Agreement shall be governed by the laws of the State of New York.
 - 8. **Severability:** If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.
 - 9. **Work Product Ownership:** Any copyrightable works, ideas, discoveries, inventions, patents, products, or other proprietary information developed in whole or in part by IPT in connection of this Agreement, will be the exclusive property of IPT.
 - 10. **Unauthorized Use:** The Participating Organization agrees to require each user obtain a username and password to gain access The Network. Sharing of usernames and passwords is strictly prohibited. The Participating Organization also agrees to obtain written consent from IPT prior to showing demonstrations of The Network to any third party.

11. **Warranty:** IPT shall provide its services and meet its obligations under this Agreement in a timely manner, using knowledge for performing the services which meet a standard of care equal to service providers similar to IPT on similar projects.
12. **Signatures:** The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

The parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year written under the Participating Organization below.

City of Newburgh
83 Broadway
Newburgh, NY 12550

Name: _____

Title: _____

Date: _____

Signature: _____

Interactive Procurement Technologies by BidNet®, a division of
International Data Base Corp.

Name: Dan Ansell _____

Title: Vice President _____

Date: _____

Signature: _____

APPROVED AS TO FINANCES

Kathryn Nivins
Acting Comptroller

APPROVED AS TO FORM

Michelle Kelson
Corporation Counsel

RESOLUTION NO.: 85 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH PRECISION PIPELINE
SOLUTIONS TO ALLOW ACCESS TO CITY-OWNED PROPERTY AS A STAGING
AREA FOR PIPE, EQUIPMENT AND RELATED MATERIALS FOR VARIOUS
PROJECTS DURING THE 2013 CONSTRUCTION SEASON**

WHEREAS, the Precision Pipeline Solutions has requested access to City-owned property located at 207 Carpenter Avenue and identified as Section 17, Block 5, Lot 6, on the tax map of the City of Newburgh for the purpose of temporary storage of pipe, equipment and related material for various projects during the 2013 construction season; and

WHEREAS, such access to the subject property requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of hereof; and

WHEREAS, this Council has reviewed such license agreement and has determined that entering into the same would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Precision Pipeline Solutions to allow access to City-owned property for the purpose of temporary storage of equipment and materials as a staging area for work to be performed during the 2013 construction season.

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and thirteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and PRECISION PIPELINE SOLUTIONS, a private business organization having an address at 617 Little Britain Road, New Windsor, New York 12553 and its consultants and sub-contractors, as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor on behalf of itself and its employees, agents and contractors in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

Property identified as lands of the City of Newburgh, 207 Carpenter Avenue, Section 17, Block 5, Lot 6 on the tax map of the City of Newburgh;

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

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property identified as 207 Carpenter Avenue, Section 17, Block 5, Lot 6, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary and for the use of said property for the storage, parking, operation and management of vehicles, equipment and materials as a staging area for work to be performed during the 2013 construction season.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fourth: Licensee may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, contractors and/or consultants, Licensee and such agents, contractors and/or consultants shall name and/or treat and hold Licensor as additional insured under insurance coverage concerning Licensee's performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said staging work shall be performed in substantially the location of 207 Carpenter Avenue, Section 17, Block 5, Lot 6, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

Eighth: Licensee agrees to give Licensor no less than twenty-four (24) hours advance notice of its intention to enter upon the subject property and to perform the subject work.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, City Manager

PRECISION PIPELINE SOLUTIONS

LICENSEE

By:

Name:

Title:

RESOLUTION NO.: 86 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH KISKA CONSTRUCTION TO
ALLOW ACCESS TO CITY-OWNED PROPERTY AS A STAGING AREA AND FOR
PURPOSES RELATING TO MAINTENANCE AND REPAIR OF THE ROUTE 9W
BRIDGE BY THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

WHEREAS, the New York State Department of Transportation has commenced a maintenance and repair project for the Route 9W Bridge; and

WHEREAS, KISKA Construction has requested access to City-owned property in between the north side of Quassaick Creek and south side of the CSX Rail Road line that runs east to west below the above subject bridge identified as Section 43, Block 1, Lot 31, Section 43, Block 1, Lot 28, Section 43, Block 1, Lot 29.2 and Section 47, Block 2, Lot 12 on the tax map of the City of Newburgh for the purpose of temporary storage and management of equipment and materials as a temporary staging area for work to be performed on the Route 9W Bridge and adjacent property; and

WHEREAS, such access to the subject property requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of hereof; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with KISKA Construction to allow access to City-owned property for the purpose of storage and management of equipment and materials as a staging area for work to be performed on the Route 9W Bridge and adjacent property.

LICENSE AGREEMENT

This Agreement, made this _____ day of _____, two thousand and thirteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and KISKA CONSTRUCTION, a private business organization having an address at 110 W. Crooked Hill Road, Pearl River, New York 10965 and its consultants and sub-contractors, as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor on behalf of itself and its employees, agents and contractors in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following title:

SCHEDULE "A":

Properties identified as lands of the City of Newburgh as Section 43, Block 1, Lot 31, Section 43, Block 1, Lot 28, Section 43, block 1, Lot 29.2 and Section 47, Block 2, Lot 12 on the tax map of the City of Newburgh;

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

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's properties as indicated in Schedule "A", and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purposes of and to perform certain tasks on property owned by Licensor, for the use of said property for the storage, parking, operation and management of vehicles, equipment and materials as a staging area for work to be performed on adjacent and nearby properties for the purposes of and to perform maintenance, repairs and improvements to the Route 9W bridge in accordance with NYSDOT D261778.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with

and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fourth: Licensee may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, contractors and/or consultants, Licensee and such agents, contractors and/or consultants shall name and/or treat and hold Licensor as additional insured under insurance coverage concerning Licensee's performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said work shall be performed in substantially the location and position shown in Schedule "A", and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

Eighth: Licensee agrees to give Licensor no less than twenty-four (24) hours advance notice of its intention to enter upon the subject property and to perform the subject work.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, City Manager

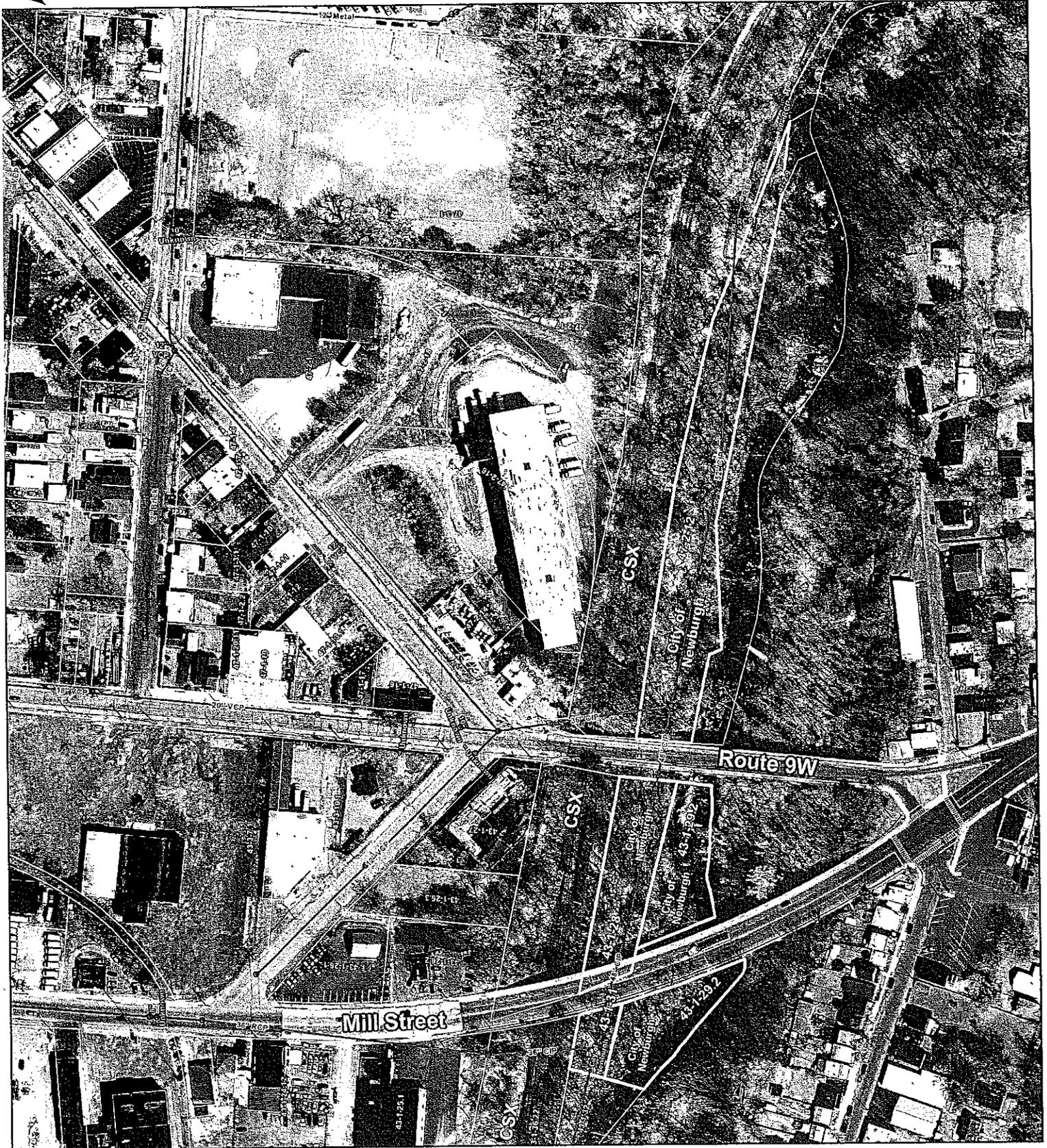
KISKA CONSTRUCTION

LICENSEE

By:

Name:
Title:

Kiska Construction Access Agreement - Schedule A



GIS Department
LFF

1 Inch = 200 Feet
4/9/13

FOR VISUAL REFERENCE ONLY
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RESOLUTION NO.: 87 - 2013

OF

APRIL 22, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES
TO PROVIDE PERFORMING ARTISTS AND RELATED SERVICES
IN CONNECTION WITH THE NEWBURGH ILLUMINATED FESTIVAL

WHEREAS, the Newburgh Illuminated Festival will be held in June 2013; and

WHEREAS, it is appropriate and necessary to authorize the City Manager to enter into agreements by which performing artists, production services and necessary equipment and facilities shall be provided; and

WHEREAS, there is funding from donations available in a Trust and Agency Account; and

WHEREAS, such agreements shall not exceed the funds in the Trust and Agency Account;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into the referenced agreements in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the Newburgh Illuminated Festival, with the net cost to the City of such agreements not to exceed the available funds in the Trust and Agency Account.

