

A regular meeting of the City Council of the City of Newburgh was held on Tuesday, September 7, 2010 at 7:00 P.M. in the Council Chambers, City Hall, 83 Broadway, Newburgh, NY 12550

The Prayer was led by Pastor Brock and the Pledge of Allegiance was led by Councilman Dillard.

Present: Mayor Valentine, presiding; Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard-5

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the regular meeting of August 9, 2010 be approved.

Ayes-Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

CARRIED

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the special meeting of August 16, 2010 be approved.

Ayes - Councilwoman Angelo, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 4

Abstain - Councilwoman Bell - 1

CARRIED

Councilwoman Angelo moved and Councilwoman Bello seconded that the City Clerk's Report, the Registrar of Vital Statistics Report and the Civil Service Administrator's Report for the month of August be received, filed and made available to the Press.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

CARRIED

Councilwoman Angelo moved and Councilwoman Bello seconded to enter Executive Session to discuss Collective Bargaining.

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

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

All in favor, the Council exited Executive Session at 7:40 p.m.

## PROCLAMATIONS

The City Council proclaimed National Hispanic Month in the City of Newburgh from September 15, 2010 to October 15, 2010.

The City Council proclaimed Family Day: A Day to Eat Dinner with your Children on September 27, 2010.

## COMMUNICATIONS

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5  
CARRIED

**PROPOSED PUBLIC HEARING**

**RESOLUTION NO.: 195-2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR OCTOBER 12, 2010 TO HEAR PUBLIC COMMENT  
CONCERNING A LOCAL LAW AMENDING CHAPTER 126  
ENTITLED "BUILDINGS, NUISANCE"  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH  
(CITY ABATEMENT)**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a local law amending Chapter 126 entitled "Buildings, Nuisance" of the Code of Ordinances of the City; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 12<sup>th</sup> day of October, 2010, at 83 Broadway, City Hall, 3<sup>rd</sup> Floor Council chambers, Newburgh, New York; and

**BE IT FURTHER RESOLVED**, that the proposed local law shall be available for public review on the City of Newburgh website and in the Offices of the City Clerk and Corporation Counsel.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

195-10

LOCAL LAW NO.: \_\_\_\_\_ - 2010

OF

OCTOBER 12, 2010

A LOCAL LAW AMENDING CHAPTER 126  
ENTITLED "BUILDINGS, NUISANCE"  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH  
(CITY ABATEMENT)

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - Title

This Local Law shall be referred to as "A Local Law amending Chapter 126 entitled "Buildings, Nuisance" of the Code of the City of Newburgh".

SECTION 2. Chapter 126. Buildings, Nuisance.

§ 126-7. Abatement by authorized officials.

The authorized officials of the City, having properly served parties who have committed or are responsible for a nuisance, ~~shall~~ may abate such nuisance ~~after~~ at the expiration of the time limit provided in such notice under the rules of the City Charter and Code for its abatement, and for such abatement by the City the penalties and cost chargeable by the City against the owner as provided in this chapter shall be imposed and collected in the manner provided by law regulating the collection of fines, and if not so collected same may be added to and relieved as property tax against the property and enforced and collected in the same manner as provided by law for the enforcement of unpaid taxes, and assess a lien against the property for the costs of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.

SECTION 3 - Effective Date

THIS LOCAL LAW SHALL TAKE EFFECT immediately upon its filing in the Office of the Secretary of State as provided by Law.

ORDINANCE NO.: \_\_\_\_\_ - 2010

OF

OCTOBER 12, 2010

**AN ORDINANCE RESCINDING THE LANGUAGE CONTAINED IN  
CHAPTER 226, ENTITLED "PERFORMANCE OF WORK BY CITY; ABATEMENT"  
OF THE CODE OF ORDINANCES AND AMENDING  
CHAPTER 226, "PERFORMANCE OF WORK BY CITY; ABATEMENT"  
IN ITS ENTIRETY**

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 226, "Performance of Work by City; Abatement", be and is hereby repealed in its entirety and that the same is hereby amended to read as follows:

**SECTION 1. Chapter 226. Performance of Work by City; Abatement.**

**§ 226-1. Notice.**

- A. In the event that any owner of any occupied or unoccupied lot, piece of land, building or structure or any part thereof within the City of Newburgh shall fail to maintain or repair the same as required by the City Code, or if such property or structure be considered a public nuisance as defined by the City Code, such owner may, in addition to or in lieu of other remedies, be served an abatement notice by certified mail, return receipt requested, sent to such owner's last known address as shown on the records of the City Assessor. A copy of such notice shall also be posted on the premises.
- B. The abatement notice shall contain a description of the premises, specify the provisions of the City Code deemed to have been violated, require the owner to correct the condition within twenty (20) days of the date of such notice, and provide that if the owner fails to do so, the City or the City's contractor may undertake or cause to be undertaken the required work, repair, or demolition and the City shall assess a lien against the property for the cost of the work, repair, or demolition together with an additional fifteen (15%) percent administrative fee for costs of inspection and other incidental costs associated with abating the condition, to be added to the total costs of the work, repair, or demolition. The notice shall also contain, pursuant to § 226-2 of this Chapter, a hearing date and location, at which time and place the owner may be heard in regard to the matter contained in the notice. If the City determines that an emergency exists, the City may undertake or cause to be undertaken such work, repair, or demolition prior to the expiration of the

specified period of time and/or prior to the hearing date, provided the notice identifies the violations as constituting such an emergency.

**§226-2. Hearing to appeal notice.**

- A. Any person affected by an abatement notice issued pursuant to § 226-1 of this Chapter shall be entitled to a hearing before the City Manager or the City Manager's designee, except in the case of an emergency. The City Manager or the City Manager's designee shall set the time and place for such hearing. The hearing shall be scheduled for at least ten (10) days but not more than fifteen (15) days from the date of the notice. At such hearing, the owner shall be given an opportunity to show cause why such notice of abatement should be modified or withdrawn.
- B. After a hearing held in accordance with subsection 226-2A of this Chapter and on consideration of the evidence presented, the City Manager or the City Manager's designee shall sustain, modify, or withdraw the notice of abatement. Such decision shall be deemed a final order and shall be served on the owner in the same manner as provided for in subsection 226-1A of this Chapter.
- C. The City Manager or the City Manager's designee shall keep a summary of testimony and copies of relevant notices or orders; entries of appearance; findings of fact, if any; and the final determination, and such record shall be maintained as a public record.
- D. If the owner does not appear at a hearing scheduled pursuant to this Section, the abatement notice shall be deemed a final order.

**§226-3. Remedies; additional notice; additional hearing; expenses and tax liens.**

- A. Should the owner fail to comply with a final order, or should the City determine an emergency exists, the City may undertake or cause to undertake the required work, repair, or demolition. The City shall keep records of the cost of such work, repair, or demolition.
- B. Should the required work, repair, or demolition be performed by the City or the City's contractor pursuant to subsection 226-3A of this Chapter, the city shall serve a billing notice on the owner, in the same manner as specified in subsection 226-1A of this Chapter, setting forth the cost of such work, repair, or demolition together with an additional fifteen (15%) percent administrative fee for costs of inspection and other incidental costs associated with abating the condition, to be added to the total costs of the work, repair, or demolition.
- C. An owner served with a billing notice pursuant to subsection 226-3B of this Chapter may request and shall be granted a hearing before the City Manager or the City Manager's designee to dispute the charges, provided that such owner shall file within

ten (10) days of the date of the notice, in the office of the City Manager, a written request for such hearing. Upon receipt of a request for a hearing the City Manager or the City Manager's designee shall set a time and a place for such hearing and shall give the applicant at least ten (10) days written notice thereof. Such hearing shall commence not later than thirty (30) days after the date on which the request was filed; however, hearings may be postponed beyond such thirty (30) day period for good cause shown. At such hearing, the owner shall be given an opportunity to show cause why such costs should be reduced or otherwise modified. The City Manager or the City Manager's designee shall make a final determination on the charges, and such decision shall be deemed a final order. If the owner does not request a hearing on the billing notice, such notice shall be deemed a final order.

- D. The cost of the work, repair, or demolition as finally determined together with an additional fifteen (15%) percent administrative fee for costs of inspection and other incidental costs associated with abating the condition, added to the total costs of the work, repair, or demolition, shall be assessed as a lien against the abated property. Notice shall be given to the Tax Collector's Office specifying the total cost of the work, repair, or demolition together with the fifteen (15%) percent administrative fee and the property affected by section, block and lot numbers as the same appear on the Official Tax Assessment Map of the City of Newburgh. From the hour of filing of said notice, the charges specified shall be a lien upon the property affected thereby. A copy of said notice shall also be served on the owner as provided for in subsection 226-1A of this Chapter. The costs specified, if not paid by or on behalf of the owner within thirty (30) days of the date of the notice, shall be added to and collected with the subsequent City tax levy, and shall bear interest and be enforced as provided by law for City taxes.

#### §226-4. Judicial review.

Any person or persons, jointly or severally aggrieved by any final order, may seek to have such order reviewed by the Supreme Court, Orange County, in the manner prescribed in Article 78 of the Civil Practice Law and Rules and as otherwise provided for in the laws of the State of New York.

#### §226-5. City not liable.

No action for damages may be maintained against the City by reason of its failure to comply with any of the provisions of this Chapter.

SECTION 2. THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

ORDINANCE NO.: \_\_\_\_\_ - 2010

OF

OCTOBER 12, 2010

AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE CODE OF THE CITY OF NEWBURGH WITHIN CHAPTERS 119, "BRUSH, GRASS AND WEEDS," 121, "BUILDINGS, VACANT," 122, "BUILDING CONSTRUCTION," 129, "BUILDINGS, UNSAFE," 190, "HOUSING AND PROPERTY STANDARDS," 234, "PROPERTY DAMAGE" AND 279, "TREES AND SHRUBS" (ABATEMENT BY CITY)

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapters 119, "Brush, Grass and Weeds," 121, "Buildings, Vacant," 122, "Building Construction," 129, "Buildings, Unsafe," 190, "Housing and Property Standards," 234, "Property Damage" and 279, "Trees and Shrubs" of the Code of the City of Newburgh be and the same are hereby amended to read as follows:

SECTION 1. Chapter 119. Brush, Grass and Weeds.

§ 119-5. Correction of condition by city.

If the person upon whom the notice provided for in § 119-4 is served fails, neglects or refuses to cut and remove or to kill by spraying such weeds, grass or other vegetation ~~within five days after the date of the mailing or posting of said notice, then the city, through the official designated by it for said purpose, shall cause such weeds, grass and other vegetation on such lot or land to be cut and removed or killed by spraying.~~ the City may abate such condition and assess a lien against the property for the costs of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.

~~§ 119-6. Costs of removal.~~

~~The actual cost to the city of cutting and removing or killing by spraying as provided in § 119-5 plus a sum equal to 5% of such actual cost for inspection and other additional costs in connection therewith, shall be certified by the city official in charge of such cutting, removing or killing by spraying, and the amount thereof shall thereupon become and be a lien upon the property on which such weeds, grass or other vegetation were located, and the total amount thereof shall be added to and become a part of the next annual assessment roll at the time and in the manner prescribed by the Charter of the city and subject to all the provisions thereof.~~

administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.

#### SECTION 4. Chapter 129. Buildings, Unsafe.

##### § 129-11. Refusal to comply; procedure; expenses.

In addition to any penalty provided for in this chapter of the Code, upon the refusal or neglect of the person served with the notice for which provision is made in §§ 129-9 and 129-10 to comply with any of the requirements thereof, the Building Inspector may take down, remove, make safe or secure said buildings or structures ~~or may cause such work to be done and shall file a certificate of the expense thereof, together with a description of the property upon which the said buildings or structures are or were located, with the Director of Finance, who shall certify the same to the Council at the next regular meeting thereafter, and the expense of such taking down, removal, making safe or secure shall be paid by the owner of said property and may be collected in a proceeding pursuant to General Municipal Law, § 78-b, or by action at law or may be determined, assessed and collected in the same manner as the general city taxes as provided by law. and~~ assess a lien against the property for the costs of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code. In the event of demolition, the Building Inspector shall additionally follow the procedures set forth in Section 129-15 hereof.

##### § 129-12. Temporary safeguards for dangerous buildings.

In case there shall be, in the opinion of the Building Inspector, actual and immediate danger of the falling of any building or part thereof so as to endanger life or property, and such danger constitutes an emergency, the Building Inspector shall cause the necessary work to be done to render such building or part thereof temporarily safe; and assess a lien against the property for the costs of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.

##### § 129-15. Procedure.

The procedure for the removal of any building or structure which endangers the health, safety or welfare of the public shall be as follows:

F. In the event that the owner, or any party of interest, fails to repair or remove, as directed in the notice, within the time indicated therein, the City of Newburgh shall ~~may~~ enter upon such property and cause to be repaired or removed the building or structure thereon, pursuant to the procedures set forth in Chapter 226 of the City Code. The cost and expenses incurred by the city in connection with the repair or removal of such building or structure, including the cost of actually removing the same, shall be assessed against the land on which said building or structure is located. Said cost and expenses

may also be collected from the owner of said building or structure by special proceeding pursuant to § 78-b of the General Municipal Law.

## SECTION 5. Chapter 190. Housing and Property Standards.

### § 190-21. Abatement of hazards; ~~in~~ emergencies; expenses.

~~Whenever any violation of this chapter which, in the opinion of the head of the code enforcement agency, causes a direct hazard or immediate danger to the health, safety, morals or welfare of the occupants of a building or the public has not been corrected in the time specified by the order issued under § 190-20 of this chapter, the head of the code enforcement agency may take such direct action as is necessary to abate the hazard or danger. Expenses incurred in the execution of such orders shall be recovered as provided in Chapter 125, Buildings, Demolition of, of this Code. If, in the opinion of the head of the code enforcement agency, such violations constitute an emergency, or if the owner notified pursuant to § 190-16 fails to correct the specified violations, the City may abate such condition and assess a lien against the property for the cost of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.~~

## SECTION 6. Chapter 234. Property Damage.

### § 234-8. Property owners' responsibilities.

C. In any case in which the City takes appropriate action to remedy, remove or paint over graffiti as provided in Subsection B hereinabove, after providing the notice as required therein, then in such case the City shall be entitled to recover from the owner or from the offender or from both, jointly and severally, reimbursements for the actual costs and expenses associated with such remedy, removal or painting over. The City may undertake any and all available actions which may be appropriate and necessary to securing such reimbursement, including but not limited to any or all of the following: negotiation with the responsible party, mediation, arbitration, legal action, and/or ~~adding the sum sought to the tax bill sent to and imposed upon the owner of real property in the City of Newburgh assessing a lien against the property for the costs of such remedy, removal, or painting over together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code. If such sum is added to the tax bill, it may thereafter be enforced in the same manner as provided by law for the enforcement of taxes.~~

## SECTION 7. Chapter 279. Trees and Shrubs.

### § 279-14. Removal of branches overhanging public areas.

Where privately owned trees encroach upon any public street, park or public area, the Superintendent of Public Works or the Building Inspector may serve, personally or by mail, upon the owner of such property, a written notice to trim the encroaching branches; ~~and, upon failure to do so within 30 days after service of such notice, the Superintendent of Public Works shall remove branches overhanging any public street, park or public area and assess the costs thereof against the property affected by the assessment, to be levied, collected and enforced in the same manner as taxes upon said property for city purposes are levied, collected and enforced.~~ If such owner fails to comply with such notice, the City may abate such condition and assess a lien against the property for the costs of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.

§ 279-15. Removal of dead trees.

Where any dead tree or trees located on private property adjacent to a public street, park or public area constitute a danger or are potentially dangerous to the traveling public, the Superintendent of Public Works or Building Inspector may serve personally or by mail upon the owner of such property a written notice to remove the dead tree, ~~and, upon failure to do so within 30 days after service of said notice, the Superintendent of Public Works shall remove the same and assess the costs thereof against the property affected by such assessment, to be levied, collected or enforced in the same manner as taxes upon said property for city purposes are levied, collected and enforced.~~ If such owner fails to comply with such notice, the City may abate such condition and assess a lien against the property for the costs of such abatement together with a fifteen (15%) percent administrative fee, pursuant to the procedures set forth in Chapter 226 of the City Code.

SECTION 8. THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

| Strikethrough denotes deletions  
Underlining denotes additions

## **PUBLIC HEARING**

Mayor Valentine announced that this is a continuation of the public hearing to receive comments regarding the Housing and Community Development needs of the City of Newburgh in order to assist in the preparation of its Housing and Community Development Plan for fiscal year 2011.

Marietta Curry, Grand Street submitted and read the attached comments along with a copy of the Charter. (copy attached)

Rev. Steve Ruelke, 98 Grand Street submitted and read the attached comments. (copy attached)

Jenny Loeb, City of Newburgh feels that CDBG is in much better shape than it was a few years ago and she thinks that a large portion of the money should be used to renovate or build new buildings where they are slated to be demolished. There is enough money this year to invest in something substantial like affordable housing that could be rent to own. We can do something big this year and she agrees that the landlord tenant liaison is a good idea.

A resident of the City of Newburgh said that CDBG started in 1974 and the only thing to show for it is the Waterfront. Where did all of the other money go? He agrees that things seem to be getting straightened out but we need some substantial projects and affordable housing. We have the funds and the knowhow and we need to see some progress not more rubble.

Denise Ribble, Montgomery Street submitted and read the attached comments. (copy attached)

Kippy Boyle, 400 Grand Street said that there is no reference in the five year plan regarding the Fishing Pier. Hundreds of thousands of dollars was put towards that pier including CDBG and it is now in a shambles. You can't even get out there and she feels that this should be discussed. Many people that she has spoken with would like to see a sidewalk improvement project which is needed. She also would like to see garbage cans placed throughout the City to give people the opportunity to throw their garbage into. In some communities they have programs for seniors to install tamper-proof smoke alarms which she thinks would be beneficial. She asked if the funds in the Planning Department are not used can they roll over to next year. If so, how would that work? There are several projects that have not been filled. Many list that there are "none to date". There is a lot of work to do and she would like to see a breakdown of where the money is being applied.

**Madeline Fletcher, Pathstone Community Improvement of Newburgh feels that we have the opportunity right now to put a lot towards housing and it would be a shame if we didn't. We have to look away from the traditional solutions and share the burden of homeownership and rentals.**

**Janet Gianopoulos, City of Newburgh feels that we should not duplicate services by putting additional taxpayer dollars towards education. Getting people working is probably one of the most important things that we can do in this City.**

**There being no further comments, this public hearing was closed.**

PUBLIC HEARING Community Development Grant Block Program  
September 7, 2010

During the September 2, 2010 work session meeting, the Director of <sup>Planning</sup> Economic and <sup>Development</sup> Planning along with the Director of Community Development made a presentation regarding current status of Community Development Block Grant program also known as CDBG. The Director of <sup>Planning</sup> Economic and <sup>Development</sup> Planning's ( Mr. Edward Lynch) powerpoint presentation stressed several important issues within the department as follows

- Limit money spent on administrative expenses
- Need to NOT use funds for general governmental operations
- Not an easy task to manage current grants when department is involved in so many other NON GRANT activities and staff is limited
- We have to have competent administrators
- CDBG entitlement grant is one of the largest and most valuable that the city receives.

As stated in the city charter Article XIV, Department of Planning and Development "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."

The Director of Planning and Development functions include economic development, planning, housing and community development, program evaluation, processing and servicing loans and contractor evaluations.

This indicates the charter was drafted to have a single <sup>Director of Planning and Development</sup> Economic Development Director to include community development. Nowhere in this section of the charter nor the entire charter does the position of Director of Community Development exist. Currently, the Department of <sup>Planning</sup> Economic and <sup>Development</sup> Planning has two (2) full time directors, with a staff of (3) full time employees. In the 2010 city budget many programs to aid families and children in need were eliminated, such as the summer lunch program which had local ministers scrambling to find resources to feed children the city abandoned. Meanwhile, the city manager at the snap of his fingers, authorized the salary of over \$77,000 for a director tearing funding from programs for the poor.

Who's managing who and what in that department? To have two (2) full time directors each making more than double the median average income in the city and between the two managing only three (3) full time employees?

We have two full time directors, one meeting the charter requirement and the other completely outside the design scope of the charter. How does the city manager take money to feed the poor and allocate it for a position that does not meet the legal requirements under the city charter? Even the current Director of <sup>Planning</sup> Economic and <sup>Development</sup> Planning in his presentation mentioned the need to limit money spent on administrative expenses and the need to increase competence in the department and re-allocate funds to programs to serve the intended under privileged recipients.

