



City of Newburgh Council Work Session

6:00 pm

January 10, 2013

AGENDA

1. Review of Tentative Agenda:

- a. Approval of the minutes of the work session meeting of December 6 and the City Council meeting of December 10, 2012
- b. Departmental Reports
- c. Notices of Claim
- d. Monday night's Council meeting will start at 6 p.m. in order to discuss collective negotiations in executive session with labor counsel
- e. (Res. 1) Adopting the Rules of Order and Procedure for the Council of the City of Newburgh for the year 2013.

2. Economic and Community Development/Real Estate:

- a. Conveyance of 13-15 Chambers Street to the Newburgh Community Land Bank in order to support the project identified in the Consolidated Funding Application grant award of \$200,000.
- b. (Res. 2) Satisfaction of Mortgage on the property located at 97-103 Grand Street
- c. Zoning Project update
- d. Hudson Valley Lighting Project update
- e. Environmental Restoration Program update

3. Finance Department:

- a. Capital Projects Plan/Bond Anticipation Note
- b. Cash Report for November

4. Grants/Contracts:

- a. (Res. 3) Acceptance of a gift of services from Orange County Drywall for improvements to the ceiling of the PD
- b. (Res. 4) Acceptance of a donation from Enforcement Technology Group and the PSOA in order to purchase equipment for the Police Department (Direct Link LifeLine Series Crisis Response Throw Phone System)
- c. (Res. 5) Acceptance of a grant in the amount of \$700.00 from the Orange County Historian for the purpose of scanning the City Clerk's handwritten minutes from 1865 through 1884.

- d. (Res. 6) Agreement with New York Communications Company, Inc. to provide for communications equipment and service for the Police Department at a cost of \$3,139.00 per month for 84 months.
- e. (Res. 7) Agreement with the Town of Newburgh to provide for the expansion of the Crossroads Sewer District and an upgrade to the Crescent Avenue Pump Station.
- f. (Res. 8) 21st Century Learning Center Grant – vendor agreements

5. Discussion Items:

- a. Syringe Exchange/mobile van AIDS Related Community Service request for letter of support – Dr. Jean Hudson, OC Health Commissioner
- b. Handicapped Parking Request
- c. Board of Ethics appointments
- d. Gun Buy Back update – Councilman Dillard

6. Executive Session:

- a. In rem litigation

Draft Only

A regular meeting of the City Council of the City of Newburgh was held on Monday, December 10, 2012 at 7:00 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

The Prayer was led by Rabbi Philip Weintraub followed by the Pledge of Allegiance.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee - 5

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the November 26, 2012 City Council Meeting be approved.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

REPORTS

Councilwoman Angelo moved and Councilwoman Lee seconded that the City Clerk's Report and the Registrar of Vital Statistics Report for the month of November be received, filed and made public.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the Civil Service Administrator's Report be received and filed only.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

EXECUTIVE SESSION

Councilwoman Angelo moved and Councilwoman Lee seconded to enter Executive Session to discuss the City of Newburgh v. Mark Sarna, Sarna Enterprises, Inc., New Windsor Development Co., LLC and Drainage District No. 6, Mt. Airy Estates (the Reserve) Town of New Windsor, New York.

All in favor the Council entered Executive Session at 7:05 p.m.

Councilwoman Angelo moved and Councilwoman Lee seconded to exit Executive Session.

All in favor the Council exited Executive Session at 7:15 p.m.

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Lee seconded that the Notices of Claim be referred to Corporation Counsel with power to act.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

Mayor Kennedy mentioned that they have an award that the City of Newburgh received from PACE Law School on Friday. This is the Founders Award and it has to do with the work that we have been doing with our Land Bank and what to do with our distressed properties. In November, 2010, the City of Newburgh City Council unanimously adopted a resolution approving the City's Distressed Property Remediation Plan to create a Land Banking Program and from that we have also then gone on to streamline processes which we are in the middle of doing right now. We have moved to make recommendations to put the land into the Land Bank and Pace University has been working with us throughout this whole process so for that we were nominated and voted to get this Founders Day Award.

Mayor Kennedy also handed out Certificates of Appreciation to City Officials recognized by Ebenezer Baptist Church for the work that they are doing in the City. They are all encouraged to be peace makers and to figure out ways to bring peace to this City.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Barbara Smith, Powell Avenue questioned resolution #235-2012 and why they just went into Executive Session on this item if it is on the agenda for the public. Why don't the residents know what was discussed within the Executive Session? The Council is voting on something that the public is thoroughly unaware of and she doesn't think that is fair.

Mayor Kennedy said that what they are voting on in public is whether to accept an offer and they were talking about the terms of a settlement agreement which is a private discussion; a legal matter.

Kippy Boyle, City of Newburgh, asked if under Communications for Mr. Dollinger is that regarding 96 Broadway?

Michelle Kelson, Corporation Counsel, responded that it is not.

Ms. Boyle continued that in reference to resolution #226-12 we have a history of people purchasing properties at Auction and not being able to fulfill their obligations to bring them up to code in eighteen months and then the City either has to take them back or they just lay fallow. In this particular case, a property was bought at Auction and now we are allowing the purchaser to transfer it to someone else and the new person is getting an eighteen month reverter clause. She thinks that this needs to be looked at and since these extensions happen on a frequent basis that the City should be getting some remuneration for allowing this to go on. If we are going to be allowing eighteen month extensions, then maybe we should put in an incentive that states if the work is not completed in eighteen months they will be charged \$2,000.00 or some other amount. It shouldn't be that person A who can't find the financing can just transfer it to his next door neighbor who hasn't paid us anything. She added that for the past several months on anything that involves property discussion she has asked that a large map be provided so that the public can see what properties they are talking about.

Mayor Kennedy responded that there is a lot going on around property and there is a reason why we are moving towards a Land Bank model because just like Ms. Boyle said over the years we have had difficulty and issues with these Auctions. We are now trying to do property disposition a different way and get our properties upgraded. It is better to get this property back on the tax rolls as soon as possible and we have an opportunity here with someone who has already demonstrated that they do that; the gentleman next door. He has taken care of his property and has demonstrated success in doing that so it doesn't make sense to sit here and have another property fall apart while we

fool around. This is the most expeditious way in which we can get a property back on the tax roll for this particular piece of property.

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

Draft Only

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Councilwoman Angelo said that Mr. Dollinger put a lot of money into the building on the corner and in one night action was taken against him. The building is in disrepair right now so maybe we can work something out with him because it is a disgrace. He had good ideas for that building and if he had completed it she believes it would have started renovations on that whole block.

City Manager, Richard Herbek, said that he believes that property is headed in the direction of tax foreclosure so once the City gains ownership we will have other options.

Mayor Kennedy said that the property on the corner of Liberty Street and Broadway is a perfect example of being one hundred percent right and dead wrong at the same time. It's an idea of being a perfectionist. We are going to follow the letter of the law and the results of what happened on that is this building sitting on the corner of Liberty Street and Broadway which is a disaster in this City. Somebody was working on a building putting together something that could have been a building that worked but we got all crazy about following the letter of the law and now we have a disaster on our hands. We have to start looking at things in a much more practical way and what we are really doing because that building is a disgrace. She is glad that they are going to move to a place where maybe they can do something with it because it is a disgrace to the City right now.

Councilwoman Lee asked exactly how many properties are they talking about on resolutions #228-12 and #229-12.

City Manager, Richard Herbek, responded that there is one property on resolution #228-12 and nineteen properties on #229-12 making it twenty total properties.

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

RESOLUTION NO.: 224 - 2012

OF

DECEMBER 10, 2012

**A RESOLUTION APPROVING THE CITY OF NEWBURGH'S
CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT
STRATEGY AND ACTION PLAN FOR FISCAL YEAR 2013**

WHEREAS, the City of Newburgh has prepared a five-year Consolidated Housing and Community Development Strategy and Plan in accordance with the planning requirements of the Cranston-Gonzalez National Affordable Housing Act; and

WHEREAS, this Consolidated Plan was prepared in accordance with all statutory requirements, including those related to citizen participation; and

WHEREAS, this plan was submitted to and approved by the U.S. Department of Housing and Urban Development; and

WHEREAS, the City has now prepared a one-year Action Plan in order to implement various elements of the strategies identified in its Consolidated Plan during the second year it is in effect; and

WHEREAS, this one-year Action Plan contains the following proposed activities and budget for the City's 2013 Community Development Block Grant Entitlement Program;

Revenues		
Anticipated FY 2013 Funding		\$ 600,000
Program Income		\$ 102,000
Total Entitlement Funding		\$ 702,000

Other Revenue Sources	Original Allocation	Total to Be Reallocated
Marina Ops - Program Income	\$ 600,000.00	\$ 130,000
HCR - Housing Funding	\$ 163,516.00	\$ 163,516
2011 Rental Housing**	\$ 165,000.00	\$ 65,000
2011 Rental Subsidy Program	\$ 30,000.00	\$ 30,000
2011 Small Business Loan Program	550,000	\$ 30,000
2010 Administration	149,401	\$ 32,000
2010 Strong Families	33,816	\$ 712
** Move to Homeowner Rehabs		
Total Reallocated Funds		\$ 451,228

Grand Total Funding for FY 2013

\$ 1,153,228

\$ 1,153,228

Proposed Budget/Requests		
1. Administration		\$ 149,000
2. In Rem Stabilization Program (2 DPW personnel)		\$ 70,000
3. Scattered Sidewalk/ Street Improvement Project/ Street Trees		\$ 100,000
4. Park Improvement (skate Park)		\$ 75,000
5. Strategic Code Enforcement personnel & materials)		\$ 75,000
6. Housing Rehabilitation .5 position and rehab funds) + 65,000 from rental rehab program		\$ 228,516
7. Community Services/ Senior & Veterans		\$ 20,000
8. Workforce Development		\$ 50,000
9. Community Policing/ Neighborhood Development		\$ 30,712
10. Downing Park Greenhouse & Aerator		\$ 100,000
11. Business Development/ Façade Improvement		\$ 177,000
12. Youth Services		\$ 73,000
13. Homeownership Education		\$ 5,000
Total Funding Requests		\$ 1,153,228

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York does hereby approve the attached one-year Action Plan, subject to further revisions as may be necessary to meet federal requirements; and

BE IT FURTHER RESOLVED, that the City Manager be and is hereby designated the official representative of the City of Newburgh and she is hereby authorized to submit the one-year Action Plan and execute the Standard Form 424 (Application for Federal Funds) and certifications attached thereto; and she is further directed and authorized to act in connection with the submission of a one-year Action Plan and to provide such additional information as may be required; and

BE IT FURTHER RESOLVED, that the Secretary of Housing and Urban Development be and hereby is assured full compliance by the City of Newburgh with the certifications attached hereto and made a part hereof.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Draft Only

RESOLUTION NO.: 225 - 2012

OF

DECEMBER 10, 2012

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO ERTHA AUGUSTIN
TO THE PREMISES KNOWN AS 16 HUDSON VIEW TERRACE
(SECTION 7, BLOCK 8, LOT 10)**

WHEREAS, on June 10, 2011, the City of Newburgh conveyed property located at 16 Hudson View Terrace, being more accurately described on the official Tax Map of the City of Newburgh as Section 7, Block 8, Lot 10, to Ertha Augustin; and

WHEREAS, Ms. Augustin has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; 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.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 16 Hudson View Terrace, Section 7, Block 8, Lot 10, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated June 10, 2011, from the CITY OF NEWBURGH to ERTHA AUGUSTIN, recorded in the Orange County Clerk's Office on June 17, 2011, in Liber 13189 of Deeds at Page 0527 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2012

THE CITY OF NEWBURGH

By: _____

RICHARD F. HERBEK,
City Manager

STATE OF NEW YORK)

)ss.:

COUNTY OF ORANGE)

On the ____ day of August in the year 2012, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 226 - 2012

OF

DECEMBER 10, 2012

**A RESOLUTION PERMITTING THE TRANSFER OF REAL PROPERTY
KNOWN AS 6-12 WILLIAM STREET (SECTION 35, BLOCK 2, LOT 25)
FROM JEFFREY NORMIL TO PRINCE WILLIAM PROPERTIES, LLC AND
AUTHORIZING AN EXTENSION OF TIME TO REHABILITATE THE
PREMISES**

WHEREAS, the City of Newburgh did convey the premises located at 6-12 William Street, more accurately described as Section 35, Lot 2, Block 25 on the Official Tax Map of the City of Newburgh, by deed dated June 17, 2011; and

WHEREAS, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about December 17, 2012; and

WHEREAS, Jeffrey Normil, the owner of the property, has been unable to obtain the financing necessary to complete the rehabilitation; and

WHEREAS, Mr. Normil is proposing to convey the property to Prince William Properties, LLC, who is the owner of the adjacent parcel and who has the means to complete the rehabilitation of the property; and

WHEREAS, Prince William Properties, LLC has requested that an extension of time to complete the required rehabilitation; and

WHEREAS, this City Council has determined that it would be in the best interests of the City of Newburgh to grant said extension, under certain conditions

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that the City Manager be and he hereby is authorized to grant Prince William Properties, LLC an extension to rehabilitate the premises known as 6-12 William Street, Section 35, Block 2, Lot 25, upon the following conditions:

1. Prince William Properties, LLC shall become record owners of the subject property within 90 days of approval of this Resolution, time being of the essence;
2. Prince William Properties, LLC shall obtain a building permit and commence rehabilitation of the subject premises by June 17, 2013, time being of the essence;
3. Prince William Properties, LLC shall obtain a certificate of completion evidencing rehabilitation of the subject premises in conformance with this Resolution and conditions of the deed dated June 17, 2011, by June 17, 2014, time being of the essence.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Draft Only

RESOLUTION NO.: 227 - 2012

OF

DECEMBER 10, 2012

A RESOLUTION RESCINDING RESOLUTION NUMBER 171-2012 OF OCTOBER 9, 2012 WHICH AUTHORIZED THE AWARD OF A BID AND THE EXECUTION OF A CONTRACT WITH OTIS ELEVATOR AND AUTHORIZING THE AWARD OF A BID AND THE EXECUTION OF A CONTRACT WITH HUNTER ELEVATOR CO., INC. TO PROVIDE MAINTENANCE AND REPAIRS ON SIX (6) ELEVATORS LOCATED AT VARIOUS CITY FACILITIES PROVIDING FOR A THREE (3) YEAR TERM AT A BASE BID COST OF \$1,595.00 PER QUARTER

WHEREAS, this Council, by Resolution No.: 171-2012 of October 9, 2012, authorized the award of a bid and the execution of a contract with Otis Elevator to provide maintenance and repairs on six (6) elevators located at various City facilities; and

WHEREAS, it has been determined that the bid submitted by Otis Elevator failed to comply with the bid specifications by submitting a base bid cost of \$1,080.00 per month rather than per quarter and that such non-compliance constitutes a material deviation requiring the rejection of the bid; and

WHEREAS, Hunter Elevator Co., Inc. has been identified as the lowest responsible bidder complying with the bid specifications by submitting a base bid cost of \$1,595.00 per quarter; and

WHEREAS, this Council has determined that rescinding Resolution No.: 171-2012 of October 9, 2012, and awarding the bid and entering into a contract with Hunter Elevator Co., Inc. 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 Resolution No.: 171-2012 of October 9, 2012 be and is hereby rescinded; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the Elevator Maintenance and Repair Services Contract be and it hereby is awarded to Hunter Elevator Co., Inc., providing for a three (3) year term at a base bid cost of \$1,595.00 per quarter, and that the City

Manager be and he is hereby authorized to enter into the annexed contract for such work in this amount.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Draft Only

HUNTER ELEVATOR CO., INC.

PROPOSAL FOR ELEVATOR SERVICE

We propose to furnish service on the following elevator equipment: As per page six in the City of Newburgh contract. (6 Elevators in various locations)

EXTENT OF COVERAGE

Under the terms and conditions of this agreement subsequently set fourth we will service the elevator equipment described in this proposal, using skilled elevator personnel whom we directly employ and supervise. We will service your elevator every month. We will take emergency calls at no charge to you during the hours of 8:00 am ~ 4:30 pm Monday thru Friday. Should a call be made for service and not be normal wear and tear between 8:00 a.m. ~ 4:30 p.m. five days a week, this will be a charge of \$115.00 dollars an hour plus parts.

Emergency call-back service will be provided during the regular working hours for vandalism or not covered by contract, 8:00 a.m. to 4:30 p.m., of regular working days, Monday through Friday, should shutdown occur between the normal service periods at an agreed upon labor rate of \$115.00 per hour per man. A team hourly charge will be \$ 200.00 per hour. If emergency service is required at nights or on Saturdays, Sundays or holidays. Overtime service requests are performed before or after normal business working days and hours.

We will during each monthly service regularly examine, adjust, lubricate as required, and, when we consider it necessary, repair or replace components including the following:

PUMP UNIT	Impellers - shafts - bearings - seals - operating valves - leveling valves - manifolds - mufflers - manual lowering valves - strainers - reservoir - solenoids - transmission sheaves - drive belts - hydraulic fluid.
MOTOR	Stator windings - rotor - slip rings - motor bearings.
CONTROLLER	Magnet coils - copper contacts - carbon contacts - shunts - springs - insulators - pins - relay assemblies - fuses - resistors - transformers - rectifiers - overload heaters - reverse phase protection - solid state devices - selectors.
WIRING	Traveling control cables - hoist way control wiring.
HOIST WAY	Limit switches - leveling switches - cables and tapes - plunger packing - exposed piping - shutoff valves - interlocks - door hanger rollers - up thrusts rollers - interlocks - door closer - bottom door guides.
CAR	Guide shoes - guide shoe liners - guide shoe rollers - leveling units - door operator motor - belts - gears - cables - sheaves - door relating devices - gate switch - door hanger rollers - up thrust rollers - clutch - bottom door guides - safety edge - photoelectric devices.
SIGNALS	Push buttons - contacts - indicator lights - hall lanterns.

HUNTER ELEVATOR CO., INC.

PROPOSAL FOR ELEVATOR SERVICE**RESPONSIBILITY FOR REPAIRS OR RENEWALS**

We shall perform all of the work which may be required to remove violations or to comply with recommendations of public administrative agencies or departments and casualty companies resulting from normal wear. It is understood, however, that this work will be done by us only in the event that it pertains to those items which we, under the terms of this contract, are required to repair. It is also understood that the conditions requiring this work shall not have been in existence on the date that our service is to commence under this contract or after 30 days cancellation notice has been given by either party.

We shall under the terms of this contract, be required to make safety tests we not be required to make any additions or changes to existing equipment or its method of operation. We shall not be obliged to render any cleaning services except to the base machinery of the elevator located in the motor room and the door operating mechanism on the top of the car. The owner will maintain the temperature of the motor room to be between 68 and 72 degrees f.

We shall have no responsibility for the following items of elevator equipment: car enclosure, hoist way enclosure, hoist way doors, hardware, door frames and sills, hoist way gates, buried piping, fluorescent light tubes and fixtures, main line switches and feeders. It is understood that the exclusions contained in this paragraph do not in any way enlarge the category of the items for which we are responsible.

INSURANCE COVERAGE

Hunter Elevator Company, Inc. is insured at all locations where it undertakes business operations for the types of insurance and limits of liability as follows:

- A. Workmen's Compensation and Employer's Liability: Equal to or in excess of limits of Workmen's Compensation laws in New York, New Jersey and Connecticut.
- B. Comprehensive Liability: Up to one million dollars ((\$1,000,000) combined single limit per occurrence.

Coverage includes:

1. Bodily Injury Liability: All sums which the company shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting from them, sustained by any person other than its employees and caused by the occurrence.
2. Property Damage Liability: All sums which the company shall become legally obligated to pay as damages because of injury to or destruction of property, caused by the occurrence.

HUNTER ELEVATOR CO., INC.

PROPOSAL FOR ELEVATOR SERVICE**PRORATIONS**

Our survey reveals that the items listed in the schedule below are worn to the extent that they will require replacement in the near future. We are accepting these items in their present condition so that we may provide you with maximum service, with the understanding that, in addition to the base price of this contract, you agree to pay an additional amount at the time the items scheduled below are first replaced. The additional charge for this replacement will be determined by prorating the total cost of replacing the individual items.

Proration will be made on the basis of life expectancy from the date of this contract as indicated on the schedule. We agree to pay for that portion used since the date of this contract and you agree to pay for that portion used of the unexpired term of expectancy.

SCHEDULE OF PARTS TO BE PRORATED

Name of Part	Basis of Proration
None	

HOURS OF WORK

We shall perform all work during regular working hours of the regular working day of the elevator trade. If you request overtime examinations or repairs, you are to pay us, at our regular billing rates, for the over time portion only.

LIABILITY

It is expressly understood, in consideration of our performance of the service described at the price stated in this agreement, that nothing in it shall be construed to mean that Hunter Elevator Company, Inc. assumes any liability because of accidents to persons or property, except those directly due to negligence by Hunter Elevator Company, Inc. or its employees; and that your own responsibility for accidents to persons or property while riding or being in or about the elevators referred to is in no way affected by this agreement. Hunter Elevator Company, Inc. shall not be responsible or liable for any loss, damage, detention or delay caused by strikes, lockouts, fire, explosion, theft, lightning, wind storm, earthquake, floods, storms, riots, civil commotion, terrorism, malicious mischief, act of God, or by any cause beyond its reasonable control, whether or not specified in this agreement, and in any event the company shall not be liable for consequential damages. Hunter Elevator Company, Inc. will be responsible only for the work, service and liability specifically mentioned in this proposal.

HUNTER ELEVATOR CO., INC.

PROPOSAL FOR ELEVATOR SERVICE

PRICE

The price for the service specified in this contract will be: **One Thousand Five Hundred & Five. 00** dollars. (\$ 1595.00) net per Quarter, payable monthly on receipt of invoice.

TERMS

The service specified in this contract will be effective on **November 14, 2012** and will continue for a period of **Three year**, and at the end of the term, we will renegotiate cost of living clause each year. Either party may terminate this agreement at the end of the term or at the end of any subsequent year by giving the other party thirty (30) days prior written notice.

At the termination of each one-year period in which this agreement is in force, this price is to be subject to adjustment in accordance with the Price Index of "Producer Prices for Metals and Metal Products" published by the U.S. Department of Labor, Bureau of Labor Statistics for the month within each yearly adjustment date falls due and by the percentage of increase or decrease in the straight time hourly rate earned by elevator mechanics in the New York metropolitan area.

Hunter Elevator Company., Inc. reserves the right to discontinue this contract at any time by notification in writing should invoices rendered for the maintenance or repair of the equipment described under the terms of this agreement not be paid within thirty (30) days from date of the invoices.

Both parties understand and agree that this proposal and your acceptance thereof shall constitute, exclusively and entirely, the agreement for the service described in the proposal; that all other prior representations or agreements, written or verbal, are incorporated herein and that no other changes in or additional to it shall be recognized unless made in writing and signed by both parties, and that this agreement is not binding upon Hunter Elevator Co., Inc. until approved by one of its executive officers.

Respectfully submitted,

ACCEPTANCE IN DUPLICATE

HUNTER ELEVATOR CO., INC.

By: Jerry Daston
President

By Jerry Daston
Authorized Signature

Date _____
Firms name _____
BY _____
Print Name _____
Title _____
Tel _____
Fax _____
E-Mail _____

ORDINANCE NO.: 10 - 2012

OF

DECEMBER 10, 2012

AN ORDINANCE AMENDING ARTICLE VI OF
CHAPTER 65 OF THE CODE OF ORDINANCES
OF THE CITY OF NEWBURGH
ENTITLED "WORKPLACE VIOLENCE PREVENTION"

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 65, "Officers and Employees", Article VI "Workplace Violence Prevention" be and is hereby is amended as follows:

SECTION 1. - TITLE

This Ordinance shall be referred to as "An Ordinance amending Article VI of Chapter 65 of the Code of Ordinances of the City of Newburgh entitled 'Workplace Violence Prevention'"

SECTION 2. - AMENDMENT

Chapter 65, OFFICERS AND EMPLOYEES

ARTICLE VI, WORKPLACE VIOLENCE PREVENTION

§ 65-10 Policy Statement

The City of Newburgh is committed to the safety and security of our employees. Workplace violence presents a serious occupational safety hazard to our agency, staff and clients. Threats, threatening behavior or acts of violence against employees, visitors, guests or other individuals by anyone on the City of Newburgh property or work sites will be thoroughly investigated and appropriate action will be taken, including summoning criminal justice authorities when warranted. All employees are responsible for helping to create an environment of mutual respect for each other as well as clients, following all policies, procedures and program requirements, and for assisting in maintaining a safe and secure work environment.

This policy is designed to meet the requirements of NYS Labor Law Section 27-b and highlights some of the elements that are found within our

Workplace Violence Prevention Program. The process involved in complying with this law included a workplace evaluation in conjunction with employee unions that was designed to identify the workplace violence hazards our employees could be exposed to. Other tools that were utilized during this process include establishing a committee made up of management and Authorized Employee Representatives who will have an ongoing role of participation in the evaluation process, recommending methods to reduce or eliminate the hazards identified during the process and investigating workplace violence incidents or allegations. All employees will participate in the annual Workplace Violence Prevention Training Program.

The goal of this policy is to promote the safety and well-being of all people in our workplace. All incidents of violence or threatening behavior will be responded to immediately upon notification. The City of Newburgh has identified response personnel that include a member of management and an employee representative. If appropriate, the City of Newburgh will provide counseling services or referrals for employees.

All City of Newburgh personnel are responsible for notifying the contact person designated below of any violent incidents, threatening behavior, including threats they have witnessed, received or have been told that another person has witnessed or received.

Designated Contact Person:

Title: City Manager
Department: Executive Office
Phone: 845-569-7301
Location: City Hall, 83 Broadway, Newburgh, NY

§ 65-11 Definitions. As used in this section, the following terms shall have the meanings indicated:

- A. "CITY" shall mean the City of Newburgh of the State of New York, unless otherwise specified.
- B. "EMPLOYEE" means an officer, official, employee, agent, contractor or volunteer working for the City of Newburgh.
- C. "WORKPLACE" means any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by the City of Newburgh.
- D. "SUPERVISOR" means any person within the City's organization who has the authority to direct and control the work performance of an employee,

or who has the authority to take corrective action regarding the violation of a law, rule, regulation or policy as to which an employee submits written notice; and includes department heads, acting department heads, deputy department heads and their designees.

- E. "RETALIATORY ACTION" means the discharge, suspension, demotion, penalization, or discrimination against any employee, or other adverse employment action taken against an employee under the terms and conditions of employment.
- F. "VIOLENCE" and/or "WORKPLACE VIOLENCE" means any physical assault, acts of aggressive behavior including but not limited to verbal threats, displays of force, stalking or other threatening behavior that reasonably rises to the level of perception of potential violence occurring in the Workplace, including with or without the use of any means, weapon or instrumentality.
 - 1. "THREATENING" or "NON-EMERGENCY" means a person, through intimidating words or gestures has induced fear and apprehension of physical or other harm in another person but there is no immediate danger of such harm being inflicted.
 - 2. "EMERGENCY" means a situation where an injury has occurred or there is an immediate threat of physical harm.