RESOLUTION NO. 88 - 2013

OF

APRIL 22, 2013

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH OPPOSING
THE PROPOSED MERGER OF CH ENERGY GROUP, INC. WITH FORTIS, INC.**

WHEREAS, Fortis, Inc. ("Fortis"), a multinational corporation with headquarters in Canada made an offer to purchase CH Energy Group, Inc. ("Central Hudson"), a publicly traded utility located in the Hudson Valley; and

WHEREAS, there are approximately 375,000 Central Hudson customers, representing approximately 680,000 persons, many of whom live in the City of Newburgh; and

WHEREAS, the Public Service Commission (PSC) must approve of this merger and in order to be approved the applicant must prove a net public benefit; and

WHEREAS, the PSC held only two hearings, on the same day, one of which was held at 3:30 in the afternoon, when much of the population was still at work; and

WHEREAS, the PSC staff recommended \$85 million in community benefit funds for areas covered by Central Hudson, to which Fortis initially offered only \$20 million before ultimately settling for less than \$50 million in aid to our area; and

WHEREAS, Fortis has only guaranteed a rate freeze for 12 months; and

WHEREAS, Fortis is not committed to expanding its Alternative Energy portfolio and has publicly said they will continue to rely on natural gas; and

WHEREAS, Fortis has not committed to increase the resilience of the region's electricity system to major storms like Irene, Lee and Sandy, including through investment in a distributed generation network; and

WHEREAS, the public benefits offered by Fortis are not only one-time and short-term, and are outweighed by the future risks to Hudson Valley residents of achieving an affordable, sustainable and reliable supply of power; and

WHEREAS, the possible use of the North American Free Trade Agreement ("NAFTA") to override the PSC and New York State requirements to modernize energy should be of major concern to our State; and

WHEREAS, Assemblyman Kevin Cahill, former chair of the Assembly Energy Committee, has highlighted the possible use of NAFTA as a way to severely restrict the ability of the PSC to fully regulate merged Fortis/Central Hudson; and

WHEREAS, Fortis partner, Abitibi, initiated a NAFTA claim against Canada when Newfoundland expropriated property there, including some belonging to Exploits Hydro Partnership, in which Fortis owns 51% and Abitibi 49%; and

WHEREAS, Central Hudson workers would only be guaranteed jobs for a two year period, after which Fortis can begin to outsource work; and

WHEREAS, IBEW Local 320 is strongly opposed to this merger due to the loss of long term local jobs, which would devastate the Hudson Valley;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, at this time, cannot support the proposed merger of Central Hudson and the multinational corporation Fortis, Inc. as it has been proposed; and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh urges the Public Service Commission to extend the period for public comment so that the City Council and other interested parties can have time to assess the full implications and potential impacts of the Central Hudson/Fortis merger; and

BE IT FURTHER RESOLVED, that the City Council urges the PSC to have a Public Recommended Decision, which will provide for a more transparent decision; and

BE IT FURTHER RESOLVED, that the City Clerk of the City of Newburgh be and hereby is directed to forward copies of this resolution to Governor Andrew Cuomo, members of the Public Service Commission c/o Jeffrey C. Cohen, Acting Secretary, Public Service Commission, New York State Senator William Larkin, Jr. and New York State Assemblyman Frank Skartados.

RESOLUTION NO.: 89-2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO WATANABE STUDIO LTD
TO THE PREMISES KNOWN AS 1 EDWARD STREET
(SECTION 46, BLOCK 2, LOT 11)**

WHEREAS, on March 15, 2005, the City of Newburgh conveyed property located at 1 Edward Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 46, Block 2, Lot 11, to Watanabe Studio Ltd.; and

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

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

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

ORDINANCE NO.: 4 - 2013

OF

April 22, 2013

AN ORDINANCE TO AMEND ARTICLE VII, ENTITLED "SPECIAL USE PERMITS" OF CHAPTER 300 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH ENTITLED "ZONING" BY ADDING SECTION 300-38 ENTITLED "LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL PERMIT"

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

Article VII. SPECIAL USE PERMITS

§ 300-35. Special uses.

§ 300-36. Procedures.

§ 300-37. Standards for individual special uses.

§ 300-38. Large-Scale Mixed-Use Development Special Use Permit

§ 300-39. (Reserved)

§ 300-35. Special uses.

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

B. Conditions to be fulfilled. In applying for a special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a special use permit, the Planning Board, with due regard to the nature and condition of all adjacent structures and uses, the zone within which the same is located, the Master Plan,

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the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans, shall find all of the following general conditions to be fulfilled:

- (1) The use requested is listed among the special uses in the zone for which application is made.
- (2) The special use is essential or desirable to the public convenience or welfare.
- (3) The special use will not impair the integrity or character of the zone or adjoining zones nor be detrimental to the health, morals or welfare.
- (4) The special use will be in conformity with the Master Plan.
- (5) Consistency with policies.
 - (a) The special use, if undertaken within the waterfront area, will be consistent with the LWRP policies, standards and conditions, which are derived from and further explained and described in Section III of the City of Newburgh LWRP.
 - [1] To revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D and 1E).
 - [2] To retain and promote commercial and recreational water-dependent uses (Policy 2).
 - [3] To strengthen the economic base of smaller harbor areas by encouraging traditional uses and activities (Policies 4 and 4A).
 - [4] To ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
 - [5] To protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 8 and 8A).
 - [6] To maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (Policies 9, 9A and 10).
 - [7] To minimize flooding and erosion hazards through nonstructural means, carefully selecting long-term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 16, 17 and 28).
 - [8] To safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policies 18 and 18A).

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

[10] To protect and restore historic and archaeological resources (Policies 23 and 23A).

[11] To protect and upgrade scenic resources (Policy 25).

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

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

[14] To protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 33, 34, 35, 36, 36A, 37 and 38).

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

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

[17] To protect air quality (Policies 41, 42 and 43).

[18] To protect freshwater wetlands (Policy 44).

(b) The Planning Board will consider the recommendations of the Waterfront Advisory Committee when determining consistency with the above policies.

C. Factors to be considered. In making such determination, the Planning Board shall give consideration to any or all of the following as they may be appropriate:

- (1) The character of the existing uses and the probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.
- (2) The conservation of property values and the encouragement of the most appropriate uses of land.
- (3) The effect that the location of the proposed use may have upon the creation of or undue increase of vehicular traffic congestion on public street or highways.

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- (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
- (5) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
- (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration, noise or radioactivity.
- (7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the City or by other competent governmental agency.
- (8) The necessity for bituminous-surfaced space for the purpose of off-street parking of vehicles incidental to the use and whether such space is reasonably adequate and appropriate in area and design and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had.
- (9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason of or as a result of the use, by the structures to be used therefor, by the inaccessibility of the property or structure thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
- (10) Whether the use of the structures to be used therefor will cause an overcrowding of land or undue concentration of population.
- (11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
- (12) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or other place of public assembly.

D. Planning Board action. The Board may approve, approve with modifications, or disapprove any application for a special use permit. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City.

- (1) Such conditions may include a time limitation.

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- (2) Conditions may be imposed which require that one or more improvements be done before the use requested can be initiated; for example, that a solid board fence be erected entirely around the site to a height of six feet before the use requested is initiated.
 - (3) Conditions of a continuing nature may be imposed. For example, exterior loudspeakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m.
 - (4) The Planning Board may establish a schedule of inspection to be conducted by the Building Inspector to determine continued compliance with this chapter and any conditions of the special use permit.
- E. Reversion to permitted use. Whenever all the conditions required are of such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter said determination on the file copy of the special use permit. Thereafter, said special use, provided that it continues to meet the other requirements of the chapter, will be treated as a permitted use.
- F. Compliance with other codes. Granting of a special use permit does not exempt the applicant from complying with all of the requirements of building codes and other ordinances.
- G. Revocation. In any case where the conditions of a special use permit have not been or are not being complied with, the administrative official shall give the permittee notice of intention to revoke such permit at least 10 days prior to a Planning Board review thereon. After conclusion of the review, the Planning Board may authorize the administrative official to revoke such permit.
- H. Expiration. In any case where a special use permit has not been exercised within the time limit set by the Planning Board, or within one year if no specific time limit has been set, then, without further action, the permit shall be null and void. "Exercised," as set forth in this section, shall mean that binding contracts for the construction of the main building have been let or, in the absence of contracts, that the main building is under construction to a substantial degree or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

§ 300-36. Procedures.