The Recreation Division shall be headed by the Senior Recreation Leader, who shall report directly to the Youth Bureau Director.

ARTICLE XIV  
Department of Planning and Development  
[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:

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 nonfederally 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.

## ARTICLE XV Commissions and Boards

### § C15.10. Civil Service Commissioners.

The Civil Service Commissioners shall have such powers, exercise such functions and perform such duties as are conferred or imposed by law upon Civil Service Commissioners. Any vacancy shall be filled for the unexpired term in the same manner as an original appointment. Not more than two (2) members of the Commission shall be adherents of the same political party, and no member shall hold any other salaried public office. A Commissioner may be removed by

## **The Rev. Steve Ruelke**

98 Grand Street  
PO Box 1621  
Newburgh, NY 12551

845-527-0405

September 7, 2010

City Council  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

### **RE: 2011 Consolidated Housing and Development Plan**

Greetings!

Thank you for the opportunity to offer my views on this plan.

I reread the Five-Year Consolidated Plan during the past couple of weeks and appreciate all the work that went into it, the data which it contained and the recommendations which resulted. I also appreciated the way in which the Consolidated Plan informed the 2010 Action Plan. That said, I am pained by the apparent lack of activity on the part of the City when it comes to carrying out that plan. For example, the Consolidated Plan and the 2010 Action Plan named Lander Street as THE primary target for action. I walk Lander Street on a regular basis and I have to say that it doesn't look like anything was invested there except for the \$40,000 the City spent demolishing an NCAC-owned building at the corner of Lander and Farrington Street that was in a state of collapse (it was one of six properties sold by the City to NCAC about three years ago). I'm sure I must be missing other activities in the target area and I can tell you I do not know about the success the City has experienced in the areas of job creation, rehab loans, façade improvements and other things. For the reason, I suggest that the Council ask for monthly reports on CDBG-funded activities and have the information available for the public.

That said, let me offer my suggestions concerning 2011 activities. First, as we have told you in the past, you're spending too much to administer this program. No justification for CDBG administration costs has been offered up in the six years that I've been paying attention to this program. I suspect that's because there is none and that there has been no justification for that expense for many years. Cut that figure back; spend it on the people.

And, here are a couple of ways in which you can do that:

1. **Low-Income Senior Home Maintenance Program.** There are roughly 250 senior citizen homeowners whose incomes are very low, according to data on file in your

assessor's office. Keeping and maintaining their homes – homes they've lived in for decades – is becoming increasingly difficult.

I propose that you allocate money to fund a basic maintenance program which would employ and train currently-unemployed persons to do basic yard work (lawn mowing, weeding, trimming), clean gutters, shovel snow, painting, washing windows, and simple interior repairs such as replacing the “guts” of a toilet or fixing a leaky faucet in the homes of those senior. Those same persons might also be employed to perform maintenance on any City-owned and occupied residential properties.

2. Operate an aggressive **Lead Paint Abatement Program**. As noted in the Five-Year Consolidated Plan, there are more than 4,300 tenant- and owner-occupied housing units in the City with unsafe levels of lead paint in them. Although there is, in fact, a County-administered Lead Safe Orange program, that program has not met with the kinds of success one might hope for.

I propose that you allocate funding for a **Lead Safe Newburgh** program that would identify candidate properties within the primary and secondary CDBG target areas, pool County and City resources, and provide employment and training opportunities to currently unemployed residents who would work under the direction and supervision of skilled tradesmen to make our housing safe, particularly for the City's children.

3. Provide initial funding and coordination for the development of a **Complementary Currency** or **Community Currency**. This could be a Time Banking System or some other mechanism that would increase support for City-based businesses, provide employment opportunities, and build community.

An example of such a system (there are about 1,000 nationwide) is the City of Ithaca which prints its own money. This legal script is valued in hours, based on the trading of labor, but it is commonly thought of as \$10 per hour (the average wage for the area). When people sign up to trade in Ithaca HOURS they agree to exchange some goods or services in the local money. For instance, a carpenter who plays the guitar could offer guitar lessons or cabinet installation. A directory is published every couple of months that lists the goods and services that people in the community are willing to trade for Ithaca HOURS. Some people pay rent, shop at the farmers market and buy furniture with HOURS. There is an HOUR bank and the local hospital accepts HOURS for medical care. According to a recent survey by Paul Glover, the founder of Ithaca HOURS, more than two million dollars worth of HOUR transactions have occurred since 1991.

Here's their mission statement:

*Ithaca Hours is a local currency system that promotes local economic strength and community reliance that will support economic and social justice, ecology, community participation, and human aspirations.*

Here's their website: [www.ithacahours.org](http://www.ithacahours.org)

A modest allocation of CDBG funds leveraged with private contribution and perhaps other public funding could make Newburgh Dollars a reality.

4. Provide seed money for the development of a **Housing Ombudsman**. This person, persons or organization would work with both landlords and tenants to settle disputes before they end up in court. Whether it is a dispute over rent, tenant destruction of property, or a landlord's failure to adequately maintain a property or respond to tenant needs, an ombudsman would step in as an impartial mediator/facilitator whose job would be to bring the disputing sides together to achieve a positive outcome. This "office" would also mediate disputes involving agencies such as DSS and Section 8. CDBG funds would be leveraged with other public sources of funding as well as private contributions.
5. Provide seed money for the development and implementation of a program leading to the legalization, licensing and regulation of **Boarding Houses** and **Rooming Houses**. There are currently an unknown number of "illegal" rooming houses operating in the City, properties which may be unsafe, substandard, and crummy. They are the only housing alternative for a large segment of our population, people who are single and working at minimum wage jobs and have no family or friends with whom to share an apartment or people who qualify for the maximum \$366-a-month housing allowance from DSS. Stories of exploitation abound.

Licensure/regulation of rooming and boarding houses would help ensure that the poorest of our City's poor have decent, safe places in which to live. And, licensure with its accompanying fee would relieve the City of some of its liability while covering the cost of administering the program.

There certainly are other ways in which the CDBG funds could and should be used to address the desperate nature of the community's housing situation and to provide much needed jobs for people who never made the official unemployment count. Other folks have suggested them I'm sure and you have too. I ask that you give the five that I've just mentioned your full consideration as you move forward to develop a plan that fits with an overall plan to bring new life to Newburgh.

Very truly yours,

  
The Rev. Steve Ruelke

Denise Ribble – Comments

There are 3 components to qualifying projects for CDBG funds to be expended to serve low and moderate income residents

Under the Housing component

There was a presentation on a Tax Foreclosure Housing Program, but nothing on Tax Foreclosure Prevention. In the Tax Foreclosure Housing Program, it appears that the City, having taken property in rem for non-payment of taxes, will now spend CDBG money to “fix up” the property and make it habitable. There was no discussion about what would then happen with the property. Would the City keep it as landlord and make it into affordable rental units? Sell it? What if they cannot sell it? This approach appears to incentivize further taking of property by the City at the homeowners and taxpayers expense.

A Tax Foreclosure Prevention Program would look at targeting individuals at risk for losing their houses due to delinquent taxes. Such individuals, once identified, could receive assistance with counseling and a budget plan to pay their back taxes with interest, a year at a time until after 3 years, they would be up to date. Those who qualify, would also be guided to other assistance such as rehab grants, weatherization grants, lead abatement and a brush of kindness to fix up and maintain their properties. By helping to prevent Tax Foreclosures, the City will be assisting qualifying individuals to stay in their homes and will be maintaining tax base.

There was no presentation on Rentals vav rental rehab, improvements and affordability. A possible program to look into is the temporary interim lease tenants (TILT) program

Under the Workforce development component

Regarding this component there is no youth education and training initiative. This would tie in with violence prevention, workforce development and the Promising Neighborhoods grant application the City has signed off on. Also, it is not clear if some amount of funding will be available to CBO’s for youth recreational and entrepreneurial activities. The Hiring Ordinance, part of the City’s Workforce Development Plan, which includes a structured way to provide “up front” community benefits, is not mentioned. This section does not seem to support job creation.

Lastly the compelling projects

It is questionable if the Armory Roof repairs over the “office area” is a permissible use of these funds, and certainly if it is the highest and best use

## COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Brigidanne Flynn, Norton Street said in regard to resolution #200-10 that at the Work Session there was discussion as to the length of service and she asked if the resolution in front of the Council tonight stipulates the amount of time or the capped dollar amount that will be allowed?

There being no one else wishing to speak, this portion of the meeting was closed.

## **COMMENTS FROM THE COUNCIL REGARDING THE AGENDA**

**There were no comments.**

## CITY MANAGER'S REPORT

Acting City Manager, Richard Herbek noted that on September 14<sup>th</sup> there will be a follow-up Work Session with Pace University and then there will be a follow-up public session with public comment. He noted that we had a very successful Bond closing and wished to give credit to Dwight Hadley, Christine Mitchell and the whole team that worked on that. We were able to achieve a rate of 3.75% which he thinks is extremely good with our financial situation. The construction project on Route 9W is moving along. They are a little behind schedule but will try to catch up over the winter. Also the Washington Street project is in progress. A lot of the water work has been completed and the next step is to pave. The Preliminary Budget will be presented to the City Council on September 20<sup>th</sup>, which is several weeks ahead of schedule. We know that the 2011 Budget is going to be very difficult and we want to allow enough time to review.

**RESOLUTION NO.: 196 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
EXECUTE AN AGREEMENT WITH IKON OFFICE SOLUTIONS  
TO LEASE A COPIER FOR CENTRALIZED DATA SERVICES  
AT THE COST OF \$371.40 FOR 36 MONTHS**

**WHEREAS**, Data Processing/IT has proposed to lease from IKON Office Solutions a RICOH AFICIO MP500SP copier to provide for Centralized Data Services; and

**WHEREAS**, the cost of the copier is \$371.40 per month for a period of 36 months; and

**WHEREAS**, a copy of the new contract is attached hereto and made a part of this resolution; and

**WHEREAS**, this Council has reviewed such contract and has determined that it is in the best interests of the City of Newburgh to enter into such contract;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached 36-month lease contract with IKON Office Solutions to provide a new RICOH AFICIO MP500SP copier to provide for Centralized Data Services at the cost of \$371.40 a month for 36 months, such funds to be derived from Budget Line A.1680.0443.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

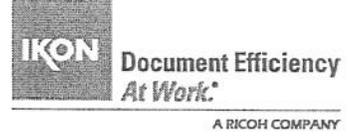
**ADOPTED**



196-10



# STATE AND LOCAL GOVERNMENT Product Schedule



Product Schedule Number: \_\_\_\_\_

State and Local Government Master Agreement Number: \_\_\_\_\_

This Image Management Plus Product Schedule ("Schedule") is made part of the State and Local Government Master Agreement ("Master Agreement") identified on this Schedule between IKON Office Solutions, Inc. ("we" or "us") and Newburgh, City Of, as Customer ("Customer" or "you"). All terms and conditions of the Master Agreement are incorporated into this Schedule and made a part hereof. It is the intent of the parties that this Schedule be separately enforceable as a complete and independent agreement, independent of all other Schedules to the Master Agreement.

### CUSTOMER INFORMATION

NEWBURGH CITY OF				Richard Herbek			
Customer (Bill To) 83 BROADWAY FL 1 CITY CLERK'S OFFICE Data Processing Office				Billing Contact Name 83 BROADWAY 2ND FLR			
Product Location Address NEWBURGH ORANGE NY 12550-5617				Billing Address (if different from location address) NEWBURGH ORANGE NY 12550-5617			
City	County	State	Zip	City	County	State	Zip
Billing Contact Telephone Number (845) 569-7301			Billing Contact Facsimile Number (845) 569-7370		Billing Contact E-Mail Address rherbeck@cityofnewburg-ny.gov		

### PRODUCT DESCRIPTION ("Product")

Qty	Product Description: Make & Model
1	[FOC] RICOH AFICIO MP5001SP

Qty	Product Description: Make & Model

### PAYMENT SCHEDULE

Minimum Term (months)
36

Minimum Payment (Without Tax)
\$ 371.4

Minimum Payment Billing Frequency
<input checked="" type="checkbox"/> Monthly
<input type="checkbox"/> Quarterly
<input type="checkbox"/> Other: _____

Advance Payment
<input type="checkbox"/> 1 <sup>st</sup> Payment
<input type="checkbox"/> 1 <sup>st</sup> & Last Payment
<input type="checkbox"/> Other: _____

Guaranteed Minimum Images*°	
Black/White	Color
6000	0

Cost of Additional Images°	
Black/White	Color
0.0089	0.0000

Meter Reading/Billing Frequency
<input type="checkbox"/> Monthly
<input checked="" type="checkbox"/> Quarterly
<input type="checkbox"/> Other: _____

\* Based upon Minimum Payment Billing Frequency  
° Based upon standard 8 1/2" x 11" paper size. Paper sizes greater than 8 1/2" x 11" may count as more than one image.

Sales Tax Exempt:  YES (Attach Exemption Certificate)      Customer Billing Reference Number (P.O. #, etc.) \_\_\_\_\_  
Addendum(s) attached:  YES (check if yes and indicate total number of pages: \_\_\_\_\_)

### TERMS AND CONDITIONS

- The first Payment will be due on the Effective Date.
- You, the undersigned Customer, have applied to us to use the above-described items ("Product") for lawful commercial (non-consumer) purposes. **THIS IS AN UNCONDITIONAL, NON-CANCELABLE AGREEMENT FOR THE MINIMUM TERM INDICATED ABOVE.** If we accept this Schedule, you agree to use the above Product on all the terms hereof, including the Terms and Conditions on the

STATE AND LOCAL GOVERNMENT  
**Master Agreement**



Number: \_\_\_\_\_

**CUSTOMER INFORMATION**

Full Legal Name Newburgh, City Of				
Address 83 BROADWAY 2ND FLR				
City NEWBURGH	State NY	Zip 12550-5617	Contact Richard Herbeck	Phone (845) 569-7301
Facsimile Number (845) 569-7370		E-mail Address rherbeck@cityofnewburgh-ny.gov		

This Master Agreement ("Master Agreement") has been written in clear, easy to understand English. When we use the words "you", "your" or "Customer" in this Master Agreement, we mean you, our customer, as indicated above. When we use the words "we", "us", or "our" in this Master Agreement, we mean IKON Office Solutions, Inc. Our corporate office is located at 70 Valley Stream Parkway, Malvern, PA 19355.

- Agreement.** We agree to rent to you, and you agree to rent from us, subject to the terms of this Master Agreement, the personal and intangible property described in any equipment schedule (a "Schedule") executed by you and us and incorporating the terms of this Master Agreement by reference. Each Schedule shall be separately enforceable as a complete and independent agreement, independent of all other Schedules to this Master Agreement. The personal and intangible property described on a Schedule (together with all attachments, replacements, parts, substitutions, additions, repairs, and accessories incorporated in or affixed to the property and any license or subscription rights associated with the property) will be collectively referred to as "Product". The manufacturer and/or vendor of the tangible Product shall be referred to as the "Vendor". To the extent the Product includes intangible property or associated services such as periodic software licenses and prepaid data base subscription rights, such intangible property shall be referred to as the "Software".
- Schedules; Delivery and Acceptance.** Each Schedule that incorporates this Master Agreement shall be governed by the terms and conditions of this Master Agreement, as well as the terms and conditions set forth in such individual Schedule. The termination of this Master Agreement will not affect any Schedule executed prior to the effective date of such termination. When you receive the Product, you agree to inspect it to determine it is in good working order. Scheduled Payments (as specified in the applicable Schedule) will begin on the Product delivery and acceptance date ("Effective Date"). You agree to sign and return to us a delivery and acceptance certificate (which, at our request, may be done electronically) within three (3) business days after any Product is installed.
- Term; Payments.** The first scheduled Payment (as specified in the applicable Schedule) ("Payment") will be due on the Effective Date. The remaining Payments will be due on the same day of each subsequent month, unless otherwise specified on the applicable Schedule. If any Payment or other amount payable under any Schedule is not paid within ten (10) days of its due date, you will pay to us, in addition to that Payment, a one-time late charge of 5% of the overdue Payment (but in no event greater than the maximum amount allowed by applicable law). You also agree to pay all shipping and delivery costs associated with the ownership or use of the Product, which amounts may be included in your Payment or billed separately. You also agree that, except as expressly stated in Section 19 below, THIS IS AN UNCONDITIONAL, NON-CANCELABLE AGREEMENT FOR THE MINIMUM TERM INDICATED ON ANY SCHEDULE TO THIS MASTER AGREEMENT. All payments to us are "net" and are not subject to set off or reduction. You agree that you will remit payments to us in the form of Company Checks, (or Personal Checks in the case of sole proprietorships), Direct Debit or Wires only. You also agree that cash and cash equivalents are not acceptable forms of payment for this Master Agreement or any Schedule and that you will not remit such forms of payment to us. Payment in any other form may delay processing or be returned to you. Furthermore, only you or your authorized agent as approved by us will remit payments to us.
- Product Location; Use and Repair.** You will keep and use the Product only at the Product Location shown in the applicable Schedule. You will not move the Product from the location specified in the applicable Schedule or make any alterations, additions or replacements to the Product without our prior written consent, which consent will not be unreasonably withheld. At your own cost and expense, you will keep the Product eligible for any manufacturer's certification as to maintenance and in compliance with applicable laws and in good condition, except for ordinary wear and tear. You may elect to separately engage us to provide maintenance and support services pursuant to a separate agreement for such purpose ("Maintenance Agreement"). All alterations, additions or replacements will become part of the Product and our property at no cost or expense to us. We may inspect the Product at any reasonable time.
- Taxes and Fees.** In addition to the payments under this Master Agreement, to the extent you are not exempt under applicable law, you agree to pay all applicable taxes, fees (including, without limitation, an administrative fee for the processing of applicable taxes, assessments or fees which may be due and payable under this Master Agreement or any Schedule), and filing costs related to the use of the Product, even if billed after the end of the term of this Master Agreement or any Schedule. If we are required to file and pay property tax, you agree at our discretion, to either (a) reimburse us annually for all personal property and other similar taxes and governmental charges associated with the ownership, possession or use of the Product, or (b) remit to us each billing period our estimate of the pro-rated equivalent of such taxes and governmental charges included in the Payment. In the event that the Payment includes personal property and similar taxes, you acknowledge and agree that such amount represents our estimate of such taxes that will be payable with respect to the Product during the term of this Master Agreement or any Schedule and that we will be entitled to retain any excess collections (which may be profit to us) and, alternatively, that we will bear the risk to the extent the actual taxes exceed what we collected through your estimated payments made pursuant to this paragraph. If you are required to file and pay the taxes directly to the tax collector, we will notify you; and you agree to file all property tax returns and promptly pay all property taxes which may be assessed against the Product. A valid sales and use tax exemption certificate must be provided to us within ninety (90) days of the first invoice to receive a credit/waiver of sales tax.
- Warranties.** We transfer to you, without recourse, for the term of each Schedule, any written warranties made by the Vendor or Software Supplier (as defined in Section 10 of this Master Agreement) with respect to the Product rented pursuant to such Schedule. YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE OR DESIGN THE PRODUCT. YOU ACKNOWLEDGE THAT YOU HAVE SELECTED THE PRODUCT BASED ON YOUR OWN JUDGMENT AND YOU HEREBY AFFIRMATIVELY DISCLAIM RELIANCE ON ANY ORAL REPRESENTATION CONCERNING THE PRODUCT MADE TO YOU. However, if you enter into a Maintenance Agreement with us with respect to any Product, no provision, clause or paragraph of this Master Agreement shall alter, restrict, diminish or waive the rights, remedies or benefits that you may have against us under such Maintenance Agreement. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO US, YOU RENT THE PRODUCT "AS-IS". YOU AGREE THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY, WE ARE NOT RESPONSIBLE FOR, AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR, ANY CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES.
- Loss or Damage.** You are responsible for any theft, destruction of, or damage to, the Product (collectively, "Loss") from any cause at all, whether or not insured, from the time of Product delivery to you until it is delivered to us at the end of the Schedule. You are required to make all Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Product so that it is in good condition and working order, eligible for any manufacturer's certification, (b) pay us the amounts specified in Section 12 below, or (c) replace the Product with equipment of like age and capacity from us.
- Claims, Liability and Insurance.** (a) To the extent permitted by applicable law, the parties to this Master Agreement will indemnify, defend and hold each other harmless from all claims arising out of the death or bodily injury of any agent, employee or business invitee of the indemnified party or the damage, loss or destruction of any tangible property of the indemnified party to the extent caused by the negligence or intentional acts or omissions of the indemnifying party. (b) Because you have sole possession and control of the Product, you are responsible for any damage, injury or loss caused by (or to) the Product resulting from the use, misuse or possession of the Product or any accident or other casualty relating to the Product. We are responsible for damage or injury to third persons to the extent the damage or injury is caused by our negligent acts or omissions. You agree to maintain insurance to cover the Product for all types of loss, including, without limit, theft, in an amount not less than the full replacement value and you will name us as an additional insured and loss payee on your insurance policy. Such insurance will provide that we will be given thirty (30) days advance notice of any cancellation. You agree to provide us with evidence of such insurance in a form reasonably satisfactory to us. If you are self-insured

SFP439822



**Document Efficiency  
At Work.**

A RICOH COMPANY

[NEW YORK]

IKON Office Solutions, Inc.  
70 Valley Stream Parkway  
Malvern, PA 19355

ADDENDUM ("Addendum"), dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ to that certain Master Agreement no. \_\_\_\_\_ ("Agreement") between IKON Office Solutions, Inc. ("we" or "us") and \_\_\_\_\_ Newburgh, City of \_\_\_\_\_ as customer ("Customer" or "you").

