



City of Newburgh Council Work Session

6:00 pm

September 19, 2013

AGENDA

1. Presentations:
 - a. Laser Fiche Project update: Bruce Cadman, General Code Publishers
2. Economic and Community Development/Real Estate:
 - a. Mill Street Partners Special Permit
 - b. Request to purchase 350 Water Street
 - c. Provan Site update
3. Grants/Contracts:
 - a. (Res. 195) Agreement with Professional Account Management LLC, to provide services related to municipal parking services and related equipment.
4. Finance:
 - a. Year to Date Financial Reports – John Aber, City Comptroller
5. Engineering:
 - a. Ty Crabb Park – bid awards
 - b. Traffic signal project update
 - c. (Res. 196) WWTP improvements: Request for extension to complete improvements
 - d. (Res. 197) Chambers Street Sidewalk: Additional construction expenses
 - e. Update on the failure of sewer outfall No. 10 under CSX Railroad
6. Discussion:
 - a. City Council Chambers – proposed improvements
 - b. (Res. 198) Naturalization Center at the Newburgh Armory Unity Center
 - c. Joint Program with the Newburgh Armory Unity Center
7. Executive Session:
 - a. Pending Litigation

RESOLUTION NO.: 195 - 2013

OF

SEPTEMBER 23, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH
PROFESSIONAL ACCOUNT MANAGEMENT, LLC
FOR MUNICIPAL PARKING SERVICES AND RELATED EQUIPMENT

WHEREAS, the City of Newburgh has requested proposals regarding Municipal Parking Services and Related Equipment; and

WHEREAS, proposals have been duly received and reviewed and it has been determined that Professional Account Management LLC ("PAM") has submitted the proposal that would most benefit the City of Newburgh; and

WHEREAS, a copy of the agreement with PAM is attached hereto and made a part of this resolution;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he is hereby authorized to enter into an agreement with Professional Account Management LLC in accordance with the proposal with all such terms and conditions as may be required by the Corporation Counsel for the Municipal Parking Services and Related Equipment.

GOODS AND SERVICES AGREEMENT

This Goods and Services Agreement (Agreement) is made effective on this _____ day of _____, 2013 (Effective Date) by and between the City of Newburg (City) having a location at 83 Broadway, Newburg, New York 12550 U.S.A. and Professional Account Management, LLC its subsidiaries, affiliates, parent, agents and representatives (collectively, PAM), a Wisconsin corporation having a location at 633 West Wisconsin Avenue, Suite 1600 Milwaukee, Wisconsin 53203 U.S.A. City and PAM may hereinafter be referred to individually as Party, or collectively as Parties.

WHEREAS, City intends that PAM provide the goods and services described herein, and PAM intends to provide such goods and services subject to the mutually agreed terms and conditions herein, and

WHEREAS, City has completed all necessary steps for procurement and retention of goods and services under applicable City policies, procedures and other applicable rules and regulations.

NOW, THEREFORE, in consideration of the sums to be paid to PAM, the promises and mutual agreements stated herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows;

1. **Term of Agreement.** This Agreement remains in effect for three (3) calendar years from the Effective Date (Term). This Agreement may be extended (Extension) in writing by mutual agreement of the Parties. During the Term and any Extension, PAM retains all ownership, title and license to the Products.
2. **Agreement and Precedence.** This Agreement governs all Orders and all products and services provided by any parent, subsidiary, affiliate, subcontractor, agent or representative of PAM as described herein or in any writing amending this Agreement. Any schedules, attachments and exhibits referenced herein, whether or not attached, and any purchase orders provided by City and accepted in writing by PAM (Orders), are hereby incorporated and made part of this Agreement. Should any conflict exist between or among the body of this Agreement, schedules, exhibits, attachments, and Orders, the following order of precedence shall apply:
 - 2.1. the body of this Agreement
 - 2.2. Schedule A - Pricing
 - 2.3. Schedule B - Processing Services and Schedule C - Collections Services, each of equal significance
 - 2.4. Schedule D - Support, Warranty and Returns
 - 2.5. any Orders
3. **Invoices and Payments.** City shall maintain and control a bank account (City Account) for purposes of deposit of funds collected by PAM in performance of this Agreement. Costs related to such account are the sole responsibility of City. Where required, PAM will invoice City monthly or as otherwise described in the Schedules. All invoices are payable net thirty (30) days from date of invoice. PAM reserves the right to add one and one-half percent (1.5%) interest, or the maximum allowed by law, per month to invoices past due by ten (10) days or greater. Payments shall be remitted to:
PAM P.O. Box 2081 Milwaukee WI 53201-2081
4. **Reimbursement and Set off.** Any fees, costs or expenses due or required under this Agreement will be set off against amounts due the City. Should funds collected be insufficient for payment in full through set off, the City understands and acknowledges that PAM will invoice the City and City shall pay all costs and expenses due hereunder.
5. **Confidential Information.** PAM acknowledges that City is a public agency with certain legal obligations for transparency and public disclosure. City acknowledges that the goods and services PAM provides incorporate proprietary design, processes and technology that if disclosed would materially harm PAM. Therefore, City will not itself, or assist a third party in, reverse engineer, document, abuse or otherwise evaluate or use the goods and services without the express written permission of PAM. All data produced or compiled by PAM shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of the other Party. All financial, statistical, personal, technical, and other data and information relating to PAM's operations shall be presumed to be confidential regardless of whether such