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

- A. Strict compliance. The Planning Board shall act in strict accordance with the procedures specified by law and by this chapter.

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- B. Fees. All applications made to the Planning Board shall be accompanied by the fee established by the City Council as provided for in § 300-83. The Board may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal is under § 300-78 hereof and is partially or wholly successful. The fees filed in connection with applications under § 300-35 shall not be returnable regardless of the disposition of the case by the Planning Board.
- C. Submission. An application for a special use permit shall be submitted to the Planning Board office on the last business day of the month preceding the month in which the application is to be heard.
- D. Contents of applications. Each application shall fully set forth the circumstances of the case. Every application shall refer to the specific provision of the chapter involved.
- E. Site plan required. Application for a special use permit shall require site plan approval in accordance with the site plan regulations contained in this chapter, except that the Planning Board may waive site plan approval for a special use permit application that will involve no physical alteration or disturbance to a site. At a minimum, the application for a special permit use shall be accompanied by a plan showing the size and location of the lot, and the location of all buildings and proposed facilities, including access drives, parking areas, and all streets within 200 feet of the lot lines.
- F. Public hearings. The Planning Board shall conduct a public hearing within 62 days from the day a complete application is received by the Planning Board. At least 10 days prior to such hearing the Secretary of the Board shall mail, by regular mail, at the applicant's expense, a notice of such hearing and of the substance of the application to the owners of all properties within 300 feet of the exterior boundaries of the property affected by the application. At least 10 days prior to such hearing, the Secretary of the Planning Board, at the expense of the applicant, to be paid in advance, shall cause to be published in the official newspaper of the City a notice of such hearing and of the substance of the appeal or application. Prior to said hearing, the applicant shall submit to the Board affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.
- G. Notice to the applicant and the Orange County Planning Department. At least 10 days prior to the public hearing, the Planning Board shall mail notices thereof to the applicant and to the Orange County Planning Department, as required by § 239-m of the General Municipal Law, which shall be accompanied by a full statement of the matter under consideration, as defined therein.
- H. Architectural Review Commission advisory opinion. The Planning Board shall, within 10 days of its submission, refer any special use permit application within historic districts or architectural design districts to the Architectural Review Commission for review and

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recommendations. The Planning Board shall defer any decision on these matters pending the receipt of a report from the Architectural Review Commission.

- I. Waterfront Advisory Committee. Whenever a request for a special use permit involves a use to be located within the City's waterfront districts, the Planning Board shall refer a copy of a completed coastal assessment form (CAF) to the Waterfront Advisory Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Advisory Committee with reference to the consistency of the proposed action as set forth in Chapter 296 of the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law." In the event that the Waterfront Advisory Committee recommendation is not forthcoming within 30 days following referral of the CAF, the Planning Board shall make its decision without the benefit of the Waterfront Advisory Committee recommendation.
- J. Decision. The Planning Board shall decide upon an application within 62 days after the public hearing is closed. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
- K. Filing. The decision of the Planning Board shall be filed in the office of the City Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.
- L. Existing violations. No special use permit shall be issued for property where the Building Inspector has found a violation of this chapter, and where such violation has not been corrected, unless the granting of such special use permit and site plan approval will result in a correction of said violation.
- M. Area variance. Where a proposed special use permit would require an area variance, an application may be made to the Zoning Board of Appeals without the necessity of a denial of an administrative official charged with enforcement of this chapter.

§ 300-37. Standards for individual special uses.

The following individual standards are hereby established for special uses:

- A. Garages, filling stations, auto repair shops, used car lots, automobile painting, automobile rebuilding or reconditioning, tire retreading or recapping, and taxi and limousine service shall be subject to the following:
 - (1) Notwithstanding any grant of authority contained elsewhere in this chapter, no special permit or variance shall be granted for a use enumerated herein to be located within a designed historic district or architectural design district unless the Architectural Review Commission shall certify to the Planning Board that said use will not be out of keeping with the architectural character of the district and will not be out of harmony with the style, materials, colors, line and details of the buildings in the district and that said use will not detrimentally

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affect the preservation of the beauty and character of the district. Said certification must be reviewed by the Planning Board prior to its acceptance of any application for a special use permit.

- (2) Any special use permit granted shall be granted only for an initial period of six months, after which the Planning Board shall review the compliance with the permit conditions and may vote to permanently grant the permit or to continue the special permit for an additional limited time period, in the absence of which said special permit shall lapse and become null and void.
- (3) Sufficient off-street parking is to be provided for all cars brought for repair; a minimum of five off-street parking spaces are to be provided.
- (4) No repair or storage of vehicles shall be on the public street.
- (5) The property must be maintained in a neat and orderly manner with no accumulation of junk vehicles, tires, auto parts, garbage, refuse or debris on the property.
- (6) Hours of operation are to be established by the Planning Board so as to limit the effect of noise and traffic on the neighborhood.
- (7) All facilities are to conform to the New York State Uniform Fire Prevention and Building Code, environmental regulations and sewer use regulations and ordinances, particularly in regard to prevention of the discharge of oil, grease, or other petroleum products into the public sewers.
- (8) All surfaces for vehicle travel or storage are to be provided with a desirable dustless surface to be approved by the Planning Board and an adequate system of storm drainage.
- (9) All lighting is to be installed in accordance with a plan to be submitted to and approved by the City Engineer and the Building Inspector and so designed as to prevent light from being thrown onto neighboring properties.
- (10) All parking, vehicle storage areas and driveways must be constructed so as to meet the requirements of Article VIII of this chapter.
- (11) The use shall be screened from all abutting residences or residential districts in accordance with § 300-12 of this chapter, except that the Planning Board may permit the substitution of an eight-foot-high wooden fence or masonry wall as a substitute for or in addition to the plantings provided in § 300-12. The screening strips of 10 feet in width must be measured entirely within the property lines of the parcel to be devoted to the use.

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(12) The Planning Board shall have the power to impose such additional conditions as it may deem required in accordance with the standards established by § 300-35 of this chapter. However, the Planning Board shall not have the power to delete or modify any of the conditions required by Subsection A(1) through (11) of this section.

(13) Where the Zoning Board of Appeals has approved a special use permit and said permit is subject to renewal, the Planning Board shall be responsible for renewing said special use permit.

B. Home occupation or professional office. Customary home occupations are deemed to be accessory uses to a single-family detached dwelling subject to the requirements contained herein. A home occupation shall not require full site development plan submission. However, an applicant shall be required to submit a lot survey indicating the location of the home and the area of the home to be used for purposes of the home occupation.

(1) The minimum lot size shall be 7,500 square feet.

(2) Such occupation is carried on in an area not exceeding 25% of the gross floor area of the principal building.

(3) At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.

(4) Equipment capable of causing interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.

(5) There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.

(6) Such occupation is incidental to the residential use of the premises and is carried on in the principal building by a resident therein with not more than two nonresident assistants.

(7) A studio where dancing or music instruction is offered is permitted, provided only up to a maximum of four pupils at any one time are instructed. Concerts or recitals are prohibited.

(8) The Planning Board may restrict the number of deliveries of materials or supplies associated with the home occupation.

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- (9) The Planning Board may approve the operation of a home occupation subject to any condition it deems necessary to ensure that the use does not diminish or impact the peace, security and the overall residential quality of the neighborhood.

C. Day-care center. The standards for a day-care center shall be as follows:

- (1) The application shall describe the anticipated occupancy of the facility by age group, i.e., infant, toddler, and school age, and the hours of operation of the facility.
- (2) A floor plan of the day-care center shall be submitted.
- (3) In addition to the parking space requirements contained in Article VIII, Table 1, *Editor's Note: See § 300-45.* additional parking spaces shall be provided for dropoff and pickup of children at a rate of one parking space per 15 children. Said spaces shall be provided directly in front of the facility along an internal driveway or in an approved parking area. The most appropriate location for dropoff parking shall include a consideration of emergency access and shall be determined by the Planning Board during site plan review. The dropoff location shall be clearly posted with appropriate signage or pavement markings. Fire lanes shall not be used for dropoff areas.
- (4) A minimum outdoor play area of 125 square feet per child under three years of age, or per child three and over, whichever is greater, shall be provided. Said outdoor play area shall be located at a minimum distance of 25 feet from any lot line or from any parking area and 50 feet from any public right-of-way. Outdoor play areas shall be directly accessible from the principal structure and shall not require crossing any street, driveway, or parking area for access. The Planning Board may, as part of site plan review and in consultation with the prospective operator, modify the area requirement to apply only to the largest age group enrollment scheduled to use the outdoor play area at one time.
- (5) A six-foot-high solid fence or opaque fence combined with hedge or tree plantings shall be provided to screen the outdoor play area where it abuts a residential zoning district.
- (6) Said facility shall provide a minimum of two exits.
- (7) Day-care centers shall adhere to the requirements of the New York State Uniform Fire Prevention and Building Code and all other applicable state guidelines that govern said uses.
- (8) If included as part of a professional office building, said day-care center shall occupy the ground floor only.
- (9) Hallways with a length of 20 feet or greater between the building exterior and the day-care center shall be prohibited.