1. **Section 16 Governing Law; Jurisdiction; Waiver of Trial By Jury and Certain Rights and Remedies Under the Uniform Commercial Code:** The following sentence shall be added to the end of Section 16 of the Agreement:

"If required by law, the provisions of Section 109 of the New York General Municipal Law are incorporated herein by reference."

2. **Section 19-Non-Appropriation of Funds/Non-Substitution:** Section 19 of the Agreement shall be deleted in its entirety and substituted with the following in lieu thereof:

"19. **Non-Appropriation of Funds.** You intend to remit all Payments and other amounts due to us for the entire term of this Master Agreement and each Schedule to this Master Agreement if funds are legally available. You reasonably believe that moneys in an amount sufficient to remit all such Payments and amounts can and will lawfully be appropriated and made available to permit your continued utilization of the Product and the performance of its essential function during the entire term of this Master Agreement and each Schedule to this Master Agreement. The person in charge of preparing your budget will include in each of your fiscal budgets a request for all Payments to become due in such fiscal period and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal period sufficient to pay all Payments coming due therein. We acknowledge that appropriation of moneys for Payments is a governmental function which you cannot contractually commit yourself in advance to perform, and neither this Master Agreement nor any Schedule to this Master Agreement constitutes such a commitment. In the event you are not granted an appropriation of funds for any Product subject to any Schedule to this Master Agreement at any time during the term of such Schedule, at least thirty (30) days prior to the end of your fiscal period, your chief financial officer shall certify in writing to us that funds have not been appropriated for the next fiscal period and, thereafter you shall have the right to return all, but not less than all, of such Product, at your sole expense, in accordance with Section 14 of this Master Agreement and terminate the Payments under such Schedule on the last day of the fiscal period for which appropriations were received by remitting to us all Payments and other amounts which are due and have not been paid at or before the end of such fiscal period.

This Master Agreement and each Schedule to this Master Agreement shall be deemed executory only to the extent of monies appropriated and available for the purpose of

\_\_\_\_\_  
Customer Initials

with respect to the Product, you shall maintain during the term of each Schedule to this Master Agreement a self-insurance program reasonably satisfactory to us and shall provide to us evidence of such program. In the event of loss or damage to the Product, you agree to remain responsible for the payment obligations under this Master Agreement until the payment obligations are fully satisfied.

9. **Title; Recording.** We are the owner of and will hold title to the Product (except for any Software). You will keep the Product free of all liens and encumbrances. Except as reflected on any Schedule, you agree that this Master Agreement is a true rental. However, if any Schedule is deemed to be intended for security, you hereby grant to us a purchase money security interest in the Product covered by the applicable Schedule (including any replacements, substitutions, additions, attachments and proceeds) as security for the payment of the amounts under each Schedule. You authorize us to file a copy of this Master Agreement and/or any Schedule as a financing statement, and you agree to promptly execute and deliver to us any financing statements covering the Product that we may reasonably require; provided, however, that you hereby authorize us to file any such financing statement without your authentication to the extent permitted by applicable law.
10. **Software or Intangibles.** To the extent that the Product includes Software, you understand and agree that we have no right, title or interest in the Software, and you will comply throughout the term of this Master Agreement with any license and/or other agreement ("Software License") entered into with the supplier of the Software ("Software Supplier"). You are responsible for entering into any Software License with the Software Supplier no later than the Effective Date.
11. **Default.** Each of the following is a "Default" under this Master Agreement and all Schedules: (a) you fail to pay any Payment or any other payment within thirty (30) days of its due date, (b) any representation or warranty made by you in this Master Agreement is false or incorrect and/or you do not perform any of your other obligations under this Master Agreement or any Schedule and/or in any other agreement with us or with any of our affiliates and this failure continues for ten (10) days after we have notified you of it, or (c) you become insolvent, you dissolve or are dissolved, or you assign your assets for the benefit of your creditors, or you file or have filed against you any bankruptcy or reorganization proceeding.
12. **Remedies.** If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Master Agreement and/or any or all Schedules, and/or any or all other agreements that we have entered into with you; (b) we may require you to immediately pay to us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) all past due Payments and all other amounts then due and payable under this Master Agreement or any Schedule; and (ii) all unpaid Payments for the remainder of the term of each Schedule plus our anticipated value of the Product at the end of the initial term of any Schedule (or any renewal of such Schedule), such unpaid Payments and anticipated value to be discounted to present value at a rate equal to 6% per year to the date of default. We agree to apply the net proceeds (as specified below in this Section) of any disposition of the Product to the amounts that you owe us; (c) we may require you to deliver the Product to us as set forth in Section 14; (d) we or our representative may peacefully repossess the Product without court order and you will not make any claims against us for damages or trespass or any other reason; (e) we may exercise any and all other rights or remedies available to a lender, secured party or lessor under the Uniform Commercial Code ("UCC"), including without limit, those set forth in Article 2A of the UCC, and at law or in equity; (f) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (g) demand the immediate return and obtain possession of the Software and re-license the Software at a public or private sale; (h) cause the Software Supplier to terminate the Software License, support and other services under the Software License, and/or (i) at our option, sell, re-lease, or otherwise dispose of the Product under such terms and conditions as may be acceptable to us in our discretion. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees, and all costs related to the sale or disposition of the Product including, without limit, incidental damages expended in the repossession, repair, preparation and advertisement for sale or lease or other disposition of the Product. If we take possession of the Product (or any Software, if applicable), we agree to sell or otherwise dispose of it with or without notice, at a public or private disposition and to apply the net proceeds (after we have deducted all costs, including reasonable attorneys' fees) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, five (5) days notice shall constitute reasonable notice. You will remain responsible for any deficiency that is due after we have applied any such net proceeds.
13. **Assignment.** YOU HAVE NO RIGHT TO SELL, TRANSFER, ENCUMBER, SUBLET OR ASSIGN THE PRODUCT OR THIS MASTER AGREEMENT OR ANY SCHEDULE WITHOUT OUR PRIOR WRITTEN CONSENT (which consent shall not be unreasonably withheld). You agree that we may sell or assign all or a portion of our interests in the Product and/or this Master Agreement or any Schedule without notice to you even if less than all the Payments have been assigned. In that event, the assignee will have such rights as we assign to them but none of our obligations (we will keep those obligations) and the rights of the assignee will not be subject to any claims, defenses or set offs that you may have against us. If you have entered into a Maintenance Agreement or supply agreement with us, such agreements will remain in full force and effect with us and will not be affected by any such assignment. You agree to acknowledge any such assignment in writing if so requested and to keep a complete and accurate record of all such assignments in a manner that complies with Section 149(a) of the Internal Revenue Code, and the regulations promulgated thereunder.

14. **Renewal; Return of Product.** After the Minimum Term or any extension of any Schedule to this Master Agreement, such Schedule will automatically renew on a month-to-month basis unless either party notifies the other in writing at least thirty (30) days prior to the expiration of the Minimum Term or extension of such Schedule; provided, however, that at any time during any month-to-month renewal, we have the right, upon thirty (30) days notice, to demand that you return the Product to us in accordance with the terms of this Section 14. During any month-to-month renewal, you shall pay the Minimum Payment each month until the Product is returned to us in accordance with the provisions hereof. Notwithstanding the foregoing, nothing herein is intended to provide, nor shall be interpreted as providing, (a) you with a legally enforceable option to extend or renew the terms of this Master Agreement or any Schedule, or (b) us with a legally enforceable option to compel any such extension or renewal. At the end of or upon termination of each Schedule, you will immediately return the Product subject to such expired Schedule to us (or our designee), to the location designated by us, in as good condition as when you received it, except for ordinary wear and tear. We will bear shipping charges so long as replacement equipment is selected from IKON. Otherwise, you will bear all shipping, de-installing, and crating expenses of the Product and will insure the Product for its full replacement value during shipping. You shall ensure that you securely remove all data from all disk drives or magnetic media prior to returning the Product under this Master Agreement or any Schedule. You are solely responsible for selecting an appropriate removal standard that meets your business needs.
15. **Miscellaneous.** It is the intent of the parties that this Master Agreement and any Schedule shall be deemed and constitute a "finance lease" as defined under and governed by Article 2A of the UCC. You agree that the terms and conditions contained in this Master Agreement and in each Schedule make up the entire agreement between us regarding the rental of the Product and supersede all prior written or oral communications, understandings or agreements between the parties relating to the subject matter contained herein, including without limitation, purchase orders. Any purchase order, or other ordering documents, will not modify or effect this Master Agreement or any Schedule, nor have any other legal effect and shall serve only the purpose of identifying the equipment ordered. You authorize us to supply any missing "configure to order" number ("CTO"), other equipment identification numbers (including, without limit, serial numbers), agreement/schedule identification numbers and/or dates in this Master Agreement or any Schedule. You acknowledge that you have not been induced to enter into this Master Agreement by any representation or warranty not expressly set forth in this Master Agreement. Neither this Master Agreement nor any Schedule is binding on us until we sign it. Any change in any of the terms and conditions of this Master Agreement or any Schedule must be in writing and signed by us. If we delay or fail to enforce any of its rights under this Master Agreement with respect to any or all Schedules, we will still be able to enforce those rights at a later time. All notices shall be given in writing and sent either (a) by certified mail or recognized overnight delivery service, postage prepaid, addressed to the party receiving the notice at the address shown on the front of this Master Agreement, or (b) by facsimile transmission, with oral confirmation, to the facsimile number shown below such party's signature on this Master Agreement. Either party may change its address or facsimile number by giving written notice of such change to the other party. Notices shall be effective on the date sent. Each of our respective rights and indemnities will survive the termination of this Master Agreement and each Schedule. If more than one customer has signed this Master Agreement or any Schedule, each customer agrees that its liability is joint and several. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Payments in the order of maturity, and any remaining excess will be refunded to you. We make no representation or warranty of any kind, express or implied, with respect to the legal, tax or accounting treatment of this Master Agreement and any Schedule and you acknowledge that we are an independent contractor and not your fiduciary. You will obtain your own legal, tax and accounting advice related to this Master Agreement or any Schedule and make your own determination of the proper lease term for accounting purposes. We may receive compensation from the manufacturer or supplier of the Product in order to enable us to reduce the cost of renting the Product to you under this Master Agreement or any Schedule below what we otherwise would charge. If we received such compensation, the reduction in the cost of renting the Product is reflected in the Minimum Payment specified herein. If you so request, and we permit the early termination of this Master Agreement or any Schedule, you agree to pay a fee for such privilege. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignee and third parties having an economic interest in this Master Agreement, any Schedule or the Product.
16. **Governing Law; Jurisdiction; Waiver of Trial By Jury and Certain Rights and Remedies Under The Uniform Commercial Code.** YOU AGREE THAT THIS MASTER AGREEMENT AND ANY SCHEDULES WILL BE GOVERNED UNDER THE APPLICABLE LAW FOR THE COMMONWEALTH OF PENNSYLVANIA. YOU ALSO CONSENT TO THE VENUE AND NON-EXCLUSIVE JURISDICTION OF ANY COURT LOCATED IN EACH OF THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE WHERE YOUR PRINCIPAL PLACE OF BUSINESS IS LOCATED TO RESOLVE ANY CONFLICT UNDER THIS MASTER AGREEMENT. THE PARTIES TO THIS MASTER AGREEMENT EACH WAIVE THE RIGHT TO A TRIAL BY JURY IN THE EVENT OF A LAWSUIT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A CUSTOMER OR LESSEE BY ARTICLE 2A OF THE UCC THAT YOU MAY HAVE AGAINST US (BUT NOT AGAINST THE MANUFACTURER, ANY VENDOR OF THE PRODUCT).
17. **Counterparts; Facsimiles.** Each Schedule may be executed in counterparts. The counterpart which has our original signature and/or is in our possession shall constitute chattel paper as

State  
of New  
York

SFP439822

that term is defined in the UCC and shall constitute the original agreement for all purposes, including, without limitation, (a) any hearing, trial or proceeding with respect to such Schedule, and (b) any determination as to which version of such Schedule constitutes the single true original item of chattel paper under the UCC. If you sign and transmit a Schedule to us by facsimile, the facsimile copy, upon execution by us, shall be binding upon the parties. You agree that the facsimile of a Schedule manually signed by us, when attached to the facsimile copy signed by you, shall constitute the original agreement for all purposes, including, without limitation, those outlined above in this Section. You agree to deliver to us upon our request the counterpart of such Schedule containing your original manual signature.

18. **Essentiality.** During the term of this Master Agreement and any Schedule, the Product will be used solely for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of your authority. You represent and warrant that the use of the Product is essential to performing such governmental or proprietary functions.

19. **Non-Appropriation/Non-Substitution.** (a) If all of the following shall occur: (i) your governing body fails to appropriate sufficient monies in any fiscal year for rentals or other payments due under any Schedule to this Master Agreement for any equipment which will perform services and functions which in whole or in part are essentially the same services and functions performed by the Product covered by any such Schedule, (ii) other funds are not available for such payments, and (iii) the non-appropriation of funds did not result from any act or failure to act on your part, then a "Non-Appropriation" shall be deemed to have occurred. (b) If a Non-Appropriation occurs, then: (i) you must give us immediate notice of such Non-Appropriation and provide written notice of such failure by your governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by such date, immediately upon Non-Appropriation, (ii) no later than the last day of the fiscal year for which appropriations were made for the rental due under any Schedule to this Master Agreement (the "Return Date"), you shall return to us all, but not less than all, of the Product covered by such Schedule to this Master Agreement, at your sole expense, in accordance with the terms hereof; and (iii) any Schedule to this Master Agreement shall terminate on the Return Date without penalty or expense to you and you shall not be obligated to pay the rentals beyond such fiscal year, provided that (A) you shall pay any and all rentals and other payments due up through the end of the last day of the fiscal year for which appropriations were made and (B) you shall pay month-to-month rent

at the rate set forth in any such Schedule for each month or part thereof that you fail to return the Product as required herein. (c) Upon any such Non-Appropriation, upon our request, you will provide, upon our request, an opinion of independent counsel (who shall be reasonably acceptable to us), in form reasonably acceptable to us, confirming the Non-Appropriation and providing reasonably sufficient proof of such Non-Appropriation.

20. **Funding Intent.** You represent and warrant to us that you presently intend to continue this Master Agreement and any Schedule hereto for the entire term of such Schedule and to pay all rentals relating to such Schedule and to do all things lawfully within your power to obtain and maintain funds from which the rentals and all other payments owing under such Schedule may be made. The parties acknowledge that appropriation for rentals is a governmental function to which you cannot contractually commit yourself in advance and this Master Agreement shall not constitute such a commitment. To the extent permitted by law, the person or entity in charge of preparing your budget will include in the budget request for each fiscal year during the term of each Schedule, respectively, to this Master Agreement an amount equal to the rentals (to be used for such rentals) to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due during such fiscal year.

21. **Authority and Authorization.** (a) You represent and warrant to us that: (i) you are a State or political subdivision of a State, as those terms are defined in Section 103 of the Internal Revenue Code; (ii) you have the power and authority to enter into this Master Agreement and all Schedules to this Master Agreement; (iii) this Master Agreement and all Schedules to this Master Agreement have been duly authorized, executed and delivered by you and constitute valid, legal and binding agreement(s) enforceable against you in accordance with their terms; and (iv) no further approval, consent or withholding of objections is required from any governmental authority with respect to this Master Agreement or any Schedule to this Master Agreement. (b) If and to the extent required by us, you agree to provide us with an opinion of independent counsel (who shall be reasonably acceptable to us), substantially in the form attached hereto as Exhibit A, confirming the foregoing and other related matters. (c) You agree to take all required actions and to file all necessary forms, including IRS Forms 8038-G or 8038-GC, as applicable, to preserve the tax exempt status of this Master Agreement and all Schedules thereto. (d) You agree to provide us with any other documents that we may reasonably request in connection with the foregoing and this Master Agreement.

IN WITNESS WHEREOF, the parties have executed this Master Agreement as of the dates set forth below.

THE PERSON SIGNING THIS AGREEMENT ON BEHALF OF THE CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO.

<p><b>CUSTOMER</b></p> <p>By: <input checked="" type="checkbox"/> _____ Authorized Signer Signature</p> <p>Printed Name: _____</p> <p>Title: _____ Date: _____</p> <p>Facsimile Number: _____</p>	<p>Accepted by: IKON OFFICE SOLUTIONS, INC.</p> <p>By: _____ Authorized Signer Signature</p> <p>Printed Name: _____</p> <p>Title: _____ Date: _____</p> <p>Facsimile Number: _____</p>
---	--

The below service commitments (collectively, the "Service Commitments") are brought to you by IKON Office Solutions, Inc., an Ohio corporation having its principal place of business at 70 Valley Stream Parkway, Malvern, PA 19355 ("IKON"), one of the largest distributors of office solutions in the world. The words "you" and "your" refer to you, our customer. You agree that IKON alone is the party to provide all of the services set forth below and is fully responsible to you, the customer, for all of the Service Commitments. The Service Commitments are only applicable to the equipment ("Equipment") described in the Image Management Plus Product Schedule to which these Service Commitments are attached, excluding facsimile machines, single-function and wide-format printers and production units. The Service Commitments are effective on the date the Equipment is accepted by you and apply during IKON's normal business hours, excluding weekends and IKON recognized holidays. They remain in effect for the Minimum Term so long as no ongoing default exists on your part.

**TERM PRICE PROTECTION**

The Image Management Minimum Payment and the Cost of Additional Images, as described on the Image Management Plus Product Schedule, will not increase in price during the Minimum Term of the Image Management Plus Product Schedule, unless agreed to in writing and signed by both parties.

**EQUIPMENT SERVICE AND SUPPLIES**

IKON will provide full coverage maintenance services, including replacement parts, drums, labor and all service calls, during Normal Business Hours. "Normal Business Hours" are between 8:00am and 5:00pm, Monday to Friday excluding public holidays. IKON will also provide the supplies required to produce images on the Equipment covered under the Image Management Plus Product Schedule (other than non-metered equipment and soft-metered Equipment). The supplies will be provided according to manufacturer's specifications. Optional supply items such as paper and transparencies are not included.

**RESPONSE TIME COMMITMENT**

IKON will provide a quarterly average response time of 2 to 6 business hours for all service calls located within a 30-mile radius of any IKON office, and 4 to 8 business hours for service calls located within a 31-60 mile radius for the term of the Image Management Plus Product Schedule. Response time is measured in aggregate for all Equipment covered by the Image Management Plus Product Schedule.

**UPTIME PERFORMANCE COMMITMENT**

IKON will service the Equipment to be Operational with a quarterly uptime average of 96% during Normal Business Hours, excluding preventative and interim maintenance time. Downtime will begin at the time you place a service call to IKON and will end when the Equipment is again Operational. You agree to make the Equipment available to IKON for scheduled preventative and interim maintenance. You further agree to give IKON advance notice of any critical and specific uptime needs you may have so that IKON can schedule with you interim and preventative maintenance in advance of such needs. As used in these Service Commitments "Operational" means substantial compliance with the manufacturer's specifications and/or performance standards and excludes customary end-user corrective actions.

**IMAGE VOLUME FLEXIBILITY AND EQUIPMENT ADDITIONS**

At any time after the expiration of the initial ninety day period of the original term of the Image Management Plus Product Schedule to which these Service Commitments relate, IKON will, upon your request, review your image volume. If the image volume has moved upward or downward in an amount sufficient for you to consider an alternative plan, IKON will, on a quarterly basis, present pricing options to conform to a new image volume. If you agree that additional equipment is required to satisfy your increased image volume requirements, IKON will include the equipment in the pricing options. The addition of equipment and/or increases/decreases to the Guaranteed Minimum Images requires an amendment ("Amendment") to the Image Management Plus Product Schedule that must be agreed to and signed by both you and IKON. The Amendment may not be less than the remaining term of the existing Image Management Plus Product Schedule but may be extended for a term up to 60 months. Adjustments to the Guaranteed Minimum Images commitment and/or the addition of equipment may result in a higher or lower minimum payment. Images decreases are limited to 25% of the Guaranteed Minimum Images in effect at the time of Amendment.