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information has been disclosed as confidential. City shall protect all confidential information from unauthorized use and disclosure by use of the same or more effective procedures as City requires of its own personnel to protect its own confidential information. City is not required by this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in City's possession and not subject to any requirement to maintain confidentiality, is independently developed by City outside the scope of the Agreement and without the use of the confidential information, or is rightfully obtained from third parties.

6. Patents, Trademarks, Copyrights, Ownership. All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in the performance of this Agreement are the property of the Party that so invented, developed, created or discovered such intellectual property. For any non-hosted, stand-alone system, City acknowledges and agrees that in the event City elects to sell, license, or dispose of the system, or any portion thereof, in any way without the express written consent of PAM, this Agreement automatically and immediately terminates without notice. The equipment, firmware and software (Products) provided by PAM are proprietary products of PAM and protected under United States copyright laws. The Software provided for installation on personal computers or server systems may be copied for archival purposes only and may not be used on more central processing units (CPUs) concurrently than the number of purchased licenses without prior written approval of PAM. PAM hereby grants to City a revocable, non-exclusive license to use the Products provided during the Term and any Extensions of this Agreement and solely for the purposes contemplated under this Agreement.

NO LICENSE UNDER ANY PATENTS, COPYRIGHTS, TRADEMARKS, MASK WORKS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OF PAM IS GRANTED OR IMPLIED UNLESS EXPRESSED IN WRITING. PAM AT ALL TIMES RETAINS ALL OWNERSHIP AND RIGHTS TO ALL PRODUCTS PROVIDED UNDER THIS AGREEMENT.

CITY HEREBY ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR ALL COSTS RELATED TO DAMAGE AND REPAIR OF PRODUCTS DIRECTLY OR INDIRECTLY RELATED TO ANY ABUSE, MISUSE, NEGLIGENCE, IMPROPER MAINTENANCE, VANDALISM, OR ACTS OF GOD.

7. Relationship of the Parties. PAM agrees and understands that services performed under this Agreement are performed as an independent contractor and not as an employee of City and that PAM acquires none of the rights, privileges, powers or advantages of City employees. This Agreement does not create any relationship of agency, partnership or joint venture between the Parties. Nothing in this Agreement gives any Party the right to use any corporate names, trademarks or trade names of any other Party.
8. Indemnification. Each Party indemnifies and will defend the other, its employees and agents from claims, damages and liability occasioned by or arising out of negligence in the performance of this Agreement. Except to the extent caused by the sole negligence or willful misconduct of either Party, each Party shall indemnify and hold and save each other, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, costs (including defense) and losses accruing or resulting to any person firm, or corporation that may be injured or damaged by the other in the performance of this Agreement. This representation and warranty shall survive the termination or expiration of this Agreement.

Each Party shall indemnify and hold and save each other, its officers, agents, and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement.

9. Limitation of Liability and Disclaimer. UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, AND WHETHER OR NOT THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO WARRANTY, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGES, LOSS OF REVENUE, LOST PROFITS, BUSINESS OR GOODWILL.