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D. Bed-and-breakfasts shall be subject to the following:

- (1) Applicability. A bed-and-breakfast is permitted as an accessory use to a single-family residence. A single-family residence must be in existence at the date of adoption of these regulations to become eligible to be a bed-and-breakfast. Except as otherwise specified herein, the single-family residence shall be required to meet the bulk requirements for single-family residences within the applicable zoning district.
- (2) Application submission. In addition to the general requirements for special use permit approval, the applicant shall also submit:
 - (a) A sketch showing the floor plan of the home and the location of proposed guest rooms.
 - (b) A site plan delineating the location of the residence on the tax parcel, minimum setback distances, proposed parking areas, proposed screening, and any other information applicable.
 - (c) If a sign is proposed, a sign plan, including type and location of illumination, if proposed.
 - (d) A certification that the owner resides and will continue to reside within the residence while the special use permit is in effect. A change in owner occupancy shall require renewal of the special use permit.
 - (e) Proof of insurance to operate a bed-and-breakfast.
- (3) Requirements and conditions of operation.
 - (a) The bed-and-breakfast shall be the primary residence of the owner.
 - (b) The number of paying guests accommodated per night shall not exceed 10 guests, and no guest shall stay for a period exceeding 15 days. The bed-and-breakfast shall maintain a guest registry identifying the arrival and departure dates of guests.
 - (c) A maximum of two adult guests and accompanying minor children shall be allowed to occupy each guest bedroom, subject to fire safety standards.
 - (d) There shall be no more than five bedrooms occupied by paying guests. Said rooms shall not be equipped with a kitchenette or other cooking devices.
 - (e) As a minimum, one bathroom shall be provided for each two guest rooms. In addition, a separate bathroom shall be maintained for the owners of the single-family residence.
 - (f) Each guest bedroom shall be equipped with a smoke detector alarm installed and maintained in a functional condition on or near the ceiling.

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- (g) A bed-and-breakfast is permitted one sign, not to exceed two square feet, identifying the name of the facility. Illumination may be permitted, subject to Planning Board approval. The Planning Board shall take into consideration the proximity of adjoining residences and potential nighttime disturbance. Said sign shall not be illuminated between 9:00 p.m. and sunrise.
 - (h) No parking space shall be located within the front yard. Parking spaces shall be set back a minimum distance of 15 feet from any side or rear lot line. A minimum of two spaces shall be provided for the single-family dwelling, plus a minimum of one off-street parking space shall be provided for each guest bedroom. Each space shall measure not less than nine feet by 18 feet in size. New parking areas required to meet these requirements shall limit the introduction of impervious surfaces.
 - (i) The Planning Board shall consider the need for landscaping to screen views from adjoining residences.
 - (j) The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character, nor shall any extensions or additions to the dwelling be made for the purpose of renting such space for overnight accommodations. Accessory buildings detached from the principal dwelling shall not be used for the purpose of a bed-and-breakfast.
 - (k) There shall be no more than two employees in addition to the owner.
 - (l) Each facility shall be operated and maintained so as to preserve the character and integrity of the surrounding residential neighborhood.
- (4) Approval. A special use permit to operate a bed-and-breakfast shall be valid for one year from the date of issuance, subject to continuing compliance with the conditions of the special use permit and subject to continuing compliance with the New York State Uniform Fire Prevention and Building Code.
- (5) Permit renewal. The applicant may renew the permit for additional two-year time periods, subject to approval by the Planning Board and any fees applicable to the review of special use permit applications. The Planning Board shall notify the Building Inspector, 15 days prior to the meeting at which the renewal is being considered, who shall provide a description, in writing, of any changes that have occurred in the floor or site plan since the time the special use permit was approved or last renewed and a list of violations or complaints, if applicable. The Planning Board shall take the Building Inspector's report into consideration when rendering a decision.
- (6) Enforcement. The Building Inspector shall be given access to the premises for the purpose of making inspections as deemed necessary from time to time to ensure compliance with these

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regulations and with the New York State Uniform Fire Prevention and Building Code. Such inspections shall be conducted in accordance with procedures set forth in this chapter. Any facility operated in violation of this chapter shall have its permit suspended on a first violation and revoked for a second violation. No permit shall be reinstated until the owner fully complies with the provisions of this chapter.

- (7) Registry. The Planning Board Secretary shall maintain a record of bed-and-breakfasts, including the name of the owner, the address, the maximum occupancy of the establishment, and the date of special use permit approval.

E. Community parking area. Community parking areas shall be subject to the following:

- (1) A plan shall be submitted detailing the parking lot layout. Parking lots shall be macadam and parking spaces shall be appropriately striped. The City Engineer, in consultation with the Building Inspector, shall be responsible for reviewing and shall favorably recommend the layout prior to Planning Board approval of the special use permit.
- (2) Adequate drainage shall be provided.
- (3) The owner shall be responsible for keeping said parking area clean and debris-free.
- (4) The community parking area shall be screened from abutting residential uses in accordance with § 300-12.
- (5) Mature trees in excess of eight inches dbh (diameter breast height) shall be identified on the site plan. The parking layout shall incorporate mature trees into the design of the parking area to the maximum extent practicable.
- (6) No more than one curb cut shall be permitted per each street frontage.

F. Planned residential development shall be subject to the following:

- (1) A planned residential development may consist of a mix of multiple-family dwellings or single-family attached (townhome) dwellings.
- (2) The site plan shall be accompanied by building elevations and a landscape plan.
- (3) The maximum density shall be 12 units per acre for multiple-family dwellings. The maximum density for townhomes shall be eight units per acre. A minimum of 25% of the site shall be maintained as open space.
- (4) No building shall exceed 120 feet in length.

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- (5) Principal buildings shall be separated a minimum distance equal to the height of the taller of adjoining buildings, but in no case shall a building be located closer than 30 feet to any other principal building.
- (6) Accessory buildings, including recreational facilities, shall be located a minimum of 25 feet from principal buildings or from any lot line.
- (7) To the maximum extent practicable, buildings shall be situated in a manner so that the front facade and the main entry point to the dwellings face to the street line.
- (8) Off-street parking is prohibited in the front yard or adjacent to a street bounding the lot when the other side of the street is zoned residential. Parking shall be located to the rear of the principal buildings. The Planning Board may allow parking in a side yard, provided that said parking area shall be screened from the street and pedestrian traffic by means of a planted strip or fence of a height of at least three feet. Parking areas shall not be located closer than 10 feet to a principal building or outside deck or recreational space and shall be suitably screened from said buildings and spaces with appropriate landscape materials.
- (9) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the Planning Board and the City Council of the City of Newburgh.
- (10) All off-street parking areas shall be attractively landscaped. A minimum of 20% of the parking area shall be landscaped.
- (11) Where provided, dumpsters shall be located in a fenced enclosure which shall be suitably screened with appropriate landscape materials.
- (12) Each dwelling unit shall be provided with an outdoor deck or space consisting of a minimum of 25 square feet.
- (13) On-site lighting shall not spill over onto adjoining residential properties.

G. Adaptive reuse of an existing building for residential use in the W-1 District shall be subject to the following:

- (1) The ground floor of said structure shall be used for nonresidential uses permitted or allowed by special use permit in the W-1 District.
- (2) Each dwelling unit shall contain a minimum of 1,000 square feet in area.
- (3) On-site indoor or outdoor accessory recreational facilities are permitted, e.g., swimming pools or tennis or squash courts. The Planning Board may impose restrictions on the type and

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operation of lighting associated with outdoor recreational facilities in order to protect the "night sky" of the Hudson River.

- (4) A landscape plan shall be submitted with the site plan.
- (5) Off-street parking shall be provided in accordance with the standards for multifamily dwellings.
- (6) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the Planning Board and the City Council of the City of Newburgh.

H. Boarding homes shall be subject to the following:

- (1) In the R-4 District, up to three nontransient roomers or boarders may be accommodated for remuneration by the resident owner of the dwelling.
- (2) The owner of the dwelling shall occupy the dwelling and shall constitute the principal use thereof.
- (3) Kitchen and dining facilities shall be limited to use by the resident owner, roomers or boarders and bona fide guests but shall not be open to the general public. There shall be no individual kitchen or dining facilities for any sleeping room.
- (4) There shall be no more than one rented sleeping room for each 2,000 square feet of lot area, with a maximum of three rooms being permitted.
- (5) Each sleeping room for rent to a roomer or boarder shall be at least 100 square feet in area.
- (6) One off-street parking space shall be provided for each rented sleeping room. The Planning Board may require landscaping or screening around the parking area.
- (7) In order to preserve the residential character of the neighborhood, there shall be no exterior alteration or expansion of the structure to allow the use of the dwelling for boarders and roomers, except for parking.

I. Colleges or universities shall be subject to the following:

- (1) All buildings shall be located at least 100 feet from the street lot line and 50 feet from all other property lines. Grandstands, gymnasiums, central heating plants and similar buildings shall be located at least 200 feet from all property lines. The distance between principal buildings shall be at least equal to the height of the taller building. Total building coverage of the site shall be limited to 30%. On-campus housing, dormitory buildings or single-family detached dwellings shall be permitted as accessory buildings, provided that the minimum lot area for

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the entire site shall be increased by at least 1,000 square feet for each dormitory bed and by at least the minimum lot area of the applicable zoning district for each single-family dwelling. Use of such dormitories or dwellings shall be limited exclusively to students, teachers, or other members of the staff of the college or university, and a dormitory or dwelling shall not subsequently be sold or rented as a private residence or for any other legal use unless the building and any required lot surrounding it shall meet all regulations of the district in which it is located.