**EQUIPMENT AND PROFESSIONAL SERVICES UPGRADE OPTION**

At any time after the expiration of one-half of the original term of the Image Management Plus Product Schedule to which these Service Commitments relate, you may reconfigure the Equipment by adding, exchanging, or upgrading to an item of Equipment with additional features or enhanced technology. A new Image Management Plus Product Schedule or Amendment for not less than the remaining term of the existing Image Management Plus Product Schedule or Amendment, must be agreed to and signed by you and IKON. The Image Management Cost of Additional Images and the Minimum Payment of the new Image Management Plus Product Schedule or Amendment will be based on any obligations remaining on the Equipment, the added equipment and new image volume commitment. Your IKON Account Executive will be pleased to work with you on a Technology Refresh prior to the end of your Image Management Plus Product Schedule or Amendment.

**PERFORMANCE COMMITMENT**

IKON is committed to performing these Service Commitments and agrees to perform its services in a manner consistent with the applicable manufacturer's specifications. If IKON fails to meet any Service Commitments and in the unlikely event that IKON is not able to repair the Equipment in your office, IKON, at IKON's election, will provide to you either the delivery of a temporary loaner, for use while the Equipment is being repaired at IKON's service center, or IKON will replace such Equipment with comparable Equipment of equal or greater capability at no additional charge. These are the exclusive remedies available to you under the Image Management Plus Commitments Customer's exclusive remedy shall be for IKON to re-perform any Services not in compliance with this warranty and brought to IKON's attention in writing within a reasonable time, but in no event more than thirty (30) days after such Services are performed. If you are dissatisfied with IKON's performance, you must send a registered letter outlining your concerns to the address specified below in the "Quality Assurance" section. Please allow 30 days for resolution.

**ACCOUNT MANAGEMENT**

Your IKON sales professional will, upon your request, be pleased to review your equipment performance metrics on a quarterly basis and mutually convenient date and time. IKON will follow up within 8 business hours of a call or e-mail to one of our account management team members requesting a metrics review. IKON will, upon your request, be pleased to annually review your business environment and discuss ways in which we may improve efficiencies and reduce costs relating to your document management processes.

**QUALITY ASSURANCE**

Please send all correspondence relating to the Service Commitments via registered letter to the Quality Assurance Department located at: 3920 Arkwright Road, Macon, GA 31210, Attn: Quality Assurance. The Quality Assurance Department will coordinate resolution of any performance issues concerning the above Service Commitments with your local IKON office. If either of the Response Time or Uptime Performance Commitments is not met, a one-time credit equal to 3% of your Minimum Payment invoice total on the non-performing unit will be made available upon your request. Credit requests must be made in writing via registered letter to the address above. IKON is committed to responding to any questions regarding invoiced amounts for the use of the Equipment relating to the Product Schedule within in a two (2) day timeframe. *To ensure the most timely response please call 1-888-ASK-IKON*

**MISCELLANEOUS**

These Service Commitments do not cover repairs resulting from misuse (including without limitation improper voltage or environment or the use of supplies that do not conform to the manufacturer's specifications), subjective matters (such as color reproduction accuracy) or any other factor beyond the reasonable control of IKON. IKON and you each acknowledge that these Service Commitments represent the entire understanding of the parties with respect to the subject matter hereof and that your sole remedy for any Service Commitments not performed in accordance with the foregoing is as set forth under the section hereof entitled "Performance Commitment". The Service Commitments made herein are service and/or maintenance warranties and are not product warranties. Except as expressly set forth herein, IKON makes no warranties, express or implied, including any implied warranties of merchantability, fitness for use, or fitness for a particular purpose. Neither party hereto shall be liable to the other for any consequential, indirect, punitive or special damages. These Service Commitments shall be governed according to the laws of the Commonwealth of Pennsylvania without regard to its conflicts of law principles. These Service Commitments are not assignable by the Customer. Unless otherwise stated in your Implementation Schedule, your Equipment will ONLY be serviced by an "IKON Certified Technician". You acknowledge and agree that, in connection with its performance of its obligations under these Service Commitments, IKON may place automated meter reading units on imaging devices, including but not limited to the Equipment, at your location in order to facilitate the timely and efficient collection of accurate meter read data on a monthly, quarterly or annual basis. IKON agrees that such units will be used by IKON solely for such purpose. Once transmitted, all meter read data shall become the sole property of IKON and will be utilized for billing purposes.

IN WITNESS WHEREOF, each party has caused its duly authorized officer to execute these Image Management Plus Commitments as of \_\_\_\_\_, 20\_\_.

**CUSTOMER**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**IKON OFFICE SOLUTIONS, INC.**

By: \_\_\_\_\_  
Name:  
Title:  
Date:



**Document Efficiency  
At Work.**

A RICOH COMPANY

**Work Order - US**  
IKON Office Solutions, INC.  
Professional Services

Base Eq Model #	Base Eq Serial #	Email Address of PS Rep	Date of Services:
-----------------	------------------	-------------------------	-------------------

Customer must already be an IKON customer to use this form without being part of the SFP

Bill To Cust No.: \_\_\_\_\_ Pyrmt Method: \_\_\_\_\_ Ship To Customer No.: \_\_\_\_\_ PO No.: \_\_\_\_\_ PO Date: \_\_\_\_\_  
 Bill To Customer: NEWBURGH CITY OF Ship To Customer: \_\_\_\_\_  
 Address: 83 BROADWAY 2ND FLR Address: 83 BROADWAY FL 1 CITY CLERK'S OFFICE Data Processing Office  
 City: NEWBURGH State: NY Zip: 12550-5617 City: NEWBURGH State: NY Zip: 12550-5617  
 Customer Contact: Richard Herbek Title: City Manager Phone: (845) 569-7301  
 IKON Sales Rep: RIKER, JAMES, P Phone: \_\_\_\_\_  
 MPS/FSM/SAM/SAC: \_\_\_\_\_ SC: \_\_\_\_\_ SC-C: \_\_\_\_\_ SA/SSA: \_\_\_\_\_

Description of Professional Services

Professional Services Task1	Professional Services Task2
PS/DOC SVC/SUPPORT BASIC SCAN INSTALL	PS/DOC SVC/MISCELLANEOUS PS-BC SEG 4 (41 - 69 ppm)
<ul style="list-style-type: none"> <li>o Design and perform solution implementation plan</li> <li>o Installation and configuration for 5 users</li> <li>o Administrator training</li> <li>o Key Operator training</li> <li>o End User training</li> </ul>	<ul style="list-style-type: none"> <li>o Design and perform solution implementation plan</li> <li>o Install and configure printer interface</li> <li>o Assist customer in connecting to their network</li> <li>o Install and setup print drivers/PPD's on up to two (2) workstations</li> <li>o Printer operator training for lead operator / administrator</li> <li>o End user training for print drivers/PPD's for up to two (2) persons</li> </ul>

Task	eIKON Code	OMD Code	Units	Unit Price	Ext. Price	Notes
1	PS-INSRIBASSCAN	WPSR40	[FOC] RICOH AFICIO MP5001SP	520	520	
2	PS-CONW	WPWY40	[FOC] RICOH AFICIO MP5001SP	0	0	
3						
					<b>Total Price:</b>	<b>Price Included</b>

This Work Order shall be effective as of the date of execution by both IKON and Customer. By signing below, the undersigned represent that they are duly authorized to enter into this Work Order on behalf of their respective entities.

<b>CUSTOMER</b>	<b>IKON OFFICE SOLUTIONS, INC.</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**TERMS AND CONDITIONS**

The performance by IKON of the Services described in this Work Order is subject to and shall be governed solely by the following terms and conditions:

Customer engages IKON to perform the services described in this Work Order (the "Services"). Changes to the scope of the Services shall be made only in a written change order signed by both parties. IKON shall have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change and all other applicable terms are agreed upon by both parties in writing. IKON shall provide the Services at the Customer location set forth herein or on a remote basis. In consideration of its Services hereunder, Customer shall pay IKON the Service fees in the amounts and at the rates set forth above. Customer shall pay all amounts payable to IKON hereunder within thirty (30) days of the date of the invoice submitted by IKON. If IKON undertakes collection or enforcement efforts, Customer shall be liable for all costs thereof, including, without limitation, reasonable attorneys' fees and late charges. IKON may suspend or terminate Services for non-payment. Customer shall be responsible for payment of any applicable taxes arising in connection with the transactions contemplated hereby (other than with respect to the income of IKON). Customer shall provide IKON with such access to its facilities, networks and systems as may be reasonably necessary for IKON to perform its Services. Customer acknowledges that IKON's performance of the Services is dependent upon Customer's timely and effective performance of its responsibilities hereunder. Unless connectivity services are specifically identified in the Task and Description section of this Work Order as part of the Services to be performed by IKON, IKON shall have no obligation to perform and no responsibility for the connection of any hardware or software to any Customer network or system.

IKON shall perform its Services in a professional manner. IKON is not the manufacturer of any of the software, tools and/or products utilized in connection with this Work Order. IKON shall, however, make available to Customer any warranties made to IKON by the manufacturers of the software, tools and/or products utilized by IKON in connection with its Services hereunder, to the extent transferable and without recourse. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IKON MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS WORK ORDER AND THE TRANSACTIONS CONTEMPLATED HEREBY. IN NO EVENT SHALL IKON BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS WORK ORDER OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF IKON HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IKON'S LIABILITY TO CUSTOMER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE FEES PAID TO IKON HEREUNDER BY CUSTOMER. IN NO EVENT SHALL IKON BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, OR DELAY OF DELIVERY OF SERVICES UNDER THIS WORK ORDER. IKON ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR SIMILAR SOFTWARE AND THE SCOPE OF SERVICES CONTEMPLATED HEREBY DOES NOT INCLUDE ANY SUCH SERVICES.

Except for purposes of this Work Order, IKON shall not use or disclose any proprietary or confidential Customer data derived from its Services hereunder; provided, however, that IKON may use general statistics relating to the Service engagement so long as it does not disclose the identity of Customer or make any reference to any information from which the identity of Customer may be reasonably ascertained. Customer agrees that during the term of the Services and for a period of one (1) year after termination thereof, it shall not directly or indirectly solicit, hire or otherwise retain as an employee or independent contractor any employee of IKON that is or was involved with or part of the Services. This Work Order represents the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. This Work Order may be amended only in writing executed by the authorized representatives of both parties. Any purchase order, service order or other Customer ordering document will not modify or affect this Work Order, nor have any other legal effect, and shall serve only the purpose of identifying the service ordered. This Work Order may not be transferred or assigned by Customer without the prior written consent of IKON. This Work Order shall be interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. The relationship of the parties is that of independent contractors. IKON shall not be responsible for and shall be excused from performance or have reasonable additional periods of time to perform its obligations where it is delayed or prevented from performing any of its obligations for reasons beyond IKON's reasonable control, including, without limitation, acts of God, natural disasters, labor disputes, strikes or unavailability of services, personnel or materials. This Work Order is separately enforceable as a complete and independent binding agreement, independent of all other Work Orders, if any. By signing, the Customer acknowledges and accepts the terms and conditions of this Work Order, and confirms that the undersigned has the necessary power and authority to enter into this Work Order on behalf of Customer.



Master Agreement. THIS WILL ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE AND THE MASTER AGREEMENT AND HAVE RECEIVED A COPY OF THIS SCHEDULE AND THE MASTER AGREEMENT.

3. Image Charges/Meters: In return for the Minimum Payment, you are entitled to use the number of Guaranteed Minimum Images as specified in the Payment Schedule of this Agreement. The Meter Reading/Billing Frequency is the period of time (monthly, quarterly, etc.) for which the number of images used will be reconciled. If you use more than the Guaranteed Minimum Images during the selected Meter Reading/Billing Frequency period, you will pay additional charges at the applicable Cost of Additional Images as specified in the Payment Schedule of this Schedule for images, black and white and/or color, which exceed the Guaranteed Minimum Images ("Additional Images"). The charge for Additional Images is calculated by multiplying the number of Additional Images times the applicable Cost of Additional Images. The Meter Reading/Billing Frequency may be different than the Minimum Payment Billing Frequency as specified in the Payment Schedule of this Schedule. You will provide us or our designee with the actual meter reading(s) by submitting meter reads electronically via an automated meter read program, or in any other reasonable manner requested by us or our designee from time to time. If such meter reading is not received within seven (7) days of either the end of the Meter Reading/Billing Frequency period or at our request, we may estimate the number of images used. Adjustments for estimated charges for Additional Images will be made upon receipt of actual meter reading(s). Notwithstanding any adjustment, you will never pay less than the Minimum Payment.

4. Additional Provisions (if any) are: \_\_\_\_\_  
\_\_\_\_\_

THE PERSON SIGNING THIS AGREEMENT ON BEHALF OF THE CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO.

<b>CUSTOMER</b> By: <input checked="" type="checkbox"/> _____ Authorized Signer Signature Printed Name: _____ Title: _____ Date: _____	Accepted by: <b>IKON OFFICE SOLUTIONS, INC.</b> By: _____ Authorized Signer Signature Printed Name: _____ Title: _____ Date: _____
--	--



**Document Efficiency  
At Work.**

A RICOH COMPANY

**Work Order - US**  
IKON Office Solutions, INC.  
Professional Services

Base Eq Model #	Base Eq Serial #	Email Address of PS Rep	Date of Services:
-----------------	------------------	-------------------------	-------------------

Customer must already be an IKON customer to use this form without being part of the SFP

Bill To Cust No.: \_\_\_\_\_ Pymt Method: \_\_\_\_\_ Ship To Customer No.: \_\_\_\_\_ PO No: \_\_\_\_\_ PO Date: \_\_\_\_\_  
 Bill To Customer: NEWBURGH CITY OF Ship To Customer: \_\_\_\_\_  
 Address: 83 BROADWAY 2ND FLR Address: 83 BROADWAY FL 1 CITY CLERK'S OFFICE Data Processing Office  
 City: NEWBURGH State: NY Zip: 12550-5617 City: NEWBURGH State: NY Zip: 12550-5617  
 Customer Contact: Richard Herbek Title: City Manager Phone: (845) 569-7301  
 IKON Sales Rep: RIKER,JAMES,P Phone: \_\_\_\_\_  
 MPS/FSM/SAM/SAC: \_\_\_\_\_ SC: \_\_\_\_\_ SC-C: \_\_\_\_\_ SA/SSA: \_\_\_\_\_

Description of Professional Services

Professional Services Task1	Professional Services Task2
PS/DOC SVC/SUPPORT BASIC SCAN INSTALL	PS/DOC SVC/MISCELLANEOUS PS-BC SEG 4 (41 - 69 ppm)
<ul style="list-style-type: none"> <li>o Design and perform solution implementation plan</li> <li>o Installation and configuration for 5 users</li> <li>o Administrator training</li> <li>o Key Operator training</li> <li>o End User training</li> </ul>	<ul style="list-style-type: none"> <li>o Design and perform solution implementation plan</li> <li>o Install and configure printer interface</li> <li>o Assist customer in connecting to their network</li> <li>o Install and setup print drivers/PPD's on up to two (2) workstations</li> <li>o Printer operator training for lead operator / administrator</li> <li>o End user training for print drivers/PPD's for up to two (2) persons</li> </ul>

Task	IKON Code	OMD Code	Units	Unit Price	Ext. Price	Notes:
1	PS-INSRICBASSCAN	WPSR40	[FOC] RICOH AFICIO MP5001SP	520	520	
2	PS-CONN4	WPWY40	[FOC] RICOH AFICIO MP5001SP	0	0	
3						Total Price: Price Included

This Work Order shall be effective as of the date of execution by both IKON and Customer. By signing below, the undersigned represent that they are duly authorized to enter into this Work Order on behalf of their respective entities.

<b>CUSTOMER</b>	<b>IKON OFFICE SOLUTIONS, INC.</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**TERMS AND CONDITIONS**

The performance by IKON of the Services described in this Work Order is subject to and shall be governed solely by the following terms and conditions:

Customer engages IKON to perform the services described in this Work Order (the "Services"). Changes to the scope of the Services shall be made only in a written change order signed by both parties. IKON shall have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change and all other applicable terms are agreed upon by both parties in writing. IKON shall provide the Services at the Customer location set forth herein or on a remote basis. In consideration of its Services hereunder, Customer shall pay IKON the Service fees in the amounts and at the rates set forth above. Customer shall pay all amounts payable to IKON hereunder within thirty (30) days of the date of the invoice submitted by IKON. If IKON undertakes collection or enforcement efforts, Customer shall be liable for all costs thereof, including, without limitation, reasonable attorneys' fees and late charges. IKON may suspend or terminate Services for non-payment. Customer shall be responsible for payment of any applicable taxes arising in connection with the transactions contemplated hereby (other than with respect to the income of IKON). Customer shall provide IKON with such access to its facilities, networks and systems as may be reasonably necessary for IKON to perform its Services. Customer acknowledges that IKON's performance of the Services is dependent upon Customer's timely and effective performance of its responsibilities hereunder. Unless connectivity services are specifically identified in the Task and Description section of this Work Order as part of the Services to be performed by IKON, IKON shall have no obligation to perform and no responsibility for the connection of any hardware or software to any Customer network or system.

IKON shall perform its Services in a professional manner. IKON is not the manufacturer of any of the software, tools and/or products utilized in connection with this Work Order. IKON shall, however, make available to Customer any warranties made to IKON by the manufacturers of the software, tools and/or products utilized by IKON in connection with its Services hereunder, to the extent transferable and without recourse. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IKON MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS WORK ORDER AND THE TRANSACTIONS CONTEMPLATED HEREBY. IN NO EVENT SHALL IKON BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS WORK ORDER OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF IKON HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IKON'S LIABILITY TO CUSTOMER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE FEES PAID TO IKON HEREUNDER BY CUSTOMER. IN NO EVENT SHALL IKON BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, OR DELAY OF DELIVERY OF SERVICES UNDER THIS WORK ORDER. IKON ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR SIMILAR SOFTWARE AND THE SCOPE OF SERVICES CONTEMPLATED HEREBY DOES NOT INCLUDE ANY SUCH SERVICES.

Except for purposes of this Work Order, IKON shall not use or disclose any proprietary or confidential Customer data derived from its Services hereunder; provided, however, that IKON may use general statistics relating to the Service engagement so long as it does not disclose the identity of Customer or make any reference to any information from which the identity of Customer may be reasonably ascertained. Customer agrees that during the term of the Services and for a period of one (1) year after termination thereof, it shall not directly or indirectly solicit, hire or otherwise retain as an employee or independent contractor any employee of IKON that is or was involved with or part of the Services. This Work Order represents the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. This Work Order may be amended only in writing executed by the authorized representatives of both parties. Any purchase order, service order or other Customer ordering document will not modify or affect this Work Order, nor have any other legal effect, and shall serve only the purpose of identifying the service ordered. This Work Order may not be transferred or assigned by Customer without the prior written consent of IKON. This Work Order shall be interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. The relationship of the parties is that of independent contractors. IKON shall not be responsible for and shall be excused from performance or have reasonable additional periods of time to perform its obligations where it is delayed or prevented from performing any of its obligations for reasons beyond IKON's reasonable control, including, without limitation, acts of God, natural disasters, labor disputes, strikes or unavailability of services, personnel or materials. This Work Order is separately enforceable as a complete and independent binding agreement, independent of all other Work Orders, if any. By signing, the Customer acknowledges and accepts the terms and conditions of this Work Order, and confirms that the undersigned has the necessary power and authority to enter into this Work Order on behalf of Customer.