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10. **Insurance.** During the Term, PAM will maintain insurance in the type and amount specified in Attachment 1 – Proof of Insurance Certificates.
11. **Sub-contracting.** PAM is authorized to engage subcontractors at PAM's sole expense. PAM shall notify the City of the name, address, and other information reasonably requested regarding any proposed subcontractor, in advance of use of such subcontractor. City shall respond in writing within two (2) business days of PAM's request for approval. Approvals under this section will not be unreasonably withheld by the City.
12. **Licenses and Certificates of Authority.** During the Term and any Extensions, PAM will maintain all licenses and certificates of authority required by law.
13. **Compliance with Laws.** Parties shall ensure full compliance with federal, state and local laws, regulations, directives, ordinances and executive orders applicable to the performance of this Agreement.
14. **Audit and Records.**
 - 14.1. PAM agrees that City, or any of its duly authorized representatives may, at any time during normal business hours and upon reasonable notice to PAM, have access to and the right to examine and audit books, documents, papers, records, and other items that relate to accounting and performance under this Agreement.
 - 14.2. PAM shall maintain these records for a period of three (3) years from the date of any termination of this Agreement. The inspection requirements of this section shall survive any termination of the Agreement by no less than three (3) years.
 - 14.3. City shall maintain and control a bank account (City Account) for purposes of deposit of funds collected by PAM in performance of this Agreement. At least monthly, City shall audit records related to the deposit of funds by PAM into City Account and reconcile such records with deposit data provided by PAM. City shall report any variance to PAM within sixty (60) calendar days after the closing date of the record that includes the alleged variance. City shall provide all records and documents related to any variance, as requested by PAM, including without limitation;
 - 14.3.1. bank deposit slips
 - 14.3.2. cumulative financial reports
 - 14.3.3. account-related communications
 - 14.4. City acknowledges and agrees that PAM is not be responsible for variances caused in whole or in part by City, any financial institution, vandalism, theft, force majeure events or variances not reported as required under this section.
15. **Arbitration.** Any controversy arising out of or related to this Agreement or the breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association (AAA) located in New York State. Another location for arbitration under the Rules of AAA may be chosen if mutually agreed by the parties. The consideration given by the Parties herein is deemed consideration adequate to support this Agreement for arbitration. A judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof in accordance with New York State law except as otherwise provided herein. The arbitrators shall have all powers of a court of law in the relevant jurisdiction. Such powers shall include but shall not be limited to: (a) the power to issue temporary restraining orders and injunctions; (b) the power to award damages; (c) the power to issue subpoenas; and (d) the power to issues all orders and to take all actions necessary to enforce their jurisdictions as provided by law. The identity of the arbitrator shall be agreed upon by the Parties. In the absence of an agreement, one (1) arbitrator shall be selected by Rolute under its standard selection procedures using any reasonable and fair method. An award in arbitration shall be final and binding upon the Parties and enforceable under law. The prevailing Party in any arbitration proceeding herein shall be awarded its costs and expensed including reasonable attorney fees. For purposes of this contract, a "prevailing Party" shall be the Party awarded any non-monetary relief sought or more than fifty percent (50%) of the monetary damages sought.
16. **Termination and Notice.** Either Party may terminate this Agreement or any part thereof for any reason. Notice of termination must be provided in writing a minimum of sixty (60) days in advance of the effective termination

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date. City understands and acknowledges that performance under this Agreement requires substantial capital and other investment by PAM. Therefore, any termination of this Agreement by the City within the first year of the Term for any reason other than material breach of this Agreement will result in termination fees and costs ("Termination Fees") to the City.

Termination Fees are at the sole discretion on PAM and shall be reasonable, supported by evidence, and subject to generally accepted accounting principles. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports and materials ("Materials") prepared by PAM specifically and solely for the City under this Agreement shall become the property of, and be promptly delivered to, the City. In the event of any termination of this Agreement, City shall return all Products within ten (10) business days of the effective termination date. PAM will provide a final invoice and City shall pay all outstanding amounts as herein described including costs of Products not returned in compliance with this section. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder will be in writing and deemed delivered (1) business day after delivery by a reputable overnight delivery service; or upon delivery by courier or in person to the following addresses:

To City:

City of Newburg
83 Broadway Newburg, New York 12550

To PAM:

Professional Account Management, LLC
Contracts
633 West Wisconsin Avenue Suite 1600 Milwaukee, Wisconsin 53203
contracts@duncansolutions.com

17. **Force Majeure.** A nonperforming Party shall not be held in default or breach due to any force majeure event. A force majeure event ("Event") is any act or event, whether foreseen or unforeseen; (a) that prevents the nonperforming Party, in whole or in part, from performing its obligations under this Agreement, and (b) is beyond the reasonable control of and not the fault of the nonperforming Party, and (c) the nonperforming Party has made all reasonable efforts but has been unable to avoid or overcome the act or event. An Event includes but is not limited to flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or public enemy, terrorist, military action, epidemic, famine or plague, shipwreck, action of a court or public authority, or strike, work-to-rule action, other labor disputes, each on an industry-wide, region-wide or nationwide basis. An Event does not include economic hardship, changes in market conditions, insufficiency of funds, unavailability of equipment or supplies or labor other than strikes, or work-to-rule actions. No obligation by either the performing Party or the nonperforming Party to make any payment required under this Agreement is excused as a result of the Event. Upon occurrence of an Event, the non performing Party shall furnish the other Party written notification describing the Event, including an estimate of its expected duration and probable impact on the performance of the nonperforming Party's obligations under this Agreement.
18. **Assignment.** This Agreement is for the sole use of City and cannot be used by or for any other entity without prior written approval by PAM. The firmware or software cannot be provided to any entity or unlicensed user under any circumstances. In the event of loss, misplacement or damage of the original software or archive copies, PAM will provide an additional copy upon written request and at the sole cost of the City.
19. **No Third-Party Beneficiaries.** The Parties specifically intend and agree that no one other than the Parties to this Agreement, except either Parties subsidiaries, affiliates, successors and any controlling parent, whether now existing or hereafter resulting from a merger, acquisition, or restructuring of the Party, is or shall be deemed to be a third-party beneficiary of any of the rights or obligations set forth in this Agreement.
20. **Modification and Waiver.** This Agreement may only be modified in writing signed by duly authorized representatives of both Parties. The failure of either Party to insist upon or enforce the performance of this Agreement, or the failure to exercise any right or privilege herein conferred, is not a waiver of any such

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covenant, conditions, rights, or privileges. No different or additional terms, conditions, amendments or modifications of any type are valid or have any effect on this Agreement unless mutually agreed between the Parties in a separate writing.