- (2) Multiple-family dwellings for the exclusive use of teachers and other members of the staff of the school shall be permitted as accessory buildings, provided that, in addition to all other site requirements, there shall be land set aside for each such dwelling of an area at least equal to the minimum residential lot size of the district in which such school site is located times the number of dwelling units in such dwelling and provided that each multifamily dwelling shall be at least 100 feet from any property line and be so located with respect to the required additional land that a lot could be separated from the balance of the school site and meet these area requirements. No such dwellings shall subsequently be rented or sold unless the above-mentioned lot shall be created with frontage on an approved street and unless the Planning Board shall find that the school to which such dwellings are accessory has ceased to operate or that the type of school has changed to one which no longer requires staff housing.
- (3) The minimum area that shall be dedicated to playgrounds and playfields shall be three acres, plus an additional two acres per 100 students.
- (4) Suitable fencing, landscaping and screening shall be provided to prevent any nuisance to surrounding properties and to protect students attending the school.
- (5) The college shall comply with any standards established for schools by the New York State Commissioner of Education.
- (6) The Planning Board may approve the design of a parking area to serve more than one use, provided that such uses will require parking facilities at different times. Parking areas shall be located at least 50 feet from all property lines, except that in the case of a property line adjacent to permanently reserved open space, parking areas may be located no closer than 25 feet therefrom. Access and interior drives shall be located so as to prevent unnecessary traffic on local residential streets and to avoid unsafe conditions and traffic congestion.

J. Used car lots shall be subject to the following:

- (1) All existing used car lots shall have a paved surface constructed in accordance with specifications of the City Engineer, an adequate system of storm drainage, screening in accordance with § 300-12 of this chapter to protect adjacent residential properties or residential-zoned areas and provision for lighting that is satisfactory to the City Building Inspector.

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§ 300-38. Large-Scale Mixed-Use Development Special Use Permit

A. Power. The City Council shall have the power to hear and decide on applications for a large-scale mixed-use development special use permit.

B. Applicability. The Large-Scale Mixed-Use Development Special Use Permit shall apply in the Tourist Commercial (TC-1) zoning district only, and only to parcels with frontage on Broadway. However, said project may extend from Broadway through the length of the block to the next public street, irrespective of the zone, provided that the portion outside of the TC-1 zone is part of a unified development parcel with frontage on Broadway.

C. Conditions to be fulfilled. In applying for a large-scale mixed-use development special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a large scale mixed-use development special permit, the City Council, with due regard to the nature and condition of all adjacent structures and uses, shall consider the requirements of the zone within which the same is located, the Master Plan, the Future Land Use Plan, the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans and shall find all of the general conditions set forth in §300-35B.(1) through (5) fulfilled.

D. Factors to be considered. In making a determination that the conditions specified above have been fulfilled, the City Council shall give consideration to any or all of the factors set forth in §300-35C.(1) through (12).

E. City Council action. The City Council may approve, approve with modifications, or disapprove any application for a large-scale mixed-use development special use permit. The Council shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed large-scale mixed-use development special use permit and may be necessary in the Council's opinion to meet the objectives herein set forth. Upon the granting of said large-scale mixed-use development special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City. Such conditions include those set forth in §300-35D.(1) through (4), or any that the Council determines reasonable and necessary.

F. Other conditions for approval. The application for a large-scale mixed-use development special use permit shall meet the conditions and provisions set forth in §300-35E. through (H).

G. Standards for large-scale mixed-use development special use permits.

The following individual standards are hereby established for large-scale mixed-use development special use permits:

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- (1) Area standards. The proposed development shall meet the minimum lot area, width and depth; yard; and maximum building height requirements for large-scale mixed-use development as set forth in the Schedule of Use and Bulk Regulations for the TC-1 District.
- (2) In the case that the proposed large-scale mixed-use development contains any use which would be individually subject to a special permit from the Planning Board, the standards for such use, as provided in in §300-37., shall apply, unless the City Council determines that the application of said standards is unreasonably or unnecessary or impractical due to the unique characteristics of the site, mix of uses or other factors.
- (3) At a minimum, the special use permit application must be accompanied by a site plan prepared in accordance with §300-52.
- (4) To the maximum extent practicable, buildings shall be situated in a manner so that the front façade and the main entry face to the street line.
- (5) Off-street parking.
 - (a) The City Council may modify the area requirements (length and width) of off-street parking spaces as set forth in §300-44. provided that in no case shall the width be decreased by more than 6 inches and the length by no more than one foot. In granting such reductions, the City Council shall consider such benefits as increased landscaping and screening within and adjacent to off-street parking areas;
 - (b) When based on a Parking Analysis, the City Council may reduce the off-street parking space and loading berth requirements as set forth in §300-45 provided that the parking capacity to be provided will substantially meet the intent of this Article. The Parking Analysis shall be prepared assuming peak-hour utilization and demonstrate that sufficient parking spaces will exist so that no overflow parking is likely to occur in any public street; and
 - (c) The City Council may permit a portion, not to exceed 25%, of the total required spaces, the total number of which shall be determined pursuant to §300-38.G.(5)(b) above, to be located at an off-site location no further than 300 feet from the premises to which they are appurtenant.
- (6) Shared parking. The use or uses proposed for the large-scale mixed-use development shall provide the required number of off-street parking spaces pursuant to §300-45., except that the number of required spaces may be reduced if the City Council finds that the parking capacity to be provided will substantially meet the intent of this Article by reason of

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variation in the probable time of maximum use by patrons, employees or residents of such establishments, provided that:

- (a) The City Council shall base its finding upon a Shared Parking Analysis to be prepared, assuming peak-hour utilization, to demonstrate that sufficient parking spaces will exist so that no overflow parking is likely to occur in any public street; and
 - (b) In the event that any establishment changes use, the applicant seeking approval for the new use or uses shall adequately demonstrate, based upon a Shared Parking Analysis, that the new use configuration will continue to allow for sufficient parking capacity, or alternatively, that additional off-street parking spaces will be provided to ensure such capacity.
- (7) Off-street parking is prohibited in the front yard. Parking shall be located to the rear of the principal buildings. The City Council may allow parking in a side yard, provided that said parking area shall be screened from the street and pedestrian traffic by means of a planted strip or fence. Parking areas shall be located a reasonable distance from principal buildings or outside decks or recreational spaces and shall be suitably screened from said buildings and spaces with appropriate landscape materials-
- (8) When abutting a residential district, off-street parking areas must be appropriately landscaped and screened.
- (9) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the City Council.
- (10) Mature trees in excess of eight inches dbh (diameter breast height) shall be identified on the site plan. The proposed development shall incorporate such mature trees into the plan to the maximum extent practicable.
- (11) Where provided, dumpsters shall be located in a fenced enclosure which shall be suitably screened with appropriate fencing and/or landscaping materials.
- (12) On-site lighting shall be designed and situated so that it does not spill over onto adjoining residential properties or create potential driving hazards. The City Council may require a lighting plan to verify that the proposed lighting will not present such adverse impacts.

H. Procedures. The powers and duties of the City Council in considering large-scale mixed-use development special permits shall be exercised in accordance with the procedures set forth in this

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article and in §300-36., except that, where relevant, said procedures shall apply to the City Council and not to the Planning Board.

§ 300-39. (Reserved)

Underlining denotes additions

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Zoning

300 Attachment 8

City of Newburgh
Schedule of Use and Bulk Regulations
TC-1 Tourist Commercial District¹

Use	Use Type	Minimum Lot Area (feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard Each (feet)	Minimum Rear Yard (feet)	Maximum Building Height	
								Stories	Feet
One-family detached dwelling	P	7,500	50	100	15	10	20	2.5	35
One-family attached (duplex, town home)	P	2,500**	25	100	15	0/10**	20	3	45
Two-family dwelling	P	10,000	75	100	15	10	20	2.5	35
Mixed use: residential on upper floors only**	P	2,500	25	100	15	0/5**	20	3	45
Professional and business office	P	2,500	25	100	15	0/5**	20	3	45
Government office	P	2,500	25	100	15	0/5**	20	3	45
Tourist-related retail use	P	2,500	25	100	15	0/5**	20	3	45
Art and antique gallery	P	2,500	25	100	15	0/5**	20	3	45
Museum	P	2,500	25	100	15	0/5**	20	3	45
Church and similar place of worship	P	7,500	75	100	15	15	20	3	45
Assembly hall	SP	2,500	25	100	15	0/5**	20	3	45
Craft shop	SP	2,500	25	100	15	0/5**	20	3	45
Restaurant; bar	SP	2,500	25	100	15	0/5**	20	3	45
Fast-food restaurant, without drive-through facility	SP	2,500	25	100	15	0/5**	20	3	45
Laundromat	SP	2,500	25	100	15	0/5**	20	3	45
Conference center	SP	10,000	100	100	25	15	25	3	45
Hotel	SP	10,000	100	100	25	15	25	3	45
Theater	SP	10,000	100	100	25	15	25	3	45
Large-scale mixed use development****	SP	20,000	100	100	15****	0/5****	20	6/4****	65/45****
Swimming pools accessory to one-family detached	A								
Other customary accessory uses and buildings, provided that such use is clearly incidental to the principal use	A								

P = Permitted SP = Special Permit Use A = Accessory Use

NOTES:

¹In the TC-1 District, residential uses are not permitted east of Washington Place and Colden Street

²Where existing buildings share common wall, no side yard is required. All other buildings require five-foot side yard.