§ 65-12 Prohibited Activities.

The following activities are prohibited by City employees and engaging in such activities is considered misconduct subject to disciplinary action up to and including termination, consistent with City policies, rules, regulations and collective bargaining agreements.

- A. Verbal or physical conduct that demonstrates explicit or implicit ridicule, mockery, derision or belittlement of any person.
- B. Any offensive or derogatory remarks based on race, color, sex, age religion, sexual orientation or preference or national origin either directly or indirectly, to another person. Such harassment is a prohibited form of discrimination under state and federal employment law.
- C. Any verbal or physical conduct that has the purpose or effect of substantially interfering with the employee's ability to do his or her job.

D. Any verbal or physical conduct that has the purpose or effect of creating an intimidating, hostile or offensive working environment.

E. Intentional physical contact for the purpose of causing harm, such as, but not limited to, slamming, stabbing, punching, striking, shoving or other physical attack.

F. Menacing or threatening behavior, such as, but not limited to, throwing objects, pounding on a desk or door, damaging property, stalking or otherwise acting aggressively, or making oral or written statements specifically intended to frighten, coerce or threaten, where a reasonable person would interrupt such behavior as constituting evidence of intent to cause harm to individuals or property.

G. Possession of firearms, imitation firearms, knives or other dangerous weapons, including but not limited to chemical/biological weapons, instruments or materials, except as permitted by law, rule or regulation.

§ 65-13. Risk Factors, Evaluation and Determination.

A. The following are risk factors, locations and applicability in the City of Newburgh:

1. Working in public settings: applies to all City locations and personnel.

2. Working late night or early morning hours: applies to personnel in City Hall, Department of Water, Department of Public Works, Recreation Department, Fire Department and Police Department.

3. Exchanging money with the public or transporting cash, checks or other portable items of value: applies to personnel in City Hall, Code Compliance Bureau, Recreation Department, Department of Public Works, Water Department and Police Department.

4. Working alone or in small groups: applies to personnel in City Hall, Recreation Department, Department of Public Works, Department of Water, Code Compliance Bureau, Fire Department and Police Department.

5. Uncontrolled access to the workplace: applies to personnel in City Hall, Recreation Department, Department of Public Works, Department of Water, Code Compliance Bureau and Fire Department.

B. Methods of risk evaluation, hazard prevention and control.

1. The department head of every City department along with an Authorized Employee Representative from each union at each work location shall evaluate its workplace or workplaces to determine the presence of factors or situations in such workplace or workplaces that might place employees at risk of workplace violence.

2. The City of Newburgh shall make high-risk areas more visible, install additional lighting where needed, post signs where necessary, secure cash on hand with proper devices, provide annual training to employees and maintain an appropriate response system.

3. The City of Newburgh shall periodically review employee security surveys, including surveys completed by authorized employee representatives, self-assessments, City Police Department and risk management consultant recommendations and other lessons learned from other entities to effectuate changes which will make the City's work areas and personnel as safe as possible.

§ 65-14. Reporting of Incidents; Responsibilities.

A. Reporting Workplace Violence.

1. All incidents of workplace violence, threats of workplace violence or observations of workplace violence shall be reported promptly in written form.

a. Employees assigned to City Hall, the Department of Water the Department of Public Works, Recreation Department and Fire Department, including the Code Compliance Bureau, shall report threatening or non-emergency incidents to their department heads. The employees may report threatening or non-emergency incidents involving their department head directly to the City Manager.

b. Police Department employees shall report threatening or non-emergency incidents to the shift supervisor unless the shift supervisor is involved in the incident in which case the report shall be made directly to the Police Chief.

c. Elected officials and department heads shall report threatening or non-emergency incidents directly to the City Manager.

d. All employees, including department heads and elected officials, shall report emergency incidents by calling 911, the City Police Department or other law enforcement agency immediately.

2. Employees who make false and/or malicious complaints of workplace violence will be subject to disciplinary action up to and including termination, consistent with City policies, rules, regulations, collective bargaining agreements and/or referral to law enforcement agencies as appropriate.

3. Complaint procedures.

a. Any employee or representative(s) of employees who believe that a violation of a workplace violence protection program exists or that an imminent danger of workplace violence exists shall bring such matter to the attention of a department head in the form of a written notice and shall afford the department head a prompt and reasonable opportunity to address such risk or violation or to correct such activity, policy or practice.

b. If following a referral of such matter to the department head and after a reasonable opportunity to address or correct such risk, activity, policy or practice the condition, circumstance or matter has not been resolved and the employee or representative(s) of employees still believe that a violation of this workplace violence prevention program remains, or that an imminent danger exists, such employee or representative(s) of employees may request an investigation or inspection by giving notice to the City Manager of such violation or danger. Such notice and request shall be in writing, set forth with reasonable particularity the grounds for the notice and be signed by such employee or representative(s) of employees. Such investigation and/or inspection shall be made promptly and proportionately in time and manner to the degree and/or extent of the risk, condition, circumstance, activity, policy or practice reported.

c. The City Manager or the City Manager's designee shall conduct an investigation and/or conduct an inspection for the purpose of evaluating the facts and circumstances and assessing the risks reported in such notice. The City Manager or City Manager's designee shall prepare a written report of the findings of the investigation and/or inspection.

d. A file of workplace violence complaints and investigative reports shall be maintained in a secure location in the City Manager's office.

e. No department head or supervisor shall take retaliatory action against any employee because the employee submits a complaint of workplace violence or assists, testifies or participates in the investigation of such complaint.

f. This policy does not preclude any employee from filing a complaint with an outside agency or a grievance under the applicable collective bargaining agreement.

B. Responsibilities of Department Heads.

1. Each department head is responsible for the implementation of this policy within his/her department.
2. Department heads must report any complaints of workplace violence of which he/she becomes aware or reasonably believes to exist to the City Manager.
3. Department heads must call 911 or the City Police Department immediately in the event of imminent or actual violence involving weapons and potential physical injuries.

C. Responsibilities of Employees.

1. Employees must report workplace violence as defined in this Article to their department head. Employees who are advised that a workplace violence incident has occurred or has been observed must report this to their department head. Recurring or persistent workplace violence that an employee reasonably believes is not being addressed satisfactorily or violence that is or has been engaged in by the employee's department head should be brought to the attention of the City Manager.
2. Employees who have obtained orders of protection are expected to notify their department head and provide a list of locations that are designated as protected areas. Employees who are victims of domestic violence and believe the violence may extend to the workplace are encouraged to notify their department heads. Confidentiality will be maintained to the fullest extent possible.
3. Upon hiring, employees will have copies of this policy made available to them, and annually thereafter, employees will participate in training.
4. Each employee is responsible for assisting in the prevention of workplace violence by refraining from participating in, or encouraging of, actions that could be perceived as workplace violence; reporting acts of workplace violence to their department heads; and encouraging any employee who confides that he or she is being subjected to workplace violence to report these acts to a supervisor.
5. Failure to take action to stop known workplace violence shall be grounds for discipline in accordance with applicable laws, rules, regulations and collective bargaining agreements.

§ 65-15. Employee Information and Training.

A. The City shall make the written workplace violence prevention policy available to its employees, their designated representatives and to the head of every department.

B. The City shall provide its employees with training on the risks of workplace violence in their workplace or workplaces annually .

§ 65-16. Authorized employee representative.

A. This ordinance was developed in consultation with Authorized Employee Representatives from the affected bargaining units.

B. The City will perform an annual review of the workplace violence prevention program with the Authorized Employee Representatives.

§ 65-17. Exemptions.

Nothing in this Ordinance shall be deemed to alter, amend or negate any general order, procedure, operation, rule, practice or other directive applicable to the carrying out of the duties of any police officer, firefighter or other law enforcement officer or emergency response officer.

SECTION 3. - EFFECTIVE DATE

This Ordinance shall take effect immediately.

Councilwoman Angelo moved and Councilwoman Lee seconded that the ordinance be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

ORDINANCE NO.: 11 - 2012

OF

DECEMBER 10, 2012

AN ORDINANCE AMENDING CHAPTER 51, ENTITLED "HUMAN RIGHTS COMMISSION" OF THE CODE OF ORDINANCES

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 51, Human Rights Commission, be and is hereby amended to read as follows:

Chapter 51. HUMAN RIGHTS COMMISSION

§ 51-1. Establishment; membership; terms of office, officers; compensation.

Pursuant to the authority contained in Article 12-D of the General Municipal Law, a Commission on Human Rights is here by established as follows:

- A. The Commission shall consist of seven (7) members appointed by the City Council; three (3) of those shall be appointed to serve a term of one year; two (2) for a term of two years and two (2) for a term of three years; and at the expiration of such terms, the terms of their successors shall be three (3) years.
- B. The members of the Commission shall elect, from their members, a chairman who shall serve as such for a period of no longer than three years, and the Commission shall have the power to employ staff in accordance with Section 239-q of the General Municipal Law, subject to such appropriation for such purposes as may be made by the Council.
- C. The members of the Commission shall serve without compensation, and no expenditures or disbursements shall be incurred except on prior approval of the City Council.
- D. In making appointments to the Commission, the City Council shall take into consideration the various religious, racial, nationality and political groups in the City.

§ 51-2. General duties.

Pursuant to § 239-q of the General Municipal Law, the City of Newburgh Human Rights Commission is hereby granted the following powers:

- A. To foster mutual respect and understanding among all racial, religious and nationality groups in the community.
- B. To make such studies in any field of human relationship in the community as in its judgment will aid in effectuating its general purposes.
- C. To inquire into incidents of tension and conflict among or between various racial, religious and nationality groups, and to take such action as may be designed to alleviate such tensions and conflict.
- D. To conduct and recommend such educational programs as in its judgment, will increase good will among inhabitants of the city and open any opportunities into all phases of City life for all inhabitants.
- E. To report complaints to the Division of Human Rights alleging unlawful discriminatory practices under Article 15 of the Executive Law.
- F. To receive, accept, use and expend public grants and private gifts, donations or bequests and other payments, goods and services notwithstanding any other provision of law.

§ 51-3. General obligations .

Pursuant to § 239-r of the General Municipal Law, the City of Newburgh Human Rights Commission shall discharge the following obligations comprised as follows:

- A. To receive complaints of alleged discrimination because of age, sex disability, marital status, race, creed, color or national origin; seek the active assistance of the State Division of Human Rights in the solution of complaints which fall within the jurisdiction of the division and to prepare its own plans in the case of other complaints with a view to reducing and eliminating such alleged discrimination through the process of conference, conciliation and persuasion.
- B. To hold conferences and other public meetings in the interest of the constructive resolution of racial, religious and nationality group tensions and the prejudice and discrimination occasioned thereby.
- C. To issue such publications and reports of investigation as in its judgment will tend to effectuate the purposes of Article 12-D of the General Municipal Law.
- D. To enlist the cooperation and participation of the various racial, religious and nationality groups, community organizations, industry and labor organizations, media or mass communication, fraternal or benevolent associations and other groups in an educational campaign devoted to

- fostering among the diverse groups of the community mutual esteem, justice and equity.
- E. To encourage and stimulate agencies under the jurisdiction of the City Council to take such action as will fulfill the purposes of Article 12-D of the General Municipal Law.
 - F. To submit an annual report to the City Council.

§ 51-4. Effect of statutory change.

In the event that the provisions of Article 12-D of the General Municipal Law are amended, such amendments shall be effective with respect to the Commission on Human Rights created hereby.

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY AS PROVIDED BY THE MUNICIPAL HOME RULE LAW.

Councilwoman Angelo moved and Councilwoman Lee seconded that the ordinance be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 228 - 2012

OF

DECEMBER 10, 2012

A RESOLUTION AUTHORIZING THE TRANSFER OF REAL PROPERTY
TO THE NEWBURGH COMMUNITY LANDBANK

WHEREAS, pursuant to Resolution No. 255-2010 of November 8, 2010, as amended by Resolution No. 47-2011 of February 28, 2011, the City of Newburgh created a land bank with a Board of Directors consisting of eleven (11) members under the New York State Private Housing Finance Law, and known as the Newburgh Housing Development Fund Corporation/Newburgh Community Land Bank; and

WHEREAS, in July 2011, New York State enacted Article 16 of the New York State Not-for-Profit Corporation Law (the "Land Bank Act") providing for the creation of land banks to be used by communities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use; and

WHEREAS, by Resolution No. 34-2012 of March 12, 2012, this City Council authorized the City Manager to take all necessary steps to apply for land bank approval from the Empire State Development Corporation and on May 17, 2012, the Empire State Development Corporation approved the City's application to form the Newburgh Community Land Bank; and

WHEREAS, the Newburgh Community Land Bank is ready to acquire City-owned properties consistent with its mission to stimulate planning, economic development and neighborhood revitalization by acquiring, managing and disposing of vacant, abandoned and underutilized properties in a responsible manner in collaboration with community stakeholders, developers and other governmental agencies in order to improve the quality of life in Newburgh; and

WHEREAS, upon the request of the Newburgh Community Land Bank, this Council has determined that transferring title of the parcels on the attached Schedule "A" is in the best interests of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh the properties on the list attached hereto as Schedule A are to be

transferred to the Newburgh Community Land Bank subject to the Disposition Policies of the Newburgh Community Land Bank annexed hereto and made part hereof as Schedule B.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Draft Only

228-12

SCHEDULE "A"

SECTION BLOCK LOT STREET NUMBER STREET

30	4	7	55	Chambers Street
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Draft Only

SCHEDULE "B"

Draft Only

Priorities Concerning the Disposition of Properties Newburgh Community Land Bank

The acquisition, use, and disposition of such properties shall at all times be consistent with the authority granted by the City of Newburgh, the laws of the state of New York, the articles of incorporation and bylaws of the City of Newburgh Land Bank, and the public purposes set forth therein.

As approved by the Board of Directors on September 19, 2012.

1. Priorities Concerning the Disposition of Properties

The disposition of properties shall be based upon a combination of three different factors. The first factor involves the intended or planned use of the property. The second factor considers the nature and identity of the transferee of the property. The third factor addresses the impact of the property transfer on the short and long term neighborhood and community development plans. Within each factor is a ranking of priorities. The disposition of any given parcel will be based upon an assessment of the most efficient and effective way to maximize the aggregate policies and priorities. The Board and Staff of the Land Bank shall at all times retain flexibility in evaluating the appropriate balancing of the priorities for the use of property, priorities as to the nature of the transferee of properties, and priorities concerning neighborhood and community development.

Priorities for Use of Property

1. Quality housing.
2. Return of the property to productive tax paying status.
3. Commercial and mixed use development.
4. Long term "banking" of properties for future strategic uses.
5. Provision of financial resources for operating functions of the Land Bank.

Priorities as to the Nature of the Transferee

1. Individuals who will own and occupy the residential property.
2. Qualified Landlords or real estate investors.
3. Qualified real estate developers; Entities that are a partnership, limited liability corporation, or joint venture comprised of a private nonprofit corporations and a private for-profit entity.
4. Businesses that will own and occupy commercial property.
5. Qualified nonprofits corporations that will hold title to the property on a long-term basis (primarily rental properties) or hold title to the property for purposes of subsequent redevelopment and re-conveyance to private third parties for homeownership.
6. Local government entities for public purpose use.

2. Land Disposition Policies

These policies pertain to transfers of property that may be vacant, improved or ready to occupy.

1. Individuals and entities that were the prior owners of property at the time of the tax foreclosure which transferred title to the Treasurer shall be ineligible to be the transferee of such property from the Treasurer.
2. The transferee must not own any real property that: a) has any unremediated citation or violation of the state and local codes and ordinances; b) a history of chronic code citations or violations of the state and local codes and ordinances; c) is tax delinquent; d) was transferred to a local government as a result of tax foreclosure proceedings.
3. The transferee must not have any judgments against them during the past 5 years regarding a landlord/tenant issue.
4. All tax incentives and financing necessary for the development to be completed must be committed for the development prescribed in the development agreement prior to actual disposition.
5. Options to purchase real estate may be available for a specified percentage of the purchase price with a negotiated time frame to be determined by the Land Bank. This fee will be credited to the parcel price at closing. If closing does not occur, the fee is forfeited. All option agreements are subject to all policies and procedures of the Land Bank pertaining to property transfers.
6. A precise narrative description of future use of the property is required. The future use must be in-line with local development plans. The development agreement shall apply to stated use.
7. The proposed use must be consistent with current zoning requirements or a waiver for non-conforming use is a condition precedent to the transfer.
8. Transactions shall be structured in a manner that permits the Land Bank to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, through reliance on subordinate financing held by the Land Bank.
9. Any non-local residents or entities with a local agent may acquire Land Bank property only with an enforceable plan to place the property into immediate productive use (meaning the property is to be occupied immediately or with the immediate commencement of some form of development project that fits the stated mission of the Land Bank). This applies to all real property.

10. Any exception to the policies governing disposition shall be taken to the governing body of the Land Bank for approval.
11. If code or ordinance violations exist with respect to the property at the time of the transfer, the development or transfer agreements shall specify a maximum period of time for elimination or correction of such violations, with the period of time be established as appropriate to the nature of the violation of the anticipated redevelopment or reuse of the property.
12. The subject property must not have been used by the transferee or a family member of the transferee as his or her personal residence at any time preceding the submission of application (except in rental cases).
13. The Land Bank will consider 'Land Leasing' as a method of disposition in any transactions.
14. Where part or all of the consideration for the transfer is the prospective affordability of the housing units, affordability requirements may be set forth in the transfer agreement and enforceable through recorded covenants, conditions or limitations upon title.

The following additional policies shall apply to properties to be transferred to individual transferees as part of a homeownership program.

1. The owner-occupant must complete renovations and move into the structure with in a time frame negotiated by the Land Bank.
2. The property may not be used solely as rental property.
3. For properties transferred for cash consideration below full fair market value of the property, the owner-occupant must reside in the property as his or her primary residence for at least a 5-year period. If the property is sold prior to the 5-year period, the transferee must either:
 - a) sell the property for no more than the purchase price from the Land Bank plus all cost of property improvements; or
 - b) repay the land bank the difference between the purchase price and the initial fair market value.

RESOLUTION NO.: 229 - 2012

OF

DECEMBER 10, 2012

**A RESOLUTION AUTHORIZING THE TRANSFER OF REAL PROPERTY
TO THE NEWBURGH COMMUNITY LANDBANK**

WHEREAS, pursuant to Resolution No. 255-2010 of November 8, 2010, as amended by Resolution No. 47-2011 of February 28, 2011, the City of Newburgh created a land bank with a Board of Directors consisting of eleven (11) members under the New York State Private Housing Finance Law, and known as the Newburgh Housing Development Fund Corporation/Newburgh Community Land Bank; and

WHEREAS, in July 2011, New York State enacted Article 16 of the New York State Not-for-Profit Corporation Law (the "Land Bank Act") providing for the creation of land banks to be used by communities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use; and

WHEREAS, by Resolution No. 34-2012 of March 12, 2012, this City Council authorized the City Manager to take all necessary steps to apply for land bank approval from the Empire State Development Corporation and on May 17, 2012, the Empire State Development Corporation approved the City's application to form the Newburgh Community Land Bank; and

WHEREAS, the Newburgh Community Land Bank is ready to acquire City-owned properties consistent with its mission to stimulate planning, economic development and neighborhood revitalization by acquiring, managing and disposing of vacant, abandoned and underutilized properties in a responsible manner in collaboration with community stakeholders, developers and other governmental agencies in order to improve the quality of life in Newburgh; and

WHEREAS, upon the request of the Newburgh Community Land Bank, this Council has determined that transferring title of the parcels on the attached Schedule "A" is in the best interests of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh the properties on the list attached hereto as Schedule A are to be

transferred to the Newburgh Community Land Bank subject to the Disposition Policies of the Newburgh Community Land Bank annexed hereto and made part hereof as Schedule B.

Councilwoman Lee said that this is twenty properties out of one hundred and fifty so the only thing that she can say to the Land Bank is that if this gets messed up they will get nothing else past her. She is hoping that having these properties in the Land Bank will inspire them to hire local people to clean them up and to work on them. That is why she is saying "yes" although a reluctant "yes" because she has been saying "no" all along but she has a feeling that they will do the right thing and hire people locally to work on the properties.

Councilman Dillard said that it has been the plan all along to hire local people.

Councilwoman Lee said that it has never been written anywhere. Just because you say it doesn't mean that it is going to happen.

Councilman Dillard said that is has been the plan all along.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

209-12

SCHEDULE "A"

SECTION	BLOCK	LOT	STREET NUMBER	STREET
30	5	43	50	Chambers Street
23	6	7	59	Chambers Street
30	1	35	10	Dubois Street
30	1	51	54	Dubois Street
23	5	9	130	First Street
30	2	5	183	First Street
30	2	4	185	First Street
30	2	3	187	First Street
18	6	16	159	Grand Street
19	1	39	188	Grand Street
30	4	31	29	Lander Street
30	3	10	42	Lander Street
30	4	38	45	Lander Street
18	10	3	122	Lander Street
11	1	31	197	Lander Street
30	1	25	9	S. Miller Street
30	2	33	12	S. Miller Street
30	1	19	21	S. Miller Street
30	2	51	48	S. Miller Street

Draft

SCHEDULE "B"

Draft Only

Priorities Concerning the Disposition of Properties Newburgh Community Land Bank

The acquisition, use, and disposition of such properties shall at all times be consistent with the authority granted by the City of Newburgh, the laws of the state of New York, the articles of incorporation and bylaws of the City of Newburgh Land Bank, and the public purposes set forth therein.

As approved by the Board of Directors on September 19, 2012.

Draft Only

1. Priorities Concerning the Disposition of Properties

The disposition of properties shall be based upon a combination of three different factors. The first factor involves the intended or planned use of the property. The second factor considers the nature and identity of the transferee of the property. The third factor addresses the impact of the property transfer on the short and long term neighborhood and community development plans. Within each factor is a ranking of priorities. The disposition of any given parcel will be based upon an assessment of the most efficient and effective way to maximize the aggregate policies and priorities. The Board and Staff of the Land Bank shall at all times retain flexibility in evaluating the appropriate balancing of the priorities for the use of property, priorities as to the nature of the transferee of properties, and priorities concerning neighborhood and community development.

Priorities for Use of Property

1. Quality housing.
2. Return of the property to productive tax paying status.
3. Commercial and mixed use development.
4. Long term "banking" of properties for future strategic uses.
5. Provision of financial resources for operating functions of the Land Bank.

Priorities as to the Nature of the Transferee

1. Individuals who will own and occupy the residential property.
 2. Qualified Landlords or real estate investors.
 3. Qualified real estate developers; Entities that are a partnership, limited liability corporation, or joint venture comprised of a private nonprofit corporations and a private for-profit entity.
 4. Businesses that will own and occupy commercial property.
 5. Qualified nonprofits corporations that will hold title to the property on a long-term basis (primarily rental properties) or hold title to the property for purposes of subsequent redevelopment and re-conveyance to private third parties for homeownership.
 6. Local government entities for public purpose use.
-

2. Land Disposition Policies

These policies pertain to transfers of property that may be vacant, improved or ready to occupy.

1. Individuals and entities that were the prior owners of property at the time of the tax foreclosure which transferred title to the Treasurer shall be ineligible to be the transferee of such property from the Treasurer.
2. The transferee must not own any real property that: a) has any unremediated citation or violation of the state and local codes and ordinances; b) a history of chronic code citations or violations of the state and local codes and ordinances; c) is tax delinquent; d) was transferred to a local government as a result of tax foreclosure proceedings.
3. The transferee must not have any judgments against them during the past 5 years regarding a landlord/tenant issue.
4. All tax incentives and financing necessary for the development to be completed must be committed for the development prescribed in the development agreement prior to actual disposition.
5. Options to purchase real estate may be available for a specified percentage of the purchase price with a negotiated time frame to be determined by the Land Bank. This fee will be credited to the parcel price at closing. If closing does not occur, the fee is forfeited. All option agreements are subject to all policies and procedures of the Land Bank pertaining to property transfers.
6. A precise narrative description of future use of the property is required. The future use must be in-line with local development plans. The development agreement shall apply to stated use.
7. The proposed use must be consistent with current zoning requirements or a waiver for non-conforming use is a condition precedent to the transfer.
8. Transactions shall be structured in a manner that permits the Land Bank to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, through reliance on subordinate financing held by the Land Bank.
9. Any non-local residents or entities with a local agent may acquire Land Bank property only with an enforceable plan to place the property into immediate productive use (meaning the property is to be occupied immediately or with the immediate commencement of some form of development project that fits the stated mission of the Land Bank). This applies to all real property.

10. Any exception to the policies governing disposition shall be taken to the governing body of the Land Bank for approval.
11. If code or ordinance violations exist with respect to the property at the time of the transfer, the development or transfer agreements shall specify a maximum period of time for elimination or correction of such violations, with the period of time be established as appropriate to the nature of the violation of the anticipated redevelopment or reuse of the property.
12. The subject property must not have been used by the transferee or a family member of the transferee as his or her personal residence at any time preceding the submission of application (except in rental cases).
13. The Land Bank will consider 'Land Leasing' as a method of disposition in any transactions.
14. Where part or all of the consideration for the transfer is the prospective affordability of the housing units, affordability requirements may be set forth in the transfer agreement and enforceable through recorded covenants, conditions or limitations upon title.

The following additional policies shall apply to properties to be transferred to individual transferees as part of a homeownership program.

1. The owner-occupant must complete renovations and move into the structure with in a time frame negotiated by the Land Bank.
2. The property may not be used solely as rental property.
3. For properties transferred for cash consideration below full fair market value of the property, the owner-occupant must reside in the property as his or her primary residence for at least a 5-year period. If the property is sold prior to the 5-year period, the transferee must either:
 - a) sell the property for no more than the purchase price from the Land Bank plus all cost of property improvements; or
 - b) repay the land bank the difference between the purchase price and the initial fair market value.