- 21. Severability. If any provision in this Agreement, or the application thereof to any person or circumstance is determined by any competent court to be held invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remainder of this Agreement, unless that effect is made impossible by the absence of the omitted provision.
- 22. Counterparts. This Agreement may be executed in any number of counterparts, each of which is deemed an original and all of which taken together constitute one Agreement. Any legible, executed copy of this Agreement is deemed an original.
- 23. Applicable Law. This Agreement is construed and will be enforced under the laws and in the courts of the State of New York without consideration to any conflicts of laws principles.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below.

CITY OF NEWBURG, NEW YORK

Signature _____

Printed Name _____

Title _____

Date _____

PROFESSIONAL ACCOUNT MANAGEMENT, LLC.

Signature _____

Printed Name *Jason Johnston*

Title *President*

Date _____

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SCHEDULE A – PRICING

\$3.67 per citation issued includes;

- a. use of four (4) AutoCITE handheld citation issuance units and PAM-owned charging station
 - b. maximum eight (8) user licenses
 - c. Three (3) late notices with late fees (Late Notice)
 - d. One (1) judgment notice (Judgment Notice) after final late notice
 - e. hosted AutoISSUE and AutoPROCESS software
 - f. electronic citation ticket stock and payment envelopes
 - g. manual ticket stock for up to 3,000 tickets per year
 - h. use of two (2) PAM-owned cashiering workstations (includes PC, printer, cash drawer, display pole, barcode scanner)
 - i. internet and IVR inquiry and payment solution
 - j. weekly state of New York DMV registered owner request export/import
 - k. configuration and implementation (including standard data transition)
 - l. warranty, maintenance and support
 - m. account management
2. Collections Program 30% Contingency Fee
3. The City shall provide;
- a. reliable electricity and broadband internet connectivity where required, and
 - b. appropriate and safe cashiering workspace, and
 - c. cashiering printer supplies, and
 - d. forward of manual tickets and drop box payment to PAM, and
 - e. cashiering services staff, and
 - f. management and issuance of all refunds,
 - g. manage all hearings and notify PAM of result
4. Debtors will be charged a convenience fee of \$2.95 for credit card payment transactions less than \$100.00 or 5% of the credit card transaction amount if greater than \$100.00.
5. All postage is the responsibility of the City. PAM shall pay all postage and itemized such costs in monthly reconciliation to the City. City is responsible for its cost of all other consumable supplies.
6. Pricing is based on minimum 20,000 citations issued annually including a maximum of 3,000 manual citations to be entered into system by PAM. Pricing is subject to change based on volume.
7. The collection Contingency Fee is in addition to any and all other costs including but not limited to court costs, sheriff's fees, interest, late fees, investigatory fees, credit reporting fees or other costs incurred directly or indirectly by PAM in collection of amounts owed under this Agreement.
8. Automatic annual price adjustments (Adjustment(s)) based on the City area Consumer Price Index (CPI) will take effect on or about three (3) years after the Effective Date of this Agreement and annually thereafter including any Extension(s). The increase is a percentage equal to the percentage increase in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve (12) month period ending in June immediately prior to the scheduled Adjustment
9. During the Term and any Extension, PAM retains all ownership, interest and title to all Products. City shall not itself place or allow, and shall insure against and prevent, any lien or other interest that may be claimed against the Products.

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SCHEDULE B – PROCESSING SERVICES