³Minimum area is per unit.

⁴One dwelling unit is permitted for each 1,000 square feet of gross floor area per upper story floor.

⁵Only applicable to lots with frontage on Broadway pursuant to Section 300-38.

⁶Front and side yard requirements may be waived, reduced or otherwise modified at the discretion of the City Council as part of the Special Use Permit process.

⁷Six stories (65 feet) are permitted within 200 feet of Broadway; four stories (45 feet) are permitted beyond 200 feet pursuant to Section 300-38.

ORDINANCE NO.: 5 - 2013

OF

APRIL 22, 2013

AN ORDINANCE RESCINDING THE LANGUAGE CONTAINED IN
CHAPTER 121 ENTITLED "BUILDINGS, VACANT"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH AND
AMENDING CHAPTER 121 ENTITLED "BUILDINGS, VACANT" TO REQUIRE
THE MAINTENANCE OF VACANT PROPERTIES IN THE CITY OF
NEWBURGH, ESTABLISHING REGISTRATION REQUIREMENTS, AND
LEVYING A REGISTRATION FEE ON OWNERS OF VACANT PROPERTIES

BE IT ORDAINED, by the Council of the City of Newburgh, New York that the language contained in Section 121, Buildings, Vacant, be and is hereby repealed in its entirety and that the same is hereby amended to read as follows:

§ 121-1 Findings and purpose.

The City of Newburgh contains many structures that are vacant in whole or large part; and in many cases the owners or other responsible parties of these structures are neglectful of them and are failing to maintain them or secure them to adequate standard or restore them to productive use. Many of these structures are in violation of state and local housing and property maintenance codes. It has been established that vacant and abandoned structures cause severe harm to the health, safety, and general welfare of the community, including diminution of neighboring property values, loss of property tax revenues, accumulations of trash and debris, increased risk of fire, and potential increases in criminal activity and public health risk, and the City of Newburgh incurs disproportionate costs in order to deal with the problems of vacant and abandoned structures, including but not limited to police calls, fire calls, and property inspections. It is in the public interest for the City of Newburgh to establish minimum standards of accountability for the owners or other responsible parties of vacant and abandoned structures in order to protect the health, safety, and general welfare of the residents of the City of Newburgh, and it is in the public interest for the City of Newburgh to impose a fee in conjunction with a registration ordinance for vacant and abandoned structures in light of the disproportionate costs imposed on the City by the presence of these structures.

§ 121-2 Definitions.

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

EVIDENCE OF VACANCY - Any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to, overgrown or dead vegetation; accumulation of debris or abandoned personal property; and statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

MUNICIPAL OFFICER - The Fire Chief, Director of the Code Compliance Bureau, and the Building Inspector or such official within that department as may be designated by the Director in writing.

OWNER - The title holder, any agent of the title holder having authority to act with respect to a vacant property, and any foreclosing entity that has obtained a judgment of foreclosure and sale (RPAPL S. 1307).

VACANT PROPERTY - Any building or structure that is not at present legally occupied or at which all lawful business or construction operations or residential inhabitation, or other occupancy have substantially ceased and that is in such condition that it cannot legally be re-occupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property; however, any habitable property where all building systems are in sound working order, where the building and grounds are maintained in good condition, and [or] which is being actively marketed by its owner for sale or rental, shall not be deemed a vacant property for purposes of this ordinance.

§ 121-3 Registration.

(1) a. Effective on June 1, 2013, the owner of any vacant property as defined herein shall, within 30 days after the building becomes vacant property or within 30 days after assuming ownership of the vacant property, whichever is later; or within 10 days of receipt of notice by the municipality, file a registration statement for such vacant property with the municipal officer on forms provided for that purpose by the municipal officer along with any fee required by Chapter 163. Failure to receive notice by the municipality shall not constitute grounds for failing to register the property.

 b. Each property having a separate section block and lot number shall be registered separately.

 c. The registration shall include the information required under section (2) of this section, the insurance certificate required under section (5) of this section unless a

bond is provided, as well as any additional information that the municipal officer may reasonably require.

d. The registration shall remain valid for one year from the date of registration. The owner shall be required to renew the registration annually as long as the building remains vacant property and shall pay a registration or renewal fee in the amount prescribed in Chapter 163 for each vacant property registered.

e. The municipal officer may establish for purposes of efficient administration that all registrations shall be renewed by a single date in each year. The municipal officer shall establish this date in which case the initial registration fee shall be pro-rated for registration statements received less than 10 months prior to that date.

f. (i.) Any owner of vacant property who plans to restore the property to productive use and occupancy during the twelve month period following the date of the initial registration of the property shall file a detailed statement of the owner's plans for restoration of the property with the registration statement and shall be exempt from payment of the registration fee but shall comply with all other provisions of this ordinance. In the event that the property has not been restored to productive use and occupancy at the end of the twelve month period, the owner shall be liable for any fee waived. The municipal officer may extend the waiver of the registration fee for not more than one additional year in response to a written request by the property owner where the municipal officer finds that compelling conditions outside the owner's control made it impossible for the owner to restore the property within the initial twelve month period.

1. In addition, the statement of the owner's plans, at a minimum, must contain one of the following for the property:
 - (a) If the building is to be demolished, a demolition plan indicating the proposed time frame for demolition; or
 - (b) If the building is to be returned to appropriate occupancy or use, a rehabilitation plan for the property. Implementation of the rehabilitation plan shall not exceed twelve months. Any repairs, improvements, or alterations to the property must comply with any applicable zoning, housing, historic preservation, or building codes and must be secured during the rehabilitation.
2. The Building Inspector shall provide the owner with a written referral to the Planning Department for information outlining programs available that may be useful in developing the owner's rehabilitation plan.

(ii.) Where the owner is an entity experienced in rehabilitation or redevelopment of vacant properties, and where the property subject to this ordinance is being held for a project of rehabilitation or redevelopment consistent with municipal plans

and ordinances, and where by virtue of financing, market, or other conditions that project may require more than one year for realization, the municipal officer may extend the waiver of the registration fee on an annual basis without limitation upon written request by the owner, as long as the municipal officer finds that the owner is making reasonable progress toward completion of the project. The owner shall provide the municipal officer with documentation of such progress, which may include plans, financing applications, applications for land use approval, or other evidence of progress.

g. The owner shall notify the municipal officer within 30 days of any change in the registration information by filing an amended registration statement on a form provided by the municipal officer for such purpose.

h. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City against the owner or owners of the building.

(2) a. The registration statement shall include:

(i) The name(s), residences and business addresses, e-mail address, telephone numbers, and birth date(s) of the principal officers if the applicant is an individual, partnership, or firm, or the names, residences and business address, e-mail address, telephone numbers, and birth dates of the principal officers if the applicant is an association or corporation.

(ii) The name, street address, e-mail address, and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner or owners in connection with the enforcement of any applicable code. The agent for service of process must maintain offices or reside in the State of New York.

(iii) The name, street address, e-mail address, and telephone numbers of the firm or individual responsible for maintaining the property. The individual or a representative of the firm responsible for maintaining the property must maintain offices within 45 miles of the City and shall be available by telephone or in person on a 24-hour-per-day, seven-day-per-week basis.

(iv) A description of the premises, including street address, section block and lot, and type of building;

(v) The date the building became vacant and the period of time the building is expected to remain vacant;

(vi) A description of what will be done to secure the structure so that it will not become open to the general public; and

(vii) The status of water, sewer, natural gas, and electric utilities.

b. By designating an authorized agent under the provisions of this section, the owner consents to receive any and all notices of code violations concerning the registered vacant property and all process in any court proceeding or administrative enforcement proceeding

brought to enforce code provisions concerning the registered building by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the owner notifies the municipal officer in writing of a change of authorized agent or until the owner files a new annual registration statement.

c. Any owner who fails to register a vacant property under the provisions of this ordinance shall further be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

(3) a. The registration and renewal fee for each building is set forth in Chapter 163.

b. All funds collected from registration and renewal fees under this section shall be deposited in a dedicated trust fund to be used exclusively for municipal activities with respect to vacant and problem properties in the municipality, including but not limited to inspection, nuisance abatement, securing and boarding, maintaining property information systems, and reasonable administrative and legal costs associated with any of the above.

(4) The owner of any structure that has become vacant property, and any person responsible for maintaining any such building that has become vacant, shall within 30 days of the structure becoming vacant or 30 days of the owner taking title to the property:

(i.) Enclose and secure the structure as provided in the applicable codes of the City of Newburgh and the State of New York or as set forth in rules and regulations adopted by the municipal officer to supplement those codes.

(ii.) Ensure that the grounds of the structure, including yards, fences, sidewalks, walks, and driveways, are well-maintained and kept free from trash or debris.

(iii.) Post a sign affixed to the structure with the name, address, and telephone number of the owner and the owner's authorized agent for the purpose of service of process and the name, address, and telephone number of the entity responsible for maintenance of the property, which may be the same as the owner or authorized agent. If the structure is set back from the street, the sign may be posted on a well-secured post or stake in the front yard of the property. The sign shall be at least 18" x 24" in dimension, shall include the words "to report problems with this building, call...", and shall be placed in a location where it is clearly legible from the nearest public street or sidewalk, whichever is nearer; and

(iv.) Maintain the structure in a secure and closed condition, keep the grounds in a clean and well-maintained condition, and ensure that the sign is visible and intact until the building is again occupied or demolished or until repair or rehabilitation of the building is complete.