RESOLUTION NO.: 230 - 2012

OF

DECEMBER 10, 2012

A RESOLUTION AUTHORIZING APPROVAL OF VARIOUS INSURANCE
POLICIES FOR THE PERIOD OF
JANUARY 1, 2013 TO DECEMBER 31, 2013

WHEREAS, the City of Newburgh has solicited proposals for insurance coverage for the fiscal year 2013; and

WHEREAS, Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. have recommended a package of insurance coverage for property and liability insurance coverage for Fiscal Year 2013;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby approves the insurance coverage for the term beginning January 1, 2013 through December 31, 2013; all liability insurance to be provided by U.S. Specialty Insurance Company, under Option 2, and inland marine, property and boiler and machinery to be provided by Praetorian Insurance Company, under Option 1, and with limits, self insured retention amounts and premium rates as set forth in the attached Insurance Quotation; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to execute agreements with Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. to provide for insurance coverage and third-party claims administration services, respectively, for the period of January 1, 2013 to December 31, 2013.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 231 - 2012

OF
DECEMBER 10, 2012

RESOLUTION ADOPTING THE CITY OF NEWBURGH'S ANALYSIS
OF IMPEDIMENTS (AI) TO FAIR HOUSING CHOICE PLAN
AND AUTHORIZING THE SUBMISSION TO THE
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WHEREAS, in accordance with 24 CFR Part 91, jurisdictions receiving entitlement grant funding from the U.S. Department of Housing and Urban Development are required to prepare and certify they will affirmatively further fair housing; and

WHEREAS, the U.S. Department of Housing and Urban Development defines affirmatively furthering fair housing as:

1. Conducting an analysis to identify impediments to fair housing choice within the jurisdiction;
2. Taking appropriate actions to overcome the effects of any impediments identified through the analysis
3. Maintaining records of the analysis and any subsequent actions take; and

WHEREAS, the City Council of the City of Newburgh has directed staff to conduct the analysis the City of Newburgh's Analysis of Impediments (AI) to Fair Housing Choice Plan provides the following information:

1. Introduction - background on fair housing laws;
2. Demographic information;
3. Evaluation of current fair housing profile;
4. Assessment of current fair housing system and programs;
5. Potential impediments to fair housing; and

WHEREAS, it is in the best interest of the City to adopt the City's Fair Housing Plan as attached and to authorize the submission to the U.S. Department of Housing and Urban Development.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newburgh hereby adopts the City of Newburgh's Analysis of Impediments to Fair Housing Choice Plan (AI).

BE IT FURTHER RESOLVED THAT the City Manager be and he hereby is authorized to execute and submit the City's Analysis of Impediments to Fair Housing Choice Plan (AI) to the U.S. Department of Housing and Urban Development.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Draft Only

RESOLUTION NO.: 232- 2012

OF

DECEMBER 10, 2012

A RESOLUTION APPOINTING CINDY M. HOLMES AND KELLY A. GONZALEZ TO THE COMMUNITY DEVELOPMENT BLOCK GRANT ADVISORY COMMITTEE

WHEREAS, the City of Newburgh is awarded Community Development Block Grant ("CDBG") funds by the Department of Housing and Urban Development ("HUD") to support community development projects; and

WHEREAS, the rules and regulations of HUD require the City to appoint a committee to give guidance and advice with respect to the expenditure of CDBG funds for community development projects; and

WHEREAS, pursuant to Resolution No. 278-2010 of December 13, 2010 the membership of the CDBG Advisory Committee shall consist of the following nine (9) members:

- Four (4) members, at least two (2) of whom represent the low income community, on the basis of their knowledge and interest in housing, homeless needs, disability rights, youth services, seniors and social services.
- Three (3) professional practitioners on the basis of their expertise in the areas of housing, homeless needs, disability rights, youth services, seniors and social services.
- One (1) Member of the City Council.
- One (1) City employee who is a staff member of the Department of Planning and Development.

WHEREAS, it is necessary to appoint two members to such CDBG Advisory Committee;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following individuals be and are hereby appointed as new members to the CDBG Advisory Committee, effective immediately:

Cindy M. Holmes - Community Member
Kelly A. Gonzalez - Professional Practitioner

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Mayor Kennedy - 4

Nays - Councilwoman Lee - 1

ADOPTED

Draft Only

RESOLUTION NO.: 233 - 2012

OF

DECEMBER 10, 2012

**A RESOLUTION REJECTING ALL BIDS RECEIVED
FOR PURCHASE OF CITY-OWNED REAL PROPERTY
THROUGH THE SEALED BID PROCESS**

WHEREAS, this Council has, by Resolutions No.: 120-2012 of July 16, 2012, 129-2012 of August 13, 2012 and 154-B-2012, 158-2012 and 159-2012 of September 10, 2012, respectively, authorized the sale of City-owned properties through a sealed bid process and approved the Terms and Conditions for the sealed bid process; and

WHEREAS, sealed bids were received and opened; and

WHEREAS, upon review of the bids, this Council has determined that rejecting all sealed bids 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 all sealed bids received in connection with the purchase City-owned real property through the sealed bid process be and are hereby rejected.

Councilman Dillard asked what happens with the buildings now that the bids have been rejected.

City Manager, Richard Herbek, said that they will remain in City ownership. There was an extensive marketing campaign and he for one was quite surprised that there wasn't more interest in these properties. We pulled them off the auction list because we thought that we would get a better price through a sealed bid process. We will have to come up with a plan.

Councilman Dillard said that there are people living in the building at 296 Grand Street who are interested.

City Manager, Richard Herbek, said that what they discussed the other night is that they are looking for a new proposal from the individual living at 296 Grand Street but that doesn't preclude us from entering into a future agreement with those individuals. For right now we are rejecting all of the sealed bids.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

Draft Only

RESOLUTION NO.: 234 - 2012

OF

DECEMBER 10, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA), DECLARING THE LAND DISPOSITION AND ACCESS AGREEMENT BETWEEN THE CITY OF NEWBURGH AND CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY TO BE AN UNLISTED ACTION, ADOPTING THE ENVIRONMENTAL ASSESSMENT FORM AND ISSUING A NEGATIVE DECLARATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LAND DISPOSITION AND ACCESS AGREEMENT WITH THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY IN CONNECTION WITH THE HUDSON VALLEY LIGHTING PROJECT

WHEREAS, by Resolution No. 143-2012 of August 13, 2012, the City Council of the City of Newburgh memorialized its support of the property proposal submitted by the City of Newburgh Industrial Development Agency in connection with the Hudson Valley Lighting Project and further authorized the City Manager to negotiate on behalf of the City of Newburgh a land transfer agreement; and

WHEREAS, the City Council has reviewed the Land Disposition and Access Agreement with the City of Newburgh Industrial Development Agency, attached hereto and made part hereof, and finds that entering into such agreement is in the best interest of the City of Newburgh; and

WHEREAS, the City desires to comply with the New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations") with respect to the Land Disposition and Access Agreement; and

WHEREAS, pursuant to the SEQRA Regulations, the City has considered the significance of the potential environmental impacts of entering into the Land Disposition and Access Agreement Project by (a) using the criteria specified in Section 617.7 of the SEQRA Regulations, and (b) examining the short EAF for the Project, including the facts and conclusions on Page 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 Land Disposition and Access Agreement.

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 Land Disposition and Access Agreement constitutes an "unlisted action", as the quoted term is defined in the SEQRA Regulations;
3. adopts the Environmental Assessment Form;
4. determines that the Land Disposition and Access Agreement will not have a significant adverse environmental impact, will not require the preparation of a Draft Environmental Impact Statement and issues a Negative Declaration with respect thereto;

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached Land Disposition and Access with the City of Newburgh Industrial Development Agency in substantially the same form and with other provisions as Corporation Counsel may require for the land exchange to facilitate the Hudson Valley Lighting Project.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

234-12

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 City of Newburgh	2. PROJECT NAME City to City of Newburgh IDA Land Transfer
3. PROJECT LOCATION: Municipality City of Newburgh County County of Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) 70 Pierces Road (Section 5, Block 1, Lot 16), Newburgh, New York 12550 5 Scobie Drive (Section 1, Block 1, Lot 6), Newburgh, New York 12550 See Attached Map	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Exchange 2.2 acres of IDA property for 2.7 acres of City property	
7. AMOUNT OF LAND AFFECTED: Initially 5 acres _____ acres Ultimately _____ 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 type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe:	
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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: City of Newburgh Date: 12/10/12 Signature: _____	

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



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:

Possible redevelopment of the 5 Scobie Drive

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

None

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

None

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 environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

City of Newburgh

December 10, 2012

Name of Lead-Agency

Date

Richard F. Herbek

City Manager

Print or Type Name of Responsible Officer in Lead Agency

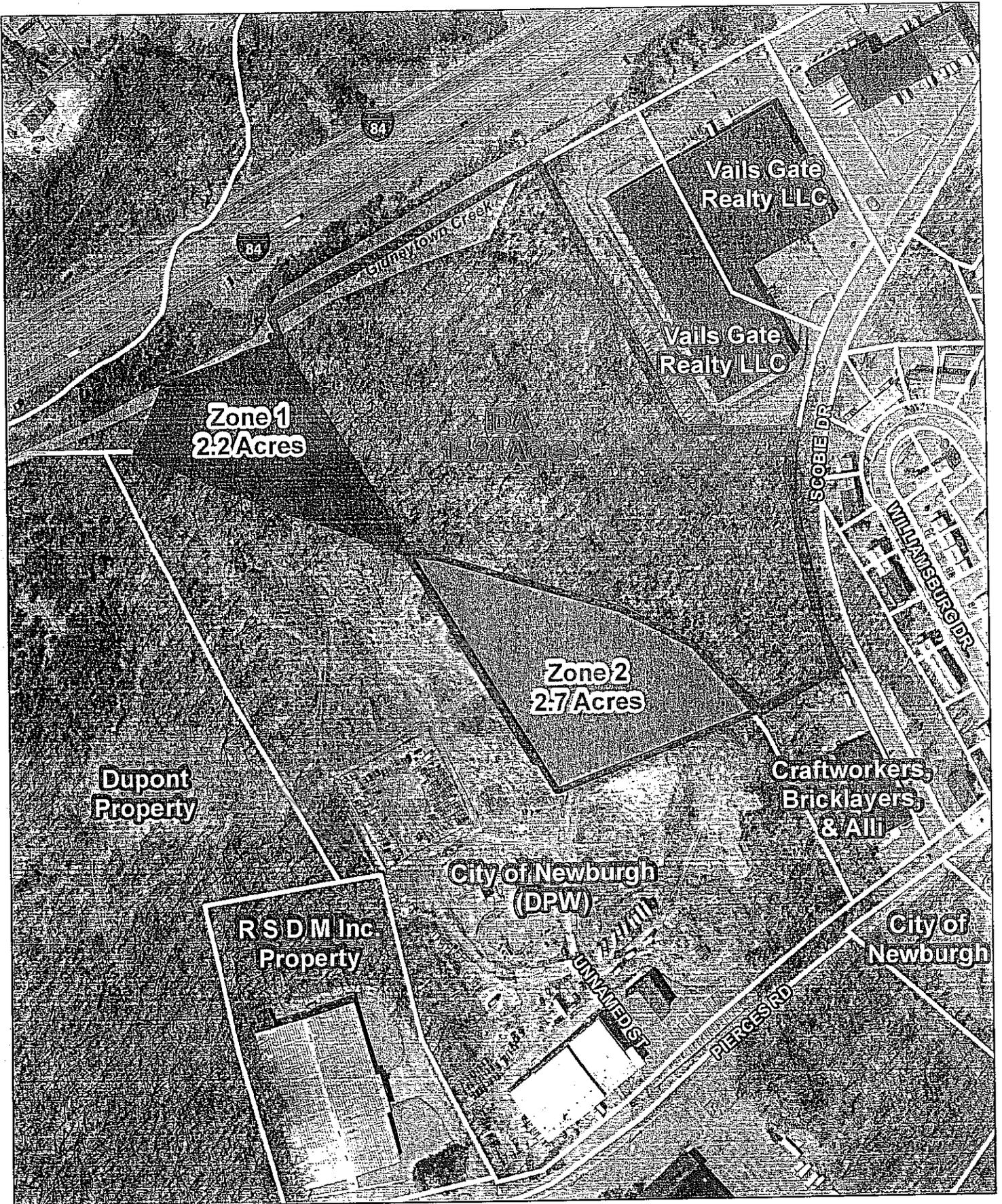
Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

Reset

Exhibit A



Prepared by City of Newburgh
Planning Department 11/28/12

Scale = 1:3000



LFF

LAND DISPOSITION AND ACCESS AGREEMENT

BETWEEN

CITY OF NEWBURGH,

AND

CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY

This Land Disposition and Access Agreement ("Agreement"), effective as of [_____, 2012] (the "Effective Date"), is hereby made by and among:

A. The City of Newburgh, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the "City"; and

B. The City of Newburgh Industrial Development Agency, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the "IDA".

The City and the IDA are collectively referred to herein as "the Parties" and individually referred to as a "Party".

WHEREAS, Hudson Valley Lighting Inc. is a business operating within the City of Newburgh and has outgrown its current location; and

WHEREAS, the IDA is the sole owner of a parcel of land known as 5 Scobie Drive and more accurately described as Section 1, Block 1, Lot 6 as shown on the tax map of the City of Newburgh (the "IDA Property"); and

WHEREAS, the City is the sole owner of a parcel of land known as 70 Pierces Road more accurately described as Section 5, Block 1, Lot 16 as shown on the tax map of the City of Newburgh (the "City Property"); and

WHEREAS, Hudson Valley Lighting Inc. desires to remain in operation within the City has expressed an interest in relocating its business to the IDA Property; and

WHEREAS, to facilitate the relocation of Hudson Valley Lighting to the IDA Property, certain pre-development activities are required, including but not limited to access to City property and the exchange between the Parties of a portion of the IDA Property and the City Property;

NOW, THEREFORE, in consideration of the mutual covenants and promises as set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions:** The following terms used in this Agreement have the following meanings:
 - (a) "Agreement Areas" means the City Property to which the IDA is being granted access hereunder, as described in and shown on Exhibit A, in order to perform the pre-development activities as the term "Pre-development Activities" is defined herein.
 - (b) "Permittees" (individually a "Permittee") means the IDA and each of its employees, agents, representatives, successors, assigns, consultants, contractors, and subcontractors which are involved in the performance of the IDA's Obligations.
 - (c) "Assignee" means Hudson Valley Lighting, Inc. or an entity wholly-owned by Hudson Valley Lighting, Inc. as the assignee of the IDA's rights and obligations under this Agreement through a separate agreement between the IDA and Hudson Valley Lighting, Inc.
 - (c) "DEC" means the New York State Department of Environmental Conservation and its divisions and employees.
 - (d) "Pre-development Activities" means tasks associated with the exchange of property between the City and the IDA and such other activities as may be necessary or as required by the New York State Department of Environmental Conservation for the application of Hudson Valley Lighting Inc for the entry of the IDA Property into the Brownfield Cleanup Program (the Pre-development Activities and the conduct of such other activities as may be necessary or as required by the DEC, collectively referred to as "IDA Obligations") into the DEC Brownfield Cleanup Program.
2. **Agreement Is a Contract:** The Parties to this Agreement intend this Agreement to be a contract and to be enforceable as such. The contract shall be governed and interpreted according to the laws of the State of New York.
3. **Claims Against Non-Parties:** Nothing herein shall affect the right of any Party to pursue its rights, including, but not limited to, rights of contribution and indemnification, against entities not a Party to this Agreement relating in any way to the Environmental Conditions existing on the City Property and the IDA Property.

4. **Good-Faith Cooperation:** The Parties shall coordinate and cooperate in good faith with each other to achieve the objectives of this Agreement. Included within the duty of good faith is the duty of the IDA to periodically and timely inform the City of the activities they are undertaking to implement its responsibilities hereunder and of the City to periodically inform the IDA of the activities it is undertaking to implement its responsibilities hereunder.
5. **Dispute Resolution:** The Parties shall make all reasonable efforts to resolve informally any questions or disputes that arise in the implementation or interpretation of this Agreement. The Parties agree that, except as otherwise provided herein, prior to seeking judicial enforcement of this Agreement, they will engage in a mutually acceptable form of alternative dispute resolution (“ADR”), to be conducted in New York, for a period of not less than one month and not to exceed three months. Notwithstanding the foregoing, however, if (a) the Parties are unable to agree upon a mutually acceptable form of ADR within a period of one month from the date that the Party seeking enforcement of this Agreement so notifies the other Parties, (b) the ADR process fails to achieve a mutually acceptable resolution within the time period set forth in the foregoing sentence, or (c) the Party seeking enforcement of this Agreement deems the circumstance to be an emergency such that it believes it necessary to seek immediate injunctive or other equitable relief, then, in any such event, the Parties retain their rights to seek judicial enforcement of this Agreement.
6. **No Admissions:** The entry into this Agreement shall not be deemed or construed as an admission by any Party of liability, fault or wrongdoing under CERCLA or any other statute, contract or common law. In the implementation of this Agreement, the Parties shall not be required to make any admission of liability to federal or state governmental entities for any purpose whatsoever.

7. Responsibilities of the City: In exchange for the promises and covenants contained herein, the City shall:

- (a) Provide timely access to the City Property to any Permittee and Hudson Valley Lighting Inc., as the Assignee, for the performance of the IDA's Obligations in accordance with this Agreement. Notwithstanding anything to the contrary and without in any way limiting the foregoing, the provision of access shall include, but not be limited to: a license or privilege of entering upon the City property and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary for the purposes of engaging in predevelopment activities which activities may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and site evaluations as are reasonably required for an evaluation and remediation of the property and the prosecution of any applications for governmental approvals.
- (b) As the Assignee, provide to Hudson Valley Lighting, Inc., or an entity wholly-owned by Hudson Valley Lighting, Inc. formed for the purpose of submitting an application to the DEC to enter the Brownfield Cleanup Program for the remediation and re-development of the IDA Property, access to the City Property and all rights and permissions to the full extent as required by the Brownfield Cleanup Program. In addition, the City shall provide to Hudson Valley Lighting, Inc., as the Assignee, access to all technical, environmental and other records relating to the City Property.
- (c) The license or privilege hereby given shall commence upon the execution of this Agreement between the Parties. 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.

- (d) Cooperate with the IDA in the performance of its responsibilities pursuant to Paragraph 8 below.
- (e) Provide assistance for the re-development of the IDA Property, including the land exchange, site investigation and remediation and other pre-development activities with New York State DEC and local governmental agencies and other similar applicable parties. The City shall provide assistance reasonably requested by the IDA and Hudson Valley Lighting in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the IDA and Hudson Valley Lighting shall have the primary responsibility for obtaining such approvals and cooperation.
- (f) Cooperate with the IDA and Hudson Valley Lighting, as the Assignee, in securing additional funding needed to complete the re-development of the IDA Property. The City shall provide support applications for funding from other sources in the form of letters and resolutions of support.
- (g) The City hereby agrees to sell and convey the portion of the City Property identified as Zone 2 in Exhibit "A" to the IDA in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law. Insurable title to the City Property shall be conveyed by the City to the IDA at or prior to closing subject only to

such exceptions to title as the IDA may approve, which approval will not be unreasonably withheld.

- (h) The purchase price for the portion of the City Property shall be the sale and conveyance of the portion of the IDA property identified as Zone 1 in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law. Insurable title to the IDA Property shall be conveyed by the IDA to the City at or prior to closing subject only to such exceptions to title as the City may approve, which approval will not be unreasonably withheld.
- (i) The City will not accept additional hazardous wastes on the City Property from neighboring properties, and further represents that the City will take all reasonable and necessary action to prevent the City Property from accepting any and all hazardous waste found on parcels adjacent to the City Property, known as the Dupont-Stauffer Superfund site and further represents that it will not request to re-open any records of decision in connection with the United States Environmental Protection Agency Administrative Settlement Agreement and Order on Consent for a Removal Action among E.I. DuPont de Nemours & Company, Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company) and EPA, Index Number CERCLA-02-2010-200X, effective October 4, 2010.
- (j) The City shall not be responsible for the costs of the Pre-development Activities authorized under this Agreement.

8. Responsibilities of the IDA: In exchange for the promises and covenants contained herein, the IDA shall:

- (a) Except as otherwise provided in this Agreement, implement all requirements of the Pre-development Activities, including, but not limited to, the survey of the City Property and IDA property.
- (b) The IDA shall be responsible for the costs of the City's obligations as set forth in Paragraph 7.
- (c) The IDA shall require that any of its contractors or subcontractors who (i) perform any portion of the Pre-development Activities at the City Property or (ii) enter onto the City Property shall provide the insurance coverages herein on the terms set forth, at their expense, Worker's Compensation insurance, public liability insurance covering personal injury and property damage, and other insurance with minimum coverages as listed below. Such policies shall be written by insurers of recognized financial standing who have been fully informed as to the nature of the Work to be performed. The Commercial General Liability Insurance shall be written on an ISO Occurrence Form (or equivalent). Except for Worker's Compensation insurance, the City shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligations of such contractors and subcontractors and not those of the City. Each policy naming the City as an additional insured shall not contain an "owned property exclusion" nor a "severability of interest exclusion."

Type of Coverage

Limits of Coverage

Worker's Compensation	Statutory
Employer's Liability or similar insurance	\$1,000,000 each occurrence
Automobile Liability	\$1,000,000 aggregate
Bodily Injury	\$1,000,000 each occurrence
Property Damage	
Commercial General Liability, including broad form contractual liability, bodily injury, and property damage	\$2,000,000 aggregate \$1,000,000 each occurrence

Prior to the commencement of the Pre-development Activities, the IDA shall require the contractors and subcontractors retained by the IDA or its assigns to submit to the City upon the City's request certificates of insurance evidencing compliance by such contractors and subcontractors with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the City with respect to its interests, (ii) it shall not be canceled, including without limitation, for non-payment of premium, or materially amended without thirty (30) days' prior written notice to the City, and the City shall have the option to pay any necessary premiums and charge the cost back to the IDA.

If any insurance shall be provided on a "claims made" basis, all such policies shall provide that:

- (1) Policy retroactive dates coincide with or precede the contractors' start of the performance of the Pre-development Activities (including subsequent policies purchased as renewals or replacements); and

- (2) Prompt notice shall be given to the City of circumstances or incidents that might give rise to future claims with respect to the Pre-development Activities.

In the event that any contractor or subcontractor of the IDA is unable to fulfill any of the requirements under this subparagraph 8(b), the IDA shall confer with the City prior to engaging said contractor or subcontractor.

The IDA 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.

The IDA hereby agrees to defend, indemnify and hold City harmless against any claims, actions and proceedings brought against City arising out of, in connection with and/or relating to Pre-development Activities on the City Property.

- (d) Pursue the re-development of the IDA Property, including but not limited to the land exchange with the City, site investigation, remediation and other pre-development activities with New York State DEC and local governmental agencies and other similar applicable parties. The IDA shall provide assistance reasonably requested by Hudson Valley Lighting in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the IDA and Hudson Valley Lighting shall have the primary responsibility for obtaining such approvals and cooperation.
- (e) Cooperate with the City and Hudson Valley Lighting in securing additional funding needed to complete the re-development of the IDA Property. The IDA shall provide

support applications for funding from other sources in the form of letters and resolutions of support.

- (f) The IDA hereby agrees to sell and convey the portion of the IDA Property identified as Zone 1 in Exhibit "A" to the City in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law. Insurable title to the IDA Property shall be conveyed by the IDA to the City at or prior to closing subject only to such exceptions to title as the City may approve, which approval will not be unreasonably withheld.
- (g) The purchase price for the portion of the IDA Property shall be the sale and conveyance of the portion of the City Property identified as Zone 2 in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law.
- (h) Provide the City with copies of all draft plans, providing the City with a reasonable opportunity to comment on such plans, and final plans and reports submitted to and approved by DEC and or any other regulatory agencies of the United States or the State of New York pursuant to the Brownfield Cleanup Program relating to the Agreement Areas and to the IDA and/or Hudson Valley Lighting's obligations.
- (i) Cooperate with the City in the performance of its obligations pursuant to Paragraph 7.
- (j) In the event that, following a period of thirty (30) days after the receipt by the IDA of written notice from the City that the IDA or any Permittee has breached this Agreement in some respect, within which period of time the IDA or any Permittee has the opportunity to cure such breach, the IDA or any Permittee has failed to fulfill any

obligation of this Agreement, the IDA or any Permittee shall not oppose, and shall comply with, an applicable order by a court of competent jurisdiction, and shall indemnify, defend and hold the City harmless from any and all Claims that are based exclusively upon, and are derived exclusively from, any such breach of this Agreement and non-compliance with any such court order.

9. **Closing:** The closing of the transfer of title for the City owned parcels shall occur at or prior to the closing between the IDA and Hudson Valley Lighting. Any and all closings shall be held at a location agreeable to all Parties. At the closing the City shall execute and deliver to the IDA a bargain and sale deed in recordable form with covenants against grantor's acts and the IDA shall execute and deliver to the City a bargain and sale deed in recordable form with covenants against grantor's acts. Each Party shall be responsible for all taxes, assessments and water and sewer rents accrued against its parcels as of the date preceding the closing date for the conveyance of such parcels. Each Party shall be responsible for all taxes, assessment and water and sewer rents accruing against the conveyed parcels on and after the closing date for such parcels. Each Party shall pay and be responsible for any and all real property transfer and similar taxes.

10. **Authority, Access and Term of Agreement:** The City represents that it is the sole owner of the City Property, and has the authority to grant the access rights and other rights as set forth in this Agreement, and further represents that, to the best of its knowledge and information, there are no unrecorded liens, encumbrances or rights of others that could affect any Permittee's access to, or right to use, the City Property as provided for herein. This Agreement shall terminate at the later of the closing set forth in paragraph 9 herein or the

successful completion of the remediation of the IDA Property through the DEC Brownfield Cleanup program.

10. **Reservation of Claims:** Notwithstanding anything to the contrary contained in this Agreement or otherwise:

- a) In return for the performance of the commitments made and the consideration given in this Agreement, the City and the IDA each agrees to forgo any and all Claims against each of the other Party, so long as such Party is not in breach of this Agreement, as determined pursuant to Paragraph 5 (Dispute Resolution) or any judicial enforcement of any such alleged breach, and has not cured any such alleged breach within thirty (30) days of receipt of a written determination rendered pursuant to Paragraph 5 or any final judicial determination.
- b) The agreement to forgo any and all Claims, as aforesaid, and any other event, document or circumstance including, but not limited to, any order issued by EPA to the City or any agreement with EPA entered into by the City, shall not be considered applicable: (i) to any portion of the City Parcel not included in the real property exchange between the Parties; or (ii) to any other potential claim of a Party, or to any costs, not explicitly covered by this Agreement.

11. **Addressees for Purposes of Notice:**

All notices, requests, demands, approvals or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows:

If to City:

City of Newburgh

83 Broadway
Newburgh, NY 12550
Attn: Richard F. Herbek

With copies to: City of Newburgh
83 Broadway
Newburgh, NY 12550
Attn: Michelle Kelson, Esq.

If to IDA: City of Newburgh Industrial Development Agency
83 Broadway
Newburgh, NY 12550
Attn: Teri Waivada

With copies to: Oxman, Tulis, Kirkpatrick, Wyatt & Geiger, LLP
Suite 100
1210 Bloomingdale Road
White Plains, NY 10605
Attn: Thomas Wyatt, Esq.

If to Hudson Valley Lighting:

With copies to: Jacobowitz & Gubitz, LLP
P.O. Box 367
158 Orange Avenue
Walden, NY 12586
Attn: John C. Cappello, Esq.

12. **Enforceability:** Should any provision of this Agreement be deemed unenforceable for any reason, the remainder of this Agreement shall continue in effect so long as the purpose of this Agreement is not nullified by the absence of such provision.