**RESOLUTION NO.: 197 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CONSOLIDATED TECHNOLOGIES, INC TO ADJUST THE EXISTING LEASE AGREEMENT FOR AVAYA FINANCIAL SERVICES TO ADD NEW TELEPHONE EQUIPMENT TO UPGRADE THE CURRENT SYSTEM FOR THE CODE COMPLIANCE, ENGINEERING AND GIS DEPARTMENTS AND FOR THE PROVISION OF TELEPHONE MAINTENANCE SERVICE AT AN ADDITIONAL CHARGE OF \$251.81 PER MONTH FOR THE 56 MONTH LEASE**

**WHEREAS**, the City of Newburgh is currently under contract with Avaya Financial Services for the purpose of financing the City's telephone systems for City Hall and the Public Safety Building; and

**WHEREAS**, such lease will expire on January 10, 2015; and

**WHEREAS**, the City would like to adjust the existing lease agreement to add new telephone equipment for the Code Compliance, Engineering and GIS Departments at an additional charge of \$251.81 per month for the 56 month lease; and

**WHEREAS**, by adjusting said lease and upgrading the telephone system the City will be saving \$4,100.00 annually; and

**WHEREAS**, this Council has reviewed such agreement and finds that the execution of such agreement 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 enter into an agreement with Consolidated Technologies, Inc., in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by Counsel, to retain their services to provide new telephone equipment and upgrade the current system for the Code Compliance, Engineering and GIS Departments at an additional charge of \$251.81 per month for the 56 month lease, such funds will be derived from Budget Line A.3620.0421.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**



197-10

# SLG LEASE AGREEMENT



FINANCIAL SERVICES

TO OUR VALUED CUSTOMER: This Lease has been written in "Plain English." When we use the words *you* and *your* in this Lease, we mean *you, our customer*, which is the Lessee indicated below. When we use the words *we, us* and *our* in this Lease, we mean the Lessor, CIT COMMUNICATIONS FINANCE CORPORATION. Our address is 1 CIT Drive, Livingston, New Jersey 07039. Phone 1-800-527-9876

Form AFS-SLGTL-LA-DS 01/04 Page 1 of 2

<b>CUSTOMER INFORMATION</b>	Lessee Name CITY OF NEWBURGH	Tax ID # 14-6002329
	Billing Street Address/City/County/State/Zip 83 Broadway, Newburgh, Orange, NY 12550	Phone No. (845) 562 - 1212
	Equipment Location Street Address/City/County/State/Zip 123 Grand Street, Newburgh, Orange, NY 12550	Phone No. ( )
<b>SUPPLIER INFORMATION</b>	Supplier Name ("Supplier") CONSOLIDATED TECHNOLOGIES, INC.	Phone No. (914) 835 - 1500

EQUIPMENT DESCRIPTION	Quantity	Make/Model	Serial Number
			TEL IP 1616 BLACK

<b>TERM AND LEASE PAYMENT SCHEDULE</b>	Lease Term (Months) 56	Lease Payment 1 @ \$0.00; 2-56 @ \$251.81	Documentation Fee \$0.00	You agree to pay at the time you sign this Lease: 0 Mos. (\$ 0.00 ) Total Advance Lease Payment. If more than one Lease Payment is required in advance, the additional amount will be applied at the end of the original term.	Plus Applicable Taxes
	Additional Provisions: The first monthly Lease Payment will be due one month after the Delivery and Acceptance Certificate is signed. "If the Equipment configuration reflected in the Supplier's invoice differs from the configuration upon which our pricing was based, we may, (1) with your approval, adjust the Lease Payments, or (2) decline to enter into this Lease." SEE ATTACHMENT A				

**INSURANCE AND TAXES** You are required to provide and maintain insurance related to the Equipment, and to pay any property, use and other taxes related to this Lease or the Equipment. (See Sections 6 and 8 on Page 2 of this Lease). If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption.

**TERMS AND CONDITIONS** 1. LEASE; DELIVERY AND ACCEPTANCE. You agree to lease the equipment, maintenance and services described above and in any purchase, maintenance, services or supply contract (collectively, "Supply Contract") associated with this lease agreement ("Lease") (collectively, "Equipment") on the terms and conditions shown on both pages of this Lease. If you have entered into a Supply Contract with any Supplier, you assign to us your rights under such Supply Contract, but none of your obligations (other than the obligation to pay for the Equipment if it is accepted by you as stated below and you timely deliver to us such documents and assurances as we request). If you have not entered into a Supply Contract, you authorize us to enter into a Supply Contract on your behalf. You will arrange for the delivery of the Equipment to you. When you receive the Equipment, you agree to inspect it to determine if it is in good working order. This Lease will begin on the date that you sign a Delivery and Acceptance Certificate and will continue for the number of months specified in this Lease unless renewed as set forth in this Lease or earlier terminated as set forth in Section 3 of this Lease. The Equipment will be deemed irrevocably accepted by you upon: (a) the delivery to us of a signed Delivery and Acceptance Certificate (if requested by us); or (b) 10 days after delivery of the Equipment to you if previously you have not given written notice to us of your non-acceptance. The first Lease Payment is due on or before the date the Equipment is delivered to you. The remaining Lease Payments will be due on the day of each subsequent month (or such other time period specified above) designated by us. (NOTE: Remainder of Section 1 and Sections 2 through 18 of this Lease are on Page 2).

BY SIGNING THIS LEASE: (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THIS LEASE, WHICH IS DOCUMENTED ON OUR FORM AFS-SLGTL-LA-DS 01/04, (ii) YOU AGREE THAT IF A COPY OF THIS LEASE IS SIGNED BY YOU AND THE FRONT OF THE COPY IS DELIVERED TO US BY FACSIMILE TRANSMISSION OR OTHERWISE, TO THE EXTENT ANY PROVISIONS ARE MISSING OR ILLEGIBLE OR CHANGED (AND NOT INITIALED BY BOTH YOU AND US), THE TERMS AND CONDITIONS OF OUR FORM AFS-SLGTL-LA-DS 01/04 IN USE ON THE DATE WE RECEIVE THE COPY SIGNED BY YOU WILL BE THE TERMS AND CONDITIONS OF THE LEASE, (iii) YOU AGREE THAT THIS LEASE IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL EXCEPT AS SPECIFICALLY PROVIDED HEREIN, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THIS LEASE, AND YOU CANNOT WITHHOLD, SETOFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, (iv) YOU AGREE THAT YOU WILL USE THE EQUIPMENT ONLY FOR GOVERNMENTAL PURPOSES, (v) YOU WARRANT THAT THE PERSON SIGNING THIS LEASE FOR YOU HAS THE AUTHORITY TO DO SO, (vi) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS LEASE RATHER THAN PURCHASE THE EQUIPMENT FOR THE LOWER TOTAL CASH PRICE, AND (vii) YOU AGREE THAT THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH YOU ARE LOCATED. YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THAT STATE. YOU AND WE EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

<u>CITY OF NEWBURGH</u>	<u>CIT COMMUNICATIONS FINANCE CORPORATION</u>
Lessee	Lessor
X	X
Authorized Signature	Authorized Signature
Print Name & Title	Print Name & Title
Date	Date

**CERTIFICATION** I, \_\_\_\_\_, a resident of \_\_\_\_\_, in the State of \_\_\_\_\_, (Certifier) (City) (State)

DO HEREBY CERTIFY that I am the duly elected or appointed and acting \_\_\_\_\_ of the Lessee identified above, which (Certifier's Title)

is a State or political subdivision or agency, duly organized and existing under the laws of the State of \_\_\_\_\_; and that I have (State)

custody of the records of Lessee; and, as of the date set forth below the individual named and executing above on behalf of the Lessee,

\_\_\_\_\_ is the \_\_\_\_\_ of Lessee and is duly authorized to execute and deliver the (Name of Authorized Signatory of Lessee) (Title)

Lease (including any addendum) and all related documents, in the name and on behalf of Lessee; and that the signature of such individual is his/her authentic signature.

IN WITNESS WHEREOF, I have hereto set my hands and affixed the seal of Lessee this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Certifier's Signature

-SEAL-

1. (Continued) You will make all payments required under this Lease to us at such address as we may specify in writing. You authorize us to adjust the Lease Payment if the Total Cash Price (which is all amounts we have paid in connection with the purchase, delivery and installation of the Equipment, including any upgrade and buyout amounts) differs from the estimated Total Cash Price specified by you (or on your behalf by the Supplier) in the credit application submitted to us. However, if the Total Cash Price exceeds the amount approved by us, we will not be obligated to purchase or lease the Equipment. If any Lease Payment or other amount payable to us is not paid within 10 days of its due date, you will pay us a late charge equal to the greater of (i) 5% of each late payment or (ii) \$5.00 for each late payment (or such lesser amount as is the maximum amount allowable under applicable law).
2. **FUNDING INTENT.** You reasonably believe that funds can be obtained sufficient to make all Lease Payments and other payments during the term of this Lease. You agree that your chief executive or administrative officer (or your administrative office that has the responsibility of preparing the budget submitted to your governing body, as applicable) will provide for funding for such payments in your annual budget request submitted to your governing body. If your governing body chooses not to appropriate funds for such payments, you agree that your governing body will evidence such nonappropriation by omitting funds for such payments due during the applicable fiscal period from the budget that it adopts. You and we agree that your obligation to make Lease Payments under this Lease will be your current expense and will not be interpreted to be a debt in violation of applicable law or constitutional limitations or requirements. Nothing contained in this Lease will be interpreted as a pledge of your general tax revenues, funds or monies.
3. **NONAPPROPRIATION OF FUNDS.** If (a) sufficient funds are not appropriated and budgeted by your governing body in any fiscal period for Lease Payments or other payments due under this Lease, and (b) you have exhausted all funds legally available for such payments, then you will give us written notice and this Lease will terminate as of the last day of your fiscal period for which funds for Lease Payments are available. Such termination is without any expense or penalty, except for the portions of the Lease Payments and those expenses associated with your return of the Equipment in accordance with this Lease for which funds have been budgeted and appropriated or are otherwise legally available. You agree that, to the extent permitted by law, (a) you will not terminate this Lease if any funds are appropriated by you or to you for the acquisition or use of equipment or services performing functions similar to the Equipment during your fiscal period in which such termination would occur and (b) you will not spend or commit funds for the acquisition or use of equipment or services performing functions similar to the Equipment until the fiscal period following the fiscal period for which funds were first not available for the Lease Payments.
4. **NO WARRANTIES.** We are leasing the Equipment to you "AS-IS." YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT AND THE SUPPLIER BASED UPON YOUR OWN JUDGMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT ASSERT ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT. YOU AGREE THAT NEITHER THE SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY. We transfer to you for the term of this Lease any warranties made by the manufacturer or the Supplier under a Supply Contract.
5. **EQUIPMENT LOCATION; USE AND REPAIR; RETURN.** You will keep and use the Equipment only at the Equipment Location shown on Page 1 of this Lease. You may not move the Equipment without our prior written consent. At your own cost and expense, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good repair, condition and working order, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions and replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment at any reasonable time. Unless this Lease is renewed or you purchase the Equipment in accordance with this Lease, at the end of this Lease you will immediately deliver the Equipment to us in as good condition as when you received it, except for ordinary wear and tear, to any place in the United States that we tell you. You will pay all expenses of deinstalling, crating and shipping, and you will insure the Equipment for its full replacement value during shipping.
6. **TAXES AND FEES.** You will pay when due, either directly or to us upon our demand, all taxes, fines and penalties relating to this Lease or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We will file all personal property, use or other tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fines or penalties. You will pay estimated property taxes with each Lease Payment or annually, as invoiced.
7. **LOSS OR DAMAGE.** As between you and us, you are responsible for any loss, theft or destruction of, or damage to, the Equipment (collectively "Loss") from any cause at all, whether or not insured, until it is delivered to us at the end of this Lease. You are required to make all Lease Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 11(b) below.
8. **INSURANCE.** You will provide and maintain at your expense (a) property insurance against the loss, theft or destruction of, or damage to, the Equipment for its full replacement value, naming us as loss payee, and (b) public liability and third party property insurance, naming us as an additional insured. If you so request and if we give our prior written consent, in lieu of maintaining the insurance described in the preceding sentence, you may self insure against such risks, provided that our interests are protected to the same extent as if the insurance required in clauses (a) and (b) above had been obtained by third party insurance carriers and provided further that such self insurance program is consistent with prudent business practices with respect to insuring such risk. You will give us certificates or other evidence of such insurance on the commencement date of this Lease, and at such times as we request. Such insurance obtained will be in a form, amount and with companies acceptable to us, and will provide that we will be given 30 days' advance notice of any cancellation or material change of such insurance.
9. **TITLE; RECORDING.** We are the owner of and will hold title to the Equipment. You will keep the Equipment free of all liens and encumbrances. You agree that this transaction is a true lease and you hereby authorize us or our agent to file a financing statement to give public notice of our ownership of the Equipment and other property (including without limitation, our interests in all software). However, if this transaction is deemed to be a lease intended for security, you grant us a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments, receivables and proceeds) and authorize us or our agent to file a financing statement or any other documents we deem necessary to perfect or protect our interest in the Equipment and other property.
10. **DEFAULT.** Each of the following is a "Default" under this Lease: (a) you fail to pay any Lease Payment or any other payment within 10 days of its due date, (b) you do not perform any of your other obligations under this Lease or in any other agreement with us or with any of our affiliates and this failure continues for 10 days after we have notified you of it, (c) you become insolvent, you dissolve or are dissolved, or you assign your assets for the benefit of your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; or (d) any representation or warranty made by you hereunder or in any instrument provided to us by you proves to be incorrect in any material respect when made.
11. **REMEDIES.** If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Lease or any or all other agreements that we have entered into with you or withdraw any offer of credit; (b) we may require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus the present value of our anticipated residual interest in the Equipment, each discounted at 5% per year, compounded monthly, plus (ii) all other amounts due or that become due under this Lease; (c) we may require you to deliver the Equipment to us as set forth in Section 5; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; (e) we may obtain a refund from the Supplier for any prepaid maintenance or services and apply it to any amounts that you owe us; and (f) we may exercise any other right or remedy available at law or in equity. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days' notice will constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds.
12. **FINANCE LEASE STATUS.** You agree that if Article 2A-Leases of the Uniform Commercial Code applies to this Lease, this Lease will be considered a "finance lease" as that term is defined in Article 2A. By signing this Lease, you agree that either (a) you have reviewed, approved, and received, a copy of the Supply Contract or (b) that we have informed you of the identity of the Supplier, that you may have rights under the Supply Contract, and that you may contact the Supplier for a description of those rights. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.**
13. **ASSIGNMENT; YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE.** We may, without notifying you, sell, assign, or transfer this Lease or our rights in the Equipment. You agree that the new owner will have the same rights and benefits that we have now under this Lease but not our obligations. The rights of the new owner will not be subject to any claim, defense or setoff that you may have against us.
14. **PURCHASE OPTION; AUTOMATIC RENEWAL.** If no Default exists under this Lease, you will have the option at the end of the original or any renewal term to purchase all (but not less than all) of the Equipment, at the fair market value, plus applicable taxes. You must give us at least 90 days written notice before the end of the original or any renewal term that you will purchase the Equipment or that you will deliver the Equipment to us. If you do not give us such written notice or if you do not purchase or deliver the Equipment in accordance with the terms and conditions of this Lease, this Lease will automatically renew for successive three-month terms until you deliver the Equipment to us. During such renewal(s) the Lease Payment will remain the same. We may cancel an automatic renewal term by sending you written notice 10 days' prior to such renewal term. We will use our reasonable judgment to determine the Equipment's fair market value. If you do not agree with our determination of the Equipment's fair market value, the fair market value (on a retail basis) will be determined at your expense by an independent appraiser selected by us. Upon payment of the fair market value, we will transfer our interest in the Equipment to you "AS-IS, WHERE-IS" without any representation or warranty whatsoever and this Lease will terminate.
15. **INDEMNIFICATION.** With respect to any claims, actions, or suits that are made against us as a result of your actions, inactions, negligence or willful misconduct ("Claims"), to the extent permitted by law, you agree to reimburse us for, and if we request, defend us against, any such Claims.
16. **AUTHORIZATION AND EQUIPMENT USE.** You represent and agree that (a) you are a State or a political subdivision or agency of a State; (b) the entering into and performance of this Lease is authorized under your State laws and constitution and does not violate or contradict any judgment, law, order, or regulation, or cause any default under any agreement to which you are a party; (c) you have complied with all bidding requirements and, where necessary, have properly presented this Lease for approval and adoption as a valid obligation on your part; (d) you have sufficient appropriated funds or other monies available from unexhausted and unencumbered appropriations and/or funds within your budget to pay all amounts due under this Lease for your current fiscal period and that such appropriations and/or funds have been designated for the payment of the Lease Payments that may come due under this Lease for your current fiscal period; (e) the use of the Equipment is essential for your proper, efficient and economic operation, you will be the only entity to use the Equipment during the term of this Lease and you will use the Equipment only for your governmental purposes. Upon our request, you agree to provide us with an opinion of counsel as to clauses (a) through (d) above, an incumbency certificate, an essential use letter as to clause (e) above, and any other documents that we request, with all such documents being in a form satisfactory to us.
17. **CHOICE OF LAW.** Regardless of any conflicting provisions in this Lease, **THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH YOU ARE LOCATED.**
18. **MISCELLANEOUS.** You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. This Lease is not binding on us until we sign it. Any change in any of the terms and conditions of this Lease must be in writing and signed by you and us. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Lease. If we delay or fail to enforce any of our rights under this Lease, we will still be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on Page 1 of this Lease (or to any other address specified by that party in writing) with first class postage prepaid. All of our rights and indemnities will survive the termination of this Lease. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Lease, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. Except as provided for in Section 3, you will not terminate, cancel, or request a refund from the Supplier for any prepaid maintenance or services included in this Lease and if you do receive a refund from the Supplier, you will hold those monies in trust for our benefit and not commingle the refund with any of your other funds and you will remit the refund to us upon our request. If you are a tax-exempt entity as defined in Section 168(h)(2) of the Internal Revenue Code, the term of this Lease, including any renewals or extensions, will not exceed a total of 60 months. **IF A SIGNED COPY OF THIS LEASE IS DELIVERED TO US BY FACSIMILE TRANSMISSION, IT WILL BE BINDING ON YOU. HOWEVER, WE WILL NOT BE BOUND BY THIS LEASE UNTIL WE ACCEPT IT BY MANUALLY SIGNING IT OR BY PURCHASING THE EQUIPMENT SUBJECT TO THE LEASE, WHICHEVER OCCURS FIRST. YOU WAIVE NOTICE OF OUR ACCEPTANCE AND WAIVE YOUR RIGHT TO RECEIVE A COPY OF THE ACCEPTED LEASE. YOU AGREE THAT, NOTWITHSTANDING ANY RULE OF EVIDENCE TO THE CONTRARY, IN ANY HEARING, TRIAL OR PROCEEDING OF ANY KIND WITH RESPECT TO THIS LEASE, WE MAY PRODUCE A COPY OF THE LEASE TRANSMITTED TO US BY FACSIMILE TRANSMISSION THAT HAS BEEN MANUALLY SIGNED BY US AND SUCH SIGNED COPY SHALL BE DEEMED TO BE THE ORIGINAL OF THIS LEASE. TO THE EXTENT (IF ANY) THAT THIS LEASE CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER AND POSSESSION OF ANY COPY OR COUNTERPART HEREOF EXCEPT THE COPY WITH OUR ORIGINAL SIGNATURE. IF YOU DELIVER THIS LEASE TO US BY FACSIMILE TRANSMISSION, YOU ACKNOWLEDGE THAT WE ARE RELYING ON YOUR REPRESENTATION THAT THIS LEASE HAS NOT BEEN CHANGED.** If more than one Lessee has signed this Lease, each of you agree that your liability is joint and several.

**ATTACHMENT A**  
**SLG LEASE AGREEMENT – A015437, SCHEDULE 00110**

---

This SLG True Lease describes a coterminous add-on (“Addition”) to the Equipment described in SLG Lease Number A015437, Schedule Number (s) 00010A (“Primary Schedule”). Accordingly (a) if you purchase or renew the Equipment described in the Primary Schedule, you shall, as applicable, purchase the Addition or renew this Lease for a renewal term of the same length as the renewal term of the Primary Schedule; and (b) if you are required to pay us the amounts specified in section 11(b) of the Primary Schedule, you shall pay us the amounts specified in section 11(b) of this Lease with respect to this Lease.

\_\_\_\_\_ Initial

**CERTIFICATE OF APPROPRIATIONS**

(SLG Lease Agreement)

I, \_\_\_\_\_ do hereby certify that I am the  
(Name)  
duly elected or appointed and acting \_\_\_\_\_ of  
(Title)

CITY OF NEWBURGH ("Lessee"); that I have custody of the financial records and budget information of such entity; that monies for all lease payments to be made under that certain SLG Lease Agreement, Lease Number A015437, Schedule Number(s) 00110, between Lessee and CIT Communications Finance Corporation or one of its affiliates or subsidiaries as lessor ("Agreement"), for the fiscal year ending \_\_\_\_\_, 20\_\_\_\_, are available from unexhausted and unencumbered appropriations and/or funds within Lessee's budget for such fiscal year; and that appropriations and/or funds have been designated for the payment of those lease payments that may come due under the Agreement in such fiscal year.