(5) The owner of any vacant property shall acquire or otherwise maintain liability insurance in an amount of not less than \$300,000.00 for buildings designed primarily for one- and two-unit residential use and not less than \$1,000,000.00 for any other building, including but not limited to, buildings designed for multifamily, manufacturing, storage, or commercial uses, covering any damage to any person or any property caused by any physical condition of or in the building. Any insurance policy acquired or renewed after the building has become vacant shall provide for written notice to the municipal officer within 30 days of any lapse, cancellation, or change in coverage and the owner shall provide such written notice of any lapse, cancellation or change in coverage to the municipal officer. The owner shall attach evidence of the insurance to the owner's registration statement. Any registration statement submitted that does not include such evidence shall not be deemed to be a valid registration. Alternatively, an owner can choose to provide a cash bond acceptable to the municipal officer, in the sum of not less than \$10,000, to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any expenses incurred in inspecting, securing, marking, or making such building safe.

(6) a. The City of Newburgh shall establish an on-line registry of all properties registered with the City under this ordinance, which shall include a procedure by which citizens can provide the municipal officer through electronic means with information on unregistered properties that may be subject to this ordinance.

b. The City of Newburgh may enter into agreements with qualified non-profit entities and neighborhood associations to assist the City to enforce this ordinance, including but not limited to identification of unregistered properties that may be subject to this ordinance.

§ 121-4 Rules and Regulations.

The municipal officer may issue rules and regulations for the administration of the provisions of this ordinance.

§ 121-5 Enforcement.

Any person who violates any provision of this ordinance or of the rules and regulations issued hereunder shall be fined not less than \$500.00 and not more than \$1,000.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this chapter shall be recoverable from the owner and shall be a lien on the property.

For purposes of this section, failure to file a registration statement within 30 days after a building becomes vacant property or within 30 days after assuming ownership of a vacant property, whichever is later; or within 10 days of receipt of notice by the municipality, failure to provide correct information on the registration statement, failure to comply with the provisions of § 121-3 (4) or (5) of this ordinance, or such other matters as may be established by the rules and regulations of the municipal officer shall be deemed to be violations of this ordinance.

§ 121-6 Effective Date.

This ordinance shall become effective upon publication as provided by law.

§ 121-7 Severability.

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

ORDINANCE NO.: 6 - 2013

OF

APRIL 22, 2013

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

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

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

Code Section	Type of Fee	Amount
Chapter 121, Buildings, Vacant		
§ 121-3B (1)	Vacant building annual registration <u>and renewal</u> fee	\$900 <u>250.00 initial fee</u> <u>\$500.00 first renewal</u> <u>\$1,000.00 second renewal</u> <u>\$2,000.00 any subsequent renewal</u>

Section 2. This ordinance shall take effect on June 1, 2013.

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RESOLUTION NO.: 90 - 2013

OF

APRIL 22, 2013

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY
REVIEW ACT (SEQRA) FOR A STORMWATER AND DRAINAGE EASEMENT IN
CONNECTION WITH SETTLEMENT OF LITIGATION IN THE MATTER OF
CITY OF NEWBURGH V. MARK SARNA, SARNA ENTERPRISES, INC., MT.
AIRY/AIRE ESTATES INC., NEW WINDSOR DEVELOPMENT CO., LLC AND
DRAINAGE DISTRICT #6 – MT. AIRY ESTATES (THE RESERVE),
TOWN OF NEW WINDSOR, NEW YORK,
DECLARING THE EASEMENT TO BE AN UNLISTED ACTION,
ADOPTING THE ENVIRONMENTAL ASSESSMENT FORM,
ISSUING A NEGATIVE DECLARATION AND AUTHORIZING THE CITY
MANAGER TO EXECUTE ALL SEQRA DOCUMENTS**

WHEREAS, by Resolution No. 177-2009 of November 16, 2009, the City of Newburgh ratified authorizing sending Notice under the Clean Water Act, commencing litigation under the Clean Water Act for the protection of Brown's Pond, a secondary water supply and reservoir for the City of Newburgh; and

WHEREAS, by Resolution No. 235-2012 of December 10, 2012, the City of Newburgh authorized the City's attorneys to prepare a stipulation of settlement and settle the claim of the City of Newburgh against Mark Sarna, Sarna Enterprises, Inc., Mt. Airy/Aire Estates Inc., New Windsor Development Co., LLC And Drainage District #6 – Mt. Airy Estates (The Reserve), Town of New Windsor, New York under certain terms and conditions and further authorized the City Manager to execute documents as the City's attorney may require, to effectuate the settlement; and

WHEREAS, the City of Newburgh is the present owner in fee of the Newburgh Water Supply, Section 32, Block 2, Lot 53; a portion of which is located on the westerly side of Mt. Airy Road in the Town of New Windsor, County of Orange, State of New York, originally described in the deed recorded in the Orange County Clerk's Office in Liber 682 at Page 170, and more particularly depicted on that certain map entitled "Survey of the Property for City of Newburgh Brown's Pond Town of New Windsor Orange County, New York," dated August 25, 2008, by Roger J. Ferris Engineering and Land Surveying, P.C.; and

WHEREAS, by Indenture, dated May 28, 1975, filed in the Orange County Clerk's Office and recorded on June 2, 1975, in Liber 2008, page 783, the City of Newburgh conveyed to Mt. Airy Estates, Inc. a stormwater and drainage easement ("Easement"); and

WHEREAS, the stipulation of settlement requires an amendment to the Easement by an "Agreement Amending the Stormwater and Drainage Easement" ("Agreement"), a copy of which is attached here to, and review preceding execution of the Easement must comply with New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations") with respect to the Easement; and

WHEREAS, pursuant to the SEQRA Regulations, the City has considered the significance of the potential environmental impacts of granting the Easement by (a) using the criteria specified in Section 617.7 of the SEQRA Regulations, and (b) examining the EAF for the Easement, including the facts and conclusions in Parts 1 and 2 of the EAF, together with other available supporting information, to identify the relevant areas of environmental concern and wishes to establish itself as Lead Agency for the granting of the Easement.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. The City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6;
2. the Project constitutes an "Unlisted" action, as that term is defined in the SEQRA Regulations;
3. The Council hereby adopts Part 1 of the Environmental Assessment Form;
4. The Council hereby determines, based upon an examination of the EAF and other available supporting information and considering the magnitude and importance of each area of environmental concern, and based on the City's knowledge of the area surrounding the Easement, that the granting of the Easement will not have a significant adverse environmental impact, will not require the preparation of a Draft Environmental Impact Statement;
5. Having determined that there are no areas of potentially large impact of environmental concern, the Council hereby issues a Negative Declaration pursuant to SEQRA with respect to the impact of the Easement upon the environment;

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary to complete the SEQRA process for the Project.

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Mt Airy Reserve/ City of Newburgh	2. PROJECT NAME Amended Easement
3. PROJECT LOCATION: Municipality Town of New Windsor County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Newburgh Water Supply, Westerly Side of Mt. Airy Road; Section 32, Block 2, Lot 53; a portion of which is located on the Westerly side of Mt. Airy Road in the Town of New Windsor, County of Orange, State of New York.	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Amended Easement for stormwater Management off of the Mt. Airy (the Reserve) Development	
7. AMOUNT OF LAND AFFECTED: Initially 8.108 acres Ultimately 9.43 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input checked="" type="checkbox"/> Other Describe: Newburgh Secondary Water Supply	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	

12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?

Yes No

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: _____ Date: _____

Signature: _____

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with is assessment

OVER
1

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.

Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.

Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

No

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

No

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

No

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

No

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

No

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

No

C7. Other impacts (including changes in use of either quantity or type of energy? Explain briefly:

No

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

Yes No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question d of part ii was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse impacts AND provide, on attachments as necessary, the reasons supporting this determination.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

AGREEMENT AMENDING STORMWATER AND DRAINAGE EASEMENT

THIS AGREEMENT AMENDING STORMWATER AND DRAINAGE EASEMENT (“Agreement”) is made and entered into this ____ day of _____ 2013 by and between the City of Newburgh, a New York municipal corporation with offices at 83 Broadway, City Hall, Newburgh, New York 12550 (hereinafter referred to as “Grantor” or “City”), and Mt. Airy Estates, Inc., a New York Corporation with offices at 15 Engle Street, Suite 100, Englewood, New Jersey 07631 (hereinafter referred to as “Grantee” or “Mt. Airy”). Grantor and Grantee may hereinafter be referred to as the “parties” collectively.

WITNESSETH

WHEREAS, Grantor is the present owner in fee of the Newburgh Water Supply, Section 32, Block 2, Lot 53; a portion of which is located on the westerly side of Mt. Airy Road in the Town of New Windsor, County of Orange, State of New York, originally conveyed in the deed recorded in the Orange County Clerk’s Office in Liber 682 at Page 170 and more particularly described and depicted on that certain map entitled “Survey of the Property for City of Newburgh Brown’s Pond Town of New Windsor Orange County, New York,” dated August 25, 2008, by Roger J. Ferris Engineering and Land Surveying, P.C., (the “Premises”), such survey attached hereto as Exhibit A (hereinafter “Survey Map”);

WHEREAS, by Indenture, dated May 28, 1975, filed in the Orange County Clerk’s Office and recorded on June 2, 1975, in Liber 2008, page 783, Grantor conveyed to Grantee a stormwater and drainage easement (“1975 Easement”);

WHEREAS, the land which is subject to the 1975 Easement and this Agreement is that portion of the Premises which is fully depicted on the Survey Map (“Easement Area”);

WHEREAS, this Easement Area, as depicted on the Survey Map, is 9.43 acres, as

opposed to the 8.108 acres of the Premises which was affected by the 1975 Easement; and

WHEREAS, the parties desire to clarify and amend the 1975 Easement by this Agreement.