13. **Entire Agreement:** This Agreement reflects the entire agreement among the Parties as to the same subject matter, and, except as otherwise provided in this Agreement, all prior agreements, understandings and commitments are merged with and into and superseded by

this Agreement. This Agreement can be amended, including, but not limited to, an expansion of the Agreement Areas for the performance of DuPont's/BCSI's Obligations, restated or supplemented only by a written agreement signed by all Parties. This Agreement may be executed in counterparts, all of which together shall be the original Agreement.

14. **Non-Assignment:** The rights, liabilities and obligations under this Agreement shall not be transferred or assigned by any Party unless each Party shall give prior written consent for such transfer or assignment, except that the IDA may assign some of its rights, liabilities and obligations under this Agreement to Hudson Valley Lighting Inc. or an entity formed by and wholly owned by Hudson Valley Lighting Inc. for the purpose of entry of the IDA Property into the DEC Brownfield Cleanup Program. The City agrees that such assignment shall be without recourse to the IDA for those obligations so assigned; the Assignee shall be responsible for all such assigned obligations of the IDA and the City will release the IDA from such obligations. Consent shall not be unreasonably delayed or withheld.
15. **Headings:** The headings are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

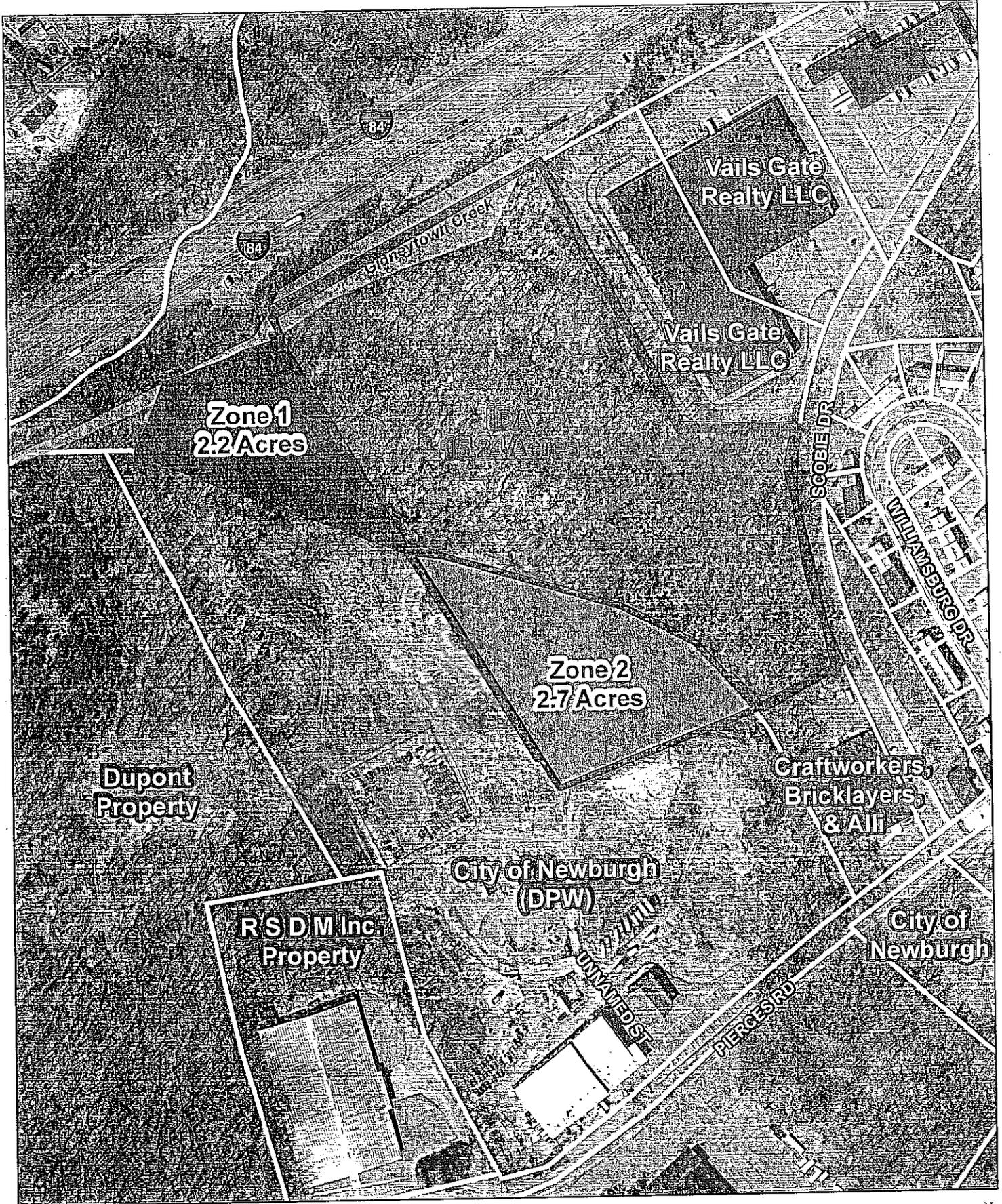
IN WITNESS WHEREOF, and intending to be legally bound, the Parties have signed this Agreement below.

Dated: _____

THE CITY OF NEWBURGH, NEW YORK

By: _____
Its:

Exhibit A



Prepared by City of Newburgh
Planning Department 11/28/12

Scale = 1:3000



LFF

RESOLUTION NO.: 235 - 2012

OF

DECEMBER 10, 2012

**A RESOLUTION TO AUTHORIZE A SETTLEMENT 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**

WHEREAS, by Resolution No. 177-2009 of November 16, 2009, the City of Newburgh ratified authorizing sending Notice under the Clean Water Act, authorizing 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, the City of Newburgh and the defendants have reached agreement on the substantial terms for settlement in the litigation and to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter under the terms set forth in the term sheet annexed hereto and made part hereof;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorneys are hereby authorized 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 the terms set forth in the Term Sheet annexed hereto and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

035-12

SETTLEMENT TERMS

1. The engineers have an agreement on what needs to happen to bring the stormwater management system into compliance. Defendants' engineers have provided the sketch of the design and the calculations for meeting the 2010 General Permit standards throughout the development. The City will need to see the SWPPP that includes these calculations and that complies with 2010 standards.
2. On the green infrastructure: the engineers agree that new houses will be built without roof connects on 90 % of all homes in subdivision; and that the two trees per house will be planted throughout the development. A deadline as to the planting of trees throughout the development will apply as new homes constructed pursuant to regular construction practices with verification by inspection once a year for three years after planting, and a guarantee on replacement if trees die. The ACOE requires inspections once a year for three years for wetlands restoration; a similar requirement is appropriate here. Street trees can only be put in as new homes are constructed pursuant to construction practices with verification
3. As to the random inspections, the City will be authorized to have a City employee conduct monthly random inspections and will be provided copies of all of the Defendants' engineers inspection reports. Defendants will pay a one-time penalty of \$500 for each deficiency not corrected to the City's satisfaction within 90 days. Continuing deficiencies will be referred to an agreed upon dispute resolution process after 90 days, with the prevailing party being reimbursed for costs and attorney's fees. Any recurring deficiency that has previously been corrected will be considered a new deficiency. If the City employee detects a deficiency for compliance with the General Permit and/or SWPPP standards, these deficiencies will be reported to the defendant for correction or objection within seven (7) days. Objections will be subject to the same dispute resolution process.
4. On the issue of the inspections for major storm events (1 inch in a 24 hour period), The City will decide if an inspection by a neutral third party is necessary following such events. If an inspector goes out and everything is fine and there are no violations impacting Brown's Pond, the City pays the cost of the inspection. If it is determined that there are violations impacting Brown' Pond, the defendants pay the cost of the inspection.
5. The parties agree in extreme storm conditions, 3.5 inches or greater in a 24 hour period, that there will be no reported violations during the storm event and for a reasonable time thereafter, not to exceed 7 days.
6. The City requires an MOU be entered between the City of Newburgh and the Town of New Windsor regarding the operation and maintenance of the storm water management system. Defendant has reached out to the counsel for the Town of New Windsor and is awaiting a response.

7. The City would agree to notify DEC that they [concur] endorse in the modification to the stormwater management system if given the opportunity to review the design of the system and SWPPP modification in advance. The City will also notify NYSDEC that it has no objection to issuance of the sewer main extension permit for the J Street section of the subdivision and notify the Town of New Windsor that it has no objection to final approval of the J Street subdivision.
8. The City will agree that the existing system and any system improvements approved by the City are permitted. The parties will modify the easement accordingly.
9. Plaintiff shall withdraw this litigation with prejudice, and dismissal of the litigation shall be so-ordered by the Court. The parties shall execute mutual general releases.
10. Plaintiff shall agree not to file any claim or notice of claim or notice of intent or commence any proceeding alleging any violation of the CWA or of a stormwater General Permit or of state or local law or regulation related to erosion control and stormwater management for any alleged violation occurring prior to the date of settlement.
11. Plaintiff shall agree that plaintiff releases and waives any claim, now or in the future, that defendants' SWPPP (incorporating the SMP-3 bypass) does not comply with any General Permit design requirements *or* that the system, as constructed, in accordance therewith does not comply with the SWPPP or any law or regulation.
12. If plaintiff believes that defendants have caused or contributed to a violation of the CWA or of a stormwater General Permit or of a state or local law or regulation related to erosion control and stormwater management *after the* date of settlement, then plaintiff shall provide to defendants written notice specifying said alleged violation. Plaintiff shall have an opportunity to cure said alleged violation within ninety (90) days or a longer time if reasonable under the circumstances. Plaintiff shall agree not to file any claim or notice of claim or notice of intent or commence any proceeding alleging said violation unless defendants have not commenced diligent efforts to cure said alleged violation on within such reasonable time.
13. Prior to or during the cure period, plaintiff shall not notify or request an inspection by NYSDEC, the Army Corps of Engineers or any agency with respect to any alleged violation.
14. Plaintiff shall agree that the existing and any system improvements constructed in the easement area are permitted. The parties shall modify the easement agreement accordingly. Plaintiff shall release defendants from and waive any trespass, nuisance and all other claims related to defendants' use and occupancy of the easement area. Defendants shall retain the right to discharge stormwater to Brown's Pond and to continue to operate, maintain and improve the stormwater system.
15. The settlement agreement shall terminate upon completion of construction.

OLD BUSINESS

Mayor Kennedy said that this came up at the Work Session last week and they didn't quite come to an understanding about what needed to happen but they need to do that tonight. When they were talking about hiring practices last week they brought forth a motion and they agreed that they needed to have a little more work on policy. She looked at the current City policy and rather than update the City Charter they can update the current hiring practices and policy. What she would like to put on the table tonight is that she asked for a motion to put our hiring on hold until they get the new hiring practices resolved. She asked for a motion to put on a temporary hold until this hiring practice and policy is in place.

Councilman Dillard motioned and Councilman Brown seconded the motion.

Councilwoman Lee said that she thought they already agreed that they would discuss this at another Work Session and she doesn't remember agreeing that they would put the hiring on hold. In fact she remembers asking that they not consider hiring an HR person and distribute those funds to members of the City staff and to consider a Deputy Chief for Chief Vatter. She also asked for discussion about that because she is not clear on how they are going to use those funds.

Mayor Kennedy told Councilwoman Lee that she was off topic. We have a point of order and a motion has been put on the table to put a hiring freeze in place until we have this best practices. No other question is on the table at this moment.

Councilwoman Lee said that they just asked for discussion. You can't say that there is no discussion on the table at this time.

Mayor Kennedy said that the discussion is about the hiring freeze and there is nothing else on the table.

Councilwoman Lee said that the Mayor developed this project without consulting the full Council and she is pushing this hiring freeze and hiring project down their throats. They said "no" once, they said "no" twice and tonight they are saying "no" again but the Mayor is still saying that we have an agreement on the table and we don't.

Mayor Kennedy said that they don't have an agreement on the table. What we have on the table is the question and what was raised at the last

Work Session is that we need to look at our hiring practices and it is suggested that what we currently have as a hiring practice is an excellent start but it is not complete with many things that we want to put on the table.

Councilwoman Lee said that we have already gone over this and the City Manager has expressed his concerns about it and either one of two things happened. They either had a secret meeting and they already have three votes or they had no secret meeting and the Mayor is the only vote so this should really be taken off the table and open for discussion. This is not a Dictatorship.

City Manager, Richard Herbek, said that he would like to add some comments. Under the Rules of Procedure the City Manager can participate in the discussion.

Mayor Kennedy said that is true. It states that the City Manager may participate in the discussion at the pleasure of the presiding officer. The point of order right now is this and she wants everyone in the audience to understand what the question is at hand. The Council wants to be able to put best practices in place in addition to current practices that are aligned with Civil Service. The practice that they are particularly interested in is the hiring of City Superintendents, Deputy Superintendents and the leaders of our City which have been hired in the past by a single appointment by the City Manager. *"What we are suggesting be added to policy is that our leaders of all departments be hired by some kind of a panel"*.

Councilwoman Lee asked who is "we"?

City Manager, Richard Herbek, told Mayor Kennedy that panels are used for all hiring particularly for key individuals. You can't have a hiring practice involving two members of the City Council and you can't have a practice whereby a panel by consensus or majority is making a decision on the hiring practice. That is completely contrary to the Council - Manager form of government which we have in the City of Newburgh and it is illegal. He said that he could create panels but it is not allowed in the City Charter for the City Council to establish panels to hire people. The main precept in a Council - Manager form of government is that there is separation of powers between the Council and the Executive in this branch of government. You can't have panels created by the City Council because it is complete change in the Charter and it requires a referendum.

Mayor Kennedy said that this is not a policy saying that the City Council will create the panels. This is something that the Civil Service or HR person should create.

City Manager, Richard Herbek, noted that the City Manager is the appointing authority.

Councilwoman Lee said that she wants to meet with the full Civil Service Commission. She doesn't believe that this is under their purview because it is not a Civil Service position and she wants to meet with the full committee. There is a Civil Service Committee.

Mayor Kennedy said that is true and it is not under the purview of Civil Service which is why right now over the last several years there have been people standing up in front of this Council time after time after time talking about the problems of hiring by the City Manager. Not just this City Manager but other City Managers.

Councilwoman Lee said that this City Manager hasn't had any money to hire anyone so it would have been the other City Managers.

Councilman Dillard said that if we look back there was a hiring freeze already.

City Manager, Richard Herbek, said that we haven't had a hiring freeze in effect for quite a while.

Councilman Dillard asked if they rescinded that freeze.

City Manager, Richard Herbek, said that there was no hiring freeze enacted by the City Council.

Councilman Dillard said that they voted on it. Not by this Council but a previous Council.

Richard Herbek, City Manager, said that he is not sure about that.

Councilman Dillard said that until they can clarify that...

Richard Herbek, City Manager, said that this hiring that has taken place continuously is the only way that government functions. There are a lot of people who need to be hired on an ongoing basis. There are seasonal employees and temporary employees. There are four employees that are going to be involved in this demolition work.

Councilman Dillard said that they are not dealing with the temporary or seasonal employees.

City Manager, Richard Herbek, said that he is not sure that there is a difference here.

Mayor Kennedy said that right now there is a motion on the table to have a temporary hiring freeze until this question of policy for hiring is resolved. There are a lot of questions on the table about how we do hiring. Whether it is a policy or city law how exactly do we hire the leaders of our City? Right now what the City Charter says is that in 1917 they set up the fact that the City Manager was the appointing authority.

City Manager, Richard Herbek, said that the Council - Manager form of government is the predominant form of government in the United States today. There are more municipalities that have this form of government in the United States today than any other form of government. He said that he views this as a step in the process of changing the form of government for this City. There have been three Charter Review Commissions that have dealt with this issue and each one has come out strongly in favor of retaining this form of government.

Mayor Kennedy said that she supports this form of government as well and she is not suggesting changing this form of government. She said that they are mixing up eggs and apples here.

Councilwoman Lee said that they are still having discussion about eggs, apples and oranges but it is still in the same basket. Again, she thinks that this is an opportunity for the Mayor to usurp their authority and circumvent process. They are saying that the Council does not need four votes; only three and they can change the process and change the Charter at the same time.

City Manager, Richard Herbek, said that what he recalls at the Work Session is that they were talking about having further discussion on this in January at the next Work Session so he doesn't know why this is coming up now.

Councilman Brown said that they have some key positions that they need to fill in the next few months and the problem is that the relationship between the City Manager and Councilwoman Lee is not dictative of this Council as a whole.

City Manager, Richard Herbek, said that he does not have any relationship with Councilwoman Lee than he does with anyone else.

Councilwoman Lee asked what kind of relationship they could have.

Councilman Brown said that they can determine what their relationship is. Anyone who has attended these Council meetings in the past six months will tell you the relationship. He doesn't have to define that relationship but what he does have to say is that in order to have fair hiring practices we need to first put a hiring freeze in order and then amend the Charter and we can do that. We can do it without a referendum and we can do it legally. This discussion is only about the Council having the time to amend the Charter and then getting our hiring practice in order and stopping or not allowing the City Manager and two other Council members to determine who will be employed by this City.

City Manager, Richard Herbek, said that he does not utilize any Council members to help with the hiring practice.

Councilman Brown asked if they could move on please.

Councilwoman Lee said "no" they can't just move on.

Councilman Brown told Councilwoman Lee that she seems to forget that it takes three votes. She can vote any way that she likes but it takes three votes to pass this motion.

Councilwoman Lee said, "*We are having discussion, Dictator Brown*".

Mayor Kennedy hit the gavel and asked for point of order.

Councilwoman Lee asked what does that mean.

Councilman Brown said that it means Workplace Violence.

Mayor Kennedy said that she is the presiding officer.

Councilwoman Lee said that she thinks Cedric is the presiding officer and the Mayor is just hair. She can assure that he would rather eat his tongue than try to get her out of this meeting.

Councilman Brown told Councilwoman Lee that he thinks she is the City Manager instead of a City Councilwoman.

Mayor Kennedy said that these theatrics are not going to help. We have a point of order here right now and there is one question on the table. One and only one and that is the hiring freeze until these issues are resolved.

City Manager, Richard Herbek, said that it is not as simple as that.

Mayor Kennedy said, "Yes it is". "This is simply a discussion".

City Manager, Richard Herbek, said that there is no written resolution and it is very unclear. If you have a hiring freeze, who is this hiring freeze affecting?

Mayor Kennedy said that it affects all jobs open right this minute and until January when we have our next meeting.

Councilwoman Angelo told Mayor Kennedy that she was overstepping her bounds and she should knock it off.

Councilman Brown said, "Let's vote".

Mayor Kennedy called for roll call.

Councilwoman Lee said "no" we are still discussing this. Why is it that Councilman Brown can tell the Mayor, "Let's vote" and then everything stops?

Councilman Brown told Mayor Kennedy that she is the presiding officer.

Councilwoman Angelo said that they are not voting on this.

Councilman Brown said, "Yes we are".

Mayor Kennedy said that they can vote on it.

Councilwoman Lee said that this is a Charter change and three of them knew about it.

Mayor Kennedy said that three of them don't know about it. Nothing was decided.

Councilwoman Lee said that this is a request for a Charter change and three of them knew about it. Now they want to talk about her hiring people and she has hired no one in the City of Newburgh. She wishes that she did but "no" she didn't.

Mayor Kennedy said that it doesn't have to be a Charter change it can be a simple policy change.

Councilwoman Lee said it could also be simply that we sit and talk about it and not the Mayor developing resolutions and then trying to convince us that she is not having discussions with Councilman Dillard and "Mayor" Brown in the corner.

Mayor Kennedy said that she didn't.

Councilman Brown told Councilwoman Lee that when he addresses her he does it correctly and he wants her to do the same for him. Thank you.

Councilwoman Lee told Councilman Brown that he doesn't address her correctly so cut it out.

Mayor Kennedy said that at this point this is contentious, messy and it's democracy.

Councilwoman Lee said that it should be taken off the table.

Mayor Kennedy said that at this point there are enough issues open and there are several key positions open so we need to resolve this issue of how we hire before we hire the next person. Therefore, she is calling roll call and they will make a vote on simply the temporary hiring freeze until this policy is resolved. They can do that at any number of meetings because whenever they are ready she will be ready to resolve it.

Councilwoman Lee said that she doesn't think that the public has a copy of this policy.

Mayor Kennedy said that there is no policy yet. They are not voting on a policy. They are voting on a temporary hiring freeze.

Councilwoman Lee asked how they are voting on it. There is no resolution.

Mayor Kennedy said that they do not need one and she asked for roll call.

Ayes - Councilman Brown, Councilman Dillard, Mayor Kennedy - 3

Nays - Councilwoman Angelo, Councilwoman Lee - 2

CARRIED

Councilwoman Angelo and Councilwoman Lee asked for a copy of the resolution.

Councilman Brown said that there is no resolution.

Mayor Kennedy said that it was not a resolution it was a point of discussion.

Councilman Dillard said that the Attorney is working on it.

Councilwoman Lee said, *"We voted on a point of discussion?" "How are we giving the City Manager direction if he has no resolution to follow?"*

Councilman Brown told Councilwoman Lee that if she likes three people at the table can give the City Manager a directive on top of that vote if that will satisfy her. When three people direct him he needs to move in that direction so there should be a hiring freeze until further notice. Councilman Brown said, *"Yes."*

Councilman Dillard said, *"Yes"*.

Mayor Kennedy said, *"Yes"*.

Councilman Brown said, *"There is your directive, City Manager, Herbek"*.

Councilwoman Lee said that this is like Kangaroo Court.

Mayor Kennedy said that they will now continue with the meeting.

NEW BUSINESS

There was no new business

Draft Only

GENERAL COMMENTS FROM THE PUBLIC

Kippy Boyle, City of Newburgh, said in regard to this discussion that she is glad they are going to be continuing until there is some light shed on how we should hire and fire so that we always have the most qualified people leading the departments. She asked Councilwoman Lee, who said that her powers were going to be usurped if this was passed, what are the current checks and balances that the Council actually has in the event that any City Manager hired someone that she felt was unqualified for the position? What tools do they have at hand as a check and balance to make sure that that wouldn't happen?

Councilwoman Lee responded that what her jaw is tight about is the Council usurping her authority. They should review these things as a Council; not just three members of the Council. That is what she expressed concern about. She didn't say that she would like or dislike an employee. She said that the way the resolution is written it should require four votes but so that they could get the resolution passed they met secretly and they wrote this resolution that usurps her authority. She also noted that they haven't hired anyone.

Joshua Smith, Montgomery Street, Chairman of the City of Newburgh Industrial Development Agency, thanked the Council for their action earlier this evening and said that it is their intention to make certain that they are kept up to date on all of the important moves made with regard to this project. They will be having a meeting soon with the DEC and they will keep the Council informed all along the way.

Jane Johnston, City of Newburgh, submitted and read the attached comments. (copy attached)

John Cappello, Village of Walden, said on behalf of his client, David Littman and himself that he wished to thank the Council, IDA Members and Consultants for all of their hard work. They have taken the first step towards what they hope will be a successful project that they can be proud of.

Barbara Smith, Powell Avenue, said that she is again confused with her Council because of lack of consistency. She has missed very few meetings and the City Council is the power. She can recall several department heads that came on an agenda item for the City Council to approve and her point is that if they are going to use department heads in one way at one time then why are they not using department heads in the same way all the time. If the Council is the approving authority, then when it comes time to say yes they should

approve this person if they approve but if they disapprove of them then don't pass them. Why are we reinventing the wheel again when we already have something that we should be following? If the City Manager says that this is who he wishes to appoint, then it should be brought to the Council. The Council should then review that person and at Work Session come up with an idea as to whether or not this is the right person or the wrong person. Why are we doing this? She doesn't understand it. If it has nothing to do with classified people, the Civil Service practice specifies very clearly how you hire and what list you take from. The one thing that bothers her is the reference made to the appointing authority. With the classified people she doesn't understand why the City Manager is the appointing authority because she believes that the Civil Service Commission should be the appointing authority. If they want to clarify things, they should sit at a round table and talk to get the best idea as to how these things should be done. The Council just approved the CDBG funding which means that they are going to have to get together to figure out how they hire people to do the work that they agreed should be done for this City. There should be something very firm in place that says this is how we do it.

Madeline Fletcher, Director, Newburgh Community Land Bank, thanked the City Council and said that she is looking forward to working with all of them. They will have a transparent and open fair process that benefits everyone. She said that she is available if there are any concerns and she hopes that they have a lot of communication over the next several months.

Timothy Hayes-el, City of Newburgh, asked the Council how many people work for the City of Newburgh that are not Civil Service employees. How many people have been hired that are not Civil Service workers?

City Manager, Richard Herbek, said that everyone is Civil Service including the members of the City Council. We are all covered by Civil Service Law.

Mayor Kennedy agreed that is true.

Timothy Hayes-el said that they are telling him that there is no one working for this City that is not a Civil Service worker.

City Manager, Richard Herbek, responded that is true.

Timothy Hayes-el said that there have been a lot of discussions about work and hiring people. We all know that Newburgh is one of the worst places in the State of New York and it has the one highest unemployment rates. We don't have time to play around and it's been years since people who

live here have been hired. It is the people who live here that hire the Council by voting them in to these positions so he can't understand why we are just getting around to hiring people who live here in the City of Newburgh. There are people living here who are suffering and they have to sell drugs to pay their rent but he knows that they want to work and have jobs. This should have been done years ago. As we move forward and discuss hiring people in the City of Newburgh, he hopes that this gets done. This is eight years in a row that he has asked the same questions and he is tired of it. Let's see some action and let's see some people that live here go to work building the city that they live in.

Janet Gianopoulos, City of Newburgh, said that she is glad that the IDA has come up with an arrangement that enables the Hudson Valley Lighting Project to move forward. She thinks this is good and as it was said at the Work Session she believes that the land will become more developable because of this compromise. Regarding the issue of a Hiring Freeze she thinks that we need to be careful that we don't put too many freezes on the table. As she recalls, there is a freeze on the penalty for people who break the law regarding Peddler's and Vendor's in their location and she is not aware of the Council taking that freeze off the table. That is something that can impact the finances of fixed businesses which do pay taxes. She told the Council to be very careful and to look back and not put too many of these freezes on the table. In regard to the Hiring Freeze, the way it was brought forth it seemed to preclude any public comment and she regrets that. She is a citizen and a tax payer here and she should be able to comment if they are thinking of doing something that looks like a Charter change but does not go through that process. The Charter is our document. You talk about power and that is the only thing that the citizens have to protect them.

Pebbles, City of Newburgh, said that as the changes are being made for jobs for the City she would like to see our residents not only just get entry level jobs. Some people received seasonal or temporary jobs and went into some departments part-time but she would like to see our residents get into some other positions because they are qualified. There are people here who have degrees and they don't have a job. In regard to the Land Bank, she had a lot of her questions answered tonight and she noted that the Resident Advisory Committee has no power. It was set up so that they have no input or voting power so she asked the Council to monitor what goes on because they have no power to make any comments or to get any input so that they can get what they really want and need. She hopes that the Council will be monitoring that. When it is time for the implementation and planning of the hiring process she hopes that the public will be notified. She would like to see a public comment meeting. She kind of likes the whole idea and she hopes to see the residents here in some of the better paying jobs.