IN WITNESS WHEREOF, I have duly executed this Certificate of Appropriations this \_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

The undersigned official of Lessee hereby certifies that the signature set forth above is the true and authentic signature of the individual identified above and that such individual holds the title set forth above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title







**Consolidated Technologies, Inc.**  
www.consoltech.com 1-888-477-4CTI

10 Midland Avenue Port Chester, NY 10573  
914-935-6000 (T) 914-935-6001 (F)  
555 Eighth Avenue New York, NY 10018  
212-300-1200 (T) 212-300-1201 (F)  
13 Roszel Road Princeton, NJ 08540  
856-626-4800 (T) 856-626-4801 (F)

Quote: 26093



**Customer:**  
City Of Newburgh - Code Compliance  
123 Grand Street  
Newburgh, NY 12550 U.S.A.

Date: 08/03/2010  
Account No.: 11761  
Account Phone: (845) 569-7324  
Account Fax:

Prepared for: Glenn Kurcon (845) 569-7324

Prepared by: Steve Bierman

Qty.	Item ID	Description	UOM	Sell	Total
16	700415565	Tel IP 1616 Black	EA	\$299.00	\$4,784.00
3	700434897	Power Brick 1151D1 For ECG IPO W/Cat 5 Cable	EA	\$26.00	\$78.00
1	OUI-NA-STND-SITE	Standard VoIP Assessment - Per Site	EA	\$791.66	\$791.66
1	OUI-NA-STND-50	Standard - 50 VoIP Endpoints	EA	\$431.16	\$431.16
1	Maintenance	Maintenance CTI Premier Maintenance 24/7 coverage. Co Term with existimg agreement	EA	\$1,034.88	\$1,034.88
2,640.00	LAB-PROJECT	Labor - Project, installation and programming	HR	\$1.00	\$2,640.00
				Project Total:	\$9,759.70
				Your Price:	\$8,847.32
				Total:	\$8,847.32

Prices are firm until - 8/17/2010  
Customer to supply and configure network switches & firewall along with cabling to end users

PAYMENT TERMS: 60% UPON AGREEMENT / 30% UPON DELIVERY / 10% UPON COMPLETION PLUS SALES TAX WHERE APPLICABLE.

**SERVICE SUPPORT PLAN (INITIAL ONLY ONE & CHECK BOX FOR PLAN STRUCTURE)**

<input type="checkbox"/> CTI ENHANCED WARRANTY	<input type="checkbox"/> CTI PREMIER MAINTENANCE	<input type="checkbox"/> EXISTING CUSTOMER
<input type="checkbox"/> EXTENDED COVERAGE W/PREPAID DISCOUNT ( ) MONTHS	<input type="checkbox"/> EXTENDED COVERAGE W/PREPAID DISCOUNT ( ) MONTHS	
<input type="checkbox"/> RENEWING COVERAGE W/LOYALTY DISCOUNT ( ) MONTHS	<input type="checkbox"/> RENEWING COVERAGE W/LOYALTY DISCOUNT ( ) MONTHS	
<input type="checkbox"/> AVAYA MAINTENANCE (Requires separate agreement)	<input type="checkbox"/> I DECLINE POST WARRANTY COVERAGE	

YOUR SIGNATURE ACKNOWLEDGES THAT YOU ACCEPT "CTI PRODUCT AGREEMENT" - STANDARD TERMS & CONDITIONS (6-RG-LIC9) POSTED AT WWW.CONSOLTECH.COM - UNDER THE TERMS & CONDITIONS TAB. YOUR SIGNATURE ON THIS QUOTE CONSTITUTES A CONTRACT

NAME OF PURCHASER	
TITLE OF PURCHASER	APPROVAL DATE

CTI REPRESENTATIVE
Steve Bierman
CTI ACCEPTED

**RESOLUTION NO.: 198 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT \$200,000 FROM THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT TO FUND THE SALARY AND BENEFITS OF TWO POLICE OFFICERS SERVING IN THE CITY'S HIGH SCHOOLS AS COMMUNITY RESOURCE OFFICERS FOR THE PERIOD OF SEPTEMBER 1, 2010 THROUGH AUGUST 31, 2011 AND AMENDING RESOLUTION NO.: 185-2009, THE 2010 BUDGET OF THE CITY OF NEWBURGH**

**WHEREAS**, the City of Newburgh and the Board of Education of the Newburgh Enlarged City School District ("NESCD") have established the position of Community Resource Officer ("CRO") to be filled by two police officers from the City of Newburgh Police Department at two schools within the NESCD - Newburgh Free Academy and North Junior High n/k/a NFA Campus North; and

**WHEREAS**, the NESCD has offered to reimburse the City for these CROs at the rate of Two Hundred Thousand (\$200,000) Dollars for the period of September 1, 2010 through August 31, 2011, so as to continue to have the CROs in Newburgh Free Academy and North Junior High n/k/a NFA Campus North within the City of Newburgh; and

**WHEREAS**, this Council has determined that accepting such funds 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 funds from the NESCD in the amount of Two Hundred Thousand (\$200,000) Dollars for the assignment of two City of Newburgh Police Officers as CROs in the NESCD; and

**BE IT FURTHER RESOLVED**, that Resolution No.: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended as follows:

Contingency	A.1990.04	\$66,667.00	
CRO Revenue	A.2261		\$66,667.00

To increase revenue line and reduce contingency account for revenue received for 9/1/10 to 12/31/10.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

**RESOLUTION NO.: 199 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO APPLY FOR AND TO ACCEPT IF AWARDED A GRANT IN AN  
AMOUNT NOT TO EXCEED ONE MILLION DOLLARS FROM THE  
DEPARTMENT OF HOMELAND SECURITY UNDER THE STAFFING FOR  
ADEQUATE FIRE AND EMERGENCY RESPONSE PROGRAM TO  
PROVIDE FOR FUNDING TO SUPPORT SIX FIREFIGHTER POSITIONS IN  
THE CITY OF NEWBURGH FIRE DEPARTMENT WITH NO CITY MATCH  
REQUIRED**

**WHEREAS**, the City of Newburgh Fire Department has expressed an interest in applying for funds available from the Department of Homeland Security under the Staffing for Adequate Fire and Emergency Response (“SAFER”) Program; and

**WHEREAS**, the Fire Department has proposed an application for said grant in an amount not to exceed One Million (\$1,000,000.00) Dollars; and

**WHEREAS**, said grant does not require any funding match by the City of Newburgh; and

**WHEREAS**, said grant, if awarded, will support the well-being and safety of our community and enhance community protection from fire; and

**WHEREAS**, if awarded, such funding will support six (6) firefighter positions within the City of Newburgh Fire Department for two years; and

**WHEREAS**, it is deemed to be in the best interests of the City of Newburgh and its citizens to apply for and accept such grant if awarded;

**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 such documents and to take any necessary and appropriate actions to apply for and to accept if awarded a grant in an amount not to exceed One Million (\$1,000,000.00) Dollars from the Department of Homeland Security under the Staffing for Adequate Fire and Emergency Response (“SAFER”) Program to

provide for funding to support six (6) firefighter positions in the City of Newburgh Fire Department with no City match required.

**Councilwoman Bello asked what the obligations of the City are. What will happen after two years?**

**Fire Chief, Michael Vatter said that when it runs out, it runs out.**

**Councilman Dillard asked who is writing this grant. Is it being done in-house?**

**Fire Chief Michael Vatter said that there is staff writing it with him but he would gladly welcome help.**

**Acting City Manager, Richard Herbek said that this has to be in by the 17<sup>th</sup> and we can certainly get some staff members to help with this.**

**Mayor Valentine said that we also have support from our two Senators on this.**

**Councilwoman Bell asked how competitive this grant is.**

**Fire Chief, Michael Vatter responded that it is fairly competitive.**

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

**RESOLUTION NO.: 200 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT FOR VENDOR SERVICES  
WITH ANGELO LALLIS AT A RATE OF THIRTY DOLLARS PER HOUR  
TO PROVIDE CONSULTING SERVICES TO THE ASSESSORS OFFICE  
FOR THE PREPARATION AND MAINTENANCE OF THE 2011  
ASSESSMENT ROLL**

**WHEREAS**, the City of Newburgh wishes to retain such services of Angelo Lallis at the rate of \$30.00 per hour for 8 hours a week to provide consulting services to the Assessors Office for the preparation and maintenance of the 2011 assessment roll; and

**WHEREAS**, this Council has determined that entering into such agreement 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 an agreement, in substantially the same form annexed hereto and subject to approval of the Corporation Counsel with such other terms and conditions as Counsel may require, with Angelo Lallis at a rate of \$30.00 per hour to provide consulting services to the Assessors Office; and

**BE IT FURTHER RESOLVED**, that Resolution No.: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended as set forth on the spreadsheet attached hereto.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

2010

## AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, 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 ANGELO LALLIS, 220 Valley Avenue, Walden, New York 12586 , 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 September 8, 2010, and ending September 31, 2010.

### ARTICLE 3. COMPENSATION

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

A not-to-exceed cost of \$3,850.00 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: \_\_\_\_\_  
ANGELO LALLIS

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
BERNIS E. NELSON,  
CORPORATION COUNSEL

\_\_\_\_\_  
CHRISTINE F. MITCHELL,  
COMPROLLER

SCHEDULE A  
SCOPE OF SERVICES

Angelo Lallis  
220 Valley Ave  
Walden, NY 12586  
845-988-8800

August 25, 2010

Fernando Gonzalez  
City of Newburgh Assessor  
83 Broadway  
Newburgh, NY 12550

Re: Consultant for the 2011 Assessment Roll

Mr. Gonzalez:

As per our previous discussion, I offer my services to the Assessor's office as a consultant in the preparation and maintenance of the 2011 assessment roll. I am capable of providing the following services:

- Assist in the monthly sales transmittal process as mandated by the Office of Real Property Services (ORPS)
- Update building permit and certificate of occupancy data on the Real Property System (RPS) for assessments
- Create a model using regression analysis to update assessments
- Update the land and cost tables in the RPS system to coincide with values as of July 1, 2010
- Assist in the process of valuing all residential and commercial properties
- Exemption administration knowledge

I possess thorough knowledge of the assessment process and will provide these services on and off site, 8 hours per week, at a rate of \$30 per hour, under your direction. Utilization of the city's hardware and software will be necessary to fulfill these duties. Thank you for your consideration.

Best Regards,  
Angelo Lallis

The prior Assessor's Assistant has offered his services as a consultant to assist the new Assessor. This will eliminate the part time position from the budget. Services are proposed to be rendered at \$30/hr.

Additionally, due to severance payments and a period of temporary employment additional funds need to be added to those lines through 12/31/10

The total expenditures budgeted for this department remain unchanged

General Fund

Description	Increase	Decrease	FUND	DEPT	ITEM	PROJ	LOCATION
Other Services	4,000		A	1355	448		
Salary	4,000		A	1355	101		
Temporary	2,500		A	1355	110		
Part Time		10,500	A	1355	102		
Total	<u>10,500</u>	<u>10,500</u>					

**RESOLUTION NO.: 201 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER  
INTO AND EXECUTE AN AGREEMENT WITH RESOURCE NAVIGATION,  
INC. FOR PAYROLL SOFTWARE CHANGEOVER  
IN THE AMOUNT OF \$13,700.00**

**WHEREAS**, the City of Newburgh wishes to enter into the attached Agreement with Resource Navigation, Inc.; and

**WHEREAS**, this agreement will provide the City of Newburgh with payroll software changeover; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute the attached agreement between Resource Navigation, Inc. and the City of Newburgh for payroll software changeover in the amount of \$13,700.00, such funds shall be derived from H1.1680.202.5700.2010.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

August 4, 2010

Christine Mitchell  
City of Newburgh  
83 Broadway  
Newburgh NY 12550

Dear Ms Mitchell;

I have outlined an agreement below. Please review and if acceptable, please sign and send back to me via fax at (781) 899-8026

Background

**City of Newburgh** is requesting check detail data for \_\_\_ calendar years for (1) company(s) from in-house system to be migrated to (1) new company(s) code using ADP.

Agreement

Resource Navigation, Inc. will perform the following services:

Function

- o Check Detail

Resource Navigation, Inc pull files from			Dates
1	<b>Resource Navigation, Inc</b>	Received files from client	After last payroll
2	<b>A complete register to help with mapping and verifying accuracy. This includes a totals page</b>		ASAP
3	<b>clear mapping of In-house company code to ADP company code.</b>		ASAP
4	<b>File with Employee name, SSN, File # and ADP company code.</b>		ASAP
5	<b>Resource Navigation, Inc</b>	Receive files back from ResNav	TBA

This engagement will be confirmed when Resource Navigation, Inc receives full payment and signed contract. After all items are received the process can take up to 8 weeks.

Company Set-Up (ADP Co Code)	Co Codes 1 X \$500.00	= \$ 500.00
Per Year (Calendar Year)	11 Years X \$1200	= \$ 13,200.00
<b>Total Cost -</b>		<b>= \$ 13,700.00</b>

Any additional service will be priced under a separate agreement.

We will need the following file and layout - each line needs to have Co ID, Employee Number, SS#, Pay Date, Period End Date

Hours / Earnings file

Co ID, Employee Number, SS#, Pay Date, Period End Date, Check#, Hours/Earn Code, Hours Amt, Earnings Amt, Gross Pay, Net Pay

Deduction file

Co ID, Employee Number, SS#, Pay Date, Period End Date, Check#, Deduction Code, Deduction Amt

Tax File

Co ID, Employee Number, SS#, Pay Date, Period End Date, Check#, Tax Type, Tax Amt, State Worked code

Mapping document for hours/earning/deduction/local taxes

A report from ADP with co code, file #, employee name, worked state

We at Resource Navigation would like to inform you on our process of dealing with data and materials supplied to us by our clients. We commit the utmost security and confidentiality regarding all information and data that is shared with all Resource Navigation employees. The process we offer to our clients to make sure all information is contained in a secure environment.

- All programming and data extract Desktop computers and servers do not have any external disk drives, CD ROMs or DVD ROMs inserted or attached. Two employees at Resource Navigation are responsible for moving the client's data on and off the working environments.
- All data extracted or received will be collected by one employee from Resource Navigation unless arrangements are made with the client in advance.
- All data that is received by external device – DVD, tapes, CD, Disks are loaded by one of the two employees who are responsible for transferring information on to Resource Navigation work environments. After data is loaded on Resource Navigation work environments all devices will be destroyed after confirmation of successful transfer.
- Resource Navigation will allow information from our clients to be stored on a secure server or in a secure safe for up to 30 days after project completion unless otherwise directed by client.
- Resource Navigation highly recommends NOT to send a device that must be returned to the client because of risk of device being missed place by delivery service.
- All information that is received by software (Gotoassist.com or email) will follow the same processes above.

Accepted:

\_\_\_\_\_  
**City of Newburgh**

\_\_\_\_\_  
**Resource Navigation, Inc.**

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

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

Resource Navigation, Inc acknowledges that in the process of providing the products and services to client under this agreement, certain information obtained from client is proprietary and confidential to client. Resource Navigation, Inc agrees to keep such information confidential and is prohibited from disclosing any portion of such information to any third party, including, but no limited to, information and data, in whatsoever form, relating to client customers or employees.

**RESOLUTION NO.: 202 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AND EXECUTE AN AGREEMENT WITH ADP  
FOR PAYROLL SERVICE**

**WHEREAS**, the City of Newburgh wishes to enter into the attached Agreement with ADP; and

**WHEREAS**, this agreement will provide the City of Newburgh with payroll, tax filing, self-service benefits administration and other data processing services, including web hosting services; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute the attached agreement between ADP and the City of Newburgh for payroll service.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**



## MAJOR ACCOUNTS AGREEMENT

This Major Accounts Agreement ("Agreement") dated \_\_\_\_\_ (the "Effective Date"), is by and between \_\_\_\_\_ with offices at \_\_\_\_\_ ("Client")

and ADP, Inc. with its principal office at One ADP Boulevard, Roseland, New Jersey 07068 ("ADP") for the procurement of Services (as defined in Section 1A below) from ADP in accordance with this Agreement. All references herein to "Client" shall refer to Client and its affiliates that are receiving the Services and ADP Products (as those terms are defined in section 1A) pursuant hereto. For purposes of this Agreement "affiliate" shall mean with respect to any individual, corporation or partnership or any other entity or organization (a "person"), any person that controls, is controlled by or is under common control with such person in question. For purposes of the preceding definition, "control" as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities or by contract or otherwise.

### 1. GENERAL TERMS

A. Services. ADP shall provide payroll, tax filing, self-service benefits administration and other data processing services, including related web hosting services (the "Services"), equipment, computer programs, software (other than pre-packaged third-party software), and documentation ("ADP Products") all as further detailed in the description of services found at [www.productdescription.majoraccounts.adp.com](http://www.productdescription.majoraccounts.adp.com) (which may be modified from time to time) and in accordance with the Sales Order(s). Client acknowledges and agrees that ADP will not be deemed to be providing legal, financial, benefits, or tax advice to Client as a result of the ADP Products and Services provided herein. If Client is receiving any of the Services that require ADP, as part of such Services, to impound funds from Client's bank account to pay Client's third-party payment obligations (e.g., Tax Filing Services, WGPS, TotalPay<sup>®</sup> Card, FSDD Services and/or ADPCheck<sup>™</sup> Services) ("Payment Services"), Client shall have sufficient, collected funds in Client's account within the deadline established by ADP to satisfy such third-party payment obligations in their entirety. ADP may commingle Client's impounded funds with other clients', ADP's, or ADP-administered funds of a similar type. ALL AMOUNTS EARNED ON SUCH FUNDS WHILE HELD BY ADP WILL BE FOR THE SOLE ACCOUNT OF ADP.

B. Accuracy of Client Information, Review of Data. All Services provided hereunder will be based upon information provided to ADP by Client (including proof of federal, state, and local tax identification numbers). Upon receipt from ADP, whether electronically or otherwise, Client will promptly review all disbursement records and other reports prepared by ADP for validity and accuracy according to Client's records and Client agrees that it will promptly notify ADP of any discrepancies (in any case before distributing any paychecks or relying on any such disbursement records or reports). To help prevent employee fraud, ADP recommends that Client has someone other than its designated payroll contact, review its disbursement reports; a prompt and thorough review allows Client to spot and correct errors and inconsistencies.

C. Protection of Client Files. ADP maintains appropriate security measures to protect the personal information of Client's employees and payees consistent with applicable state and federal laws including the Massachusetts Standards for The Protection of Personal Information of Residents of the Commonwealth (201 CMR 17.00). Additionally, ADP will employ commercially reasonable storage (including backup, archive and redundant data storage, on-site and off-site) and reasonable precautions to prevent the loss of or alteration to Client's data files and/or Client Content (as defined in Section 1H) in ADP's possession, but ADP does not undertake to guarantee against any such loss or alteration. ADP is not, and will not be, Client's official record keeper. Accordingly, Client will, to the extent it deems necessary, keep copies of all source documents of the information delivered to ADP (including maintaining printouts or electronic copies of Client Content input into any ADP Internet Services (as defined in Section 1H)).

D. Use of ADP Products and Services. ADP Products and Services include confidential and proprietary information. Client shall use the ADP Products and Services only for the internal business purposes of Client. Client shall not provide, directly or indirectly, any of the ADP Products or Services or any portion thereof to any party other than the Client. Client shall not provide service bureau or other data processing services that make use of the ADP Products or Services or any part thereof without the express written consent of ADP. Client represents that it has verified the identity of each of its employees to whom it will make payments using ADP Products or Services through appropriate documentation provided by such employee (e.g., I-9 documentation). Client shall be responsible for ensuring that its employees, plan participants and any other persons authorized by Client to access or use the Services comply with all the terms of this Agreement.

E. Compliance with Laws. Client acknowledges that the ADP Products and Services are designed to assist Client in complying with applicable laws and governmental regulations, but that Client, and not ADP, shall be solely responsible for (i) compliance with all laws and governmental regulations affecting its business, and (ii) any use Client may make of the ADP Products and/or Services (including any reports and worksheets produced in connection therewith) to assist it in complying with such laws and governmental regulations. Client will not rely solely on its use of the ADP Products and/or Services in complying with any laws and governmental regulations (including but not limited to any applicable Office of Foreign Assets Control ("OFAC") screening requirement). Each party will be responsible for complying with all requirements of applicable law or regulation (i) that affect its business generally or (ii) regarding security breaches and suspected security breaches involving personal information that is stored on the computer systems of such party or its subcontractors. Payment Services are subject to the operating rules of the National Automated Clearing House Association ("NACHA"). ADP and Client each agree to comply with the NACHA rules applicable to it with respect to Payment Services.