NOW THEREFORE, in consideration of the obligations and covenants set forth in the 1975 Easement and this Agreement, and pursuant to an additional agreement between the parties, and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, the parties, do hereby covenant and agree as follows:

1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference.
2. The City conveys to Mt. Airy, a perpetual, nonexclusive easement for stormwater management and control; erosion and sediment control; and drainage, collection and settlement; and related objectives; all for the purpose of draining in an environmentally sound manner stormwater and surface water released from the Mt. Airy/Aire Estates (The Reserve) subdivision (the "Mt. Airy Estates") and directed to, on, across and into the Easement Area in the manner as set forth in provisions 3 and 4 of this Agreement.
3. The easement rights and obligations conveyed by the Agreement to Mt. Airy are for the installation and operation of the Stormwater Facilities (as this term is defined below herein), which includes the construction and continued use, ownership, maintenance and repair of those Stormwater Facilities in and outside the Easement Area, which Stormwater Facilities are depicted on the drawing "Mt. Airy Estates AKA The Reserve Proposed SMP Improvements" dated March 19, 2013, last revised April 17, 2013 and included in the April 2013 Modification Draft Modification of Stormwater Pollution Prevention Plan for Mount Airy Estates (the "Storm Drainage Map"), attached hereto as Exhibit B, and including all Stormwater Facilities shown on the Storm Drainage Discharge As-built Survey, prepared by Leo J. Carroll, P.E., L.S. &

Associates, dated 11-11-08 (the "As-Built Survey"), attached hereto as Exhibit C, and such

Stormwater Facilities will be installed and operated in the following manner:

(i) SMP-1:

- a. SMP-1 is currently configured as a sediment basin;
- b. After the permanent stabilization of the contributing drainage area(s) to SMP-1 is complete, SMP-1 will be reconfigured as a micro-pool extended detention pond in accordance with the February 2007 SWPPP;
- c. Approximately 25 feet of 48 inch diameter (25' of 48") HDPE pipe enters the Easement Area north of Revere Run and terminates at the inlet on the south side of SMP-1;
- d. Approximately 15 feet of 15 inch diameter (15' of 15") HDPE pipe enters the Easement Area north of lot 77-3-9 and terminates at the inlet on the south side of SMP-1;
- e. A four (4) inch PVC outlet pipe exits SMP-1 through the emergency spillway, drains into wetlands and then drains to Brown's Pond within the Easement Area;
- f. An Emergency spillway on east side of SMP-1 that drains into wetlands and then to Brown's Pond within the Easement Area;
- g. Approximately 300 feet of 4 inch (300' of 4") underground underdrain pipe that exits SMP-1 at its northeast corner, surfaces in the wetlands, and drains to Brown's Pond within the Easement Area; and

(ii) SMP-2:

- a. SMP-2 is currently configured as a sediment basin;
- b. After the permanent stabilization of the contributing drainage area(s) to SMP-2 is complete, SMP-2 will be reconfigured as a as a micro-pool extended detention pond in accordance with the February 2007 SWPPP;
- c. Approximately 160 feet of 24 inch diameter (160' of 24") HDPE pipe enters the Easement Area east of Independence Drive and terminates at the inlet in the southwest corner of SMP-2;
- d. Approximately 30 feet of 24 inch diameter (30' of 24") HDPE pipe enters the Easement Area east of the intersection of Liberty Ridge and Independence Drive and terminates at the inlet on western side of SMP-2;
- e. Approximately 75 feet of 36 inch diameter (75' of 36") HDPE pipe enters the Easement Area east of McKinley Court and terminates at the inlet in the northwest corner of SMP-2;
- f. A four (4) inch PVC underground outlet pipe exits through the emergency spillway, drains into wetlands and then drains to Brown's Pond within the Easement Area;
- g. An Emergency spillway on east side of SMP-2 that drains into wetlands and then to Brown's Pond within the Easement Area;

- h. Approximately 35 feet of 4 inch diameter (35' of 4") PVC underground outlet pipe that exits through the emergency spillway, drains into wetlands and then drains to Brown's Pond within the Easement Area;
- i. 180 feet of 12 inch diameter (180' of 12") HDPE underground outlet pipe that, exits the ground through a twelve (12) inch gate valve at the emergency spillway, drains into wetlands and then drains to Brown's Pond within the Easement Area;
- j. Approximately 160 feet of 4 inch diameter (160' of 4") underground underdrain pipe that passes through the east side of SMP-2, exits the ground in the wetlands, and then drains into Brown's Pond within the Easement Area;
- k. Two (2) twenty-five foot (25') trench drains located in the spillway east of SMP2 that drain to the wetlands and then drain to Brown's Pond within the Easement Area; and

(iii) SMP-3:

- a. SMP-3 currently discharges through the existing 36 inch (36") pipe to the inlet of SMP-2;
- b. The discharge to SMP-2 will be removed and replaced by a discharge through the 40' of 36" diameter HDPE underground pipe;
- c. 40' of 36" diameter HDPE underground pipe with a flared end section located south of SMP 3 surfaces and discharges first into rip rap 22 feet long with a maximum width of 25' then into wetlands, and ultimately into the Easement Area at the point as indicated by the Storm Drainage Map and into Brown's Pond within the Easement Area; and

(iv) 24 inch diameter HDPE standpipe located on the west side of Mount Airy Road, in the eastern side of Brown's Pond within the easement area; and

(v) Including all facilities shown on the Storm Drainage Discharge As-built Survey, prepared by Leo J. Carroll, P.E., L.S. & Associates, dated 11-11-08.

4. In addition to the foregoing, said easement rights and obligations conveyed by the Agreement regarding access to the Easement Area are as follows:

(i) to enter upon the Easement Area, by men and machines, as necessary in order to install and operate the Stormwater Facilities;

(ii) to construct, as necessary, improvements to the Stormwater Facilities, the construction of and access to administer improvements both being subject to prior approval by the City, which approval shall not be unreasonably withheld; and

(iii) access to the Easement Area will only be provided from Revere's Run, through the 10 foot wide drainage easement off of Independence Drive, and through the 10 foot wide drainage easement off of McKinley Court.

5. The term "Stormwater Facilities" means the storm water management pools referred to on the Storm Drainage Map as SMP-1, SMP-2 and SMP-3, which includes but is not limited to swales, pipes, drainage ways and all appurtenances, as those terms are utilized or shown in the Storm Drainage Map and the As-Built Survey, and as they may subsequently be improved as necessary and in accordance with this Agreement and City approval.

6. The City reserves the full right of use and enjoyment of the Premises and the Easement Area, subject to this Agreement and the easement rights granted herein, and provided that no act or omission of the City adversely affects the intents and purposes of this Agreement or Mt. Airy's rights hereto.

7. Mt. Airy shall indemnify, defend and hold harmless the City from any injury, cost or claim for damages made against the City, due to (i) flooding onto adjoining properties or (ii) damage caused by installation or negligent operation of Mt. Airy's Stormwater Facilities.

8. The parties recognize that upon completion of the roads in the subdivision and takeover of the roads and the Stormwater Facilities by the Town of New Windsor, the roads, along with the rights, covenants and obligations passed under this Agreement will be conveyed to the Town of New Windsor.

9. This Agreement shall run with the land, which is referred to herein as the Easement Area, and shall inure to the benefit of Mt. Airy and its heirs or successors and assigns. All rights, remedies, liabilities, covenants and agreements herein given to or imposed upon either of the parties hereto shall inure to and be binding upon the successors and assigns of the City and Mt. Airy.

10. Mt. Airy shall not use or occupy or knowingly permit the Easement Area or any part thereof to be used in a manner or occupied for a purpose contrary to federal, State, or local law.

11. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those as to which it was held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard to conflicts of laws principles.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. This Agreement contains the entire agreement between the parties with respect to the easement rights and obligations granted, made and conveyed herein, and any prior or contemporaneous agreement, whether written or oral, shall be of no force or effect over the terms herein. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the parties or their successors and assigns.

[signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

MT. AIRY ESTATES, INC.

CITY OF NEWBURGH

By: _____

By: _____

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

On _____, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

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

On _____, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

RESOLUTION NO.: 91 - 2013

OF

APRIL 22, 2013

RESOLUTION AMENDING RESOLUTION NO: 223 - 2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$ 40,911.00 FROM CONTINGENCY TO CODE ENFORCEMENT
TO FUND A CODE ENFORCEMENT OFFICER
DEDICATED TO BROADWAY FOR THE REMAINDER OF 2013

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

	<u>Decrease</u>	<u>Increase</u>
A.1900 Special Items		
.1990 Contingency	\$ 40,911.00	
A.3620 Code Enforcement Department		
.0101 Salary		\$ 29,532.00
.0107 Longevity		\$ 1,600.00
.0810 Retirement		\$ 6,507.00
.0830 Social Security		\$ 2,382.00
.0835 MTA		\$ 106.00
.0880 CSEA EBF		\$ 784.00