Omari Shakur, New Voters Movement, said to the community and the young people who have been asking him what's been going on in this City is that these people are making decisions about their lives. That is why they have to register to vote. It is their future that they are up there talking about and they will be running this City. He said to make sure that they keep registering and learn how to make this City a better city. It is going to take time but it will be their City eventually.

Brenda McPhail, City of Newburgh, said that she listened to the Council tonight and she gets really disgusted because we go day by day in this City looking at the same thing year after year and nothing changes. She kind of agrees with Councilwoman Lee and she sees through their plan because when they discussed before about combining departments together they were aiming at three individuals. They talked about revenue for the City and if they are interested in putting people to work then they will listen to what people are saying to them. They are not interested in putting anyone to work unless it is somebody that they want to put to work. They have their pals and schemes on who they want to give a job to instead of the people who were born and raised here and who know this City. They have to stop playing games with people's lives. Who knows this City better than the people that live here? Some of the jobs do require education for some people but there is a lot that they can do. She is tired of getting Council after Council and nothing gets done because everyone just talks. The City of Newburgh looks a mess and they should be ashamed to say that they sit on the City Council the way it looks.

Roxie Royal, City of Newburgh, said that she is sitting here tonight looking at our Council and her heart is grieved. She said that she has not missed too many meetings in the last thirty years and this is our first full Democratic City Council that she can remember. Her comment in the second or third meeting was that she was very proud of them because they seemed like a team. Over the past several months, however, she has seen that teamwork come apart. Teamwork is one of the things that we need to learn how to do. She told the Council that they were voted into office by the residents of this City. They voted for them because they felt at that time that they were the best people to be in office and to carry on the business of this community. She asked the Council to please not let them down. She told them to go home and think about it and see if they can't work out a plan where they can work together.

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

A. Jane Johnston 16 Farrell St. #4 Newburgh, NY 12550 Tel. 845.563.0829 jane@newburghadvocate.com

December 10, 2012

Mayor Judy Kennedy
City Council
City Manager Richard Herbek
City Hall, City of Newburgh
83 Broadway
Newburgh, NY 12550

Re: Charter Change Needed for Article XIV—Department of Planning
and Development

Dear Mayor, City Council, and City Manager,

On the city's new website, under "Job Opportunities" there is a listing for the "Director of Business and Industrial Development." I object to this position as it does not exist in the city's charter. Furthermore, the Planning and Development Department needs to have its powers and duties corrected in the city charter.

I am attaching Article XIV of the city charter, entitled "Department of Planning and Development." Please note that this article assigns the duties of managing the Industrial Development Agency, Local Development Corporation, and Community Development Agency to the *Director of Planning and Development*. Currently, the IDA has elected to hire its own, independent employee to administer the IDA; *no one* has administered the LDC in years; and the CDA no longer exists.

Where does this **new** position fit into the department? Will you *also* be hiring a Director of Planning and Development?

Why is it that most of the duties and responsibilities assigned to the "Director of Business and Industrial Development" aren't handled by the IDA's executive director?

Whatever you do with this new position, ultimately what is needed is a thorough evaluation of how Planning and Development is performing, whether services overlap or are duplicated with the IDA, recommendations for changes, and finally, a charter update. In my opinion, the review and charter change should happen **before** any new hires are made.

Sincerely yours,



A. Jane Johnston

Article XIV. DEPARTMENT OF PLANNING AND DEVELOPMENT

§ C14.00. Establishment; head.
§ C14.01. Director of Planning and Economic Development.

§ C14.02. Department of Planning and Development functions.

[Added 1-27-2003 by L.L. No. 1-2003]

§ C14.00. Establishment; head.

There shall be a Department of Planning and Development, headed by a Director of Planning and Development, who shall be appointed by the City Manager and who shall serve at the pleasure of the City Manager.

§ C14.01. Director of Planning and Economic Development.

The Director of Planning and Development shall be appointed on the basis of his education and experience in carrying out the duties of the position. Among the Director's functions and duties, but not by way of limitation, shall be the following:

NEEDS CORRECTION

A. To act as a full-time administrator of the Department, the Newburgh Local Development Corporation and the Newburgh Industrial Development Agency offices to ensure a coordinated and comprehensive approach to community and economic development within the City of Newburgh.

B. To develop and administer a combined and integrated staff to support the Newburgh Community Development Agency, Newburgh Local Development Corporation and the Newburgh Industrial Development Agency and other community-based programs recognized by the Council.

C. To oversee all volunteer community-based initiatives, recognized by resolution of the City Council, and to provide administrative services and technical support to the various community-based initiatives so recognized.

D. To identify economic problems and opportunities in the City and develop relevant policy responses for the City Manager.

E. To supervise demolition and construction of public works within federally or non-federally assisted renewal projects sponsored by the City or its agencies.

F. To undertake any other planning, community and economic development duties deemed necessary by the City Manager.

§ C14.02. Department of Planning and Development functions.

The Department of Planning and Development shall have the following functions:

- A. Economic development: to undertake, direct, supervise and coordinate the City's participation in activities, programs and ventures intended to designate and to advance the economic climate in the City of Newburgh through marketing, real estate, planning and financial strategies and techniques; to establish and maintain contact with industrial and manufacturing businesses within the City, assist them in their dealings with the City government, and to provide them with information on state and federal assistance programs; and to provide relevant market and site data for industrial and major commercial developers.
- B. Planning: to provide technical support required in the administrative and/or legislative review and consideration to the Building Inspector, Planning Board, Zoning Board of Appeals, Council, Architectural Review Commission and Waterfront Advisory Board.
- C. Housing and Community Development: to plan, undertake and direct the City's efforts in providing affordable rental accommodations and home ownership opportunities for its residents by encouraging the growth and revitalization of the City housing stock; to supervise and/or coordinate the City's participation in programs, activities and ventures designed to construct new housing accommodations, rehabilitate existing residential structures or convert other structures to residential use to better meet the need for affordable housing; to plan and undertake other activities designed to contribute to an enhanced quality of life and long-term stability for the City's neighborhoods, including activities which provide additional opportunities for employment and business development to the residents of those neighborhoods; and to coordinate the other City agencies as such actions relate to the provision of housing in and development of the City's neighborhoods.
- D. Program evaluation: to submit to the City Manager an annual program evaluation and audit reports on agencies and organizations funded with state and federal monies. The program evaluations and audit reports shall be submitted in January of each year. Such evaluations and reports must be in full accordance with all applicable regulations. The information to be contained in the annual reports will include but not be limited to the following service indicators: documentation indicating that program requirements were met, including goals, performance standards and objectives and the methodology used for measuring performance.
- E. Processing and servicing loans: documentation indicating the loan amount, and the funds used, the amount collected on repayment and the payment history, documentation on how the grantees met the loan objectives.

F. Contractor evaluations: documentation evaluating the contractor's qualifications, performance history and compliance with federal, state and City guidelines regarding equal opportunity ownership, participation and employment.

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Mobile View



Draft Only

COMMENTS FROM THE COUNCIL

Councilman Brown thanked everyone for coming tonight and wished them a Happy Holiday. As he reflects back on this past year, there is not much that has been changed in the City of Newburgh but they do have at least three Council members at the table that are committed to some serious changes in this City and the way they do business. He thinks that they have to start somewhere and that is the place to start. As far as employment in this City, he said that he is working hard on hiring city residents to work here in this City full time year round; not part time seasonal jobs paying ten or twelve dollars per hour. That is really important to him because his background tells him that if you pour money into an economy it will grow and if we keep our money here in the City of Newburgh our City will grow. He wished everyone a Happy Holiday and a good night.

Councilwoman Angelo said that at every meeting we have there is turmoil. She remembers the night that the Mayor was nominated by the Democratic Committee to run for Mayor of the City of Newburgh and she said that she was the one who could save the City and find the money. All that she can see right now is continuous turmoil at every meeting and it is getting to the point where she doesn't want to come to any more meetings. She said that there is no reason for this. The Holiday season is just around the corner so she hopes that we can have a little spirit between now and Christmas. She thanked everyone who offered a tree for the City and the one they chose belonged to one of our Patrolman. She added that one of her neighbors told her that his grandson received a call from Wall Street because they wanted to use his tree. They came and cut it down and paid him more than \$1000.00 for it so that is recognition for our City too. She again asked why we have to have so much turmoil at these meetings. The City Manager is Executive Director of this City and he does the hiring and firing.

Councilman Dillard thanked everyone for coming out and to remind the residents here in the City of Newburgh that he has been on this Council for the past three years and he has been working towards hiring local people for the past three years. The seed is in the ground and they will move forward. They have been looking at a lot of things here in this City and what he has seen he does not like. He wished everyone a very Happy Holiday Season and said that they will be continuously working for the citizens here in the City of Newburgh.

Councilwoman Lee said that she wants everyone to understand that her last name is Lee not Brown. Brown is her maiden name. Calling her Councilwoman Brown is offensive to her because her children's last name is

Lee and she would appreciate receiving the same respect that is given to other married people. Her last name is Lee. She said that she moved here in 2005 and became a member of the Housing Authority Board of Commissioners in February 2010. When she started working for them whatever Civil Service problems they were having started long before she got there. She didn't hire anyone but there seems to be some question about how one of the employees got there given that they were from New York City. There is an assumption that she came in through her so she contacted the past Executive Director because it is not bringing people into the City of Newburgh to take your jobs. Those jobs were here. She is referring to what Councilman Brown said on Thursday night.

Councilman Brown said that he said nothing about her and the Housing Authority so she can erase that.

Councilwoman Lee said that Councilman Brown said that she was hiring her friends.

Councilman Brown said, *"No, did not; never"*.

Councilwoman Lee told him to check the record. She continued that the employee was hired in 2007 on the heels of some problems that the Housing Authority was having so she would like to have all of those records put on the Website. One thing she won't do on the City Council is sit here and be bashed. She is not some of the other people that they know so when they attack her she is going to find out the facts and come back and give them to them. The fact is that HUD was pulling the Section 8 funding from the Housing Authority and Mr. Starling hired someone that he knew from New York City to come in and correct the books. So she will be giving them the audit report, list of the Board of Directors and the Executive Director so that they can see who exactly was on the Housing Authority Board when it was going south. She told Mayor Kennedy that she sincerely wishes that when she is conducting a meeting even if she doesn't agree with what she is saying she is still entitled to the same respect and she would appreciate it if she would stop Councilman Brown when he decides that it is time for everybody to stop talking and for her to move the meeting on. When that happens the lines get very confused and she doesn't know who is leading the Council Meeting. She told everyone to have a good night and Merry Christmas.

Mayor Kennedy thanked everyone for the entire year. She said that it has been a bumpy and rocky year but some progress has been made. Early in the year they passed a resolution that was a change in Local Law on how tax payers could pay their taxes. It allows payments to be made on back taxes and they have worked with several people to keep them in their homes. They

passed some important legislation concerning a Land Bank and they are working on handling the distressed properties in a new way that could really launch this City forward. Tonight they passed a very important resolution concerning a piece of property that allows one of our businesses to expand. They have some work to do with the DEC but it could mean many more jobs in this City and it could create a cascade because when they move out of their building another company that is looking to expand could move in. This could create more opportunity for new businesses to come here. There was a film commission presentation here on Thursday night working hard to bring the film industry here. That would be an opportunity for this City to work with the County to bring jobs for the filming industry. There are many that want to come here now and we want to make it easy for them to do that. There are good things happening here in this City and yes, there have been disagreements on this Council. She said to be clear that when she got into this she didn't need to be Mayor. She once did apply for City Manager but when she decided to do this she did it with an absolute determination to get some things changed in this City that would make this City work in a way that would be functioning. In regard to the hiring practices, she has reviewed the principles and the policy here and before this City Council came there was something done called the City of Newburgh Governance Principles. One of the governance principles is that this City Council sets policy and the City Manager implements policy. That is the way it is supposed to work. This City Council is right now questioning the hiring policies and practices. She said that when she wrote the resolution she wrote it by herself and didn't send it out to anybody. On the day before she sent it to everybody so they all got a copy of it at the same time. They had questions last Thursday on how they should implement it but it has nothing to do with changing the City Manager form of government which she supports and has supported all along. What she is questioning is our hiring practices because they have lead to some real problems in this City in the past. She and the current City Manager will be long gone but their job is just the same thing as George Washington saying that he didn't want to be King but there needs to be a balance of power. Right now these policies need to set us in place so that there is a balance of power. The Charter says that a City Manager will appoint all of the personnel. She asked everyone if they realized what the means. That is not a good hiring policy in any organization. It is a policy that creates an unbalance of power. She is asking to look at our policies and how we do our interview process. Who does that and how so that they have some fair practices and everyone gets treated the same. Right now they have a job description that was put out and she doesn't believe that any one of them was asked for any input. It just appeared. Even though this job has been on the books for over a year suddenly it just went out. Her question is why are we in such a rush to suddenly do this? She doesn't know and she is not going to make any allegations but she is saying to slow it down and let's get it right. This whole

department for Director of Business and Professional Development we need to get right so we don't need to go rushing over the cliff with this. That is what she is working on right now. She started it and she is glad that Councilman Brown and Councilman Dillard wanted to join in. She would like to think that they could all look at these policies and decide that they want to have fair policies. She thinks that they can do that and she is willing to work on it. She wished everyone a very Merry Christmas and Happy Holidays and said to be safe.

There being no further business to come before the Council, the meeting adjourned at 8:45 p.m.

LORENE VITEK
CITY CLERK

Draft Only

City of Newburgh, Newburgh New York
Work Session of the City Council

Thursday, December 6, 2012

Members Present: Mayor Judy Kennedy
Councilwoman Regina Angelo
Councilman Curlie Dillard
Councilwoman Gay
Councilman Cedric Brown

Also Present: Richard F. Herbek, City Manager
Tiffany Reis, Assistant Corporation Counsel

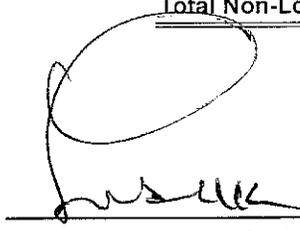
Call to Order: The meeting was called to order by City Manager Richard F. Herbek at 5:00 pm.

Executive Session: At 5:05 p.m. a motion was made by Councilwoman Lee and seconded by Councilman Dillard to enter into executive session regarding matters of collective negotiation.

YES: 5
NO: 0
CARRIED

Adjournment: Upon consensus, the Council returned to the regular work session noting the time as 6:20 p.m.

Account#	Account Description	Fee Description	Qty	Local Share
	Marriage License	Marriage License	20	350.00
			Sub-Total:	\$350.00
2590	Additional Tow Truck	Additional Tow Truck	7	175.00
	Loading Zone	Loading Zone	2	200.00
	Towing License	Towing License	3	450.00
			Sub-Total:	\$825.00
A12550003	Misc. Fees	Certified Copies - Marriage	22	232.00
			Sub-Total:	\$232.00
A12550008	Misc. Fees	Copies	25	31.00
			Sub-Total:	\$31.00
A12550012	Thumbprint Fee	Thumbprint Fee	1	5.00
			Sub-Total:	\$5.00
A1550	Public Pound	Public Pound	1	10.00
			Sub-Total:	\$10.00
A15500004	Dog Redemption	Redemptions	1	35.00
			Sub-Total:	\$35.00
A15500010	Vet Bill (rabies)	Vet Bill (Rabies)	1	28.00
			Sub-Total:	\$28.00
A2544	Dog Licensing	Female, Spayed	4	30.00
		Male, Neutered	6	45.00
		Male, Unneutered	2	25.00
			Sub-Total:	\$100.00
A25900012	Peddlers Permit	Application Fee	1	75.00
			Sub-Total:	\$75.00
A25900019	Taxi Cab License	Taxi Cab License	1	400.00
			Sub-Total:	\$400.00
A25900020	Taxi Drivers License	Taxi Drivers License	1	100.00
			Sub-Total:	\$100.00
Total Local Shares Remitted:				\$2,191.00
Amount paid to: NYS Ag. & Markets for spay/neuter program				16.00
Amount paid to: State Health Dept. For Marr. Licenses				450.00
Total State, County & Local Revenues:		\$2,657.00	Total Non-Local Revenues:	
			\$466.00	



City Clerk

1/3/13

Date



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

JANUARY 3, 2013

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

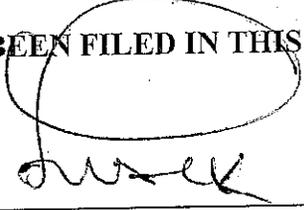
FROM: REGISTRAR OF VITAL STATISTICS

I RESPECTFULLY REPORT THAT THERE HAS BEEN
RECEIVED IN THE OFFICE OF VITAL STATISTICS DURING THE MONTH
OF DECEMBER 2012 THE SUM OF \$5,214.00 AS FOLLOWS:

157 CERTIFIED COPIES OF BIRTH CERTIFICATES	\$1,570.00
364 CERTIFIED COPIES OF DEATH CERTIFICATES	<u>\$3,644.00</u>
TOTAL	\$5,214.00

IN ADDITION:

911 BIRTHS HAVE BEEN FILED IN THIS OFFICE TO DATE,
616 DEATHS HAVE BEEN FILED IN THIS OFFICE TO DATE,



LORENE VITEK

PERSONNEL REPORT
CIVIL SERVICE COMMISSION
DECEMBER 2012

POLICE:

Daniel Cameron	Police Lieutenant
159 Dickerson Avenue	From provisional to permanent
Montgomery, NY	12/19/12 \$90,135

DPW:

Sharrieff Anderson	CDBG Temporary Laborer
56 Bay View Terrace	Appointed Temporary
Newburgh, NY	12/3/12 \$16.00/hr.

Irell Jones	CDBG Temporary Laborer
1 Chadwick Gardens	Appointed Temporary
Newburgh, NY	12/3/12 \$16.00/hr.

Alex Livingston	CDBG Temporary Laborer
57 Carson Avenue	Appointed Temporary
Newburgh, NY	12/3/12 \$16.00/hr.

Kenyon Nolcox	CDBG Temporary Laborer
241 Third Street	Appointed Temporary
Newburgh, NY	12/3/12 \$16.00/hr.

**Recreation/
21st Century
Grant:**

Goldie Mercado	Group Leader
31 Monument Street	Appointed Temporary
Newburgh, NY	12/14/12 \$18.00/hr.



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

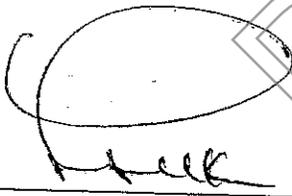
LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel
FROM: Lorene Vitek, City Clerk
RE: Notice of Claim:
State Farm vs. City of Newburgh
DATE: December 17, 2012

Please find attached Notice of Claim which was received via Certified Mail.



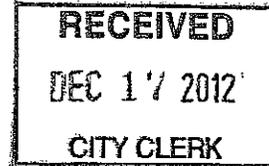
Attachment

Cc City Manager ✓
Mayor & Council

November 30, 2012

City Clerk
83 Broadway
Newburgh NY 12550-5617

State Farm Claims
P.O. Box 2371
Bloomington IL 61702-2371



Certified Mail - Return Receipt Requested

RE: Claim Number: 52-1F44-054
Our Insured: Eleanor La Grotta
Date of Loss: June 28, 2012
Your Insured: City Clerk
Your Insured Driver: Paul K Taylor
Loss Location: Liberty St, Newburgh,

Sir/Madam :

Facts of Loss:

Our insured was going around city street cleaner and was struck by city sweeper.

It is our understanding that you are self insured. Our investigation indicates you are responsible for this claim. Therefore, we are seeking recovery from you. This letter is to notify you of our subrogation claim and request your cooperation in settling this matter.

To assist you in your review, here is a breakdown of the amounts State Farm® paid by Cause of Loss:

041/045 - Uninsured Motorist BI	\$
042 - Uninsured Motorist PD	\$
300 series/400 - Comp/Collision	\$5,751.76
501 - Rental/Loss of Use	\$
600-050 - Med Pay/PIP	\$
Other	\$
Salvage Recovery	\$
Amount State Farm Paid	\$5,751.76
Insured Deductible	\$500.00
Total Claim Amount	\$6,251.76

Based on the assessment of liability between the parties, State Farm Mutual Automobile Insurance Company is seeking 20% of the Total Claim Amount listed above. The amount payable to State Farm Mutual Automobile Insurance Company for this loss is \$1,250.36.

Please remit payment of this claim and include our claim number on the payment. If you have any questions or need additional information, please call me at the number listed below. If I am not available, any other member of my team may assist you. Thank you for your cooperation.

PAPALEO'S AUTO BODY INC

259-265 ANN ST, NEWBURGH, NY 12550

Phone: (845) 565-7212

FAX: (845) 568-0681

 Workfile ID: 5f3e355e
 Federal ID: 14-1789638
 License Number: 7074405
Supplement of Record**Customer: LA GROTTA, ELEANOR**

Written By: Chris Cababe, 7/21/2012 7:56:22 AM

Adjuster: Team CR Unit CA ACC BSOC, (800) 884-4415 x3020 Business

Insured: LA GROTTA, ELEANOR Policy #: Claim #: 52-1F44-05401
 Type of Loss: COLL-Collision Date of Loss: 6/28/2012 12:00:00 AM Days to Repair: 0
 Point of Impact: 05 Right Rear

Owner:	Inspection Location:	Insurance Company:
LA GROTTA, ELEANOR	RESIDENCE - ELEANOR LA GROTTA	STATE FARM INSURANCE COMPANIES
424 GARDNERTOWN RD	424 GARDNERTOWN RD	ROCKLAND , NY
NEWBURGH, NY 12550-1680	NEWBURGH, NY 12550-1680	100 STATE FARM PLACE
(845) 564-3345 Evening	Other	BALLSTON SPA, NY 12020
(845) 564-3314 Day	(845) 564-3345 Day	(800) 884-4415 x3020 Business

Vehicle Drop Off Date: 07/09/2012 **Promise Date:** 07/20/2012 **Repair Start Date:** 07/09/2012
Repair Completion Date: 07/20/2012 **Vehicle Pick Up/Return Date:** 07/20/2012

VEHICLE

Year: 2003	Body Style: 4D SED	VIN: 1NXBR32EX3Z096009	Mileage In: 91748
Make: TOYO	Engine: 4-1.8L-FI	License: BCG8827	Mileage Out:
Model: COROLLA LE	Production Date:	State: NY	Vehicle Out:
Color: Int:	Condition:	Job #:	

TRANSMISSION5 Speed Transmission
Overdrive**SEATS**Bucket Seats
Cloth Seats
Reclining Seats**STEERING**Power Steering
Tilt Wheel**BRAKES**

Power Brakes

GLASS

Rear Defogger

Power Windows

WHEELS

Full Wheel Covers

RADIOAM Radio
FM Radio

Stereo

Search/Seek

CD Player

INTERIOR

Power Locks

Power Trunk/Tailgate

Air Conditioning

Driver Air Bag

Passenger Air Bag

Console/Storage

Digital Clock

Intermittent Wipers

Wood Interior Trim

EXTERIOR

Power Mirrors

Dual Mirrors

Body Side Moldings

Keyless Entry

PAINT

Clear Coat Paint

Supplement of Record

Customer: LA GROTTA, ELEANOR

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		FRONT DOOR					
2	R&I	RT Door w'strip	6786102130			0.4	
3		REAR DOOR					
4	S01 R&I	RT R&I door assy w/power units	6700302190			1.1	
5	Blnd	RT Outer panel US built	6711302080				1.0
6	R&I	RT Door w'strip	6787102090			Incl.	
7	R&I	RT Belt molding	7573002081			0.3	
8	R&I	RT Door glass Toyota	6810302090			0.5	
9	* S01	Repl RT Body side mldg LE, XRS, & S model champagne	7574102180D0	1	100.45	0.3	
10	* R&I	RT Run channel	6814202160			0.3	
11	S01 Blnd	RT Handle, outside LE, XRS, & S model champagne	69211AA020D2				0.2
12	R&I	RT Handle, outside LE, XRS, & S model champagne	69211AA020D2			0.2	
13	R&I	RT R&I trim panel	6763002810B2			0.4	
14		QUARTER PANEL					
15	Repl	RT Quarter panel CE & LE	6160102140	1	699.43	14.0	3.2
16		Add for Clear Coat					1.3
17	Repl	RT Quarter panel protector	5874102060	1	12.21	0.2	
18	R&I	RT Pressure vent	62940AA030			0.2	
19	* Rpr	RT Outer wheelhouse	6163102070			2.0	0.6
20		Add for Clear Coat					0.1
21	R&I	RT Upper qtr trim neutral	6247112841E0			Incl.	
22	R&I	RT Lower qtr trim neutral	6255102050E0			Incl.	
23	Repl	RT End panel	6169702902	1	69.33	1.0	0.4
24		Overlap Mirror Panel					-0.2
25		Add for Clear Coat					0.1
26		PILLARS, ROCKER & FLOOR					
27	* Blnd	<u>RT Hinge pillar CE & LE PARTIAL FOR NO CLEAR BREAK</u>	6113102090			s	0.5
28	* Blnd	<u>RT rocker panel CE & LE PARTIAL FOR NO CLEAR BREAK</u>	6131102060			s	0.8
29	R&I	RT Rocker molding	7585102030			0.4	
30	R&I	LT Rocker molding	7585202030			0.4	
31	R&I	RT Rear door trim neutral	6233302040E0			Incl.	
32	* R&I	<u>Carpet neutral SET BACK</u>	5851002493E2			1.5	
33	R&I	RT Pillar cover	6011712010			0.2	
34	S01 R&I	RT Scuff plate rear	6791502070			Incl.	
35		BACK GLASS					
36	R&I	Back glass Toyota	6481102200			Incl.	
37	Repl	Dam	5611747010	1	26.29		
38	#	Repl GLASS KIT		1	25.00		
39	Repl	Molding	7557102120	1	56.49	Incl.	