1. Referral and Reconciliation. PAM shall receive and process parking citations that the City delivers to it. The City shall deliver, mail, or transmit all parking citations on a daily basis. PAM will provide a daily reconciliation of the number of citations delivered by the City.
2. Computer Programs and Hardware. PAM will provide all software, written procedures and other supporting items required in performance of this Agreement. PAM shall be responsible for the warranty and maintenance of all hardware and software including hosted AutoISSUE and AutoPROCESS. The City is responsible for any damage, loss, or theft of computer hardware, software, or equipment used by the City at the City location. The City will provide insurance coverage for such equipment as described herein.
3. Remittance. Payments on Citations made directly to PAM will be deposited by PAM into the City Account. PAM will provide a monthly reconciliation and report of activities to the City, up to and including the date of any expiration or termination of this Agreement, within thirty (30) calendar days of such expiration or termination.
4. NSF and Disputed Payments. In the event that any debts reported to the City as paid are subsequently returned NSF or reversed as disputed, PAM will reverse the amount of such debt payment and all fees taken on such payment in the current month's deposits and reporting.
5. Base Processing. Notice of illegal parking or violation (collectively 'Citations') issued by the City, whether through AutoPROCESS or manually, will be entered into PAM's system and cleared upon payment or other disposition. Requests for Registered Owner information will be sent to the appropriate Departments of Motor Vehicles (DMV). Citations will be generated and mailed by PAM to the Registered Owner and the penalty or fine amount requested. Debtor payments by mail will be made directly to PAM. DMV registration liens will be placed on vehicles having unpaid fines and fees in compliance with the New York DMV and other applicable state and local laws. DMV liens shall be removed through DMV when the entire amount of parking citation fines, fees, and penalties due against the vehicle are satisfied. No extra processing charge will be made for a citation incorrectly processed and subsequently corrected and re-entered into the database. PAM shall provide hearing scheduling and disposition posting as forwarded by the City.
6. Suspension of Processing. PAM shall suspend processing any citation referred to it upon written notice to do so by the City. PAM shall maintain records indicating any suspension resulted by the City.
7. Computer System. PAM will provide the City with internet inquiry capability at the City location for retrieval of parking citation information. User specific licenses will be installed at the City location. The City is responsible for all electricity, broadband internet connection and related costs.
8. Collection and Deposit of Funds. PAM shall collect and deposit funds received for the payment of Citation fines and fees into the City Account. Costs related to such account are the sole responsibility of CLIENT. All citation revenues will be deposited in the CLIENT bank account by the end of the next banking day of receipt by PAM. Deposits will be batched in increments of one hundred (100) to limit the number of bank transactions necessary. A maximum of three (3) deposits daily will be made.
9. Collection Disbursement. PAM shall disburse to CLIENT on a monthly basis, all monies on deposit from the payment of parking citation fines and fees. Disbursement will be made after the close of the processing month beginning the month following the Agreement date.
10. IVR and Internet Payments. PAM shall provide the public with the ability to pay parking citations using an accepted credit card via an Interactive Voice Response (IVR) system or the internet. The cost for these services, including credit card discount fees, will be recovered by PAM in the form of a per transaction convenience fee assessed to the Debtor for each transaction.
11. Customer Service. PAM will provide a toll-free Customer Service number listed on all correspondence for debtors to contact PAM for any reason.

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SCHEDULE C – COLLECTION SERVICES

1. Performance by City

- 1.1. Authority to Collect. The City hereby authorizes PAM to use any legal means necessary to collect Debts placed with PAM by the City upon issuance of the Judgment Notice.
- 1.2. Ownership of Debts. The City maintains ownership of all Debts placed with PAM for collection under this Agreement. The City maintains all legal right and title to Debts unless otherwise agreed in writing between the Parties.
- 1.3. Duty to Provide Information. The City agrees to provide PAM with all information obtained regarding each Debt placed with PAM under this Agreement. It is the obligation of the City to provide PAM with all information that may prohibit or delay the collection of the Debt or in any way impact the ability of PAM to collect the Debt, including but not limited to bankruptcy, death, legal disability or other potential or actual defenses, including statute of limitations defense.
- 1.4. Warranties. Where applicable, the City warrants that, to the best of its knowledge, the Debts placed with PAM have been reviewed by the City in accordance with this Agreement prior to transfer to PAM, and that the balances reported to PAM are true and accurate, that all obligors on Debts have been disclosed and that all disputes and defenses of debtors have been reported to PAM.
- 1.5. Notice of Dispute. The City will inform PAM in writing, or by such other means as the Parties may expressly mutually agree from time to time, of any Debts subject to this Agreement that have been or are in dispute. Disputes under this provision include oral and written indications and statements by the debtor or any third party that the Debt is in dispute, and includes but is not limited to a request for validation of the Debt. If such dispute is made in writing by debtor, the City will notify PAM of the date of the writing and provide PAM with the original written dispute or a copy thereof.
- 1.6. Continuing Obligation. The City will continue to provide the most current version of the information required under this Agreement throughout the Term and any Extension.
- 1.7. Authorization to Receive and Endorse Payments. The City authorizes and appoints PAM to collect and receive all payments due or payable to the City for Debts placed with PAM. PAM has authority to receive payments in any form including but not limited to cash, check, money order, or electronic payment and has authority to endorse all such payments as may be required.
- 1.8. Authorization to Investigate. The City expressly authorizes PAM to perform investigative services related to ordinary debt collection activities.