F. License Rights. The right to use the ADP Products is granted to Client for the sole purpose of utilizing the Services as provided herein. Any license or right to access the ADP Products shall automatically terminate upon ADP ceasing to provide Client with related Services; provided, however, that Client shall be entitled to retain any time collection equipment that has been purchased and paid for in full by Client.

G. Online Access. Certain ADP Products or Services may be accessed by Client and its authorized employees and plan participants through the Internet at a website provided by ADP or on behalf of ADP, including those hosted by ADP on behalf of Client (a "Site"). In addition, Client acknowledges that security of transmissions over the Internet cannot be guaranteed. ADP is not responsible for (i) Client's access to the Internet, (ii) interception or interruptions of communications through the Internet, or (iii) changes or losses of data through the Internet, in each case other than to the extent caused solely by ADP. In order to protect Client's data, ADP may suspend Client's, Client's employees', or plan participants' use of the ADP Products or Services via the Internet immediately, without prior notice, pending an investigation, if any breach of security is suspected.

H. Client Content. "Client Content" shall mean (i) payroll, benefits, human resources and similar information provided by Client or its employees or plan participants, including transactional information, as well as (ii) Client's trademarks, trade names, service marks, logos and designs provided by Client, (the "Authorized Marks"); which ADP includes, either directly as part of its setup services or through Client or any of its employees or plan participants, in any web-based ADP Product, including ADP Workforce Now™ (collectively "ADP Internet Services"). Client shall be solely responsible for obtaining all required rights and licenses to use and display the Client Content and for updating and maintaining the completeness and accuracy of all Client Content. Client grants ADP a right to use the Client Content for the sole purpose of performing the Services for Client.

I. ADP Content. ADP Workforce Now is ADP's web-based portal which provides a single point of access to ADP online solutions and employee-facing websites and resources related to payroll, HR and benefits, and time and attendance. Client understands that ADP may include informational content, forms and tools, as well as banner advertisements for ADP and/or third-party products and services, on the client self-administration portion of ADP Workforce Now as well as the employee self-service portion of ADP Workforce Now. Upon written request by Client, ADP will remove banner advertisements that ADP has posted to ADP Workforce Now, which represent offers or promotions from ADP or ADP partners. The availability and use of such content, forms and tools and banner advertisements shall be subject to the online terms (the "Online Terms"). Client's business dealings with any third-party advertiser found on ADP Workforce Now are solely between Client and such advertiser and ADP shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on ADP Workforce Now.

J. No Transfer, Modification, etc. Client shall not assign, loan, sublicense, alter, modify, adapt (or cause to be altered, modified or adapted), reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, all or any portion of the ADP Internet Services or any access or use thereof. Client will not write or modify interfaces or reports to any ADP Internet Service except as expressly authorized by ADP. CLIENT WILL NOT RECOMPILE, DISASSEMBLE, REVERSE ENGINEER, OR MAKE OR DISTRIBUTE ANY OTHER FORM OF, OR ANY DERIVATIVE WORK FROM ADP WORKFORCE NOW.

K. Password Protection. Client agrees to maintain the privacy of usernames and passwords associated with ADP Internet Services. Client is fully responsible for all activities that occur under Client's password or Internet account. Client agrees to (i) immediately notify ADP of any unauthorized use of Client's password or Internet account or any other breach of security, and (ii) ensure that Client exits from Client's Internet account at the end of each session. ADP shall not be liable for any damages incurred by Client or any third party arising from Client's failure to comply with this section.

L. Links to Third-Party Sites. The Site(s) may contain links to other Internet sites. Links to and from a Site to other third-party sites do not constitute an endorsement by ADP or any of its subsidiaries or affiliates of such third-party sites or the acceptance of responsibility for the content on such sites.

M. Transmission of Data. In the event that Client requests that ADP provide any Client Content or employee or plan participant information to any third party or to any non-U.S. Client location, Client represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.

## 2. FEES, PAYMENTS, AND TAXES

A. Fees. Client shall pay ADP for the ADP Products and Services at the rates specified in (i) a Price Agreement, if any, for the term set forth therein or, if none, (ii) the Sales Order for the first six (6) months after the Effective Date (assuming no changes in requirements, specifications, volumes or quantities) (the "Initial Period"). Client shall pay ADP for the ADP Products and Services added by Client after the Effective Date at ADP's then prevailing prices for such ADP Products and Services. ADP may increase prices for the ADP Products and Services at any time after the Initial Period upon at least thirty (30) days prior written notice to Client if such change is part of a general price change by ADP to its clients for affected items.

B. Payments. Client will pay all invoices in full within thirty (30) days of the invoice date. Client shall reimburse ADP for any expenses incurred, including interest and reasonable attorney fees, in collecting amounts due ADP hereunder that are not under good faith dispute by Client.

C. Taxes. Client shall be responsible for payment of all taxes (excluding those on ADP's net income) relating to the provision of ADP Products and Services, except to the extent a valid tax exemption certificate or other written documentation acceptable to ADP to evidence Client's tax exemption status is provided by Client to ADP prior to the delivery of Services.

## 3. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL EQUIPMENT PROVIDED BY ADP OR ITS SUPPLIERS IS PROVIDED "AS IS" AND ADP AND ITS LICENSORS EXPRESSLY DISCLAIM ANY WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE SERVICES, THE ADP PRODUCTS, ANY CUSTOM PROGRAMS CREATED BY ADP OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP. ADP AND ITS LICENSORS FURTHER DISCLAIM ANY WARRANTY THAT THE RESULTS OBTAINED THROUGH THE USE OF THE SERVICES, THE ADP PRODUCTS, ANY CUSTOM PROGRAMS CREATED BY ADP OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP WILL MEET CLIENT'S NEEDS.

#### 4. INTELLECTUAL PROPERTY

A. Ownership and Proprietary Rights. All ADP Products licensed to Client hereunder are the licensed and/or owned property of and embody the proprietary trade secret technology of ADP and/or its licensor(s) and are protected by copyright laws, international copyright treaties, as well as other intellectual property laws, that among other things, prohibit the unauthorized use and copying of any ADP Products. Client receives no rights to any ADP Products or any intellectual property of ADP or its licensors, except as expressly stated herein.

B. ADP Indemnity. Subject to the remainder of this Section 4B, ADP shall defend Client in any suit or cause of action, and indemnify and hold Client harmless against any damages payable to any third party in any such suit or cause of action, alleging that the ADP Products as used in accordance with this Agreement infringe any U.S. patent, copyright, trade secret or other proprietary right of any third party. The foregoing obligations of ADP are subject to the following requirements: Client shall take all reasonable steps to mitigate any potential damages which may result; Client shall promptly notify ADP of any and all such suits and causes of action; ADP controls any negotiations or defense of such suits and causes of action; and Client assists as reasonably required by ADP. The foregoing obligations of ADP do not apply to the extent that the infringing ADP Product or portions or components thereof or modifications thereto were not supplied or directed by ADP, or were combined with other products, processes or materials not supplied or directed by ADP (where the alleged infringement relates to such combination).

C. Use of Client's Authorized Marks. In the event that ADP makes available branding of any materials, cards and/or websites associated with the ADP Products or Services and Client requests such branding, Client grants ADP, the card issuers and any third-party service providers designated by ADP the right to display Authorized Marks, subject to Client's right to review and approve the copy prior to the use of such Authorized Marks. This authorization shall cover the term of this Agreement and, if Client is receiving TotalPay<sup>®</sup> Card Services, any period of ongoing use of the cards by employees after termination of this Agreement.

#### 5. NONDISCLOSURE

All Confidential Information (as defined below) disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information, but in no case less than reasonable care. The receiving party will limit access to Confidential Information to its affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (a) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (b) as appropriate and with prior notice where practicable, to respond to any summons or subpoena or in connection with any litigation, and (c) relating to a specific employee, to the extent such employee has consented to its release. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, ADP may retain information for regulatory purposes or in back-up files, provided that ADP's confidentiality obligations hereunder continue to apply. For purposes of this Section, "Confidential Information" shall mean: all information of a confidential or proprietary nature, including pricing and pricing related information and all personally identifiable payroll and employee-level data, provided by the disclosing party to the receiving party for use in connection with ADP Products or Services, or both, but does not include (i) information that is already known by the receiving party, (ii) information that becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement, and (iii) information that becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis. The obligations of ADP set forth in this Section 5 shall not apply to any suggestions and feedback for product or service improvement, correction, or modification provided by Client in connection with any present or future ADP product or service, and, accordingly, neither ADP nor any of its clients or business partners shall have any obligation or liability to Client with respect to any use or disclosure of such information.

#### 6. LIMITATION OF LIABILITY

A. ADP Responsibility. ADP shall correct any Client report, data or tax agency filings, as the case may be, produced incorrectly as a result of an ADP error, at no charge to Client. Additionally, ADP shall reimburse Client for (i) actual damages incurred by Client as a direct result of the criminal or fraudulent acts or willful misconduct of ADP or any of its employees, (ii) any penalty imposed against Client as a result of an error or omission made by ADP in performing the Tax Filing Services or (iii) any interest assessed against Client as a result of ADP holding Client tax funds past the applicable due date due as a result of an error or omission made by ADP in performing the Tax Filing Services. ADP shall have no liability to Client for any third-party software that may be accessed by ADP Internet Services.

B. Limit on Monetary Damages. Notwithstanding anything to the contrary contained in this Agreement (other than and subject to sections 4B and 6A above), ADP's aggregate liability under this Agreement during any calendar year for damages (monetary or otherwise) under any circumstances for claims of any type or character made by Client or any third party arising from or related to ADP Products or Services, will be limited to the lesser of (i) the amount of actual damages incurred by Client or (ii) the average monthly charges for three (3) months for the affected ADP Products or Services during such calendar year. ADP will issue Client a credit(s) equal to the applicable amount and any such credit(s) will be applied against subsequent fees owed by Client.

C. No Consequential Damages. NEITHER ADP NOR CLIENT WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF INFORMATION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES OR ADP PRODUCTS, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 7. TERM AND TERMINATION; DEFAULT BY CLIENT; REMEDIES UPON DEFAULT

A. Termination/Suspension. Subject to the terms of any Price Agreement, entered into by ADP and Client, ADP or Client may terminate this Agreement or any Service(s) provided hereunder without cause upon at least ninety (90) or thirty (30) days, respectively, prior written notice. Either party may also suspend performance and/or terminate this Agreement immediately upon written notice at any time if: (i) the other party is in material breach of any material warranty, term, condition or covenant of this Agreement and fails to cure that breach within thirty (30) days after written notice thereof; (ii) the other party ceases business operations; or (iii) the other party becomes insolvent, generally

stops paying its debts as they become due or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within ninety (90) days after commencement of one of the foregoing events). ADP may also suspend performance and/or terminate this Agreement immediately without prior notice in the event Client, its employee(s) or any other third party (i) includes in any ADP Internet Services any Client Content which is obscene, offensive, inappropriate, threatening, or malicious; which violates any applicable law or regulation or any contract, privacy or other third party right; or which otherwise exposes ADP to civil or criminal liability or (ii) wrongfully uses or accesses the ADP Products or any other systems of ADP used in the performance of its obligations under this Agreement. Additionally, Payment Services may be immediately suspended or terminated by ADP without prior notice if (i) ADP has not received timely funds from Client as required by Section 1A above; (ii) a bank notifies ADP that it is no longer willing to originate debits from Client's account(s) and/or credits for Client's behalf for any reason; (iii) the authorization to debit Client's account is terminated or ADP reasonably believes that there is or has been fraudulent activity on the account; (iv) ADP reasonably determines that Client no longer meets ADP's credit/financial eligibility requirements for such Services; or (v) Client has any material adverse change in its financial condition.

**B. Post-Termination.** If use of any ADP Products or Services is or may be terminated by ADP pursuant to Section 7A, ADP shall be entitled to allocate any funds remitted or otherwise made available by Client to ADP in such priorities as ADP (in its sole discretion) deems appropriate (including reimbursing ADP for payments made by ADP hereunder on Client's behalf to a third party). If any ADP Products or Services are terminated by either party, Client will immediately (i) become solely responsible for all of its third-party payment obligations covered by such ADP Products or Services (including, for Tax Filing Services, all related penalties and interest) then or thereafter due; (ii) reimburse ADP for all payments made by ADP hereunder on Client's behalf to any third party; and (iii) pay any and all fees and charges invoiced by ADP to Client relating to the ADP Products or Services.

#### 8. FUNDING

Client shall be liable for debits properly initiated by ADP hereunder. Client unconditionally promises to pay to ADP the amount of any unfunded payroll file (including any debit that is returned to ADP because of insufficient or uncollected funds or for any other reason), plus any associated bank fees or penalties, upon demand and pay interest on the unfunded payroll amount at the rate of 1.5% per month (or the maximum allowed by law if less). Also, if any debit to an employee or other payee's account reversing or correcting a previously submitted credit(s) is returned for any reason, Client unconditionally promises to pay the amount of such debit upon demand and interest thereon at the rate set forth in this Section 8. Client shall be liable for, and shall indemnify ADP against, any loss, liability, claim, damage or exposure arising from or in connection with any fraudulent or criminal acts of Client's employees or payees. Client agrees to cooperate with ADP and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by ADP or another party processing a transaction on behalf of ADP.

#### 9. MISCELLANEOUS

**A. Inducement.** Client has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement.

**B. Third-Party Beneficiaries.** With respect to the ADP Products and Services, ADP suppliers, vendors and referral partners may enforce the same disclaimers and limitations against Client as ADP may under Sections 3 and 6 of this Agreement. Other than ADP suppliers, vendors, and referral partners who are intended third-party beneficiaries with respect to Sections 3 and 6 of this Agreement, nothing in this Agreement creates, or will be deemed to create, third-party beneficiaries of or under this Agreement. ADP has no obligation to any third party (including Client's employees and/or any taxing authority) by virtue of this Agreement.

**C. Force Majeure.** Any party hereto will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, war, utility or communication failures, or other cause beyond the party's reasonable control. Both parties will use reasonable efforts to mitigate the effect of a force majeure event.

**D. Non-Hire.** During the term of this Agreement and for the twelve (12) months thereafter, neither Client nor the ADP regions providing the Services, shall knowingly solicit or hire for employment or as a consultant, any employee or former employee of the other party who has been actively involved in the subject matter of this Agreement.

**E. Waiver.** The failure of either party at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

**F. Headings.** The headings used in this Agreement are for reference only and do not define, limit, or otherwise affect the meaning of any provisions hereof.

**G. Severability.** If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Client and ADP shall be construed and enforced accordingly.

**H. Relationship of the Parties.** The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement, is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith.

**I. Governing Law.** This Agreement is governed by the laws of the State of New York without giving effect to its conflict of law provisions.

**J. Limitation of Claims.** No action arising under or in connection with this Agreement, regardless of the form, may be brought by Client more than two (2) years after Client becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the cause of action.

**K. Regulatory Notice.** No state or federal agency monitors or assumes any responsibility for the financial solvency of third-party tax filers.

**L. Use of Agents.** ADP may designate any agent or subcontractor to perform such tasks and functions to complete any services covered under this Agreement. However, nothing in the preceding sentence shall relieve ADP from responsibility for performance of its duties under the terms of this Agreement.

**M. Entire Agreement and Conflicts Clause.** This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes and overrides all prior agreements on the same subject matter, and shall govern all disclosures and exchanges of Confidential

**RESOLUTION NO.: 203 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-  
ENTRY FROM A DEED ISSUED TO BRIAN FERNANDEZ  
TO THE PREMISES KNOWN AS 360 THIRD STREET  
(SECTION 16, BLOCK 8, LOT 21)**

**WHEREAS**, on November 18, 2009, the City of Newburgh conveyed property located at 360 Third Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 16, Block 8, Lot 21, to Brian Fernandez; and

**WHEREAS**, Mr. Fernandez 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 recommend 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 Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**



**RESOLUTION NO.: 204 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION ESTABLISHING A CENTRAL PRINTING  
AND MAILING ACCOUNT AND AMENDING RESOLUTION NO. 185-2009,  
THE 2010 BUDGET OF THE CITY OF NEWBURGH**

**WHEREAS**, this City Council needs to establish a Central Printing and Mailing Account;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh hereby establishes a Central Printing and Mailing Account and amends the 2010 Budget of the City of Newburgh, as set forth on the attached spreadsheet.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

201-10

Central Printing & Mailing has been decentralized over all departments.  
I am recommended a centralized printing and mailing account.

General Fund							
<u>Description</u>	<u>Increase</u>	<u>Offset</u>	<u>FUND</u>	<u>DEPT</u>	<u>ITEM</u>	<u>PROJ</u>	<u>LOCATION</u>
Central Printing & Mailing	50,000		A	1670	400		
Contingency Acct		<u>50,000</u>	A	1990	0004		
Total	<u>50,000</u>	<u>50,000</u>					

**RESOLUTION NO.: 205 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION AMENDING RESOLUTION NO: 185-2009,  
THE 2010 BUDGET OF THE CITY OF NEWBURGH,  
TO COVER ADDITIONAL OVERTIME FOR THE FIRE DEPARTMENT  
TO COVER SERVICES THROUGH DECEMBER 31, 2010**

**BE IT RESOLVED** that Resolution No: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended regarding the amendment to the General Fund, as set forth on the spreadsheet attached hereto.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

205-10

The Fire Department doesn't have sufficient overtime to cover services through 12/31/10.

Current Overtime

Budget	575,000
Actual to date 8/19	<u>556,873</u>
Difference	18,127

2009	722,175
2008	666,498

It is estimated that the Fire Department will require \$220,000 in additional overtime to support operations through 12/31/10. Please consider the following budget adjustment. This adjustment has no overall increase to the budget.

General Fund

Description	Increase	Decrease	FUND	DEPT	ITEM	PROJ	LOCATION
Fire Department OT	220,000		A		3412		103
FD Retirement		170,000	A		3412		815
Health Insurance		30,000	A		3412		860
Severance		20,000	A		3412		106
	<u>220,000</u>	<u>220,000</u>					

**RESOLUTION NO.: 206 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION AMENDING RESOLUTION NO: 185-2009,  
THE 2010 BUDGET OF THE CITY OF NEWBURGH,  
REGARDING AMENDMENTS TO THE GENERAL FUND  
TO COVER THE COSTS FOR BUILDING OPERATIONS  
THROUGH DECEMBER 31, 2010 FOR THE ARMORY**

**BE IT RESOLVED** that Resolution No: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended regarding amendments to the General Fund, as set forth on the spreadsheet attached hereto.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

206-10

The City has taken possession of the Armory. The following accounts are recommended to pay for building operations through 12/31/10.

General Fund Description	Increase	Offset	FUND	DEPT	ITEM	PROJ	LOCATION
Telephone	1,000		A		1625		421
Gas & Electric	25,000		A		1625		422
Other Services	1,000		A		1625		448
Contingency Acct		27,000	A		1990		4
Totals	<u>27,000</u>	<u>27,000</u>					

**RESOLUTION NO.: 207 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION AMENDING RESOLUTION NO: 185-2009,  
THE 2010 BUDGET OF THE CITY OF NEWBURGH,  
TO TRANSFER \$920.00 FROM THE GENERAL FUND  
WHICH IS THE REMAINDER OF THE MONEY THE CITY RAISED  
FOR THE 4<sup>TH</sup> OF JULY FIREWORKS TO THE TRUST AND AGENCY FUND  
TO BE USED TOWARD THE 2011 JULY 4<sup>TH</sup> FIREWORKS**

**BE IT RESOLVED** that Resolution No: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended regarding the amendment to the General Fund, as set forth on the spreadsheet attached hereto.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

07-10

The City raised \$9,170 for the 2010 4th of July fireworks. The vendor's payment was \$8,250. I am therefore requesting a budget transfer of \$920 to the Trust & Agency Fund to be used toward the 2011 July 4th Fireworks.

General Fund

Description	Increase	Increase	FUND	DEPT	ITEM	PROJ	LOCATION
Operating Transfer	920		A		9901		900
Fireworks Donations		920	A		0		2707
Total	<u>920</u>	<u>920</u>					

Trust & Agency Fund

New Accounts

Description	Increase	Increase	FUND	DEPT	ITEM	PROJ	LOCATION
Fireworks Cash	920		T		0	200	17
Fireworks Donations		920	T		0	690	0
Total	<u>920</u>	<u>920</u>					

**RESOLUTION NO.: 208 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION AMENDING RESOLUTION NO.: 185-2009,  
THE 2010 BUDGET OF THE CITY OF NEWBURGH,  
TO RECORD PILOT PAYMENTS FROM THE WATER AND SEWER FUNDS  
TO THE GENERAL FUND**

**BE IT RESOLVED**, that Resolution No: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended to record PILOT payments from the water and Sewer Funds to the General Fund as set forth on the spreadsheet attached hereto.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

20870

PILOT payments from the Water & Sewer Fund were approved in the 2010 budget. However, they were not correctly recorded to the General Fund. I recommend the following entry to correctly record PILOT payments from the Water and Sewer Funds to the General Fund

General Fund Description	Decrease	Increase	FUND	DEPT	ITEM	PROJ	LOCATION
Water Fund- Interfund Revenue		300,000	A		0		2816
Sewer Fund- Interfund Revenue		300,000	A		0		2818
Contingency Acct	<u>600,000</u>		A		1990		4
Totals	<u>600,000</u>	<u>600,000</u>					

**RESOLUTION NO.: 209 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION ESTABLISHING AN IT CAPITAL PROJECT BUDGET  
AND AMENDING RESOLUTION NO.: 185-2009, THE 2010 BUDGET  
OF THE CITY OF NEWBURGH**

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh hereby establishes an IT Capital Project Budget and amends the 2010 Budget of the City of Newburgh, as set forth on the attached spreadsheet.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

29-10

The attached budget request is presented in following with the IT presentation.  
 This budget will cover all items listed in the presentation

Capital Projects Fund

Description	Increase	Increase	FUND	DEPT	ITEM	PROJ	LOCATION
Server Project	235,500		H1	1680	200	5700	2010
Armory IT	9,250		H1	1680	201	5700	2010
AS400 IT	50,000		H1	1680	202	5700	2010
Fire Laptops	8,000		H1	1680	203	5700	2010
Desktops	36,000		H1	1680	204	5700	2010
General Fund Contribution		338,750	H1	1680	5031	5700	2010
<b>TOTALs</b>	<u>338,750</u>	<u>338,750</u>					

General Fund

Description	Increase	Offset	FUND	DEPT	ITEM	PROJ	LOCATION
Operating Transfer	338,750		A		9901 0900		
Contingency Account		338,750	A		1990	4	
	<u>338,750</u>	<u>338,750</u>					

**RESOLUTION NO.: 210 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION ESTABLISHING A BUDGET FOR THE GRANT RECEIVED  
FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR  
FOR THE DUTCH REFORMED CHURCH  
AND AMENDING RESOLUTION NO.: 185-2009,  
THE 2010 BUDGET OF THE CITY OF NEWBURGH**

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh hereby establishes a budget for the Grant received from the United States Department of the Interior for the Dutch Reformed Church and amends the 2010 Budget of the City of Newburgh, as set forth on the attached spreadsheet.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

210-10

The City has previously received a grant from The US Dept. of the Interior for transcribing and preserving historical records from the Dutch Reformed Church. The grant is for \$23,700 with \$23,700 in kind contributions. This request is to put a budget in place for the balance of this grant

Grant Fund Description	Increase	Increase	FUND	DEPT	ITEM	PROJ	LOCATION
Historical Preservation	18,428		CG	1460	200	3600	2010
Federal Funds		9,214	CG	1460	4098	3600	2010
City Match		9,214	CG	1460	5031	3600	2010
(in kind services)							
Total	<u>18,428</u>	<u>18,428</u>					

General Fund Description	Increase	Decrease	FUND	DEPT	ITEM	PROJ	LOCATION
Operating Transfer	9,214		A		9901 0900		
In Kind Match		9,214	A		9901 0999		
Total	<u>9,214</u>	<u>9,214</u>					

**RESOLUTION NO.: 211 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A DONATION OF TABLES AND CHAIRS  
FROM MOUNT SAINT MARY COLLEGE  
FOR USE AT THE ARMORY BUILDING**

**WHEREAS**, Mount Saint Mary College has offered to donate tables and chairs to the City of Newburgh; and

**WHEREAS**, this contribution will be used in the City of Newburgh's Armory Building; and

**WHEREAS**, this Council deems it to be in the best interests of the City of Newburgh to accept such donation,

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to accept the tables and chairs donated by Mount Saint Mary College, with the appreciation and thanks of the City of Newburgh.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

**RESOLUTION NO.: 212 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO APPLY FOR AND TO ACCEPT IF AWARDED A GRANT IN AN  
AMOUNT NOT TO EXCEED SIXTY THOUSAND DOLLARS FROM THE  
NEW YORK STATE OFFICE OF HOMELAND SECURITY  
TO PROVIDE FOR FUNDING FOR THE PURCHASE OF URBAN SEARCH  
AND RESCUE EQUIPMENT FOR THE CITY OF NEWBURGH FIRE  
DEPARTMENT WITH NO CITY MATCH REQUIRED**

**WHEREAS**, the City of Newburgh Fire Department has expressed an interest in joining with the Orange County Emergency Services Department to apply for funds available from the New York State Office of Homeland Security to ; and

**WHEREAS**, the Fire Department has proposed an application for said grant in an amount not to exceed Sixty Thousand (\$60,000.00) Dollars; and

**WHEREAS**, said grant does not require any funding match by the City of Newburgh; and

**WHEREAS**, said grant, if awarded, will support the well-being and safety of our community; and

**WHEREAS**, it is deemed to be in the best interests of the City of Newburgh and its citizens to apply for and accept such grant if awarded;

**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 such documents and to take any necessary and appropriate actions to apply for and to accept if awarded a grant in an amount not to exceed Sixty Thousand (\$60,000.00) Dollars from the New York State Office of Homeland Security to provide for funding for the purchase of Urban Search and Rescue Equipment for the City of Newburgh Fire Department with no City match required.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

**RESOLUTION NO.: 213 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**RESOLUTION AUTHORIZING THE EXECUTION  
OF A MEMORANDUM OF AGREEMENT WITH THE CITY OF  
NEWBURGH, CITY OF NEWBURGH POLICE BENEVOLENT  
ASSOCIATION, VINCENT KELLER,  
JOHN ZAGARELLA AND ROLANDO ZAPATA**

**WHEREAS**, City of Newburgh Police Detectives Vincent Keller, John Zagarella and Rolando Zapata have advised the City that they are prepared to assist the City by retiring at the end of September 2010, provided that a provision of the City/PBA CBA relating to the payment for unused sick leave is modified at the rate of 100% rather than 75%; and

**WHEREAS**, the City Council has reviewed the terms of the Memorandum of Agreement, a copy of which is annexed hereto, and has consulted with the representatives of the City, who have recommended that the City Council approve the agreement;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Manager be and he hereby is authorized to execute the attached Memorandum of Agreement between the City of Newburgh, the Newburgh Police Benevolent Association, Vincent Keller, John Zagarella and Rolando Zapata regarding their retirement and sick leave conversion pay.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

213-10

MEMORANDUM OF AGREEMENT

AGREEMENT, by and between the City of Newburgh, the Newburgh PBA, Vincent Keller, John Zagarella and Rolando Zapata.

WHEREAS, the City and the PBA are parties to a collective negotiations agreement covering the period January 1, 2006 through December 31, 2009 and Keller, Zagarella and Zapata are PBA unit members; and

WHEREAS, the City is experiencing an unprecedented fiscal crisis; and

WHEREAS, Keller, Zagarella and Zapata have advised the City that they are prepared to assist the City by retiring at the end of October 15, 2010, provided that a provision of the City/PBA CBA relating to payment for unused sick leave is modified; and

WHEREAS, the City and the PBA have negotiated in good faith and reached an agreement to make this modification, in order to facilitate Keller's, Zagarella's and Zapata's retirements, on a one-time, non-precedent setting basis.

NOW, THEREFORE, IT IS AGREED THAT:

1. Keller hereby submits his irrevocable letter of resignation for retirement purposes, effective October 15, 2010.
2. Zagarella hereby submits his irrevocable letter of resignation for retirement purposes, effective October 15, 2010.
3. Zapata hereby submits his irrevocable letter of resignation for retirement purposes, effective October 15, 2010.
4. Notwithstanding anything to the contrary in the City/PBA CBA Article XIII(C)(1), Keller, Zagarella's and Zapata's sick leave conversion shall be paid at the rate of 100% rather

than 75%.

5. Nothing contained in this Agreement shall be deemed to be precedent setting. This document, its existence and contents, may not be cited in any other matter, such as, but not limited to, any grievance, arbitration, PERB conference or hearing or any court- related proceeding, except for an action to enforce its terms.

6. This Agreement constitutes the entirety of the agreement among the parties regarding the Keller's, Zagarella's and Zapata's retirement and their sick leave conversion pay. There are no other agreements, oral or otherwise.

7. This Agreement is subject to ratification and approval by the City Council.

FOR THE CITY:

FOR THE PBA:

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
VINCENT KELLER

\_\_\_\_\_  
JOHN ZAGARELLA

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
ROLANDO ZAPATA

Dated: \_\_\_\_\_

**RESOLUTION NO.: 214 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION APPROVING THE CONSENT JUDGMENT AND  
AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT  
JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI  
PROCEEDING AGAINST THE CITY OF NEWBURGH IN THE ORANGE  
COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NO.  
7952-2008, INVOLVING SECTION 33, BLOCK 7, LOT 29.1 (LAKESIDE  
PLAZA ASSOCIATES AND HENRY MEISELS)**

**WHEREAS**, Lakeside Plaza Associates and Henry Meisels have commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2008-2009 tax assessment year bearing Orange County Index No. 7952-2008; and

**WHEREAS**, Lakeside Plaza Associates and Henry Meisels challenged the 2010-2011 tax assessment year to the Board of Assessment Review, and have not commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange in an effort to save all parties the additional expense of such a proceeding; and

**WHEREAS**, such tax assessment year has been included in this proposed Consent Judgment; and

**WHEREAS**, it appears from the recommendation of the City Assessor, Fernando Gonzalez and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

**WHEREAS**, Lakeside Plaza Associates and Henry Meisels are willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioners described on the City of Newburgh tax roll for the tax years 2008-2009 as tax map number 33-7-29.1 be reduced to a market value of \$ 1,950,000.
- 2- That the real property of Petitioners described on the City of Newburgh tax roll for the tax years 2010-2011 as tax map number 33-7-29.1 be reduced to a market value of \$ 1,465,000.
- 3- That any tax savings benefits to be realized upon the execution of this Consent Judgment be realized as a refund, or as a credit against the next City tax payment due on the properties herein involved. The City Comptroller shall decide whether to issue a refund or a credit, based upon the best interests of the City;

**NOW, THEREFORE BE IT RESOLVED**, that the proposed settlement as set forth and described above and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws; and

**BE IT FURTHER RESOLVED**, that Richard F. Herbek, City Manager of the City of Newburgh; Fernando Gonzalez, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons to execute the Consent Judgment on behalf of the City.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**



entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

**ORDERED**, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioners by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be audited, allowed, and credited or paid to the Petitioners by the County of Orange, the amounts, if any, paid as County taxes and County Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be audited, allowed, and credited or paid to the Petitioners by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, That any tax savings benefits to be realized upon the execution of this Consent Judgment be realized as a refund or credit against the next tax payment due on the properties herein involved, to be determined by the City, without any interest owing thereon to Petitioners. The 2008/2009 tax year refund, or credit against the next City tax payment due on the properties herein, is \$2,146.60; and it is further,

**ORDERED**, that there shall be no interest paid or credited in connection with this Consent Judgment; and it is further,

**ORDERED**, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed:           September \_\_\_\_, 2010  
                          Goshen, New York

**ENTER:**

\_\_\_\_\_  
HON. CATHERINE M. BARTLETT  
SUPREME COURT JUSTICE

**ON CONSENT:**

\_\_\_\_\_  
HON. RICHARD F. HERBEK  
Acting City Manager  
Dated:

\_\_\_\_\_  
LAKESIDE PLAZA ASSOCIATES  
Dated:

\_\_\_\_\_  
HON. FERNANDO GONZALEZ  
Assessor  
Dated:

\_\_\_\_\_  
HENRY MEISELS  
Dated:

\_\_\_\_\_  
RICHARD B. GOLDEN, ESQ.  
Burke, Miele & Golden, LLP

\_\_\_\_\_  
STUART THALBLUM, ESQ.  
Law Offices of Ronald J. Cohen

**RESOLUTION NO.: 215 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AMENDING RESOLUTION NO.: 189-2007  
AUTHORIZING THE CITY MANAGER TO  
ENTER INTO AN AMENDMENT TO THE CONTRACT WITH THE  
CHAZEN COMPANIES TO PROVIDE FOR PROFESSIONAL SERVICES IN  
CONNECTION WITH PETROLEUM BULK STORAGE COMPLIANCE  
AT AN ADDITIONAL COST OF \$4,500.00**

**WHEREAS**, this Council did, by Resolution No.: 189-2007 of October 9, 2007, authorized the City Manager to enter into an agreement with Chazen Companies to provide for professional services in connection with petroleum bulk storage compliance at an estimated cost of \$3,950.00; and

**WHEREAS**, this Council did, by Resolution No.: 190-2009 of December 14, 2009, authorized the City Manager to enter in to new contract to upgrade the proposal for additional services on five (5) City-owned properties for an additional cost of \$4,750.00; and

**WHEREAS**, it is now necessary to enter into an amendment to the contract for additional services at a cost of \$4,500.00; and

**WHEREAS**, this Council has determined that retaining Chazen Companies to provide such additional services 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 enter into an agreement with The Chazen Companies for a total cost of \$4,500.00 to provide additional professional services in connection with petroleum bulk storage facilities owned and controlled by the City of Newburgh and with the City's compliance with rules and regulations pertaining thereto.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

**RESOLUTION NO.: 216 - 2010**

**OF**

**SEPTEMBER 7, 2010**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A GRANT FROM THE NEW YORK STATE DEPARTMENT OF  
STATE FOR THE LOCAL GOVERNMENT EFFICIENCY GRANT PROGRAM  
IN THE HIGH PRIORITY PLANNING GRANT CATEGORY FOR THE  
PURPOSE OF FUNDING A CHARTER REVISION PLAN**

**WHEREAS**, this Council, by Resolution No.: 37-2010 of February 8, 2010, expressed their support of an application to the New York State Department of State's 2009-2010 Local Government Efficiency Grant Program for the purposes of seeking funding for a high priority planning grant to conduct a City Charter Revision Study to implement functional consolidation, increased shared services and management improvements to achieve savings; and

**WHEREAS**, the City of Newburgh has been advised that the Department of State has awarded such grant in the amount of Forty-Five Thousand (\$45,000.00) Dollars; 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 and he is hereby authorized to accept a grant from the New York State Department of State for the Local Government Efficiency Grant Program in the High Priority Planning Grant category for the purpose of funding a Charter Revision Plan.

**Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5**

**ADOPTED**

## GENERAL COMMENTS FROM THE PUBLIC

Denise Ribble, City of Newburgh, said that a while ago the Waterfront Advisory and the IDA requested a public information forum about the Waterfront redevelopment but they have not received a response as of yet. She also sent an e-mail to the Council and the City Manager regarding their offer of assistance to the County and our neighboring municipalities on water supply issues. During discussion about deficit issues a comment was made about the Fiscal Advisory Board and she thought that it was clearly anticipated by the Council that there was a desire to have a Control Board for that so she is wondering what the status is. She added that the public should also go to the meeting with Pace University.

Mayor Valentine said that the meeting with Pace University on September 14<sup>th</sup> is for updates to the Council. There will be a meeting scheduled at a later date for public discussion.

Brian Flannery, 5 Norton Street, noted that at the Work Sessions the audience can't hear very well when you don't speak right into the microphones. Also when there is a power point presentation it is difficult to hear the person speaking without a microphone.

Brigidanne Flynn, City of Newburgh, said that at the Work Session there was a presentation by George Garrison about bulk pick-up. Many municipalities offer a bulk-pick up on Saturdays throughout the year which she thinks is something we should try to do here in the City of Newburgh. If someone requires a bulk-pick up then perhaps it could be added to their bill or maybe we should allow one bulk pick-up per household per year. We need to look at the situation and the cost to us and come up with something that will work for everyone.

Ariyike Diggs, 10 Bayview Terrace and members of the Heights Association, made the Council aware that there is a section of fence surrounding the Liberty Street School that has collapsed allowing people to wander in. She asked what the status is of the steps to safeguard this property and insure the safety of the people in that area.

Kippy Boyle, City of Newburgh, asked what the status is on a permanent City Manager. She understands that interviews were done for the Community Development position and she heard tonight that we might not be following the Charter so she would like to know what happened with that position. In regard to an energy plan, she is glad to see that the IT Department saw the value of connecting systems and she would like to see some energy

audits done on our other buildings. She added that she would like to know when the City is going to be reimbursed money regarding the West Street Project. She thinks that we would use GIS to do some studies and prepare a map only with tax exempt properties which she thinks would be very enlightening. She would also like to see a map in the Council Chambers to be used during discussions about projects in the City. Lastly, regarding public access to a Park on the Waterfront, she noted that one of the owners of that property has docks jutting out.

Michael Ferrara, Acting Police Chief, announced that the application for the 2010 Police Exam is now available. If anyone is interested in applying, they must be between the ages of twenty and thirty-five and applications will be taken through September 30, 2010. He added that they are offering both English and Spanish Speaking exams.

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

## COMMENTS FROM THE COUNCIL

Councilwoman Angelo said that the Festival at the Armory was wonderful and they collected almost \$16,000.00. She thanked the Department Heads, Public Works, Police Department, Fire Department, Mobile Life and Ann Kuzmik for all of their help. The total spent was \$6,700.00 without much overtime on the Police Department and there was a K-9 demonstration too. We now have \$10,000.00 for next year.

Councilwoman Bell said that she was unable to attend the Festival but congratulated Councilwoman Angelo on a job well done. In regard to the CDBG Tax Foreclosure presentation, she would like for Economic and Community Development to seriously look at this. There are too many hard working taxpayers that have lost their homes and with fees and taxes being increased we know that people cannot afford to pay. Do we continue to take homes away and sell them to others or do we do something proactively to try to eliminate this. It is not funny to have worked your whole life to be a home owner and then have the taxes go up faster than your income to where you can no longer afford it and lose your home. Tax foreclosure prevention is needed before the home is taken especially with our seniors and those on fixed incomes and this should be our number one priority. She is adamant that this happen and it should happen immediately. We should also urge Economic Development to see about getting some green businesses and jobs here in our city. Most of the workforce and the World is untrained in green technology and she feels that part of the Armory could be used for the establishment of some green businesses. She thinks that we should look at this aggressively. She added that it is now 9:09 p.m. and she can still hear the religious service that is going on a half a block away. Whether it is positive or not at 9:00 at night there are children that have to go to school tomorrow morning. There should be a time limit that should be adhered to by everyone. She told everyone to be the change that we wish to see and focus on open transparent government.

Councilwoman Bello said in regard to bulk pick-up that she thinks we should reinstitute it at whatever cost month to month. We are not able to attract people to come here because parts of the City look like mini landfills and people don't want to live or raise their children here. If it is not good enough for her then it is not good enough for anyone in this City. She added that when the City Manger presents the Budget to the public that that meeting should be held at the Activity Center so that we have the ability to accommodate as many people as possible.

Councilwoman Dillard said that today he attended a funeral service for a young man who will be remembered by his community and his Church. He was a shining star that we have lost and he will remain in our prayers. He thanked everyone for coming tonight and said that when making a comment to please say something positive.

Mayor Valentine agreed that the Festival at the Armory was wonderful and it was laid out well with plenty of room for people and kids to roam around from place to place. It was a great use of space and we are going to come up with other ideas on how to use that space and to make money such as Festivals or weekend shows. We have been given a gift of this space and we are using all of the educational facilities in the city to help by using the brain power of people to come up with creative ideas. The more it is used as a gathering place the safer the City becomes and we need to build on that. He added that we are not calling the Budget a Proposed Budget this year but a Preliminary Budget. We are getting this Budget three weeks earlier than normal on September 20, 2010 at the Activity Center because we have to submit our City Budget to the New York State Comptroller's Office one month before it is voted on. They will look at it and make recommendations back to us and they are only giving us ten days to answer them because by law we must have the Budget adopted at the second meeting in November. He thinks it was good judgment to get this Budget into their hands earlier because they would never be able to do this otherwise. He asked everyone to attend the meeting on September 20<sup>th</sup> because they need the public input.

There being no further business to come before the Council, the meeting adjourned at 9:20 P.M.

LORENE VITEK  
CITY CLERK