Supplement of Record

Customer: LA GROTTA, ELEANOR

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

40	ROOF						
41	*	Blnd	<u>RT Outer rail PARTIAL FOR NO CLEAR BREAK</u>	6121102070			<u>0.6</u>
42		R&I	RT Drip molding	7555502030			0.3
43		R&I	Headliner neutral	6331002332E0			3.5
44	REAR LAMPS						
45	*	Repl	<u>LKQ RT Combo lamp assy LKQ BROADWAY 800-626-6708 +40%</u>	8155002200	1	<u>105.00</u>	<u>Incl.</u>
46		R&I	RT Backup lamp assy	8167002030			0.3
47		R&I	LT Backup lamp assy	8168002030			0.3
48	TRUNK LID						
49		Blnd	Molding champagne	7680102120D0			0.2
50	*	R&I	Molding champagne	7680102120D0			<u>0.3</u>
51		Repl	Nameplate "TOYOTA"	7544102060	1	23.16	0.3
52		Repl	Nameplate "COROLLA"	7544202070	1	30.14	0.3
53		Repl	Nameplate "LE" chrome	754441A790	1	20.11	0.2
54		R&I	Trunk lid trim	6471902040C0			0.2
55	*	Rpr	<u>Trunk lid w/o spoiler PARTIAL W FULL CLEAR</u>	6440102100			<u>1.5</u> <u>2.0</u>
56			Overlap Major Adj. Panel				-0.4
57	*		Add for Clear Coat				<u>0.4</u>
58		Repl	Emblem	75441AA050	1	24.02	0.2
59	WHEELS						
60		R&I	RT/Rear R&I wheel	4261102471		m	0.1
61	REAR BODY & FLOOR						
62		R&I	RT Side trim panel	6472102120C0			Incl.
63	*	Rpr	<u>Rear body panel PARTIAL W FULL CLEAR</u>	5830702110			<u>3.5</u> <u>1.3</u>
64			Overlap Major Adj. Panel				-0.4
65	*		Add for Clear Coat				<u>0.3</u>
66		R&I	Rear panel trim	5838702050B0			Incl.
67	*	R&I	Spare cover	6477102150C0			<u>0.2</u>
68	REAR BUMPER						
69		Repl	RT Filler rivet	9026906013	6	4.50	
70			O/H bumper assy				1.8
71		Repl	RT Side support	5215502070	1	21.26	Incl.
72		Repl	RT Bumper cover bracket	5219702030	1	5.69	Incl.
73	*	R&I	LT Filler	5255302020			<u>0.3</u>
74		Repl	RT Filler	5255202020	1	30.94	Incl. 0.3
75			Add for Clear Coat				0.1
76		R&I	R&I bumper cover	5215902911			Incl.
77	*	Rpr	<u>Bumper cover CE & LE PARTIAL W FULL CLEAR</u>	5215902911			<u>2.0</u> <u>2.6</u>
78	*		Add for Clear Coat				<u>1.2</u>
79			Deduct for Rear Bumper R&I				-1.2
80	#	Repl	MASK UNPAINTED SECTIONS		1	4.00	0.3

Supplement of Record

Customer: LA GROTTA, ELEANOR

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

		REAR BUMPER				
81	#	Repl CAR COVER	1	10.00	0.3	
82	#	Repl FLEX ADDITIVE	1	15.00		
83	#	Repl COLOR TINT INC SPRAY OUT CARDS	1		0.5	
84	#	Rpr DISCONNECT & RECONNECT BATTERY			0.2	
85	#	Rpr RESET ELECTRONICS			0.3	
86	#	Rpr DENIB & POLISH			1.2	
87	#	Repl ANTICORROSION PRIMER	1	35.00	0.3	
88	#	Repl UNDERCOATING	1	28.95	0.4	
89	#	Repl RUST-PROOFING	1	18.95	0.3	
90	#	Rpr SET-UP AND MEASURE			2.0	
91	#	S01 Rpr PRE- PULL			2.5 F	
92	#	Rpr UNIBODY SIDE SWAY			2.5 F	
93	#	Rpr REPAIR & REFINISH PINCH WELD ANCHOR DAMAGE			1.0	1.0
94	#	Repl 2ND CAR COVER FOR PRIMER & EDGING	1	10.00	0.3	
95	#	Repl MASK INTERIOR FOR REPAIRS	1	10.00	0.5	
96	#	Repl LIFT TAPE & MASK FRONT GLASS	1	8.00	0.4	
97	#	Repl WELD THRU PRIMER	1	12.00	0.3	
98	#	Rpr REMOVE DECAL/MLDG ADHESIVE			0.6	
99	#	Repl SOUND DEADNING	1	15.00	0.3	
100	#	Repl CHIP GUARD	1	18.95	0.3	
101		OTHER CHARGES				
102	#	E.P.C.	1	4.50		
SUBTOTALS				1,444.37	52.0	17.2

Supplement of Record

Customer: LA GROTTA, ELEANOR

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

ESTIMATE TOTALS

Category	Basis	Rate	Cost \$
Parts			1,439.87
Body Labor	47.0 hrs @	\$ 55.00 /hr	2,585.00
Paint Labor	17.2 hrs @	\$ 55.00 /hr	946.00
Frame Labor	5.0 hrs @	\$ 65.00 /hr	325.00
Paint Supplies	17.2 hrs @	\$ 28.00 /hr	481.60
Other Charges			4.50
Subtotal			5,781.97
Sales Tax	\$ 5,781.97 @	8.1250 %	469.79
Grand Total			6,251.76
Deductible			500.00
CUSTOMER PAY			500.00
INSURANCE PAY			5,751.76

Draft Only

Supplement of Record

Customer: LA GROTTA, ELEANOR

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

SUPPLEMENT SUMMARY

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
Changed Items							
86	#	Rpr PRE- PULL				-4.0 F	
91	#	S01 Rpr PRE- PULL				2.5 F	
Added Items							
4		S01 R&I RT R&I door assy w/power units	6700302190			1.1	
9	*	S01 Repl RT Body side midg LE, XRS, & S model champagne	7574102180D0	1	100.45	0.3	
11		S01 Blind RT Handle, outside LE, XRS, & S model champagne	69211AA020D2				0.2
34		S01 R&I RT Scuff plate rear	6791502070			Incl.	
SUBTOTALS					100.45	-0.1	0.2

TOTALS SUMMARY

Category	Basis	Rate	Cost \$
Parts			100.45
Body Labor	1.4 hrs @	\$ 55.00 /hr	77.00
Paint Labor	0.2 hrs @	\$ 55.00 /hr	11.00
Frame Labor	-1.5 hrs @	\$ 65.00 /hr	-97.50
Paint Supplies	0.2 hrs @	\$ 28.00 /hr	5.60
Subtotal			96.55
Sales Tax	\$ 96.55 @	8.1250 %	7.85
Total Supplement Amount			104.40
NET COST OF SUPPLEMENT			104.40

CUMULATIVE EFFECTS OF SUPPLEMENT(S)

Estimate	6,147.36	Chris Cababe
Supplement S01	104.40	Chris Cababe
Job Total:	\$ 6,251.76	
CUSTOMER PAY:	\$ 500.00	
INSURANCE PAY:	\$ 5,751.76	

Supplement of Record

Customer: **LA GROTTA, ELEANOR**

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

The above estimate is based on our inspection. Occasionally, worn or damaged parts are discovered after after repairs have begun. Parts prices are subject to invoice. Papaleo's Auto Body, Inc. is not responsible for loss or damage to vehicle in case of fire, theft or any other cause beyond our control, or for any delay caused by unavailability of parts or delay in parts shipments by the supplier or transporters. you authorize all employees to operate the vehicle on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on the vehicle to secure payment for repairs thereto, and further agree to pay legal fees and costs necessary to enforce this authorization.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR COMMERCIAL INSURANCE OR A STATEMENT OF CLAIM FOR ANY COMMERCIAL OR PERSONAL INSURANCE BENEFITS CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, AND ANY PERSON WHO, IN CONNECTION WITH SUCH APPLICATION OR CLAIM, KNOWINGLY MAKES OR KNOWINGLY ASSISTS, ABETS, SOLICITS OR CONSPIRES WITH ANOTHER TO MAKE A FALSE REPORT OF THE THEFT, DESTRUCTION, DAMAGE OR CONVERSION OF ANY MOTOR VEHICLE TO A LAW ENFORCEMENT AGENCY, THE DEPARTMENT OF MOTOR VEHICLES OR AN INSURANCE COMPANY, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE VALUE OF THE SUBJECT MOTOR VEHICLE OR STATED CLAIM FOR EACH VIOLATION. You are entitled to the return of all replaced parts, except warranty and exchange parts, but you must ask for them in writing before any work is done. If you authorize work by phone, the shop must keep any replaced parts, and make them available when you pick up the vehicle.

Draft

Supplement of Record

Customer: LA GROTTA, ELEANOR

Vehicle: 2003 TOYO COROLLA LE 4D SED 4-1.8L-FI

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Unless otherwise noted all items are derived from the Guide ARM8427, CCC Data Date 7/17/2012, and the parts selected are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor information provided by MOTOR may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as AM. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2012 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a complete list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category.
X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category.
M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel.
CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel.
HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non
Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace.
R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel.
Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway
Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)

52-1F44-054

Local Codes
CN-014906-12
KCMD11030036

AMENDED REPORT

1 Accident Date: Month 6, Day 28, Year 2012. Day of Week: Thursday. Military Time: 10:40. No. of Vehicles: 2. No. Injured: 0. No. Killed: 0. Not Investigated at Scene: []. Left Scene: []. Police Photos: [X] Yes [] No.

2 VEHICLE 1 - Driver License (D Number) 284015081. State of Lic. NY. VEHICLE 2 - Driver License ID Number 664445066. State of Lic. NY.

Driver Name - exactly as printed on license: LAGROTTA, ELEANOR (Vehicle 1); TAYLOR JR, PAUL K (Vehicle 2).

Address (Include Number and Street): 424 GARNERTOWN RD (Vehicle 1); 202 STRAWBRIDGE RD (Vehicle 2).

City or Town: NEWBURGH (Vehicle 1); WALLKILL (Vehicle 2). State: NY. Zip Code: 12550 (Vehicle 1); 12589 (Vehicle 2).

3 Date of Birth: 5/6/1928 (Vehicle 1); 1/30/1966 (Vehicle 2). Sex: F (Vehicle 1); M (Vehicle 2). Unlicensed: []. No. of Occupants: 01 (Vehicle 1); 01 (Vehicle 2). Public Property Damaged: [].

Name - exactly as printed on registration: LAGROTTA, ELEANOR (Vehicle 1); DEPT, OF; PUBLIC; WORKS, NEWBURGH (Vehicle 2). Sex: F (Vehicle 1); C (Vehicle 2). Date of Birth: 5/6/1928 (Vehicle 1); [] (Vehicle 2).

4 Address (Include Number and Street): 424 GARNERTOWN RD (Vehicle 1); 88 PIERCES RD (Vehicle 2). City or Town: NEWBURGH (Vehicle 1); NEWBURGH (Vehicle 2). State: NY. Zip Code: 12550 (Vehicle 1); 12550 (Vehicle 2).

Plate Number: BCG8827 (Vehicle 1); M19071 (Vehicle 2). State of Reg: NY. Vehicle Year & Make: 2003 TOYT (Vehicle 1); 2006 FRHT (Vehicle 2). Vehicle Type: 4DSD (Vehicle 1); RD/S (Vehicle 2). Ins. Code: 328 (Vehicle 1); 994 (Vehicle 2).

5 Tickets/Arrest Number(s): [] (Vehicle 1); [] (Vehicle 2). Violation Section(s): [] (Vehicle 1); [] (Vehicle 2).

6 VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED. 15. TRAILER 18. NO DAMAGE. 16. OVERTURNED 19. OTHER.

7 VEHICLE DAMAGE CODES: Box 1 - Point of Impact; Box 2 - Most Damage. Enter up to three more damage codes.



8 See the last page of the MV-104A for the accident diagram.

9 Cost of repairs to any one vehicle will be more than \$1000. [] Unknown/Unable to determine [X] Yes [] No.

Reference Marker, Coordinates (if available), Latitude/Northing, Longitude/Easting, Place Where Accident Occurred: County ORANGE, City [X], Village [], Town of NEWBURGH. Road on which accident occurred: LIBERTY STREET. at 1) intersecting street SECOND STREET. or 2) feet miles of (Milepost, Nearest intersecting Route Number or Street Name).

Accident Description/Officer's notes: V2, THE CITY STREET SWEEPER, WAS HEADING SOUTH ON LIBERTY STREET, MAKING A TURN ONTO SECOND STREET, WHEN V1 COLLIDED WITH IT. THE DRIVER OF V1 STATED THAT SHE WAS ATTEMPTING TO PASS V2 AND DIDN'T REALIZE THAT IT WAS MAKING THE TURN. THE DRIVER OF V2, STATED THAT HE DID NOT SEE V1 UNTIL AFTER THE CRASH.

Table with columns: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 BY, TO 18, Names of all involved, Date of Death Only. Rows: A 1 1 4 1 84 F - - - LAGROTTA, ELEANOR; B 2 1 4 1 46 M - - - TAYLOR JR, PAUL K.

Table with columns: A, L, L, I, N, V, O. Rows: A, B, C, D, E.

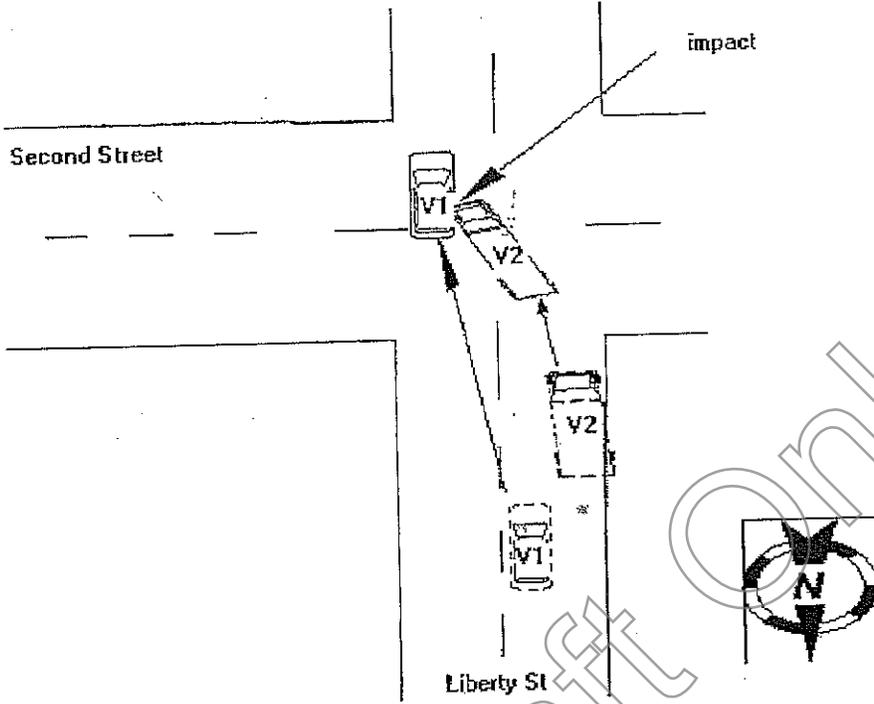
Page 2 of 2 Pages

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT MV-104A (3/04)

Local Codes		
CN-014906-12		
KCND11000036		

AMENDED REPORT

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Month	Day	Year	Thursday	10:40	2	0	0	Accident Reconstructed <input type="checkbox"/>		
6	28	2012								



Draft Only

ADMINISTRATIVE DATA

2003 TOYOTA COROLLA LE 4D SEDAN

Brad Fordyce
State Farm Insurance
Ballston Spa CTLU. Branch
P.O. Box 8017
Ballston Spa NY 12020-8002

Claimant:
Insured: La Grotta
Claim: 52-1F44-05401
Loss Date: 06/28/2012
Loss Type: Collision
Policy:
Other:

BOOK AVERAGING WORKSHEET

2003 TOYOTA COROLLA LE 4D SEDAN

N.A.D.A. values are as of June 2012 from the Official Older Used Car Guide, National Edition for a 2003 TOYOTA Corolla-4 Cyl. Sedan 4D LE.

The Automobile Red Book values are based on the 06/01/12-06/30/12 Region A Automobile Red Book Edition for a 03 TOYOTA COROLLA LE 4D SEDAN.

	NADA Retail	Red Book Retail
BASE VALUE	\$7,475	\$7,200
ENGINE: 4cyl Gasoline 1.8	Included	Included
TRANSMISSION: 4 Speed	Included	Included
MILEAGE: 91,748	475	Included
DRIVE	Included	Included
Air Conditioning	Included	200
Alarm System	No Adjustment	No Adjustment
AM/FM CD Player	Included	50
Anti-Lock Brakes	No Adjustment	No Adjustment
Bodyside Moldings	No Adjustment	No Adjustment
Bucket Seats	No Adjustment	No Adjustment
Cargo/Trunk Mat	No Adjustment	No Adjustment
Cargo/Trunk Net	No Adjustment	No Adjustment
Center Console	No Adjustment	No Adjustment
Cruise Control	100	100
Digital Clock	No Adjustment	No Adjustment
Dual Airbags	No Adjustment	No Adjustment
Floor Mats	No Adjustment	No Adjustment
Intermittent Wipers	No Adjustment	No Adjustment
Keyless Entry System	No Adjustment	No Adjustment
Lighted Entry System	No Adjustment	No Adjustment
Power Brakes	No Adjustment	No Adjustment
Power Door Locks	Included	No Adjustment
Power Mirrors	No Adjustment	No Adjustment
Power Steering	Included	No Adjustment
Power Windows	Included	75
Rear Window Defroster	Included	No Adjustment
Rem Trunk-L/Gate Release	No Adjustment	No Adjustment
Split Folding Rear Seat	No Adjustment	No Adjustment
Tachometer	No Adjustment	No Adjustment

	NADA Retail	Red Book Retail
	-----	-----
Tilt Steering Wheel	No Adjustment	No Adjustment
Tinted Glass	No Adjustment	No Adjustment
Velour/Cloth Seats	No Adjustment	No Adjustment
Wood Interior Trim	No Adjustment	No Adjustment
All Weather Guard Package	No Adjustment	No Adjustment
	=====	=====
	\$8,050	\$7,625
ADJUSTED TOTALS		

=====

AVERAGE \$7,838.00

Additional Valuation Adjustments:

Other Adjustment: 0

Additional Mileage Adj: 238

Prior Damage: 0

Dealer Prep: -100

=====

Adjusted Book Value \$7,976.00

General Sales Tax: 8.125% 648.05

Deductible: -500.00

Net Adjusted Value: 8,124.05

The Autosource Book Averaging Worksheet represents an estimated value for the loss vehicle based on the average of values provided by Red Book and NADA guide books. 'Included' indicates the book includes the item in the Base Value. 'No Adjustment' displays if the book does not consider that item to have value. The # sign indicates a carryover item subject to state or insurance company guidelines.

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Report Generated by Audatex, a Solera Company

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07/16/12 08:53
Via: Multiple

AUTOSOURCE VALUATION
AS Request: 31166952

Page 1
Version: 2

ADMINISTRATIVE DATA

2003 TOYOTA COROLLA LE 4D SEDAN

Brad Fordyce
State Farm Insurance
Ballston Spa CTLU. Branch
P.O. Box 8017
Ballston Spa NY 12020-8002

Claimant:
Insured: La Grotta
Claim: 52-1F44-05401
Loss Date: 06/28/2012
Loss Type: Collision
Policy:
Other:

BOOK AVERAGING WORKSHEET

2003 TOYOTA COROLLA LE 4D SEDAN

N.A.D.A. values are as of June 2012 from the Official Older Used Car Guide, National Edition for a 2003 TOYOTA Corolla-4 Cyl. Sedan 4D LE.

The Automobile Red Book values are based on the 06/01/12-06/30/12 Region A Automobile Red Book Edition for a 03 TOYOTA COROLLA LE 4D SEDAN.

	NADA Retail	Red Book Retail
BASE VALUE	\$7,475	\$7,200
ENGINE: 4cyl Gasoline 1.8	Included	Included
TRANSMISSION: 4 Speed	Included	Included
MILEAGE: 91,748	475	Included
DRIVE	Included	Included
Air Conditioning	Included	200
Alarm System	No Adjustment	No Adjustment
AM/FM CD Player	Included	50
Anti-Lock Brakes	No Adjustment	No Adjustment
Bodyside Moldings	No Adjustment	No Adjustment
Bucket Seats	No Adjustment	No Adjustment
Cargo/Trunk Mat	No Adjustment	No Adjustment
Cargo/Trunk Net	No Adjustment	No Adjustment
Center Console	No Adjustment	No Adjustment
Cruise Control	100	100
Digital Clock	No Adjustment	No Adjustment
Dual Airbags	No Adjustment	No Adjustment
Floor Mats	No Adjustment	No Adjustment
Intermittent Wipers	No Adjustment	No Adjustment
Keyless Entry System	No Adjustment	No Adjustment
Lighted Entry System	No Adjustment	No Adjustment
Power Brakes	No Adjustment	No Adjustment
Power Door Locks	Included	No Adjustment
Power Mirrors	No Adjustment	No Adjustment
Power Steering	Included	No Adjustment
Power Windows	Included	75
Rear Window Defroster	Included	No Adjustment
Rem Trunk-L/Gate Release	No Adjustment	No Adjustment
Split Folding Rear Seat	No Adjustment	No Adjustment
Tachometer	No Adjustment	No Adjustment

07/16/12 08:53
Via: Multiple

AUTOSOURCE VALUATION
AS Request: 31166952

Page 2
Version: 2

BOOK AVERAGING WORKSHEET (continued)

2003 TOYOTA COROLLA LE 4D

Tilt Steering Wheel
 Tinted Glass
 Velour/Cloth Seats
 Wood Interior Trim
 All Weather Guard Package

NADA Retail

 No Adjustment
 No Adjustment
 No Adjustment
 No Adjustment
 No Adjustment
 =====
 \$8,050

Red Book Retail

 No Adjustment
 No Adjustment
 No Adjustment
 No Adjustment
 No Adjustment
 =====
 \$7,625

ADJUSTED TOTALS

=====
 AVERAGE \$7,838.00

Additional Valuation Adjustments:

Other Adjustment: 0

Additional Mileage Adj: 0

Prior Damage: 0

Dealer Prep: -100

=====
 Adjusted Book Value \$7,738.00

General Sales Tax: 8.125% 628.71

Deductible: -500.00

Net Adjusted Value: 7,866.71

The Autosource Book Averaging Worksheet represents an estimated value for the loss vehicle based on the average of values provided by Red Book and NADA guide books. 'Included' indicates the book includes the item in the Base Value. 'No Adjustment' displays if the book does not consider that item to have value. The # sign indicates a carryover item subject to state or insurance company guidelines.

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07/16/12 08:53
 via: Multiple

AUTOSOURCE VALUATION
 AS Request: 31166952

Page 3
 Version: 2

ABOUT YOUR VALUATION

2003 TOYOTA COROLLA LE 4D SEDAN

This report contains proprietary information of Audatex and shall not be disclosed to any third party (other than the insured or claimant) without Audatex's prior written consent. If you are the insured or claimant and have questions regarding the description of your vehicle, please contact the insurance company that is handling your claim. Information within VINsource/NICB is provided solely to identify potential duplicative claims activity. User agrees to use such information solely for lawful purposes.

Tax rates contained herein are based on general sales tax data provided by Vertex Inc. Excise, use, registration, licensing and other taxes and fees that may be applicable are not included. Audatex makes no representations or warranties concerning the applicability or accuracy of such tax data.

Report Generated by Audatex, a Solera Company

US Pat. No 7912740B2

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Draft Only

ADMINISTRATIVE DATA

2003 TOYOTA COROLLA LE 4D SEDAN

Papaleos Auto Body Inc
State Farm Insurance
23DE VIR Branch
100 State Farm Place
Ballston Spa NY 12020

Claimant:
Insured:La Grotta
Claim:52-1F44-05401
Loss Date:06/28/2012
Loss Type:Collision
Policy:
Other:

BOOK AVERAGING WORKSHEET

2003 TOYOTA COROLLA LE 4D SEDAN

N.A.D.A. values are as of June 2012 from the Official Older Used Car Guide, National Edition for a 2003 TOYOTA Corolla-4 Cyl. Sedan 4D LE.

The Automobile Red Book values are based on the 06/01/12-06/30/12 Region A Automobile Red Book Edition for a 03 TOYOTA COROLLA LE 4D SEDAN.

	NADA Retail	Red Book Retail
BASE VALUE	\$7,475	\$7,200
ENGINE: 4cyl Gasoline 1.8	Included	Included
TRANSMISSION: 4 Speed	Included	Included
MILEAGE: 91,748	475	Included
DRIVE	Included	Included
Air Conditioning	Included	200
Alarm System	No Adjustment	No Adjustment
AM/FM CD Player	Included	50
Anti-Lock Brakes	No Adjustment	No Adjustment
Bodyside Moldings	No Adjustment	No Adjustment
Bucket Seats	No Adjustment	No Adjustment
Cargo/Trunk Mat	No Adjustment	No Adjustment
Cargo/Trunk Net	No Adjustment	No Adjustment
Center Console	No Adjustment	No Adjustment
Cruise Control	100	100
Digital Clock	No Adjustment	No Adjustment
Dual Airbags	No Adjustment	No Adjustment
Floor Mats	No Adjustment	No Adjustment
Intermittent Wipers	No Adjustment	No Adjustment
Keyless Entry System	No Adjustment	No Adjustment
Lighted Entry System	No Adjustment	No Adjustment
Power Brakes	No Adjustment	No Adjustment
Power Door Locks	Included	No Adjustment
Power Mirrors	No Adjustment	No Adjustment
Power Steering	Included	No Adjustment
Power Windows	Included	75
Rear Window Defroster	Included	No Adjustment
Rem Trunk-L/Gate Release	No Adjustment	No Adjustment
Split Folding Rear Seat	No Adjustment	No Adjustment
Tachometer	No Adjustment	No Adjustment

	NADA Retail	Red Book Retail
	-----	-----
Tilt Steering Wheel	No Adjustment	No Adjustment
Tinted Glass	No Adjustment	No Adjustment
Velour/Cloth Seats	No Adjustment	No Adjustment
Wood Interior Trim	No Adjustment	No Adjustment
All Weather Guard Package	No Adjustment	No Adjustment
	=====	=====
ADJUSTED TOTALS	\$8,050	\$7,625

=====

AVERAGE \$7,838.00

Additional Valuation Adjustments:

Other Adjustment:	0
Additional Mileage Adj:	0
Prior Damage:	0
Dealer Prep:	0

=====

Adjusted Book Value \$7,838.00

General Sales Tax: 8.125% 636.84

Deductible: -500.00

Net Adjusted Value: 7,974.84

The Autosource Book Averaging Worksheet represents an estimated value for the loss vehicle based on the average of values provided by Red Book and NADA guide books. 'Included' indicates the book includes the item in the Base Value. 'No Adjustment' displays if the book does not consider that item to have value. The # sign indicates a carryover item subject to state or insurance company guidelines.

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Tax rates contained herein are based on general sales tax data provided by Vertex Inc. Excise, use, registration, licensing and other taxes and fees that may be applicable are not included. Audatex makes no representations or warranties concerning the applicability or accuracy of such tax data.