2. Performance by PAM

- 2.1. Agreement to Collect. PAM agrees to provide debt collection services to the City in compliance with all applicable laws, regulations, licensing and bonding requirements.
- 2.2. Documentation of Accounts/Financial Reporting. PAM will provide monthly, detailed reports of collection activity related to Debts including without limitation; principal amount of Debt, amounts collected to date including any allowable fees, costs and interest, dispute information, requests for validation by debtor, agreements by the debtor regarding future payments, bankruptcy, death or legal disability of the debtor, amount of commission retained by PAM, amount remitted to the City and amount remitted to others under this Agreement.
- 2.3. Credit Reporting. PAM will report information regarding Debts in accordance with this Agreement to the following Consumer Reporting Agencies: Equifax, Experian and Trans Union. PAM agrees to comply with the Fair Credit Reporting Act (FCRA) and all applicable state and federal laws related to such reporting. PAM will comply with standards set by the American Collectors Association, Inc. (ACA), including the ACA Code of Ethics and the ACA Code of Operations.
- 2.4. Insurance and Bond Coverage. PAM will maintain at least the minimum level of insurance and bond coverage required by ACA or state law, whichever is greater, in all jurisdictions in which engaged in collection activity under this Agreement.
- 2.5. Trust Account. PAM warrants that it will maintain a trust account if required by state law while PAM is engaged in collection activity under this Agreement.
- 2.6. Methods and Compliance. PAM uses ordinary and reasonable collection efforts as permitted by law and will at all times comply with the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA) and all applicable state, federal and local laws and regulations applicable to collections under this Agreement.

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3. Legal Process. The City reserves sole right and authority to place Debts in litigation, including Debts subject to a forwarding agreement. The City may authorize PAM in writing to retain an attorney and commence litigation on behalf of the City, subject to separate terms and conditions mutually agreed in writing between the Parties. At no time, nor in any case, does PAM accept any responsibility or liability for any expenses, fees, or damages or any costs or liability related to legal process or use of an attorney to collect Debts.
4. Cost and Fees
 - 4.1. Contingency Fee. The cost of collection services described in this Agreement is percentage-based contingent on Debts collected. A Debt placed for collection with PAM or with an attorney to obtain judgment or otherwise satisfy payment of the Debt is subject to the fee based on the amount actually collected (Contingency Fee) by PAM. The Contingency Fee is in addition to any and all other costs including but not limited to court costs, sheriff's fees, interest, late fees, investigatory fees, credit reporting fees or other costs incurred directly or indirectly by PAM in collection of amounts owed under this Agreement.
 - 4.2. Interest and Fees on Debts. The City hereby authorizes PAM to add interest, civil penalties, litigation and legal process fees, court costs, attorney fees and other such expenses relating to the collection of Debts as provided by law or debtor contract and to collect this amount from the debtor. Such amounts are considered part of the total original amount placed for collection.
 - 4.3. Remittance. Amounts due the City based on one (1) calendar month of collections will be remitted to the City Account by the fifteenth (15th) day of the following month. PAM will provide a report of collection activities to the City, up to and including the date of any expiration or termination of this Agreement, within thirty (30) calendar days of expiration or termination.
 - 4.4. NSF and Disputed Payments. In the event that any Debts reported to the City as paid are subsequently returned NSF or reversed as disputed, PAM will reverse the amount of such Debt payment and all fees taken on such payment from the current month's billing statement.
5. Authorization To Forward Accounts. PAM may forward any of the City's Debts to another collection agency if the debtor has moved out of the general business area of PAM, and such other collection agency shall have authority to exercise all ordinary and reasonable collection efforts as permitted by law, and shall remit any payments made to PAM less agreed commissions, and PAM shall then remit to the City less any agreed commissions.
6. Right To Withdraw Accounts or Termination. The City may request the return of any Debts not yet collected provided thirty (30) calendar days advance written notice (Notification Period). PAM agrees to return Debts not collected by the end of the Notification Period along with appropriate financial records of the Debts including amounts collected, commission retained, additional fees, interest and charges added, and a detailed statement of expenses incurred by PAM on behalf of the City. In the event of termination of this Schedule or the Agreement, the City will pay all amounts due under this Agreement on Debts that have been collected through the end of PAM's business day on the date of termination.
7. Assignment and Process. PAM will accept Debts in accordance with the business rules adopted by the City but shall not assume collection activities until the Judgment Notice.
8. Collection Letters. PAM will propose customized collection letters to the City for review, edit and approval. Collection letter types may include Notice of Assignment to Collection Agency, Demand for Payment, Pending DMV Hold, Pending Tax Offset (where applicable), or Pending Credit Bureau Placement.
9. Skip Tracing. PAM will provide skip trace services where required to locate debtors current address for all Debts.
10. DMV Information. PAM will verify DMV information, as required, and obtain vehicle registrations for Debts.
11. Customer Service. PAM will provide a toll-free Customer Service number listed on all correspondence for debtors to contact PAM for any reason.
12. Debtor Dispute Resolution. PAM will provide dispute resolution services, in accordance with business rules established by the City, to review debtor claims of non-liability and forward accounts to the City where PAM has determined a valid reason for dismissal. The City, at its sole discretion, will make final decisions on such matters and update the AutoCOLLECT System to reflect such decision.
13. Lockbox Remittance Processing. All PAM collection notices include a return remittance envelope addressed to PAM's remittance processing center. PAM will provide lockbox remittance processing of all payments and update the AutoCOLLECT System on a daily basis.

GOODS AND SERVICES AGREEMENT

SCHEDULE D – SUPPORT, WARRANTY AND RETURNS

- 1) Support - Applications. Software engineers will be available by telephone for support between 8:30 a.m. – 5:00 p.m. EST in support of PAM provided hardware, software and systems. Remote access to personal computers will be accomplished via LogMeIn. Change requests that modify the configuration or features of the system will be quoted separately and are not included.
- 2) Support - Hosted Systems. The following support is available where applicable PAM systems are in place.
 - a) Server Infrastructure. PAM will monitor and maintain all application servers, database servers, authentication services, virtualized machines, monitoring servers, backup servers, network equipment (including switches, routers, firewalls, data lines) and other necessary infrastructure components. PAM will install Microsoft system updates, including window patches. PAM will tune and maintain database systems.
 - b) System Backups. Online Oracle Database backups to tape drive will occur nightly. Offline Oracle Database backups to tape will occur weekly. Application server backups to tape drive will occur nightly. All tapes will be stored in secure facility off-site.
 - c) Software Maintenance. PAM will install all necessary software updates on the Hosted System infrastructure.
 - d) City Network Hardware and Connectivity. For PAM provided and maintained network connections, PAM will remotely monitor firewall, routers, and data lines to ensure connectivity. In the event of outage, PAM will assist with, but is not responsible for the restoration of service.
- 3) Warranty and Returns. PAM expressly warrants parking products against defects in materials and workmanship for twelve (12) months from date of installation or fourteen (14) months from the date of delivery to City, whichever is sooner (Warranty Period).
- 4) Included in this limited warranty are electronic modules, replacements parts, certain software fixes and upgrades, and accessories. This warranty is expressly limited to repair or replacement of the defective part or parts at PAM's sole discretion. PAM's sole obligation and City's sole and exclusive remedy related to defective goods and this limited warranty is repair or replacement of defective goods, at PAM's sole discretion, during the Warranty Period. This limited warranty is restricted to the performance defined within the relevant PAM Product Specifications.
- 5) This limited warranty applies to goods determined to be defective in material or workmanship under normal use and service. The following Exclusions apply to this limited warranty;
 - a) Parts determined to be abused, misused, incorrectly handled, improperly maintained, or vandalized
 - b) Consumables and batteries, unless proven to be defective upon supply
 - c) Unauthorized, imitation or other non-PAM parts, accessories, or alterations
 - d) Goods affected by environmental conditions or acts of God
 - e) Software upgrades or changes due to changes in City systems, software, hardware or other operating environment changes
 - f) Change requests that modify the configuration or features of the system
- 6) Hardware is moisture resistant however, not designed to be completely moisture proof or waterproof. All parts being returned under this limited warranty for repair will be managed through the National Repair Center (DNRC) located in Carlsbad, California. To initiate a repair under this limited warranty, City shall:
 - a) Call the DNRC at (760) 945-9893 between 8:30 a.m. to 5:00 p.m. EST Monday through Friday.
 - b) A customer support representative will review the issue and provide further instruction that may include a Return Merchandise Authorization (RMA) number.
 - c) City is responsible for proper packaging and shipment costs to the DNRC. The RMA number must be clearly printed on the outside of any packaging.
 - d) Parts shipped without contacting the DNRC in advance will be refused.
 - e) Shipments without an RMA number clearly printed on the outside of packaging may be delayed in processing or refused.
 - f) PAM will pay shipping charges to return goods to City after repair or replacement.

THIS LIMITED WARRANTY IS THE EXCLUSIVE AND SOLE WARRANTY PROVIDED BY PAM AND EXCLUDES ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PAM IS NOT RESPONSIBLE FOR ANY GENERAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSS OF USE OR LOSS OF PROFITS.

GOODS AND SERVICES AGREEMENT

ATTACHMENT 1 – INSURANCE CERTIFICATES

RESOLUTION NO.: 196 - 2013

OF

SEPTEMBER 23, 2013

A RESOLUTION AUTHORIZING AN EXTENSION OF TIME TO COMPLETE
THE CONTRACT WORK IN CONNECTION WITH THE
WATER POLLUTION CONTROL PLANT IMPROVEMENTS PROJECT
WITH BLUE HERON CONSTRUCTION CO., LLC FOR GENERAL CONSTRUCTION
SERVICES, HUDSON VALLEY ELECTRICAL C&M, INC. FOR ELECTRICAL SERVICES
AND DJ HEATING & AIR CONDITIONING, INC FOR HVAC CONSTRUCTION
SERVICES AND THE EXECUTION OF A NO-COST CHANGE ORDER

WHEREAS, by Resolution No. 167-2012 of September 24, 2012, the City Council of the City of Newburgh accepted bids and awarded contracts to Blue Heron Construction Co., LLC for general construction services, Hudson Valley Electrical C&M Inc. for electrical services and DJ Heating & Air Conditioning, Inc. for HVAC construction services (collectively referred to as "the construction contracts") in connection with the Water Pollution Control Plant Improvements Project ("the Project"); and

WHEREAS, substantial completion of the construction phase of the Project was scheduled for September 26, 2013 and final completion of the construction phase of the Project was scheduled for October 21, 2013; and

WHEREAS, there is a manufacturing delay in the delivery of the sludge mixer which will affect the schedule of the installation of the equipment; and

WHEREAS, Malcolm Pirnie, Inc./ARCADIS, the City's project manager, is recommending that the City grant an eight (8) week time extension to the construction contracts for the delivery and installation of the sludge mixer which will extend the substantial completion of the construction phase to November 21, 2013 and final completion of the construction phase of the Project to December 16, 2013; and

WHEREAS, the extension of time for completion of the Project will be a no cost to the City; require a change order to the construction contracts; and will not affect the City's compliance with the NYS Department of Environmental Conservation Consent;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he hereby is authorized to execute a no-cost change order to the construction contracts for the Water Pollution Control Plant Improvements Project and that the completion time for the construction contracts is extended eight weeks for substantial completion of the construction phase by November 21, 2013 and final completion of the construction phase of the Project by December 16, 2013.

RESOLUTION NO.: 197 - 2013

OF

SEPTEMBER 23, 2013

A RESOLUTION AUTHORIZING THE EXECUTION OF A CHANGE ORDER
IN THE AMOUNT OF \$23,200.00 TO THE CONTRACT WITH
SUN-UP ENTERPRISES, INC. FOR ADDITIONAL WORK IN CONNECTION WITH
THE CHAMBERS STREET STREETSCAPING IMPROVEMENTS PROJECT

WHEREAS, by Resolution No. 116-2013 of June 17, 2013, the City Council of the City of Newburgh awarded a bid and authorized the Interim City Manager to execute a contract with Sun-Up Enterprises, Inc. for the Chambers Street Streetscaping Improvements Project; and

WHEREAS, due to unforeseen conditions encountered on site including a underground vault and some curb alignment changes requested by the Newburgh Fire Department, certain additional work is required at an additional cost of \$23,200.00 and such additional work will require the execution of a change order to the contract with Sun-Up Enterprises, Inc.; and

WHEREAS, funding for such additional work shall be derived from budget code CD1.8686.448.8065.2013; and

WHEREAS, this Council has determined that executing the change order for the additional work is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he hereby is authorized to execute a change order to the contract with Sun-Up Enterprises, Inc. for additional work in the amount of \$23,200.00 in connection with the Chambers Street Streetscaping Improvements Project.

RESOLUTION NO.: 198 - 2013

OF

SEPTEMBER 23, 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
SUPPORTING THE ESTABLISHMENT OF A LOCAL SATELLITE OFFICE OF
IMMIGRATION TO SERVE THE HUDSON VALLEY

WHEREAS, The United States of America has indicated support to make our Naturalization process less burdensome to complete; and

WHEREAS, many residents in our area are otherwise entitled to become citizens except for mandated trips to New York City, and

WHEREAS, the cost is computed to be over \$1.9 million a year in lost wages, lost productivity and actual out of pocket expense to residents and industry in the Hudson Valley; and

WHEREAS, these residents have neither the time nor the necessary funds to complete these mandated expeditions; and

WHEREAS, our local representatives, Congressman Sean Patrick Maloney, Congressman Chris Gibson, Congresswoman Nita Lowey along with New York State Senator Bill Larkin and Assemblyman Frank Skartados have indicated support for the most manageable, accommodating and economical process for our citizens possible; and

WHEREAS, presently thousands of our residents who are waiting to become citizens must endure the hardship of leaving their homes and places of employment plus the expense of traveling to New York City to complete the naturalization process;

NOW THEREFORE BE IT RESOLVED, that future citizens of the Hudson Valley in the State of New York have the ability to have their naturalization requirements completed locally at a centrally located establishment in the Hudson Valley rather than force them to travel to New York City; and

BE IT FURTHER RESOLVED, that the United States Government will provide the employee support and required equipment to run a satellite office in the Hudson Valley for the Naturalization procedure one to two days per month.

MOVED BY _____

SECOND BY _____

On this day _____ of _____ 2013