Report Generated by Audatex, a Solera Company

US Pat. No 7912740B2

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Draft Only

Vehicle Inspection Report

Claim No: 52-1F44-05401 Rep: _____ Claim Unit: _____
 Owner: _____ Rep Phone: _____ Rep Fax: _____
 Insured: LA GROTTA Loss Code: _____ Date of Loss: 06/28/12
 Location Address: _____ Phone: _____ Date Report.: 07/16/12
 N/A, Cause of Loss: Storage: \$ _____/day
 *Collision Theft Flood Vandalism Hail Fire Other: Towing: \$ _____
 Stock # _____

VEHICLE DESCRIPTION

2003 Toyota Corolla LE 4D Sedan Lic. Plt: _____ Exp.: _____
 VIN: 1NXBR32EX3Z096009 Color: Ext. UNK Int. _____ St: _____
 Engine Disp. 1.8 No. Cyl. 4 *Gas Diesel Turbo/Supercharged Electric
 Trans: *Auto Manual Speeds: 3 *4 5 6 7 8 9 10
 Mileage: 91,748 Tires Mfg: _____ *Wear: LF 15% LR 15% SP _____
 Size: _____ RF 15% RR 15%
 Cab Type: Reg Cab Ext. Cab Crew Cab Load/Rating: 1/2 Ton 3/4 Ton 1 Ton
 Box Size: Box Type: Styleside Stepside
 Van Type Passenger Cargo Regular Extended Conversion Name: _____

VEHICLE EQUIPMENT

ACCESSORIES	OTHER ACC.	SEATS	ROOF	BUMPERS	OTHER
*Pwr Steer	AM Radio	Power Seat	Vinyl Top	Rear Step	Grille Grd
*Pwr Brakes	*AM/FM Stro	Du Pwr Seat	Luggage Rck	Tube	Fog Lights
*Pwr Windows	AM/FM Cass	Heated Seat	Roll/LteBar	Chrome	Winch
*Pwr Locks	AM/FM CS/CD	Lumbar Adj.	Convertible	Chr. Step	Camp.Shell
*Pwr Mirrors	*CD Player	Splt 60/40	Sun-Power	WHEELS	Bed Liner
*Cruise Ctrl	CD Changer	*Bucket	Sun-Manual	Cust. Whl	Sp-in Bed
*Tilt Wheel	Equalizer	*Cloth/Velr	Sun-Pop-Up	Whl Cvr	Liner
*Air Cond.	*Alarm Sys.	Leather	TRUCKS/VANS	Alum./Alloy	Tool Box
Dual Air	Rem. Startr	Vinyl	Television	Chrome	Aux Tank
*AntiLck Brk	*Keyless	Cpt'n Chair	Sliding Rr	Sty. Stl	Hyd.Lft Gt
4WH Dsc Brk	Navigation	2 4 6	Window	Dual Rear	Lift Kit
4 Wh Str'g	DVD Player	GLASS	Power Rear	Wheels	Gr Eff Pkg
*Air Bg Drvr	GPS	HeadsUp Dsp	Window	SUSPENSION	Trlr Hitch
*Air Bg Pass	VCR	Heated W/S	DRIVETRAIN	Trl Tow Pkg	Run.Boards
Air Bg Othr	*Center Cons	*Heated B/Gl	*2 WD	Off. Rd Pkg	PAINT
Pwr Antenna	Overhd Cons	*Tinted Gls	4 WD	Cmp. Spl	2-Tone
Rear Wiper		Privacy Gls	AutoLckHubs		Custom
Rear Spoilr			ManuLckHubs		Graphics
*Remote Trunk					

Use this space to explain or describe Equipment/Accessories listed above
 and/or list and describe additional Equipment/Accessories
 All Weather Guard Package
 Dual Airbags, Bodyside Moldings, Cargo/Trunk Mat, Digital Clock, Cargo/Trunk
 Net, Floor Mats, Intermittent Wipers, Lighted Entry System, Split Folding R
 ear Seat, Tachometer, Wood Interior Trim



Drive Only



RBZ00070

State Farm Mutual Automobile Insurance Company

Auto Payments by Participant/COL

Route To: Jean Newmister

BASIC CLAIM INFORMATION

Claim Number: 52-1F44-054

Date of Loss: 06-28-2012

Policy Number: 0495-868-52C

Named Insured: LA GROTTA, ELEANOR

Named Insured(s) / 400 - COLL

C denotes consolidated payment

E denotes EFT payment

P previously converted payment from CAT/CMR

<u>Payment Number</u>	<u>Issued Date</u>	<u>Payee</u>	<u>Payable COL</u>	<u>Pay Cd</u>	<u>Status</u>	<u>Amount</u>	<u>Auth ID</u>	<u>Rsn Cd</u>
128297075K E	07-24-2012	PAPALEOS AUTO BODY INC	400	1	Paid	\$5,751.76	QCF8	
Total:						\$5,751.76		

Draft Only

RESOLUTION NO.: 1 - 2013

OF

JANUARY 14, 2013

A RESOLUTION ADOPTING
RULES OF ORDER AND PROCEDURE
FOR THE COUNCIL OF THE CITY OF NEWBURGH
FOR THE YEAR 2013

BE IT RESOLVED, that the Council of the City of Newburgh, New York adopts for use during the year 2013 the Rules of Conduct and Procedure. By Laws, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

Draft Only

City of Newburgh City Council
Rules of Order and Procedure

Rule I: General Rules of Procedure

A. The presiding officer shall preserve order and decorum and shall decide questions of order, subject to an appeal by motion to the City Council; the appeal to be taken without debate. The presiding officer may, if (s)he so desires, present motions and resolutions to the City Council, and (s)he may debate on any question which is being considered by it.

B. When a question is under consideration, no motion shall be entertained except as herein specified, which shall have precedence in the following order:

1. Motion for clarification, or to request reversal of ruling of the presiding officer, or limiting or extending discussion;
2. Recess the session;
3. Lay on table;
4. Postpone to a meeting of a certain date;
5. Refer to work session;
6. Amend;
7. Call the previous question, to be asked as follows: "Shall the main question be put now?" If answered in the negative, the main question remains before the Council.

C. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone shall be decided without debate.

D. A motion to adjourn shall always be in order and shall be decided without debate.

E. Every member desiring to speak shall address the presiding officer. All council members shall confine him/herself to the question under debate and avoid personalities. A member once recognized shall not be interrupted when speaking.

F. No question or motion shall be debated or put, unless it is seconded. It shall then be stated by the presiding officer.

G. A motion to reconsider any action taken by the Council may be made on the day such action was taken, either immediately during the session or at a recessed or adjourned session. Such motion must be made by a member on the prevailing side, but may be seconded by any member. The motion is subject to debate. This rule shall not prevent any member of the Council from making or re-making the same or any other motion at a subsequent meeting of the Council.

H. No member of the Council shall by conversation or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to comply with these rules, or the orders of its presiding officer. The Presiding Officer, subject to appeal by motion to the Council, may direct a member who is acting in violation of this section to leave the meeting or call for a recess or adjournment.

I. As the sergeant-at-arms of the meetings, the Police Chief shall carry out all order and instructions given by the presiding officer, for the purpose of maintaining order and decorum at the meetings, subject to an appeal by motion, to the Council.

J. Any motion may be withdrawn by the maker before it has been amended or voted upon, but in such case any other member may renew the motion at that time.

Rule II. Order of Business

A. The Order of Business shall be in conformity with section 20-3 of the Code of Ordinances.

B. The Order of Business may be departed from by majority vote of the members present.

Rule III. Voting

A. The order of voting shall be by alphabetical order of the last name of each Council member with the Mayor voting last.

B. All votes shall be by roll call. It shall be the duty of the City Clerk to enter on the minutes the names of the members voting for or against the question. Once a question has been put and the vote is being taken, the members of the Council shall confine themselves to voting and shall not resume discussion or make further comments on the question.

C. Every resolution or motion must be seconded before being put to a vote. An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

D. No resolution, ordinance or local law may be introduced at a meeting unless the resolution, ordinance or local law has been considered at a work session of the Council prior to the Council meeting or is listed on the written agenda for said meeting. Notwithstanding the foregoing, by majority vote, an item not discussed at work session or appearing on the written agenda may be introduced, considered, and voted upon.

Rule IV. Executive Session

Whenever the Council shall determine to transact business in an executive session, it shall do so in accordance with the provisions of Open Meetings Law. All executive sessions shall be commenced at the public meeting. Proposals, discussions, statements and transactions in executive session are intended to be and shall be held and maintained in confidence and shall not be disclosed. The presiding officer shall direct all persons except members and designated officers and employees of the City to withdraw.

Rule V. Participation of City Manager and Staff

The City Manager shall be permitted to address the Council and participate in discussions. Heads of Departments shall be permitted to address the Council. Any other City officer or employee shall be permitted to address the Council with permission of the presiding officer, subject to an appeal by motion to the City Council, the appeal to be taken without debate.

Rule VI. Suspension of the Rules

In order to hear persons other than members of the City Council, the Mayor, and members of City staff, it shall be necessary to pass a motion suspending the rules of order. A motion to suspend the rules may be made at any time during the meeting and shall be decided without debate. Any such person speaking shall confine himself/herself to the subject and shall spend not longer than three (3) minutes, unless the time is extended by the presiding officer. This rule shall not apply to public hearings.

Rule VII. Guidelines for Public Comment

A. The public shall be allowed to speak only during the Public Comment periods of the meeting or at such other time as the presiding officer may allow, subject to appeal by motion to the Council.

B. Speakers must adhere to the following guidelines:

1. Speakers must be recognized by the presiding officer.
2. Speakers must step to the front of the room.
3. Speakers must give their name, address and organization, if any.
4. Speakers must limit their remarks to 3 minutes on a given topic. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
5. Speakers may not yield any remaining time they may have to another speaker.

6. Council members may, with the permission of the presiding officer, interrupt a speaker during their remarks, but only for the purpose of clarification or information.
7. All remarks shall be addressed to the Council as a body and not to any specific member or to staff.
8. Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste. No profanities shall be used. No personal, slanderous, boisterous remarks shall be made. Council members, the Mayor and staff shall be treated with respect. The presiding officer, subject to appeal by motion to the Council, or the Council, may, by majority vote, request that the presiding officer direct that a speaker violating this provision or any other rule yield the floor and in the event the speaker fails to obey, (s)he may be escorted from the meeting by the sergeant-in-arms.
9. Interested parties or their representatives may address the Council by written communications. Written communications shall be delivered to the Clerk or their designee. Speakers may read written communications verbatim.

C. Members of the public not speaking shall observe commonly accepted rules of courtesy and decorum. They shall not annoy or harass others or speak when another speaker is being heard by the Council.

Rule VIII. Use of Recording Equipment

All members of the public and all public officials are allowed to audio or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer, subject to appeal by motion to the Council, may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Council, size of the equipment, and the ability of the public to still participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, (s)he may request an accommodation to avoid the interference and if not complied with, may ask the individual to leave the meeting room.

Rule IX. Rules for Public Hearings

The following rules shall apply to a legally required public hearing held before the City Council:

- (a) Speakers shall register in writing prior to the beginning of the hearing by providing their name, address, and organization, if any. Individuals arriving after the commencement of the hearing shall be permitted to register upon arrival as long as the Chairperson has not closed the hearing.

(b) The Presiding Officer shall recognize each speaker, in the order registered, when the hearing is commenced. Speakers shall identify themselves, their address and organization, if any, prior to the remarks.

(c) Speakers must limit their remarks to five (5) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.

(d) All remarks shall be addressed to the Council as a body and not to any individual member thereof.

(e) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.

(f) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.

(g) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.

Rule X. Work Sessions

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions.

Rule XI. Robert's Rules of Order

In the event any question in procedure shall arise that is not provided for by these rules, then, in that event, Robert's Rules of Order, Newly Revised, 10th Edition, shall be followed.

Rule XII. Adoption of Ordinances

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on

agenda items before Council action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

This rule shall not be construed to prevent the Council from holding a public hearing on any ordinance at its discretion, provided a majority of the members of the Council in attendance at a meeting, upon a motion or resolution duly introduced, vote to conduct such public hearing.

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)

Draft Only

RESOLUTION NO.: 2 - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A SATISFACTION IN CONNECTION WITH
A MORTGAGE ISSUED TO 97-103 GRAND STREET, LLC
FOR PREMISES LOCATED AT 97-103 GRAND STREET
(SECTION 24, BLOCK 12, LOT 3)**

WHEREAS, by Resolution No.: 105-2010 of May 10, 2010, this Council authorized the acceptance and assumption of all the assets and liabilities of the Newburgh Community Development Agency ("NCDA"), all without consideration, pursuant to Section 554(19) of the General Municipal Law; and

WHEREAS, Resolution No.: 105-2010 of May 20, 2010, further authorized the Acting City Manager to execute and accept delivery of any and all deeds, assignments, instruments, agreements, and any and all other necessary documents to effect such acceptance and assumption by the City; and

WHEREAS, by an Assignment and Assumption of Mortgage Without Covenant between the NCDA f/k/a the Newburgh Urban Renewal Agency to the City of Newburgh, executed on November 15, 2010, and recorded in the Orange County Clerk's Office on November 22, 2010, included a mortgage issued to 97-103 Grand Street, LLC for premises located at 97-103 Grand Street (Section 24, Block 12, Lot 3) in the principal sum of Ten Thousand (\$10,000.00) Dollars; and

WHEREAS, the terms of the mortgage instrument have been satisfied by the mortgagor, and the issuance of a Satisfaction of Mortgage, a copy of which is annexed hereto, is necessary and appropriate; and

WHEREAS, this Council has determined that executing said Satisfaction 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 the attached Satisfaction in connection with a mortgage issued to 97-103 Grand Street, LLC for premises located at 97-103 Grand Street (Section 24, Block 12, Lot 3).

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

KNOW ALL MEN BY THESE PRESENTS,

That The City of Newburgh, a New York municipal corporation, and having its principal office at 83 Broadway, City Hall, Newburgh, New York 12550.

Insert residence, if individual, or principal office, if corporation, giving street and street number.

DOES HEREBY CERTIFY that the following Mortgage **IS PAID**, and do hereby consent that the same be discharged of record.

Mortgage dated the 29th day of August in the year 2001, made by To Newburgh Community Development Agency F/K/A Newburgh Urban Renewal Agency

To by 97-103 Grand Street, LLC

in the principal sum of \$10,000.00 and recorded on the 16th day of October in the year 2003, in Liber 11230 of Section _____ of Mortgages, page 1157, in the office of the County Clerk of the County of Orange and further described in Assignment and Assumption of Mortgage Without Covenant from the Newburgh Community Development Agency formerly known as the Newburgh Urban Renewal Agency to the City of Newburgh, dated the 15th day of November in the year 2010, and recorded on the 22nd day of November in the year 2010, in Book 13085 Page 0851.

Dated the _____ day of November in the year 2011

IN PRESENCE OF:

THE CITY OF NEWBURGH

RICHARD F. HERBEK, CITY MANAGER

Section 321 of the Real Property Law expressly provides who must execute the certificate of discharge in specific cases and also provides, among other things, that (1) no certificate shall purport to discharge more than one mortgage, (except that mortgages affected by instruments of consolidation, spreader, modification or correction may be included in one certificate if the instruments are set forth in detail in separate paragraphs); (2) if the mortgage has been assigned, in whole or in part, the certificate shall set forth: (a) the date of each assignment in the chain of title of the person or persons signing the certificate, (b) the names of the assignor and assignee, (c) the interest assigned, and (d) if the assignment has been recorded, the book and page where it has been recorded or the serial number of such record, or (e) if the assignment is being recorded simultaneously with the certificate of discharge, the certificate of discharge shall so state, and (f) if the mortgage has not been assigned of record, the certificate shall so state; (3) if the mortgage is held by any fiduciary, including an executor or administrator, the certificate of discharge shall recite the name of the court and the venue of the proceedings in which his appointment was made or in which the order or decree vesting him with such title or authority was entered.

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Orange, ss:

On the _____ day of January in the year 2013, before me, the undersigned, personally appeared RICHARD F. HERBEK

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____

(If the place of residence is in a city, include the street and street number if any, thereof; that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

Satisfaction of Mortgage

Title No.

City of Newburgh
TO
97-103 Grand Street, LLC

DISTRIBUTED BY

YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared _____

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of _____, County of _____, ss:

*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the _____ day of _____ in the year _____, before me _____ the undersigned personally appeared _____

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in _____ the _____

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

SECTION: 24

BLOCK: 12

LOT: 3

COUNTY OR TOWN: City of Newburgh

RETURN BY MAIL TO:

[Empty box for return address]

RESOLUTION NO.: 3 - 2012

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A DONATION OF LABOR AND MATERIALS FROM
ORANGE COUNTY DRYWALL SERVICES, INC. TO RENOVATE
THE POLICE STATION LOBBY ACOUSTICAL CEILING GRID SYSTEM**

WHEREAS, the City of Newburgh Police Station lobby has sustained serious water damage; and

WHEREAS, Mr. Ruben Galan, the owner of Orange County Drywall Services, Inc., has contacted the Chief of Police and offered to donate labor and materials to renovate the police station lobby acoustical ceiling grid system; and

WHEREAS, this Council has determined that accepting such donation is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a donation of labor and materials from Orange County Drywall Services, Inc. to renovate the Police Station lobby acoustical ceiling grid system.

RESOLUTION NO.: 4 -2013

OF

JANUARY 14, 2013

**A RESOLUTION ACCEPTING DONATIONS FROM
ENFORCEMENT TECHNOLOGY GROUP, INC. AND THE POLICE SUPERIOR
OFFICERS ASSOCIATION OF NEWBURGH, NEW YORK, INC.
FOR A DIRECT-LINK LIFELINE SERIES CRISIS RESPONSE THROW PHONE SYSTEM
FOR THE CITY OF NEWBURGH POLICE DEPARTMENT**

WHEREAS, a City of Newburgh Police Sergeant attending a Hostage/Crisis Negotiation Training Course provided by the Public Agency Training Council was randomly selected to receive a Bluetooth Communications System donated by Enforcement Technology Group, Inc.; and

WHEREAS, the Sergeant requested to apply the retail value of the Bluetooth Communications System toward the purchase of a Direct-Link LifeLine Series Crisis Response Throw Phone System for the City of Newburgh Police Department; and

WHEREAS, Enforcement Technology Group, Inc. is willing to provide the Direct-Link LifeLine Series Crisis Response Throw Phone System to the City of Newburgh Police Department for an added cost of \$1,000.00; and

WHEREAS, the Police Superior Officers Association of Newburgh, New York, Inc. has offered to donate to the City of Newburgh the \$1,000.00 for the Direct-Link LifeLine Series Crisis Response Throw Phone System; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to accept such donations from Enforcement Technology Group, Inc. and the Police Superior Officers Association of Newburgh, New York, Inc.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a donation in the amount of One Thousand (\$1,000.00) Dollars from Police Superior Officers Association of Newburgh, New York, Inc. and the donation of Direct-Link LifeLine Series Crisis Response Throw Phone System from Enforcement Technology Group, Inc.

RESOLUTION NO.: 5-2013

OF

JANUARY 14, 2013

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A \$700.00 GRANT FROM THE ORANGE COUNTY HISTORIAN FOR THE PURPOSE OF SCANNING THE CITY CLERK'S HANDWRITTEN COUNCIL MINUTES DATING FROM 1865 THROUGH 1884 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS AS MAY BE APPROPRIATE AND NECESSARY TO ACCEPT SUCH FUNDS

WHEREAS, the City Clerk's Office is in possession of handwritten Council Minutes dating from 1865 through 1884; and

WHEREAS, the Orange County Historian recognizes the significance of the City's archives and has offered the City a \$700.00 grant to begin scanning of the handwritten minutes; and

WHEREAS, this Council has determined that accepting such grant 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 authorized to accept the \$700.00 grant from the Orange County Historian for the purpose of scanning the City Clerk's handwritten Council Minutes dating from 1865 through 1884; and

BE IT FURTHER RESOLVED, that the City Manager is further authorized to execute the necessary documents as may be appropriate and necessary to accept such funds.

RESOLUTION NO.: 6 - 2013

OF

JANUARY 14, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LEASE AGREEMENT
WITH NEW YORK COMMUNICATIONS COMPANY, INC.
TO PROVIDE FOR COMMUNICATIONS EQUIPMENT AND THE SERVICE OF
THE COMMUNICATIONS EQUIPMENT FOR THE CITY OF NEWBURGH
POLICE DEPARTMENT AT A COST OF \$3,139.00 PER MONTH
FOR 84 MONTHS

WHEREAS, the City of Newburgh Police Department's agreement with New York Communications Company, Inc. ("NYCOMCO") for equipment and service of its communications equipment has expired; and

WHEREAS, the Police Department has received the renewal service and lease agreement; and

WHEREAS, said renewal agreement is being provided at a monthly cost of \$3,139.00 for 84 months; and

WHEREAS, NYCOMCO agrees three (3) years from lease equipment installation "effective date" they will remove any communication equipment and maintenance agreements which will be replaced and will be provided by the County for operation on a new County wide radio system, without penalty and the lease will be prorated to reflect the reduction in the monthly cost of equipment removed; and

WHEREAS, such funding has been appropriated within the Police Department budget; and

WHEREAS, a copy of such renewal is annexed hereto and made a part of this resolution; and

WHEREAS, the City Council has examined such lease agreement and determined it to be in the best interests of the City of Newburgh to enter into such agreement,

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 annexed agreement with NYCOMCO for communications equipment and the service of the communications equipment at a monthly rate of \$3,139.00 for 84 months for the City of Newburgh Police Department.

Draft Only

IT IS FURTHER AGREED BY THE PARTIES:

(1) **ASSIGNMENT.** (a) The Lessor may assign the equity interest of the equipment described in this lease to a bank or financial institution. The Lessor will continue to collect the monthly payments due under this lease and will continue to provide service and maintenance of the equipment for the Lessee. No obligation is imposed upon the bank or financial institution to which the equity value of the equipment may be assigned to perform or fulfill any obligations of the Lessor under this lease. The Lessee acknowledges that any claim it may have under this lease shall be asserted against the Lessor only and not against an assignee of the equity value of the equipment

(b) The Lessee may not assign this lease or any right to or use of the equipment described herein without the written consent of the Lessor first obtained. Notwithstanding an assignment, the Lessee will remain fully obligated under this lease unless specifically released by the Lessor and any person or company which takes over the rights or obligations under this lease will have all of the rights and will be obligated to keep all of the promises and agreements made herein.

(2) **DEFAULT.** If the Lessee be adjudicated a bankrupt or there is filed against it a petition under the bankruptcy laws, or if any insolvency proceedings is initiated by or against the Lessee, or if the equipment or any part thereof is encumbered, pledged, or attached, seized or taken under any judicial process, the Lessor or its assignee may at any time terminate this lease agreement and enter any premises or vehicles where the leased equipment may be located, without process of law, and remove all said equipment, without prejudice to any other rights or remedies of the Lessor or its assignee.

(3) **SERVICE.** The performance of equipment and the liability of the Lessor under the service provision is contingent upon maintenance by a qualified communications technician, employed and certified by NYCOMCO. This maintenance is the liability of NYCOMCO and is included in the lease charges.

(4) **PATENT INDEMNITY.** The Lessor will defend any suit or proceeding brought against the Lessee so far as based on a claim that any leased equipment, or any part thereof, constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information, and assistance (at the Lessor's expense) for the defense of same, and the Lessor shall pay all damages and costs awarded therein against the Lessee.

(5) **OPTION TO RENEW.** The Lessee shall have the option to renew this lease agreement at a monthly rental to be determined at or before the expiration of the lease term, by written notice prior to expiration of the lease term by execution of a renewal form.

(6) **LESSEE'S OBLIGATIONS.** The Lessee shall

(a) keep the equipment described herein at the location designated and shall not move it elsewhere without prior written authorization from the Lessor;

(b) notify the Lessor of the name and mailing address of any party having a right or interest in any motor vehicle not unconditionally owned by the Lessee in which any of the equipment listed herein is installed;

(c) at the expiration of this lease agreement, return to the Lessor in good condition except for normal wear and tear all leased equipment, together with all parts and accessories added to or installed in the leased equipment;

(d) keep the label reading "Property of New York Communications Company, Inc." affixed to all leased equipment at all times, and make equipment available for Lessor's inspection at reasonable times upon reasonable notice;

(e) be responsible during the lease term for loss or theft of all portable radios listed herein and maintain adequate insurance thereon payable to the Lessor and Lessee as their interests may appear;

(f) arrange for access by the Lessor or any person acting in its behalf to the location where the leased equipment is to be installed.

(7) **LIMITATION OF LIABILITY.** In no event shall the Lessor be liable for special or consequential damages. The Lessor's liability on any other claim for loss of liability, arising out of or connected with this lease, or the use of any equipment covered by this lease (including, but not limited to, loss or liability arising from breach of contract) shall in no case exceed the prorated total monthly rental then paid on the particular unit involved in the claim, except as provided in the paragraphs entitled "SERVICE" and "PATENTS".

(8) **GOVERNMENT AUTHORIZATIONS.** Neither the Lessor nor any of its employees is an agent or representative of the Lessee and the Lessee is solely responsible for obtaining any required authorizations from the Federal Communications Commission and for compliance therewith. If this lease includes the furnishing of a tower and installation, the Lessee shall have the sole responsibility for obtaining all necessary Federal, State and Local permits or authorizations pertaining thereto. The Lessor will comply with all other applicable Federal, State or Local laws and specifically represents that any goods to be delivered hereunder shall be produced in compliance with the Fair Labor Standards Act of 1938 as amended. Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the lease and not for the benefit of any other person.

(9) **AMENDMENTS.** This lease agreement (and any amendments attached hereto and signed by both parties) contains the entire understanding between the parties concerning the subject matter hereof and any representation, promise, modification or amendment shall not be binding upon either party unless reduced in writing and signed on behalf of each by a duly authorized representative.

NEW YORK COMMUNICATIONS COMPANY, INC.



REMIT TO:
 53 West Cedar Street
 Poughkeepsie, NY 12601
 (845) 471-5520 Fax (845) 486-4123
 WWW.NYCOMCO.COM

134 Bracken Road
 Montgomery, NY 12549
 (845) 452-5800 Fax (845) 457-5733

LEASE ORDER: 267812-00
 DATE: 7/10/12
 SALESREP: WILLIAM TUTHILL
 LEASE #: 14660 -SLE-01
 EXPIRATION DATE:

Bill To: 14660
 NEWBURGH PD CITY
 55 BROADWAY
 NEWBURGH NY 12550

Fax: 845-565-5662
 CUSTOMER CONTACTS: Chief Michael Ferrara PHONE: 845-561-3131
 SGT PAUL HORAZ PHONE: 569-7579

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
3	905-0381	ZETRON MAX PRO WORKSTATION BUNDLE WITH CPU, MEDIA DOCK, 2 SPEAKERS, POWER SUPPLY AND LICENSES. 23" TOUCH SCREEN MONITORS 3-SHURE DESKTOP MICROPHONES 4-MAX RADIO GATEWAYS 1-MAX MANAGER 1-BLOCK OF 10 RADIO LICENSES 1-REDUNDANT POWER SUPPLY 1-12VDC POWER DISTRIBUTION PANEL 4-DUAL UNIT RACK MOUNT OTION 3-24-PORT SWITCH-CISCO 3-FOOT SWITCH 1-77" CABINET ENCLOSURE MAX SETUP AND PROGRAMMING INSTALLATION 7 YEAR LEASE COVERAGE	807.00 /MO	2,421.00 /MO
3	EXISTING MAHG-N8MXX	EXISTING HARRIS M7100 CONTROL STATIONS WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. 1-PATROL 1-ANI 1-WATCH COMMANDER	40.00 /MO	120.00 /MO
2	MAMW-SDMXX	HARRIS M7300 EDACS CONTROL STATION WITH POWER SUPPLY AND EXISTING ANTENNA SYSTEM. EDACS SCAN BASE-1 EDACS SCAN BASE-2 PROGRAMMING AND INSTALLATION 7 YEAR LEASE COVERAGE	40.00 /MO	80.00 /MO
5	TK-790HBK-U	KENWOOD 150MHZ 110W BASE STATION-USED	40.00 /MO	200.00 /MO

Continued on Next Page . . .

NEW YORK COMMUNICATIONS COMPANY, INC.



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134 Bracken Road
 Montgomery, NY 12549
 (845) 452-5800 Fax (845) 457-5733

LEASE ORDER: 267812-00
 DATE: 7/10/12
 SALESREP: WILLIAM TUTHILL
 LEASE #: 14660 -SLE-01
 EXPIRATION DATE:

Bill To: 14660
 NEWBURGH PD CITY
 55 BROADWAY
 NEWBURGH NY 12550

Fax: 845-565-5662
 CUSTOMER CONTACTS: Chief Michael Ferrara PHONE: 845-561-3131
 SGT PAUL HORAZ PHONE: 569-7579

QTY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
1	EXISTING SXHMCK	WITH POWER SUPPLY, EXISTING ANTENNA SYSTEM, CABINET ENCLOSURE, INTERFACE TO RTL, PROGRAMMING AND INSTALLATION. 2-ARMORY 2-DOWNING PARK 1-FIRE DEPARTMENT 7 YEAR LEASE COVERAGE	248.00 /MO	248.00 /MO
1	NYCOMCO CPU	HARRIS MASTR III 150 MHZ REPEATER WITH EXISTING ANTENNA SYSTEM LOCATED AT CRONOMER HILL. 7 YEAR LEASE COVERAGE	35.00 /MO	35.00 /MO
1	NYANI	NYCOMCO COMPUTER FOR ANI SYSTEM WITH 2-23" MONITORS. 7 YEAR LEASE COVERAGE	35.00 /MO	35.00 /MO
			TOTAL:	3,139.00 /MO

AUTHORIZED SIGNATURE _____
 PRINT NAME _____
 TITLE _____

RESOLUTION NO.: 7 -2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH THE TOWN OF NEWBURGH TO
PROVIDE FOR THE EXPANSION OF THE CROSSROADS SEWER DISTRICT AND AN
UPGRADE OF THE CRESCENT AVENUE PUMP STATION**

WHEREAS, by Resolution No. 70-2010 of March 22, 2010, the City Council of the City of Newburgh authorized the City Manger to negotiate and execute the necessary agreements and related contracts with the Town of Newburgh to provide for the upgrade of the Crescent Avenue Pump Station with the City's proportionate cost of such upgrade to paid for through a reduction of its sewer operation and maintenance charges as levied through the existing inter-municipal agreement between the Town and City dated May 6, 2004; and

WHEREAS, the City is now able to pay its proportional cost of the upgrade to the Crescent Avenue Pump Station in a lump sum at the completion of the project; and

WHEREAS, it has been determined by this Council that the City and Town will mutually benefit from this project;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York authorizes the City Manger to execute Amendment No. 1 to the Inter-Municipal Sewer Agreement between the City of Newburgh and the Town of Newburgh in substantially the same form as annexed hereto, with terms and conditions as required by the Corporation Counsel, to provide for the upgrade of the Crescent Avenue Pump Station.

THE CITY OF NEWBURGH
AND
THE TOWN OF NEWBURGH
AMENDMENT NO. 1
TO INTERMUNICIPAL
SEWER AGREEMENT

ADOPTED BY THE CITY COUNCIL OF THE CITY
OF NEWBURGH ON _____, 2013

ADOPTED BY THE NEWBURGH TOWN
BOARD ON _____, 2012

Richard F. Herbek, City Manager

Wayne C. Booth, Town Supervisor

DRAFT: Intermunicipal Sewer Agreement-Amendment 9/11/12 revised 1/4/13

AMENDMENT NO. 1
TO INTER-MUNICIPAL SEWER AGREEMENT

This AMENDMENT TO INTER-MUNICIPAL SEWER AGREEMENT ("Amendment") is made and entered this ___ day of _____, 2013, by and between the City of Newburgh (the "City") and the Town of Newburgh (the "Town") (collectively referred to herein as the "Parties").

WHEREAS, on May 6, 2004, the City and the Town entered into an inter-municipal agreement governing sewage treatment service and the construction of additional sewage treatment plant capacity under a program that was mutually beneficial to both municipalities and in the general public interest (the "2004 Sewer Agreement"); and

WHEREAS, the Town seeks to make an additional interconnection to the City sewer system in accordance with the terms of the 2004 Sewer Agreement in order to serve a new district extension to the Town's Crossroads Consolidated Sewer District in the area of West Stone Street and North Carpenter Avenue; and

WHEREAS, the Parties desire to amend the 2004 Sewer Agreement to provide for certain improvements to the City's Crescent Avenue Sewage Pumping Station which the City's engineer has advised are necessary in order for the City sewage collection system to be capable of carrying sewage from the new interconnection on terms that are mutually beneficial to both municipalities, and

WHEREAS, the City and the Town, both in the County of Orange, State of New York, have the power and authority to each contract with the other to accomplish the aforesaid purposes,

NOW, THEREFORE, in consideration of the foregoing and pursuant to the authority vested in the City and the Town by the General Municipal Law and other statutes of the State of New York, and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereto do mutually agree as follows:

1. DEFINITIONS: The following words and phrases shall have the meanings set forth below whenever they are used in this Amendment.

"2004 Sewer Agreement" shall mean the inter-municipal agreement between the City and the Town dated May 6, 2004.

"Amendment" shall mean this amendment to the 2004 Sewer Agreement including all appendices and exhibits.

"Crescent Avenue Sewage Pumping Station" shall mean the underground pump station which is part of the City of Newburgh sewer system situated at Crescent Avenue including the real property, personal property, equipment, fixtures, structures, appurtenances, and related facilities used to conduct the City's sewage and waste water discharge operations.

"New Interconnection" shall mean the new point at which the Town's sewer system connects to the City sewer system in order to serve the West Stone Street Extension.

"West Stone Street Extension" shall mean the new sewer district extension to the Town's Crossroads Consolidated Sewer District in the area of West Stone Street and North Carpenter Avenue. Except as provided in this Amendment, all terms used in this Amendment that are not otherwise defined shall have the respective meanings ascribed to such terms in the 2004 Sewer Agreement.

2. INCONSISTENCY. In the event there is any inconsistency or difference between the terms and provisions of this Amendment and the 2004 Sewer Agreement, the terms and provisions set forth in this Amendment shall control and govern.
3. CONSTRUCTION OF IMPROVEMENTS TO CRESCENT AVENUE SEWAGE PUMP STATION. The Parties agree that the Town, subject to the terms and conditions of this Agreement, will construct improvements to the Crescent Avenue Sewage Pumping Station so that the City sewage collection system shall be capable of carrying additional sewage flow from the New

Interconnection. The City agrees to provide the Town with such appropriate license or permit over City property as may be necessary to construct the improvements and the usual appurtenances thereto. The construction shall be done in accordance with plans and specifications prepared and approved in accordance with the terms and conditions of this Amendment. The design and construction shall be compatible with the existing City sewer system and shall meet the requirements of all State, Federal and Local laws, rules, and regulations pertaining thereto.

4. TOWN UNDERTAKINGS. The Town agrees to:
 - a. Engage the services of a New York State licensed professional engineer (the "Consultant Engineer") to review the existing condition of the Crescent Avenue Sewage Pumping Station, evaluate rehabilitation and replacement alternatives and in conjunction with the City's Engineer, recommend a plan for a fully updated sewage pumping station designed to accommodate the additional flow from the West Stone Street Extension through the New Interconnection and to prepare a basis of design report (the "Pumping Station Project").
 - b. Engage the services of a New York State licensed professional engineer (the "Design Engineer") to prepare the necessary contract documents (including specifications and drawings) necessary for regulatory review and approval and for bidding of the proposed Pumping Station Project. Design drawings will be forwarded to the City's Engineer for review and comment at 30 percent, 70 percent and 90 percent completion points in the design.
 - c. Advertise the project and award construction to the successful lowest responsive and responsible bidder(s) (the bidder(s) to whom the contract is awarded by the Town is hereinafter referred to as the "contractor").
 - d. Engage the services of a New York State licensed professional engineer (the "Project Engineer") to conduct the construction engineering, administration and inspection of the construction contract,

including review and approval of all materials and products proposed for the Pumping Station Project, compliance with the specifications during construction, review and approval of all payment requests made by the contractor, review and approval of any change orders necessary for the completion of the Project, preparation of as-built drawings and certification of the Project as complete. The Town shall administer the construction or inspection of the Pumping Station Project in such a manner as to make certain that all work is performed according to plans drawn by the Design Engineer and approved by the City.

- e. Make any and all payments for the above engineering services and the construction contract.
- f. Upon completion of the construction of the Pumping Station Project, the Town shall furnish the City with three (3) sets of as built drawings of the completed work, one of which said sets shall be a reproducible copy.

5. CITY UNDERTAKINGS. The City agrees to:

- a. Provide access to the Crescent Avenue Sewage Pumping Station to the Town and the Consultant Engineer for the purposes of evaluation of rehabilitation and replacement alternatives and any and all assistance reasonably necessary for the Town to complete the undertakings in Section 4 above.
- b. Provide any and all comments on proposed alternatives within 15 working days of their submittal by the Consultant Engineer and to have City officials and the City Engineer be reasonably available for any meetings requested by the Town and its Consultant Engineer.
- c. Provide any and all comments on the Pumping Station Project design specifications and drawings within 15 working days of their submittal by the Design Engineer and to have responsible City officials and the City Engineer be reasonably available for any meeting requested by the Town and its Design Engineer in that regard. The plans and specifications shall be modified as required by the City, if such modification is necessary to protect the City's sewer system or to make them conform

to the intent and dictates of this Agreement Any other changes or modifications to the plans and specifications shall require review and approval by the City's engineer, which said approval shall not be unreasonably delayed or withheld

- d. Provide any and all comments on the New Interconnection design specifications and drawings and proposed metering device for the New Interconnection within 15 working days of their submittal by the Design Engineer and Town and to have responsible City officials and the City Engineer be reasonably available for any meeting requested by the Town and its Design Engineer in that regard. The plans and specifications shall be modified as required by the City, if such modification is necessary to protect the City's sewer system or to make them conform to the intent and dictates of this Agreement Any other changes or modifications to the plans and specifications shall require review and approval by the City's engineer, which said approval shall not be unreasonably delayed or withheld
- e. If necessary, execute any applications for regulatory review and approval, including but not limited to applications to the New York State Department of Environmental Conservation and expeditiously issue any review and approval for City of Newburgh Building Permits submitted by the contractor.
- f. Provide permission for the successful low bidder to complete the construction of the Pumping Station Project and the New Interconnection on City owned property.
- g. Provide any and all comments on construction issues to the Town's Project Engineer and the Town in writing within 24 hours.
- h. Provide written acceptance of the facility upon conducting a final inspection of both Substantial and Final Completion of the work and submission of any required test results and determination that the work was performed satisfactorily and otherwise provide prompt notice of deficiency or defect in the work to the Town. The City shall not unreasonably withhold or delay final approval.

- i. Make any and all payments for reimbursement of Town expenses as specified by this Amendment within 30 calendar days of submittal by the Town of Newburgh.

6. ADDITIONAL RIGHTS AND OBLIGATIONS WITH REGARD TO PUMPING STATION PROJECT.

- a. No work on construction shall begin until and unless the City has approved the form of the contract therefor, and has had a reasonable opportunity to review the contractor proposed to be engaged to perform the work. The City shall have the right, through the Town, to disapprove such contractor if it is determined through valid documentation by the City that the apparent low bidder does not meet the General Municipal Law requirements for being a responsive and responsible bidder.
- b. The Town shall give the City at least thirty (30) days notice prior to commencement of the actual work on the construction of the Pumping Station Project.
- c. The City may observe the work in progress as it deems appropriate or necessary. All certifications of the work required to be presented to the Town shall also be required to be presented to the City. Should the City have reason to believe that the contractor is not complying with the plans and specifications, it shall immediately notify the Town and the Town shall demand and obtain compliance from the contractor forthwith so that the completed project will comply with the plans and specifications
- d. The Town shall obtain all necessary permits and approvals for and shall conform to all laws, ordinances, rules, regulations and requirements affecting the construction and work on the Pumping Station Project. The Town agrees that the work shall be done in compliance with the direction of the City's engineer for the prevention of damage to the City's sewer system as well as in conformance with this Agreement.

- e. The Town shall maintain and keep clean all of the City's lands occupied for the purpose of the Pumping Station Project construction work and shall in no way interfere with the City's ongoing sewer system operations.
- f. The Town agrees that there shall be no blasting done in connection with the Pumping Station Project unless the parties agree in advance that blasting will be done for a specific purpose, and in a specific manner so as to ensure the health and safety of persons and property.
- g. The cost and expense of the construction of the expansion(s) and appurtenances, of the work thereon, and the planning, legal, and engineering costs incurred by the Town shall be paid solely by the Town, subject to the provisions for partial reimbursement by the City in Section 10 below.
- 7. NEW INTERCONNECTION. The design and construction of the New Interconnection shall be governed by the 2004 Sewer Agreement.
- 8. INSURANCE, INDEMNIFICATION AND HOLD HARMLESS.
 - a. The Town also agrees to cause the contractor(s) to provide and maintain the following insurance in relation to the construction of the Pumping Station Project:
 - i. Comprehensive General Liability Policy with limits of liability of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - ii. Umbrella policy with limits of liability of at least \$3,000,000 per occurrence and \$3,000,000 in the aggregate;
 - iii. Comprehensive Automobile Liability Policy with a combined limit of liability of at least \$1,000,000 and
 - iv. Worker's Compensation with the New York statutory limits.

- b. Neither the Town nor the contractor(s) or subcontractor shall commence work on City property under this Amendment until all the insurance required under this Amendment has been obtained and such insurance has been approved by the City. Certificates of Insurance shall be filed with the City prior to commencement of the work. These Certificates shall contain a provision that the coverage afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been received by the City. The Town, and any contractors and subcontractors (including any materialmen and suppliers), shall immediately cease all work on the expansion(s) during such time as any of the noted insurance coverages are not in effect, except such work that is limited to ensuring the safety of the site.
- c. Renewal certificates covering the renewal of all policies expiring during the life of the contract shall be filed with the City not less than thirty (30) days before the expiration of such policies.
- d. All of the above-mentioned insurance policies shall name the City of Newburgh, and its officers, employees, and agents as either additional or named insureds and neither the City nor its officers, employees or agents shall be responsible for the payment of premiums for such insurance.
- e. The Town shall be responsible to the City in damages for any injury sustained by the City's lands, the City's sewage system or any structure, building, fixture, appurtenances, facility, equipment, meter, metering equipment, device of any kind and other property, real and/or personal, belonging to the City or the City's agents, which is caused or occasioned, directly or indirectly, by any act or omission, whether or not negligent, on the part of the Town or its agents, servants, or employees during the construction of the Pumping Station Project by the Town. Such injuries shall be repaired by the Town as may be required by the City, and the Town shall bear the entire cost and expense of such repairs. The Town must be given written notice of the condition if possible or at least oral notice where written notice is not practical. If any delay by the Town in making the required repairs

would jeopardize or endanger the City's sewage treatment system, the City may make such repairs and/or take such reasonable and appropriate measures as are deemed necessary by the City to safeguard the City's sewage and sewage treatment system. The City may charge to the Town the entire cost of such repairs and/or measures.

- f. The Town will require its contractor to obtain and maintain Builder's Risk Insurance against loss or damage for replacement value and for such larger amount as may be necessary to prevent any claim for contribution for co-insurance on the part of the insurance company. Losses thereunder shall be payable to the Town and the City as their interests may appear. The Parties agree that any insurance monies collected upon any such policies covering the Crescent Avenue Pumping Station shall be held by them and used only toward the repair, reconstruction or rebuilding thereof.
- g. The Town shall save the City harmless from, defend and indemnify the City for all judgments, settlements, payments, ~~finer~~ penalties, causes of action, liabilities, awards, damages, losses, costs and expenses including, but not limited to legal fees and expenses rendered against or charged to the City in all suits, actions, claims and proceedings instituted against the City because of any injury, including death, to any person and/or any damage to any property caused or occasioned, directly or indirectly, by reason of any act or omission, whether or not negligent, on the part of the Town, its agents, servants or employees, or any other person engaged in any activity or work authorized by the Town pursuant to the provisions of this Agreement relating to the construction of the Pumping Station Project, including but not limited to the planning, designing work and construction of the Pumping Station Project and appurtenances thereto.

9. PROJECT COSTS SUBJECT TO THIS AMENDMENT. The following Pumping Station Project

costs (the "Project Costs") shall be subject to this Amendment:

- a. Any and all costs for engineering services associated with the evaluation of alternatives, preparation of a basis of design, regulatory review and approval, design engineering, construction engineering and inspection for the Pumping Station Project.
- b. Any and all costs associated with the construction contract contemplated under this Amendment including any and all change order costs executed to complete the Pumping Station Project.
- c. Any and all administrative and legal expenses incurred by the Town in connection with the Pumping Station Project, including but not limited to legal expenses, bond counsel costs (if necessary), advertising costs and printing costs.

10. PRO-RATA SHARING OF PROJECT COSTS. The Project Costs paid by the Town shall be shared by the Parties on the following pro-rata basis: the City's pro-rata share shall be 70%; the Town's pro-rata share shall be 30%. This calculation is based upon the assignment of "sewer facility unit charges" pursuant to the City's Code Section 248-1A by the City Engineer to properties in the City whose sewage flows through the Crescent Avenue Sewage Pumping Station and to the properties in the West Stone Street Extension of the Town. The City has 183.32 sewer facility units contributing flow to the Crescent Avenue Sewage Pumping Station and the West Stone Street Extension of the Town will have 78.89 sewer facility units contributing flow through the New Connection. The total number of sewer units is 262.21 and the respective percentages are 70 percent assigned to the City and 30 percent assigned to the Town. The City shall reimburse the Town for its pro-rata share of the Project Costs pursuant to Section 11 below.

11. REIMBURSEMENT OF PRO-RATA SHARE OF PROJECT COSTS BY THE CITY.

The City shall reimburse the Town for its pro-rata share of the Project Costs by remitting full

payment to the Town after review and approval of contractor and consultant invoices by the City Engineer and Comptroller upon the completion of the Project.

12. OWNERSHIP AND OPERATION OF THE CRESCENT AVENUE SEWAGE PUMPING STATION.

It is agreed that the City shall continue to own the now existing City sewer system, all of the land now occupied by the sewage system, and that the City will own the new Crescent Avenue Pumping Station and its appurtenances which the Town has herein agreed to construct. The City shall continue to operate and maintain the sewage system including the Crescent Avenue Pumping Station improvements constructed by the Town.

13. AUDIT AND INSPECTION:

The City, at its own cost and expense, may audit the books, accounts, and records maintained by the Town pertaining to the Pumping Station Project which is the subject of this Amendment. The City shall notify the Town in writing of its intention to audit at least seven (7) days prior to said audit, and said audit shall be made during regular business hours on regular business days.

13. SEVERABILITY: If any portion or portions of this Amendment is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

14. APPROVALS. Approvals required pursuant to this Amendment shall not be unreasonably delayed or withheld.

15. TITLES: The titles used in these provisions are for convenience only and shall not be used in interpreting these provisions.

16. WAIVER The waiver by either party of a breach of any provision of this Amendment by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

17. CHOICE OF LAW: This Amendment shall be governed by and construed in accordance with the

Laws of the State of New York.

18. RESOLUTIONS: This Amendment has been agreed to and approved by formal resolution of the Town Board of the Town of Newburgh and the City Council of the City of Newburgh, copies of which resolutions are attached as Exhibit "A."

IN WITNESS WHEREOF, the Parties have signed this Amendment this ___th day of _____, 2013.

Town of Newburgh

By _____
Wayne C. Booth, Supervisor

City of Newburgh

By _____
Richard F. Herbek, City Manager

Draft

RESOLUTION NO.: § - 2013

OF

JANUARY 14, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE VENDOR SERVICE AGREEMENTS WITH
VARIOUS SERVICE PROVIDERS AT A COST NOT TO EXCEED \$26,250.00
IN CONNECTION WITH THE CURRENT REQUIREMENTS OF THE
TWENTY FIRST CENTURY GRANT PROGRAM**

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

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

WHEREAS, the City's 21st Century Community Learning Centers Program provides strengthening and expanding opportunities afterschool for children and youth; and

WHEREAS, it is necessary and appropriate to enter into vendor service agreements with the City's 21st Century Community Learning Centers Program with various service providers for the final fiscal year of said grant period beginning October 1, 2012 and ending on June 30, 2013 for the following amounts:

Maritza Claderon	\$ 4,500.00
Corey Woods	\$ 3,400.00
Kanisha Henderson	\$ 3,860.00
Ridge Hester	\$ 8,000.00
Darrell Williams	\$ 4,440.00
Robin Mann	\$ 2,050.00

WHEREAS, the Council has reviewed the attached Agreements and has determined that it is in the best interest of the City of Newburgh and its residents to accept and expend such funds to enhance the community and strengthen afterschool services to Newburgh's children and youth;

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 Vendor Service Agreements with the service providers referenced herein above at a cost not to exceed \$26,250.00 in connection with the current requirements of the Twenty First Century Grant Program.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Maritza Calderon, 511 Fostertown Rd., Newburgh, NY 12550 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$4,500.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

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

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

ARTICLE 13. INDEMNIFICATION

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

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

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

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

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

ARTICLE 16. TERMINATION

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

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

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

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

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

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

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

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

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

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____

RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____

Maritza Calderon
MARITZA CALDERON
VENDOR

DATE: _____

DATE: 12/17/12

SCHEDULE A
SCOPE OF SERVICES

Teach Zumba skills, exercises, and moves.

Draft Only

SCHEDULE B

FEES AND EXPENSES

Contract amount: \$4,500.00 (not to be exceeded)

- (\$30/hr)

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Corey Woods, 10 Vermont Dr., Newburgh, NY 12550 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$3,400.00 has been established for the scope of SERVICES

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

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

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

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

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

ARTICLE 13. INDEMNIFICATION

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and

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

ARTICLE 16. TERMINATION

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no

payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____
COREY WOODS
VENDOR

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

Seamlessly integrate the Dynamo Dance Program. Teach the kids to experience hands on foray in to the dance world. Increase student confidence, engagement, and absolute satisfaction.

Location- Heritage: Tue. And Wed.

Draft Only

SCHEDULE B

FEEES AND EXPENSES

Contract amount: \$3,400.00 (not to be exceeded)/ \$50

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

Draft Only

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Kanisha Henderson, 2610 Vailgate Heights Dr., New Windsor, NY 12553 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$3,860.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

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

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

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

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

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

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

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

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

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

ARTICLE 16. TERMINATION

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

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

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

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

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

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

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

ARTICLE 17. GENERAL RELEASE

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

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

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

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

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

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

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____
KANISHA HENDERSON
VENDOR

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

Providing students with the skills and technical understanding of DJing. Teach Intro to DJing such as history, indentify and understand equipment, tech advances, etc. and Djing styles.

Location: HOH: W
Heritage: T
NEA: M

Draft Only

SCHEDULE B

FEES AND EXPENSES

Contract amount: \$3,860.00 (not to be exceeded)

Approved as to form:

Draft Only

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

SCHEDULE B

FEES AND EXPENSES

Contract amount: \$3,860.00 (not to be exceeded)/ \$60

- Agreed to hire Ms. Henderson at \$60 per hour contingent that she uses her own supplies; submit a final project (DVD/CD), etc.) to the program; submit monthly report on time as required; hand on child involvement—including equipment.

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYLA A. GROSS
City Comptroller

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Ridge Hester, 287 Grand St., Newburgh, NY 12550 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$8,000.00 has been established for the scope of SERVICES

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

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

Draft Only

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

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

ARTICLE 13. INDEMNIFICATION

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and

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

ARTICLE 16. TERMINATION

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no

payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____
RIDGE HESTER
VENDOR

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

To enhance the students knowledge of HBCU marching band and learn how to play instrument. This will allow students to learn about English, Math, and Science without using the conventional methods of learning.

Location- HOH: M, W, F
Heritage: T, Th.
NFA: M, W

Additional: 2hrs on Thursday's and Friday's with the City of Newburgh Dynamic Approaching Storm Band

SCHEDULE B

FEES AND EXPENSES

Contract amount: \$8,000.00 (not to be exceeded)

Approved as to form:

Draft Only

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Darrell Williams, 42 Wesley Court, Newburgh, NY 12550 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$4,440.00 has been established for the scope of SERVICES

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

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged

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

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

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

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All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

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

ARTICLE 13. INDEMNIFICATION

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and

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

ARTICLE 16. TERMINATION

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to **VENDOR** and/or set-off against any sums due **VENDOR**.

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

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

ARTICLE 17. GENERAL RELEASE

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

ARTICLE 18. SET-OFF RIGHTS

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

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

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no

payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____
DARRELL WILLIAMS
VENDOR

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

Providing students with the skills to gain encouragement through creativity and aid them in proper band dancing techniques. Teach step classes and techniques for performance.

Location- HOH: M, W, F
Heritage: T, Th.
NEA: M, W

Additional: 2hrs on Thursday's and Friday's with the City of Newburgh Dynamic Approaching Storm Band

Draft Only

SCHEDULE B

FEES AND EXPENSES

Contract amount: \$4,440.00 (not to be exceeded)/ \$30 per hr

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

Draft Only

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2012, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "**CITY**," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Robin Mann, 11 Debra Place #2, Newburgh, NY 12550 hereinafter referred to as "**VENDOR**."

ARTICLE 1. SCOPE OF WORK

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

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

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning October 1, 2012, and ending June 30, 2013.

ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$2,050.00 has been established for the scope of SERVICES

Draft Only

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

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged

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

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

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

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

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

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

ARTICLE 14. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and

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

ARTICLE 16. TERMINATION

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

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 17. GENERAL RELEASE

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

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

ARTICLE 19. NO ARBITRATION

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

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

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

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

other action provided for by law or pursuant to this Agreement.

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

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No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no

payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: Robin Mann
ROBIN MANN
VENDOR

DATE: _____

DATE: 12/11/12

SCHEDULE A

SCOPE OF SERVICES

Providing students with the skills to gain encouragement through creativity and aid them in becoming productive citizens that will be able to set and accomplish goals. Teach time management skills as well as structured organizational skills.

Draft Only

SCHEDULE B

FEES AND EXPENSES

Contract amount: \$2,050.00 (not to be exceeded)

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller