

A regular meeting of the City Council of the City of Newburgh was held on Monday, January 24, 2011 at 7:00 P.M. in the Council Chambers at City Hall, 3rd Floor, 83 Broadway, Newburgh, New York 12550.

The Prayer was led by Mayor Valentine and the Pledge of Allegiance was led by Councilwoman Bell.

Present: Mayor Valentine, presiding; Councilwoman Bell, Councilwoman Bello, Councilman Dillard - 4

Absent: Councilwoman Angelo - 1

Councilwoman Bello moved and Councilman Dillard seconded that the minutes of the regular meeting of January 10, 2011 be approved.

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

CARRIED

COMMUNICATIONS

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

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

CARRIED

PROCLAMATION

Mayor Valentine read a Proclamation designating February as Black History Month in the City of Newburgh.

ANNOUNCEMENT

Mayor Valentine announced that the next regular City Council meeting scheduled for February 14th, 2011 has been rescheduled for Tuesday, February 15th.

Mayor Valentine read a public thank you on behalf of the City Council to all of the members that are serving on the Charter Review Commission.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Brigidanne Flynn, City of Newburgh said in regard to resolutions #28 and #29 that with a lot of mixed use housing in the area we need to find a way to support the businesses. Safe Harbors is very good for residential but their retail space has been empty for a very long period of time so she is concerned about the retail aspect of this proposal. At the Work Session, one of the Council members commented that there are several thirty to forty year PILOT's that the city currently has. She asked how many do we currently have? How many are remaining and how long do they have left to go? She understands that the company in resolution #28 was asking for a ten year PILOT which is quite reasonable compared to a thirty or forty year PILOT.

Barbara Smith, Powell Avenue said in regard to the same resolutions that there was a lot of discussion with regard to these projects and none of it seems to be coordinating with the people that are now involved with it. She sees a different name on this and she has no idea how that changed. Everything that went before the Boards was approved on a different level than what is reading in this resolution. There was never any discussion with regard to a PILOT and that this would be removed from the tax rolls. We are in worse shape than we were back in February, 2010 and she has no figures in front of her to make a smart judgment. She thought that this was going to be a positive thing for our city.

Maryann Prokosch, City of Newburgh said in regard to #28 and #29 that she understands why PILOT's are necessary. Her question is the amount of the PILOT and if we can't get a bigger amount. This seems too low. We have to be mindful.

Brian Flannery, 5 Norton Street said on the same topic that he sees the PILOT as benefitting taxpayers in the long run. He wishes that a PILOT wasn't necessary but he recognizes that in the current economic climate numbers don't work otherwise. He said to never leave an empty lot on a corner. We need to heal these gaping wounds at the heart of the historic district. He is concerned about the design of the Cornerstone's proposed building. He didn't get a good look at the architect's rendering and he thought that they should all get a better look at it so that they would have the opportunity to give constructive feedback.

Gay Lee, City of Newburgh said in regard to resolution #20 that our last Council meeting was so full of anger and violence and she noticed that there are only a few cops here in the building when we have a City Council meeting. Last week was the only time she attended a meeting that she could honestly

say that she was frightened. She saw a lot of people get angry and one person even invited another person outside. We are all like sitting ducks in this room and if something breaks out there are not enough people in here to restore any kind of order. She is hoping that as they consider resolution #20 that they think about some kind of protection. There is no mechanism here to check people as they walk in and out of the building especially in these times with the increase in taxes because people are very angry and fearful. There needs to be a system in place so that they will know if someone is coming into the building armed. She hopes that the Council keeps the safety of everyone in mind.

Janet Gianopolous, City of Newburgh said in regard to #28 and #29 that she sees these as steps forward. We need to get more development of various types in this city and she is hoping that we will get some actual business development that will further offset the tax increases and get us back on the right track. She thinks that with projects like these we need to look at the whole picture because there are various opportunities connected.

Aquanetta Wright, City of Newburgh said in regard to #20 that she would like to know if they have a clear outline of what the money from the grant for prevention and safety will be used for. When the Council changed, Councilwoman Bello was very involved in finding some metal detectors for downstairs free of charge. She wonders what happened to that and will we get some sort of protection.

Pauline Dillard, Water Street asked the Council to not vote on resolution #22-2011 for the Urban Garden because last year they had one at the corner of Chambers Street and as far as she is concerned the project was not good. There was no involvement from the neighborhood and no gardening skills were taught to the kids. No fresh vegetables or flowers were provided to the neighborhood families. She feels that this is just a way to get a job for someone that is a friend of someone in City Hall and they need to stop exploiting the neighborhoods. This city has done nothing for the children here in Newburgh which is why we have these high budgets for the police and fire departments. They are not taking care of the children and they refuse to do anything for them. We need to come up with a better plan like pocket parks in these grassy areas throughout Newburgh so that mothers who are working a job and a half will have a place to sit with their children and relax for a while. In regard to resolution #28, she said that we have to fill up the lots if we want the City to move ahead.

Michelle Basch, 87 Broad Street said that she is very much for the building of the Liberty and Ann Street areas because we need businesses and we need a tax base. She knows that it is possible to revive step by step, block

by block, property by property and to do it right. She is in favor of a PILOT program but she would like to know the length of time. Is this an escalated one where each year they pay more taxes and also how much. If you take a look at the waterfront, that happened because of a PILOT program and she would also like to know if they are still in that or are they paying their taxes at this point. She feels that five to ten years would be a proper amount of time or whatever math makes sense but the people in resolution #28 and #29 do need a PILOT program.

Sean O'Shea, City of Newburgh said in regard to resolutions #28 and #29 that he hopes the Council will request a public presentation of this plan. This is a big project and he thinks that the residents should have an opportunity to see the whole presentation and what the cost will be. Economic impact is very important with projects like these because with a PILOT program there will not be any taxes coming in for many years. We need entrepreneurial opportunities and jobs in this city and some of this construction work could be entry level work for city residents.

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

RESOLUTION NO.: 17 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION APPOINTING MEMBERS
TO THE COMMUNITY DEVELOPMENT BLOCK GRANT ADVISORY
COMMITTEE**

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

WHEREAS, it is appropriate in keeping with the rules and regulations of HUD to appoint a committee to give guidance and advice with respect to the expenditure of CDBG funds for community development projects; and

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

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

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

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

Marge Bell - City Council Member

BE IT FURTHER RESOLVED, the following members hereby remain to serve as members to the Community Block Grant Advisory Committee

Cari Bailey - Professional Practitioner
Mario Cipollone - Professional Practitioner
Torrance Harvey - Community Member
Timothy Hayes - Community Member
Jenny Loeb - Professional Practitioner
Ian MacDougall - Employee staff member of Department of
Planning
and Development
Brenda McPhail - Community Member

BE IT FURTHER RESOLVED, the City Council shall forthwith appoint one additional (1) community member by further Resolution, to bring the CDBG Committee to its full complement of nine (9) members.

Councilman Dillard said that it was his understanding that Councilwoman Bell would serve as a member for six months and then he would serve for six months. After seeing this he said that he is making a decision as a Council person and he is withdrawing his name.

Acting City Manager, Richard Herbek said that the intent was to have this resolution for the first six months and then have another resolution to amend it down the road.

Councilman Dillard said that there will be no need for that as he is withdrawing.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

Ayes - Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 3

Nays - Councilman Dillard - 1

ADOPTED

RESOLUTION NO.: 18 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT ON BEHALF OF THE CITY OF
NEWBURGH WITH HUDSON VALLEY DATANET D/B/A LIGHTOWER
FIBER NETWORK TO PROVIDE WIDE AREA NETWORK ("WAN")
COMPUTER NETWORKING
AND INTERNET SERVICES FOR ALL CITY DEPARTMENTS
AT A COST OF \$3,700.00 PER MONTH FOR A TERM OF THIRTY SIX (36)
MONTHS**

WHEREAS, by Resolution No. 250 - 2006 of December 18, 2006, the City of Newburgh entered in to an agreement with Hudson Valley Datanet Services to provide Wide Area Network ("WAN") and internet services including related equipment at all locations required by the City, scalable bandwidth for all WAN and internet connections and with built-in redundancies to protect against WAN outages, network monitoring and help desk services and on-site support, all to enhance the capacity of the City to employ advanced computer and telecommunications technology to meet its current and future operational demands; and

WHEREAS, such enhanced functioning will require, among other things, an increased available bandwidth, increased network capacity, significantly decreased user downtime, a guaranteed level of service, and the ability to combine voice and data networks which will reduce telephone system costs and reduce the cost of maintenance of telephone infrastructure; and

WHEREAS, such agreement will be expiring and the City of Newburgh wishes to renew such agreement for a term of thirty six (36) months; and

WHEREAS, the renewal agreement includes an upgrade in service to double the City's internet capacity and will relocate the services from City hall to the Police Department; and

WHEREAS, said renewal agreement is being provided at a total monthly cost of \$3,700.00; and

WHEREAS, by renewing said lease the City will be paying \$3,700.00 per month, which is \$800.00 less per month than the current rate of \$4,500.00 projecting an annual savings of \$8,600.00 for the first year, and after a one-time non-recurring installation charge of \$1,000.00 after the first year the savings is projected to be \$9,600.00 yearly; and

WHEREAS, such funding for this service will be derived from the A.1680.0448 budget;

WHEREAS, the City Council has determined that renewing such contract is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the City Manager be and he is hereby authorized to enter into an agreement with Hudson Valley Datanet DBA Lighttower Fiber Networks to provide Wide Area Network (“WAN”) and internet services for all City departments in substantially the form attached hereto with such other provisions as the Information Services Manager and/or the Corporation Counsel may require, at a cost of \$3,700 per month for a term of thirty six (36) months.

Councilwoman Bello moved and Councilman Dillard seconded that the resolution be adopted.

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

ADOPTED

18-11



Hudson Valley DataNet Customer Service Agreement

This Agreement (Agreement) is entered into by and between Hudson Valley DataNet, LLC ("DataNet"), a Delaware limited liability company located at 900 Corporate Blvd, Newburgh, NY 12550 and _____, with its principal place of business located at _____ ("Customer"), for the purpose of DataNet providing Customer with the Telecommunications Services (Services) set forth and outlined in one or more Service Order(s) attached as Appendix A, which is made a part hereof by this reference as fully as though set forth herein at length. DataNet and the Customer are each referred to as a party ("Party") and together as parties ("Parties") to this Agreement.

lawful telecommunications purposes, but Customer shall in no event be deemed to have a greater right to use the Services than that which DataNet may legally provide under applicable Federal and State laws and regulations. In the event that Service includes Internet access service, Customer will execute and abide by the Accepted Use Policy (AUP), as shown in Appendix E.

- 1. Period of Agreement:** This Agreement is effective as of the date signed by the Customer ("Effective Date") and shall remain in full force and effect for a period of ___ months ("Initial Term") from the Service Commencement Date as defined in Section 7 and shall thereafter be automatically renewed for a period of one (1) year ("Renewal Term"), unless written notice is received by DataNet a minimum of thirty (30) days prior to the expiration date of the Agreement. The term ("Term") of this Agreement shall include the Initial Term, the Renewal Term and any period after the end of the Initial Term or Renewal Term as per the following sentence. In the event the Service Commitment Period of an additional Service Order(s) extends beyond the period of the Initial Term or the Renewal Term of the Agreement or Service continues to be provided after the Initial Term or Renewal Term without a Service Order extending the term, the Services for such Service Order(s) will remain in effect for the agreed upon Service Commitment Period, subject to all the terms and conditions of this Agreement as if it were still in effect with respect to the Services.
- 2. Privacy:** The terms of this Agreement are the proprietary information of both DataNet and the Customer, and are not to be disclosed under any circumstances without the written permission of both Parties, unless so required by law.
- 3. Assignment:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Upon written notice, DataNet may assign this Agreement to any subsidiary, parent or to an entity affiliated with DataNet, or to DataNet's successor pursuant to any reorganization or merger of its business, or pursuant to any sale or transfer of all or substantially all of its assets. No other assignment by DataNet will be permitted without the prior written consent of the Customer, which consent shall not be unreasonably withheld or denied.
- 4. Service:** DataNet will provide to Customer the use of the Services as ordered by Customer on a DataNet Service Order shown in Appendix A (Service Order). Services will be established in accordance with the Provisioning and Installation process set forth in Appendix B (Provisioning and Installation). Customer may use the Services for all

- 5. Service Charges:** Customer agrees to pay all monthly recurring charges (MRC), non-recurring charges (NRC), taxes, fees and other similar charges legally entitled to be collected by DataNet as a direct result of DataNet's provision and/or arrangement for Service to Customer under a Service Order that arise out of Customer's use of the Services and any Third Party Services secured by DataNet for the Customer. These monthly recurring and non-recurring charges are set forth in each Service Order as listed in Pricing Terms and Length of Agreement section of Appendix A. Unless notified by the other Party at least 30 days prior to the end of the term of a Service Order that the Service will be disconnected, DataNet will automatically renew the Service Order for a term of twelve (12) months.

Charges listed in Pricing Terms and Length of Agreement section of Appendix A do not include applicable fees and charges such as access or egress (or related) charges imposed by third parties; taxes, tax-related or tax-like surcharges; or other similar charges. Customer agrees to pay all additional charges, to the extent applicable, in addition to the charges set forth in this Agreement.

- 6. Invoice:** The MRC for an initial partial month of Service (if applicable) shall be pro-rated for that portion of said partial month of Service in which Service is actually provided, and may be invoiced upon initiation of such Service. On an ongoing basis, DataNet will invoice Customer for Service charges each month for that month, at the beginning of the month's Service. Any NRC shall be invoiced upon receipt by DataNet of each Service Order. Customer shall pay all invoices (MRC, NRC) within 25 days of the date of the invoice (Due Date) without reduction, set-off or adjustment and send its payments to the address specified on the invoice. DataNet may impose a late payment charge ("Late Payment Charge(s)"), if payment is not received by the Due Date, of the lower of one and one-half percent (1 1/2%) per month or the maximum rate allowed by law on the non-disputed amounts due under any invoice not paid by the Due Date. Any Customer dispute of charges must be made in writing to the Finance Department, Hudson Valley DataNet, LLC, 900 Corporate Blvd., Newburgh, NY 12550 before the Due Date. DataNet will review any disputed charges and reply to the Customer within 10 working days of receipt with a decision regarding such dispute.
- 7. Service Commencement:** The Service Commencement Date shall be determined using the earlier of the following criteria:

- a) Completion of testing by DataNet and Acceptance by Customer/or
- b) If after two (2) Business Days after completion and turn over, Customer does not attach equipment or reject service, service will be deemed accepted/ or
- c) In a multiple node network, Service Commencement will begin upon completion of a minimum of two nodes. Both Parties, in writing, prior to contract signing, shall agree upon any exceptions.

All Service Charges will begin on the Service Commencement Date of each Service Order. This date will be used to calculate Service Start date and Service End date.

8. **Suspension of Service:** DataNet may, at its sole discretion, but with at least 10 days written notification to the Customer, suspend Service if payment of all non-disputed amounts has not been received by the Due Date. DataNet will restore Service if DataNet receives payment of all current and overdue charges of all non-disputed amounts. Service will only be restored after payment is received, and within 72 hours of said receipt. DataNet will assess a Service restoration fee ("Service Restoration Fee") of up to \$750 to restore Service after suspension of Service for nonpayment. Failure to make payment for all non-disputed Service Charges, Late Payment Charges and Service Restoration Fees within ten (10) calendar days following the suspension of service, shall be considered an Early Termination election by the Customer.
9. **Early Termination:** If Customer cancels or terminates this Agreement prior to the end of the Term, or terminates a Service Order prior to the end of its term (refer also to Appendix B for Cancellation by Customer), except if early termination is due to DataNet's inability to deliver Services as per Appendix B, Customer agrees to pay DataNet a termination charge ("Termination Charge"), as liquidated damages and not as a penalty or forfeiture as follows: (i) all applicable unpaid non-recurring charges (NRC) specified in a Service Order, plus (ii) all disconnection, early cancellation or termination charges payable to any third parties incurred by DataNet on Customer's behalf relating to the Service in that Service Order, plus (iii) 100% of the balance of the value of the MRC for the remaining term of the Service Order cancelled by the Customer. All termination charges shall be due and payable within thirty (30) days of the effective date of termination. Customer shall be liable for any penalty incurred by DataNet with respect to any third party including any third party provider of Off-Net Service(s) as defined herein and any special construction and unrecoverable costs that DataNet has incurred in efforts to establish and provide Services pursuant to the Service Order and this Agreement. Notwithstanding any provision or inference to the contrary contained herein, any monetary sums deemed to be due and payable under this Agreement or Service Order shall survive its termination indefinitely.
10. **Rights of Access:** It is the Customer's sole responsibility to provide a fully executed Access Agreement(s), included as

Appendix D, prior to Service being installed at Customer's designated location(s). This Access Agreement(s) shall guarantee, at no cost to DataNet, DataNet's rights to ingress and egress, access to install, maintain, or replace any and all equipment, cables or other devices DataNet deems necessary to provide Services contained in Appendix A. In the event that the Customer's designated location(s) are not along public rights-of-way, and private property must be crossed, either aerially or underground, it is the Customer's sole responsibility to ensure that DataNet's standard utility easement is fully executed and approved by either the property owner(s) or the owner's authorized agents.

11. **Guarantee of Service:** Hudson Valley DataNet provides standard service as defined as Level A in Appendix C ("Level-of-Service Classifications"). Level A guarantees that its Service will be online and available 99.9% of the time as measured over any 30-day period. In the event that 0.1% downtime is exceeded in any given month, DataNet will credit Customer with one full days usage (1/30th of MRC). This guarantee applies to normal operating conditions, and does not cover Service outages due to a Force Majeure Event as defined in Section 22. DataNet is not responsible for business losses, loss of revenue, or other damages as a result of Service outages, regardless of the cause. The Customer may elect to receive a higher level of availability as provided in Appendix C. If elected, DataNet provides Service guaranteed to the higher level by establishing physically redundant network loops and/or networks with guaranteed backup protection links. DataNet may use third party providers for Off-Net Services to provide the Service(s).
12. **Third Party Services:** DataNet does interconnect with major local and long distance telephone service companies and other CLECs and will assist Customer in obtaining access to additional services from these companies ("Third Party Services"). The provision of and billing for these Third Party Services may be by these other service companies, and not by DataNet. DataNet is not responsible for the quality and reliability of Third Party Services. DataNet's sole responsibility is in the provision of Service to a point of demarcation designated as DataNet's, at the Third Party's physical location. Customer is responsible for obtaining and maintaining any and all necessary approvals for interconnection between DataNet and the Third Party's network.
13. **Liability and Warranties:** Except as otherwise set forth in this Agreement, DataNet makes no warranties, representations, or other Agreements, express or implied with respect to the Service, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. In no event shall either Party be liable for special, incidental, consequential, indirect or punitive damages, loss of revenue or profit, loss of goodwill, loss or use of any property, cost of substitute performance, equipment or Services, downtime costs and claims of either Party for damages, even if such Party is advised of the possibility of such damages. DataNet is not responsible for any warranty offered by the Customer to any third party or

any warranty offered by any third party to the Customer. DataNet's entire liability for any claim, loss expense or damage under this Agreement or any Service Order shall in no event exceed the sum actually paid by Customer to DataNet for the Service, which gives rise to the claim. DataNet shall use all commercially reasonable efforts to maintain the Service to Customer as specified herein.

14. **Indemnification:** Subject to the limitations set forth in Section 13, above, DataNet (including its affiliates, subsidiaries, members, stockholders, directors, officers, employees and its agents), and the Customer shall indemnify and hold the other harmless from and against all liabilities, claims, damages, losses, costs, expenses and judgments (including reasonable attorney's fees) and causes of action arising out of or in connection with this Agreement or any Service Order.
15. **Third Party Beneficiary:** The provisions of this Agreement are for the sole benefit of the Parties to this Agreement and no third party may seek to enforce or benefit from these provisions.
16. **Choice of Law:** The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of New York. Parties agree that any action or suit commenced pursuant to or in respect of this Agreement shall be brought in the State or Federal courts situated in Orange or Westchester Counties, New York.
17. **Material Change in Law:** If any Regulatory Requirement has the effect of canceling, changing or superseding any material term or provision of this Agreement, then this Agreement will be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the Parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either Party may terminate this Agreement and/or any Service Order impacted by the Regulatory Requirement effective as of the date of notice by providing written notice to the other Party.
18. **Notices:** All notices, demands, requests, or other communications which may be, or are required to be, given or served, or sent by any Party to any other Party pursuant to this Agreement shall be in writing and will be deemed to have been duly delivered or given when: (i) delivered by hand (with written confirmation of receipt) before 5:00 p.m. local time on a business day (or otherwise on the next succeeding business day); (ii) sent by facsimile before 5:00 p.m. local time on a business day (or otherwise on the next succeeding business day) and a written confirmation of the transmission is received by the sender; or (iii) the next business day after being deposited for delivery with a nationally recognized overnight delivery service, such as Federal Express, and addressed or sent, as the case may be, to the appropriate addresses or facsimile numbers set forth on the Cover Sheet. Each Party may designate by notice in

writing a new address, to which any notice, demand, request or communication may thereafter be so given, served or sent.

19. **Severability:** Except for Sections 1, 5, 7, 8, 9 and 11 of this Agreement which are the essence of this Agreement and reflect the vital and central Agreement of the Parties with respect to the subject matter hereof and without which their bargain would not have been consummated, each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
20. **Credit Application:** DataNet may require Customer to submit a fully executed Credit Application prior to accepting a Service Order. The credit check may result in a requirement for a Security Deposit equal to two (2) months Service charge. This deposit, and/or the requirement to submit a credit application, may be waived solely at the discretion of DataNet. In the event Customer does not maintain a timely payment history, DataNet may require additional deposits and/or require the submission of a new credit application. Provided Customer has satisfied all payments, DataNet will return any deposit obtained at the end of the term of the Agreement.
21. **Regulatory Costs:** DataNet and Customer recognize that from time to time, Local, State and Federal Government agencies may impose additional taxes, assessments, franchise fees, and other forms of regulatory fees beyond the control of, or the scope of this Agreement. DataNet will pass on these additional costs in the form of a line item on Customer invoice entitled Regulatory fees.
22. **Force Majeure:** Neither Party shall have any liability to the other solely by virtue of the occurrence of a Force Majeure Event, whether such Force Majeure Event occasions a default or otherwise engenders a potential liability. A Force Majeure Event shall include, but not be limited to, events such as vandalism, acts of God, fire, flood, storms and storm damage, acts of war, terrorism, sabotage, riot or other civil disorders, actions of civil or military authorities, accidents of all types, and any and all other acts which are out of the control of DataNet. Lack of funds to make any required payment by Customer shall not be construed to be a Force Majeure Event.
23. **Default:** If a Party breaches any material term of this Agreement and the breach continues without remedy for forty-five (45) days after written notice of default, the other Party may terminate for cause any Service Order materially affected by the breach. However, if Customer is in breach of its payment obligations (including failure to pay a required deposit), then the provisions of Section 8, Suspension of Service shall apply to such Default. A Service Order may be terminated by either Party immediately upon written notice if the other Party has become insolvent or involved in a liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

This Agreement is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

Accepted by:

HUDSON VALLEY DATANET, LLC	CUSTOMER
By: _____ (Signature)	By: _____ (Signature)
Name: <u>John Galanti</u> (Print Name)	Name: _____ (Print Name)
Title: <u>President</u> Date: _____	Title: _____ Effective Date: _____

List of Attachments

- | | |
|-------------------|---|
| Appendix A | Service Order with Pricing |
| Appendix B | Provisioning & Installation |
| Appendix C | Level-of-Service Classifications |
| Appendix D | Access Agreement |
| Appendix E | Acceptable Use Policy |

Appendix A - Hudson Valley DataNet Service Order

Page 1 of 3

DataNet's Service is defined as DataNet establishing physical connectivity to the DataNet network at the data rate (bandwidth) and in the digital or telephonic protocol specified by the Customer in this Agreement. The physical connection may be fiber optic, coaxial, wireless, or twisted pair copper, depending on the Customer's needs and DataNet's choice, based on DataNet's engineering judgment.

For multiple locations, the Customer will specify the addresses and/or location(s), the physical position(s) within that location(s), the service required at each location, the data format(s) required, and the interconnection requirements to other networks, e.g. Internet portal access, or connectivity to another telephone service provider.

Standard Service, as defined by Level A in Appendix C, does not provide for physical, electrical, or optical redundancy or diversity.

For this Agreement, the Customer requests Level of Service Classification ____ as defined in Appendix C.

For this Agreement, the Customer requests connectivity at the listed location(s) defined below:

The bandwidth and data format/protocol for this/these location(s) are defined as follows:

Appendix A - Hudson Valley DataNet Service Order

Page 2 of 3

Order Number:	Sales Representative:
Tracking Number	

Customer Information

Customer:	
Billing Contact:	Email:
Phone Number:	Fax Number:
Billing Address:	
Technical Contact:	Email:
Phone Number:	Fax Number:
Mobile Number:	Other Number:
Comments:	

Service Information

Requested Due Date:	Term (months):
Service(s):	Protected: <input type="checkbox"/> Yes <input type="checkbox"/> No Diverse: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> SONET / TDM	<input type="checkbox"/> Private Network <input type="checkbox"/> Point-to-Point
	<input type="checkbox"/> DS-1 Framing: <input type="checkbox"/> SF/D4 <input type="checkbox"/> ESF <input type="checkbox"/> Unframed
	Termination: <input type="checkbox"/> RJ48X <input type="checkbox"/> RJ21 <input type="checkbox"/> RJ48 <input type="checkbox"/>
	RJ48C <input type="checkbox"/> Other
	Line Code: <input type="checkbox"/> B8ZS <input type="checkbox"/> AMI
<input type="checkbox"/> DS-3	Framing: <input type="checkbox"/> C-Bit <input type="checkbox"/> M13 <input type="checkbox"/> Unframed
	Termination:
<input type="checkbox"/> OC-3	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-3C	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-12	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-12C	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-48	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-48C	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-192	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> OC-192C	Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> ETHERNET	Interface: <input type="checkbox"/> 10/100T <input type="checkbox"/> 1000T <input type="checkbox"/> 1000SX <input type="checkbox"/> 1000LX
	Ring Bandwidth: _____ Mbps
	Indicate Drop Bandwidth at each Location below
<input type="checkbox"/> INTERNET	IP Addresses: _____ <input type="checkbox"/> DNS (add'l forms required)
	Bandwidth: _____
Notes:	
Location(s): (Indicate NPA/NXX at each site)	
Comments:	

Appendix A - Hudson Valley DataNet Service Order

Page 3 of 3

Pricing Terms and Length of Agreement

DataNet agrees to provide the communications Services to the Customer, at the locations and in the data formats specified in Appendix A, for a period of ___ months from Service Commencement Date. Upon signing, Customer agrees to arrange with building owner to have fully executed an Access Agreement substantially in the form of Appendix D to this Agreement, which provides DataNet access to install, maintain or replace any and all equipment, cables, or other devices DataNet deems necessary to provide Services contained in Appendix A.

In return for these Services, Customer agrees to pay DataNet invoice, within 25 days of invoice date (Due Date), the sum of \$_____ as a one-time Non-Recurring Charge and \$_____ as a Recurring Charge per month plus any applicable taxes or fees, for a period of _____ months under the payment terms described herein, beginning with the date DataNet delivers, and Service is accepted, to the point of demarcation referenced in Appendix A. In the event of partial activation of the total number of nodes, partial billing will result for those completed nodes.

The period of the Agreement may be extended or modified, and the service levels also be amended or modified at any time as requested by the Customer, and as agreed to by DataNet in a written quotation.

Service Commencement shall be determined using the following criteria:

- a) Completion of testing by DataNet and Acceptance by Customer/or
- b) If after two (2) Business Days from completion and turn over to Customer as specified Section 7, Customer does not attach equipment or reject service, service will be deemed accepted/ or
- c) In a multiple node network, Service Commencement will begin upon completion of a minimum of two nodes. Both Parties, in writing, prior to contract signing, shall agree upon any exceptions.

All Service Charges will begin on the Service Commencement Date. This date will be used to calculate Service Start date and Service End date.

Accepted by:

HUDSON VALLEY DATANET, LLC	CUSTOMER
By: _____ (Signature)	By: _____ (Signature)
Name: _____ (Print Name)	Name: _____ (Print Name)
Title: _____ Date: _____	Title: _____ Date: _____

Appendix B Provisioning and Installation

1. **Provisioning:** Provisioning will be provided as set forth in the Service Order.
2. **On-Net Services:** Service provided by DataNet on the DataNet Network.
3. **Off-Net Services:** Service provided through DataNet, on a network other than the DataNet Network.
4. **Ordering Service**
 - a) **Service Order Issuance:** Upon receipt of a Service Order from Customer, DataNet will provide a unique order identifier and confirmation to the e-mail address or fax number provided on the Service Order to Customer ("Acknowledgement") in approximately one (1) business day following the receipt of the Service Order.
 - b) **On-Net Service Firm Order Commitment ("FOC"):** If DataNet is able to provide the On-Net Service set forth in the Service Order and accepts the Service Order then DataNet shall provide an On-Net FOC to the e-mail address or fax number provided on the Service Order to Customer as soon as any corrections, clarifications or provisioning required for the processing of the Service Order are made and understood by the Parties. Such FOC will contain a statement stating an "on or before" date on which Customer will receive the design layout record ("DLR") and circuit ID for the Service ordered.
 - c) **Off-Net Service Firm Order Commitment ("FOC"):** If DataNet is able to provide the Off-Net Service set forth in the Service Order and accepts the Service Order after receipt of the Off-Net Service provider's FOC, then DataNet shall provide an Off-Net FOC to the e-mail address or fax number provided on the Service Order to Customer as soon as any corrections, clarifications or provisioning required for the processing of the Service Order are made and understood by the Parties. Such FOC will contain a statement stating an "on or before" date on which Customer will receive the design layout record ("DLR") and circuit ID for the Service ordered.
5. **Service:** DataNet will provide Service to the DataNet "Point of Demarcation" contained in the Service Order. Equipment and Service on the Customer-side of the demarcation are the responsibility of Customer. Equipment and Service on the DataNet-side of the demarcation are the responsibility of DataNet, and DataNet will maintain all such equipment. DataNet will test the Service and at the completion thereof, shall notify Customer that the Service is available for use. DataNet shall install its equipment in the Customer's designated location, provided the location has adequate space, is secure and has acceptable environmental conditions for temperature, humidity and air quality for the requested Level-of-Service (refer to Appendix C). In a multi-tenant building, the Customer shall secure space for the DataNet equipment from the landlord in a common area of the building that satisfies the same space, security and environmental conditions as stated in the prior sentence.
6. **Notice of Completion:** DataNet will provide a notice of completion including DataNet's Trouble Reporting and Escalation Procedure to the e-mail address or fax number provided on the Service Order to the Customer of the service completion Date. Customer has two business days to verify completion and proper operation of the Service. Unless DataNet is notified of problems with the Service, billing will commence two days after the notice of completion

DataNet shall not be liable for any damages due to late Service Dates including, but not be limited to, delays (i) obtaining regulatory approvals and right-of-ways, (ii) concerning material deliveries and (iii) labor related matters beyond its control.
7. **Off-Net Service Installation:** The installation interval for Off-Net Dedicated Transport is on an ICB (Individual Case Basis).
8. **Cancellation By Customer:** Customer may cancel a Service Order if DataNet receives written notice of cancellation before the FOC has been issued without termination liability for that Service Order. If Customer cancels a Service Order after the FOC has been issued, the Early Termination provisions as set forth in this Agreement shall apply.

Appendix C

Hudson Valley DataNet Level-of-Service Classifications

Overview

DataNet's business philosophy is to provide high speed, high reliability network communications capabilities to its Customers at a reasonable price. DataNet expects its basic Service offering (Level A) to experience downtime of less than 0.1% (uptime of over 99.9% as measured on an monthly basis), and includes performance guarantees in its Service offering to this effect. However, some Customers will require online performance greater than the standard offering. To this end, DataNet has defined and developed Service offerings (Levels AA and AAA) that provide increasing levels of network reliability and uptime to meet Customer's needs. The reliability levels projected for these Service offerings are defined below.

It should be noted that the actual reliability of any circuit is dependant on both the network performance and the Customer premise facilities. Accordingly, DataNet service level commitments are contingent on the Customer providing the minimum level of facilities as described below. DataNet is not responsible for degradation of Service or outages caused by power failure and/or failure due to environmental conditions outside of the tolerances specified below that affect the normal operation of equipment at the Customer's site.

Level A: (>99.9% Uptime)

This level of Service is DataNet's standard offering, and is suitable for most commercial users. With this Service, the Customer is provided access through a fiber optic or copper cable connection to DataNet's network. There is no physical, electrical, or optical redundancy or diversity in this standard class of service. Minimum Customer premise facility requirements for 99.9% circuit reliability are:

Secure, dust-free equipment location in a dedicated utilities room.

- Dedicated 20-Amp electrical circuit
- Temperature control (40 to 80-deg F)
- Battery backup

Level AA: (>99.99% Uptime)

DataNet provides this level of Service to commercial users who place a very high priority in maintaining continuity of Service. Examples of these users are e-businesses, surveillance and alarm Services, emergency medical systems, etc. With AA-level Service, the user is provided two circuits for network redundancy. Minimum Customer premise facility requirements for 99.99% circuit reliability are:

- Secure, DataNet-controlled equipment location with 24x7x365 access.
- NEBS-1 compliant equipment (all Customer equipment connecting to the DataNet terminal).
- Dedicated 20-Amp electrical circuit.
- Battery backup (four hour minimum).
- Environmental control – HVAC, dust-free, 72-deg F with less than 10% variance, and controlled humidity.

Level AAA: (>99.999% Uptime)

AAA Service is provided to users that require extremely high levels of system reliability. These users may be telephone companies, ISP's, local radio and TV stations, emergency medical systems, etc. Level-AAA Service must be defined in a dialog between the Customer and DataNet's technical staff based on the Customer's specific needs. The users of this Service receive divergent path redundant circuits for the greatest network reliability. Minimum Customer premise facility requirements for 99.999% circuit reliability are:

- Secure, DataNet controlled equipment location with 24x7x365 access.
- NEBS-3 compliant equipment (all Customer equipment connecting to the DataNet terminal).
- Dual Dedicated 20-Amp AC electrical circuits.
- Battery Backup with emergency power generation.
- Customer equipment has dual-card redundancy for copper interfaces (DS1, DS3 etc.) to the DataNet network.
- Customer equipment has dual-card and drop redundancy for optical interfaces to the DataNet network.
- Environmental control – HVAC, dust-free, 72-deg F with less than 2% variance, and controlled humidity.

These Level AAA networks, by definition, are custom designed circuits that require close interaction between the Customer and DataNet. If DataNet is to provide these circuits, a Non-Recurring Engineering (NRB) charge for design may be required of the Customer. Special construction charges may also apply. DataNet will define all such charges in a written quotation in response to a Customer request.

APPENDIX D

ACCESS AGREEMENT

This Agreement between Hudson Valley DataNet, LLC, a Delaware limited liability company, with its principal place of business at 900 Corporate Blvd, Newburgh NY 12550, hereinafter known as DataNet, and _____, hereinafter known as "Landlord/Building Owner", with a principal place of business at:

(Address)

grants DataNet the right of ingress and egress to both the building(s) and grounds (installation address), along with an easement to install, upgrade, maintain, or remove conduit, manholes, cables and equipment for the purpose of providing any and all Services DataNet is legally able to deliver & requested by business entities or tenants located at:

(Installation Address)

DataNet agrees to install any required conduit, manholes, cable and equipment in a businesslike and professional manner, in a location mutually agreed upon by both Parties. DataNet also agrees that any damage done to other facilities during the course of installation or removal of its facilities will be effectively restored to "as before" condition, less normal wear and tear, at DataNet's expense. Any conduit and manholes installed by DataNet will become the property of the Landlord/Building Owner once installed by DataNet. Spare conduit shall not be considered abandoned unless DataNet is no longer serving Customers at this location or complex.

Landlord/Building Owner agrees to provide access to utility rooms and all other common areas required to install and service equipment. It is further agreed that DataNet may have, if required, a separate, dedicated 20 Amp electrical circuit for its equipment, and a secure area accessible only to DataNet employees or representatives.

This Agreement shall be binding upon and be for the benefit of Parties, their respective successors and assigns. Upon written notice, either Party may assign this Agreement to any subsidiary, parent or affiliated company, or pursuant to any reorganization or merger of its business, or pursuant to any sale or transfer of all or substantially all of its assets. No other assignment by either Party will be permitted without the prior written consent of the other Party, which consent shall not be unreasonably withheld or denied. The Landlord/Building Owner consents to any and all recordation of the Agreement, which DataNet may deem advisable to protect the access and easement granted to it hereunder.

Hudson Valley DataNet, LLC

Landlord/Building Owner

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Date: _____

Date: _____

18-11



Hudson Valley DataNet Customer Service Agreement

This Agreement (Agreement) is entered into by and between Hudson Valley DataNet, LLC ("DataNet"), a Delaware limited liability company located at 900 Corporate Blvd, Newburgh, NY 12550 and _____, with its principal place of business located at _____ ("Customer"), for the purpose of DataNet providing Customer with the Telecommunications Services (Services) set forth and outlined in one or more Service Order(s) attached as Appendix A, which is made a part hereof by this reference as fully as though set forth herein at length. DataNet and the Customer are each referred to as a party ("Party") and together as parties ("Parties") to this Agreement.

- 1. Period of Agreement:** This Agreement is effective as of the date signed by the Customer ("Effective Date") and shall remain in full force and effect for a period of _____ months ("Initial Term") from the Service Commencement Date as defined in Section 7 and shall thereafter be automatically renewed for a period of one (1) year ("Renewal Term"), unless written notice is received by DataNet a minimum of thirty (30) days prior to the expiration date of the Agreement. The term ("Term") of this Agreement shall include the Initial Term, the Renewal Term and any period after the end of the Initial Term or Renewal Term as per the following sentence. In the event the Service Commitment Period of an additional Service Order(s) extends beyond the period of the Initial Term or the Renewal Term of the Agreement or Service continues to be provided after the Initial Term or Renewal Term without a Service Order extending the term, the Services for such Service Order(s) will remain in effect for the agreed upon Service Commitment Period, subject to all the terms and conditions of this Agreement as if it were still in effect with respect to the Services.
- 2. Privacy:** The terms of this Agreement are the proprietary information of both DataNet and the Customer, and are not to be disclosed under any circumstances without the written permission of *both* Parties, unless so required by law.
- 3. Assignment:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Upon written notice, DataNet may assign this Agreement to any subsidiary, parent or to an entity affiliated with DataNet, or to DataNet's successor pursuant to any reorganization or merger of its business, or pursuant to any sale or transfer of all or substantially all of its assets. No other assignment by DataNet will be permitted without the prior written consent of the Customer, which consent shall not be unreasonably withheld or denied.
- 4. Service:** DataNet will provide to Customer the use of the Services as ordered by Customer on a DataNet Service Order shown in Appendix A (Service Order). Services will be established in accordance with the Provisioning and Installation process set forth in Appendix B (Provisioning and Installation). Customer may use the Services for all

lawful telecommunications purposes, but Customer shall in no event be deemed to have a greater right to use the Services than that which DataNet may legally provide under applicable Federal and State laws and regulations. In the event that Service includes Internet access service, Customer will execute and abide by the Accepted Use Policy (AUP), as shown in Appendix E.

- 5. Service Charges:** Customer agrees to pay all monthly recurring charges (MRC), non-recurring charges (NRC), taxes, fees and other similar charges legally entitled to be collected by DataNet as a direct result of DataNet's provision and/or arrangement for Service to Customer under a Service Order that arise out of Customer's use of the Services and any Third Party Services secured by DataNet for the Customer. These monthly recurring and non-recurring charges are set forth in each Service Order as listed in Pricing Terms and Length of Agreement section of Appendix A. Unless notified by the other Party at least 30 days prior to the end of the term of a Service Order that the Service will be disconnected, DataNet will automatically renew the Service Order for a term of twelve (12) months.

Charges listed in Pricing Terms and Length of Agreement section of Appendix A do not include applicable fees and charges such as access or egress (or related) charges imposed by third parties; taxes, tax-related or tax-like surcharges; or other similar charges. Customer agrees to pay all additional charges, to the extent applicable, in addition to the charges set forth in this Agreement.

- 6. Invoice:** The MRC for an initial partial month of Service (if applicable) shall be pro-rated for that portion of said partial month of Service in which Service is actually provided, and may be invoiced upon initiation of such Service. On an ongoing basis, DataNet will invoice Customer for Service charges each month for that month, at the beginning of the month's Service. Any NRC shall be invoiced upon receipt by DataNet of each Service Order. Customer shall pay all invoices (MRC, NRC) within 25 days of the date of the invoice (Due Date) without reduction, set-off or adjustment and send its payments to the address specified on the invoice. DataNet may impose a late payment charge ("Late Payment Charge(s)"), if payment is not received by the Due Date, of the lower of one and one-half percent (1 1/2%) per month or the maximum rate allowed by law on the non-disputed amounts due under any invoice not paid by the Due Date. Any Customer dispute of charges must be made in writing to the Finance Department, Hudson Valley DataNet, LLC, 900 Corporate Blvd., Newburgh, NY 12550 before the Due Date. DataNet will review any disputed charges and reply to the Customer within 10 working days of receipt with a decision regarding such dispute.
- 7. Service Commencement:** The Service Commencement Date shall be determined using the earlier of the following criteria:

- a) Completion of testing by DataNet and Acceptance by Customer/or
- b) If after two (2) Business Days after completion and turn over, Customer does not attach equipment or reject service, service will be deemed accepted/ or
- c) In a multiple node network, Service Commencement will begin upon completion of a minimum of two nodes. Both Parties, in writing, prior to contract signing, shall agree upon any exceptions.

All Service Charges will begin on the Service Commencement Date of each Service Order. This date will be used to calculate Service Start date and Service End date.

- 8. **Suspension of Service:** DataNet may, at its sole discretion, but with at least 10 days written notification to the Customer, suspend Service if payment of all non-disputed amounts has not been received by the Due Date. DataNet will restore Service if DataNet receives payment of all current and overdue charges of all non-disputed amounts. Service will only be restored after payment is received, and within 72 hours of said receipt. DataNet will assess a Service restoration fee ("Service Restoration Fee") of up to \$750 to restore Service after suspension of Service for nonpayment. Failure to make payment for all non-disputed Service Charges, Late Payment Charges and Service Restoration Fees within ten (10) calendar days following the suspension of service, shall be considered an Early Termination election by the Customer.
- 9. **Early Termination:** If Customer cancels or terminates this Agreement prior to the end of the Term, or terminates a Service Order prior to the end of its term (refer also to Appendix B for Cancellation by Customer), except if early termination is due to DataNet's inability to deliver Services as per Appendix B, Customer agrees to pay DataNet a termination charge ("Termination Charge"), as liquidated damages and not as a penalty or forfeiture as follows: (i) all applicable unpaid non-recurring charges (NRC) specified in a Service Order, plus (ii) all disconnection, early cancellation or termination charges payable to any third parties incurred by DataNet on Customer's behalf relating to the Service in that Service Order, plus (iii) 100% of the balance of the value of the MRC for the remaining term of the Service Order cancelled by the Customer. All termination charges shall be due and payable within thirty (30) days of the effective date of termination. Customer shall be liable for any penalty incurred by DataNet with respect to any third party including any third party provider of Off-Net Service(s) as defined herein and any special construction and unrecoverable costs that DataNet has incurred in efforts to establish and provide Services pursuant to the Service Order and this Agreement. Notwithstanding any provision or inference to the contrary contained herein, any monetary sums deemed to be due and payable under this Agreement or Service Order shall survive its termination indefinitely.
- 10. **Rights of Access:** It is the Customer's sole responsibility to provide a fully executed Access Agreement(s), included as

Appendix D, prior to Service being installed at Customer's designated location(s). This Access Agreement(s) shall guarantee, at no cost to DataNet, DataNet's rights to ingress and egress, access to install, maintain, or replace any and all equipment, cables or other devices DataNet deems necessary to provide Services contained in Appendix A. In the event that the Customer's designated location(s) are not along public rights-of-way, and private property must be crossed, either aerially or underground, it is the Customer's sole responsibility to ensure that DataNet's standard utility easement is fully executed and approved by either the property owner(s) or the owner's authorized agents.

- 11. **Guarantee of Service:** Hudson Valley DataNet provides standard service as defined as Level A in Appendix C ("Level-of-Service Classifications"). Level A guarantees that its Service will be online and available 99.9% of the time as measured over any 30-day period. In the event that 0.1% downtime is exceeded in any given month, DataNet will credit Customer with one full days usage (1/30th of MRC). This guarantee applies to normal operating conditions, and does not cover Service outages due to a Force Majeure Event as defined in Section 22. DataNet is not responsible for business losses, loss of revenue, or other damages as a result of Service outages, regardless of the cause. The Customer may elect to receive a higher level of availability as provided in Appendix C. If elected, DataNet provides Service guaranteed to the higher level by establishing physically redundant network loops and/or networks with guaranteed backup protection links. DataNet may use third party providers for Off-Net Services to provide the Service(s).
- 12. **Third Party Services:** DataNet does interconnect with major local and long distance telephone service companies and other CLECs and will assist Customer in obtaining access to additional services from these companies ("Third Party Services"). The provision of and billing for these Third Party Services may be by these other service companies, and not by DataNet. DataNet is not responsible for the quality and reliability of Third Party Services. DataNet's sole responsibility is in the provision of Service to a point of demarcation designated as DataNet's, at the Third Party's physical location. Customer is responsible for obtaining and maintaining any and all necessary approvals for interconnection between DataNet and the Third Party's network.
- 13. **Liability and Warranties:** Except as otherwise set forth in this Agreement, DataNet makes no warranties, representations, or other Agreements, express or implied with respect to the Service, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. In no event shall either Party be liable for special, incidental, consequential, indirect or punitive damages, loss of revenue or profit, loss of goodwill, loss or use of any property, cost of substitute performance, equipment or Services, downtime costs and claims of either Party for damages, even if such Party is advised of the possibility of such damages. DataNet is not responsible for any warranty offered by the Customer to any third party or

any warranty offered by any third party to the Customer. DataNet's entire liability for any claim, loss expense or damage under this Agreement or any Service Order shall in no event exceed the sum actually paid by Customer to DataNet for the Service, which gives rise to the claim. DataNet shall use all commercially reasonable efforts to maintain the Service to Customer as specified herein.

14. **Indemnification:** Subject to the limitations set forth in Section 13, above, DataNet (including its affiliates, subsidiaries, members, stockholders, directors, officers, employees and its agents), and the Customer shall indemnify and hold the other harmless from and against all liabilities, claims, damages, losses, costs, expenses and judgments (including reasonable attorney's fees) and causes of action arising out of or in connection with this Agreement or any Service Order.
15. **Third Party Beneficiary:** The provisions of this Agreement are for the sole benefit of the Parties to this Agreement and no third party may seek to enforce or benefit from these provisions.
16. **Choice of Law:** The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of New York. Parties agree that any action or suit commenced pursuant to or in respect of this Agreement shall be brought in the State or Federal courts situated in Orange or Westchester Counties, New York.
17. **Material Change in Law:** If any Regulatory Requirement has the effect of canceling, changing or superseding any material term or provision of this Agreement, then this Agreement will be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the Parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either Party may terminate this Agreement and/or any Service Order impacted by the Regulatory Requirement effective as of the date of notice by providing written notice to the other Party.
18. **Notices:** All notices, demands, requests, or other communications which may be, or are required to be, given or served, or sent by any Party to any other Party pursuant to this Agreement shall be in writing and will be deemed to have been duly delivered or given when: (i) delivered by hand (with written confirmation of receipt) before 5:00 p.m. local time on a business day (or otherwise on the next succeeding business day); (ii) sent by facsimile before 5:00 p.m. local time on a business day (or otherwise on the next succeeding business day) and a written confirmation of the transmission is received by the sender; or (iii) the next business day after being deposited for delivery with a nationally recognized overnight delivery service, such as Federal Express, and addressed or sent, as the case may be, to the appropriate addresses or facsimile numbers set forth on the Cover Sheet. Each Party may designate by notice in

writing a new address, to which any notice, demand, request or communication may thereafter be so given, served or sent.

19. **Severability:** Except for Sections 1, 5, 7, 8, 9 and 11 of this Agreement which are the essence of this Agreement and reflect the vital and central Agreement of the Parties with respect to the subject matter hereof and without which their bargain would not have been consummated, each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
20. **Credit Application:** DataNet may require Customer to submit a fully executed Credit Application prior to accepting a Service Order. The credit check may result in a requirement for a Security Deposit equal to two (2) months Service charge. This deposit, and/or the requirement to submit a credit application, may be waived solely at the discretion of DataNet. In the event Customer does not maintain a timely payment history, DataNet may require additional deposits and/or require the submission of a new credit application. Provided Customer has satisfied all payments, DataNet will return any deposit obtained at the end of the term of the Agreement.
21. **Regulatory Costs:** DataNet and Customer recognize that from time to time, Local, State and Federal Government agencies may impose additional taxes, assessments, franchise fees, and other forms of regulatory fees beyond the control of, or the scope of this Agreement. DataNet will pass on these additional costs in the form of a line item on Customer invoice entitled Regulatory fees.
22. **Force Majeure:** Neither Party shall have any liability to the other solely by virtue of the occurrence of a Force Majeure Event, whether such Force Majeure Event occasions a default or otherwise engenders a potential liability. A Force Majeure Event shall include, but not be limited to, events such as vandalism, acts of God, fire, flood, storms and storm damage, acts of war, terrorism, sabotage, riot or other civil disorders, actions of civil or military authorities, accidents of all types, and any and all other acts which are out of the control of DataNet. Lack of funds to make any required payment by Customer shall not be construed to be a Force Majeure Event.
23. **Default:** If a Party breaches any material term of this Agreement and the breach continues without remedy for forty-five (45) days after written notice of default, the other Party may terminate for cause any Service Order materially affected by the breach. However, if Customer is in breach of its payment obligations (including failure to pay a required deposit), then the provisions of Section 8, Suspension of Service shall apply to such Default. A Service Order may be terminated by either Party immediately upon written notice if the other Party has become insolvent or involved in a liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

This Agreement is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

Accepted by:

HUDSON VALLEY DATANET, LLC	CUSTOMER
By: _____ (Signature)	By: _____ (Signature)
Name: <u>John Galanti</u> (Print Name)	Name: _____ (Print Name)
Title: <u>President</u> Date: _____	Title: _____ Effective Date: _____

List of Attachments

- | | |
|-------------------|---|
| Appendix A | Service Order with Pricing |
| Appendix B | Provisioning & Installation |
| Appendix C | Level-of-Service Classifications |
| Appendix D | Access Agreement |
| Appendix E | Acceptable Use Policy |

Appendix A - Hudson Valley DataNet Service Order

Page 1 of 3

DataNet's Service is defined as DataNet establishing physical connectivity to the DataNet network at the data rate (bandwidth) and in the digital or telephonic protocol specified by the Customer in this Agreement. The physical connection may be fiber optic, coaxial, wireless, or twisted pair copper, depending on the Customer's needs and DataNet's choice, based on DataNet's engineering judgment.

For multiple locations, the Customer will specify the addresses and/or location(s), the physical position(s) within that location(s), the service required at each location, the data format(s) required, and the interconnection requirements to other networks, e.g. Internet portal access, or connectivity to another telephone service provider.

Standard Service, as defined by Level A in Appendix C, does not provide for physical, electrical, or optical redundancy or diversity.

For this Agreement, the Customer requests Level of Service Classification _____ as defined in Appendix C.

For this Agreement, the Customer requests connectivity at the listed location(s) defined below:

The bandwidth and data format/protocol for this/these location(s) are defined as follows:

Appendix A - Hudson Valley DataNet Service Order

Page 2 of 3

Order Number:	Sales Representative:
Tracking Number	

Customer Information

Customer:	
Billing Contact:	Email:
Phone Number:	Fax Number:
Billing Address:	
Technical Contact:	Email:
Phone Number:	Fax Number:
Mobile Number:	Other Number:
Comments:	

Service Information

Requested Due Date:	Term (months):
Service(s):	Protected: <input type="checkbox"/> Yes <input type="checkbox"/> No Diverse: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> SONET / TDM	<input type="checkbox"/> Private Network <input type="checkbox"/> Point-to-Point
	<input type="checkbox"/> DS-1 Framing: <input type="checkbox"/> SF/D4 <input type="checkbox"/> ESF <input type="checkbox"/> Unframed
	Termination: <input type="checkbox"/> RJ48X <input type="checkbox"/> RJ21 <input type="checkbox"/> RJ48 <input type="checkbox"/>
	RJ48C <input type="checkbox"/> Other
	Line Code: <input type="checkbox"/> B8ZS <input type="checkbox"/> AMI
<input type="checkbox"/> DS-3	Framing: <input type="checkbox"/> C-Bit <input type="checkbox"/> M13 <input type="checkbox"/> Unframed
	Termination:
	<input type="checkbox"/> OC-3 Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-3C Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-12 Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-12C Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-48 Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-48C Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-192 Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
	<input type="checkbox"/> OC-192C Termination: <input type="checkbox"/> SC <input type="checkbox"/> LC <input type="checkbox"/> Other _____
<input type="checkbox"/> ETHERNET	Interface: <input type="checkbox"/> 10/100T <input type="checkbox"/> 1000T <input type="checkbox"/> 1000SX <input type="checkbox"/> 1000LX
	Ring Bandwidth: _____ Mbps
	Indicate Drop Bandwidth at each Location below
<input type="checkbox"/> INTERNET	IP Addresses: _____ <input type="checkbox"/> DNS (add'l forms required)
	Bandwidth: _____
Notes:	
Location(s): (Indicate NPA/NXX at each site)	
Comments:	

Appendix A - Hudson Valley DataNet Service Order

Page 3 of 3

Pricing Terms and Length of Agreement

DataNet agrees to provide the communications Services to the Customer, at the locations and in the data formats specified in Appendix A, for a period of ___ months from Service Commencement Date. Upon signing, Customer agrees to arrange with building owner to have fully executed an Access Agreement substantially in the form of Appendix D to this Agreement, which provides DataNet access to install, maintain or replace any and all equipment, cables, or other devices DataNet deems necessary to provide Services contained in Appendix A.

In return for these Services, Customer agrees to pay DataNet invoice, within 25 days of invoice date (Due Date), the sum of \$_____ as a one-time Non-Recurring Charge and \$_____ as a Recurring Charge per month plus any applicable taxes or fees, for a period of _____ months under the payment terms described herein, beginning with the date DataNet delivers, and Service is accepted, to the point of demarcation referenced in Appendix A. In the event of partial activation of the total number of nodes, partial billing will result for those completed nodes.

The period of the Agreement may be extended or modified, and the service levels also be amended or modified at any time as requested by the Customer, and as agreed to by DataNet in a written quotation.

Service Commencement shall be determined using the following criteria:

- a) Completion of testing by DataNet and Acceptance by Customer/or
- b) If after two (2) Business Days from completion and turn over to Customer as specified Section 7, Customer does not attach equipment or reject service, service will be deemed accepted/ or
- c) In a multiple node network, Service Commencement will begin upon completion of a minimum of two nodes. Both Parties, in writing, prior to contract signing, shall agree upon any exceptions.

All Service Charges will begin on the Service Commencement Date. This date will be used to calculate Service Start date and Service End date.

Accepted by:

HUDSON VALLEY DATANET, LLC	CUSTOMER
By: _____ (Signature)	By: _____ (Signature)
Name: _____ (Print Name)	Name: _____ (Print Name)
Title: _____ Date: _____	Title: _____ Date: _____

Appendix B Provisioning and Installation

1. **Provisioning:** Provisioning will be provided as set forth in the Service Order.
2. **On-Net Services:** Service provided by DataNet on the DataNet Network.
3. **Off-Net Services:** Service provided through DataNet, on a network other than the DataNet Network.
4. **Ordering Service**
 - a) **Service Order Issuance:** Upon receipt of a Service Order from Customer, DataNet will provide a unique order identifier and confirmation to the e-mail address or fax number provided on the Service Order to Customer ("Acknowledgement") in approximately one (1) business day following the receipt of the Service Order.
 - b) **On-Net Service Firm Order Commitment ("FOC"):** If DataNet is able to provide the On-Net Service set forth in the Service Order and accepts the Service Order then DataNet shall provide an On-Net FOC to the e-mail address or fax number provided on the Service Order to Customer as soon as any corrections, clarifications or provisioning required for the processing of the Service Order are made and understood by the Parties. Such FOC will contain a statement stating an "on or before" date on which Customer will receive the design layout record ("DLR") and circuit ID for the Service ordered.
 - c) **Off-Net Service Firm Order Commitment ("FOC"):** If DataNet is able to provide the Off-Net Service set forth in the Service Order and accepts the Service Order after receipt of the Off-Net Service provider's FOC, then DataNet shall provide an Off-Net FOC to the e-mail address or fax number provided on the Service Order to Customer as soon as any corrections, clarifications or provisioning required for the processing of the Service Order are made and understood by the Parties. Such FOC will contain a statement stating an "on or before" date on which Customer will receive the design layout record ("DLR") and circuit ID for the Service ordered.
5. **Service:** DataNet will provide Service to the DataNet "Point of Demarcation" contained in the Service Order. Equipment and Service on the Customer-side of the demarcation are the responsibility of Customer. Equipment and Service on the DataNet-side of the demarcation are the responsibility of DataNet, and DataNet will maintain all such equipment. DataNet will test the Service and at the completion thereof, shall notify Customer that the Service is available for use. DataNet shall install its equipment in the Customer's designated location, provided the location has adequate space, is secure and has acceptable environmental conditions for temperature, humidity and air quality for the requested Level-of-Service (refer to Appendix C). In a multi-tenant building, the Customer shall secure space for the DataNet equipment from the landlord in a common area of the building that satisfies the same space, security and environmental conditions as stated in the prior sentence.
6. **Notice of Completion:** DataNet will provide a notice of completion including DataNet's Trouble Reporting and Escalation Procedure to the e-mail address or fax number provided on the Service Order to the Customer of the service completion Date. Customer has two business days to verify completion and proper operation of the Service. Unless DataNet is notified of problems with the Service, billing will commence two days after the notice of completion

DataNet shall not be liable for any damages due to late Service Dates including, but not be limited to, delays (i) obtaining regulatory approvals and right-of-ways, (ii) concerning material deliveries and (iii) labor related matters beyond its control.
7. **Off-Net Service Installation:** The installation interval for Off-Net Dedicated Transport is on an ICB (Individual Case Basis).
8. **Cancellation By Customer:** Customer may cancel a Service Order if DataNet receives written notice of cancellation before the FOC has been issued without termination liability for that Service Order. If Customer cancels a Service Order after the FOC has been issued, the Early Termination provisions as set forth in this Agreement shall apply.

Appendix C

Hudson Valley DataNet Level-of-Service Classifications

Overview

DataNet's business philosophy is to provide high speed, high reliability network communications capabilities to its Customers at a reasonable price. DataNet expects its basic Service offering (Level A) to experience downtime of less than 0.1% (uptime of over 99.9% as measured on an monthly basis), and includes performance guarantees in its Service offering to this effect. However, some Customers will require online performance greater than the standard offering. To this end, DataNet has defined and developed Service offerings (Levels AA and AAA) that provide increasing levels of network reliability and uptime to meet Customer's needs. The reliability levels projected for these Service offerings are defined below.

It should be noted that the actual reliability of any circuit is dependant on both the network performance and the Customer premise facilities. Accordingly, DataNet service level commitments are contingent on the Customer providing the minimum level of facilities as described below. DataNet is not responsible for degradation of Service or outages caused by power failure and/or failure due to environmental conditions outside of the tolerances specified below that affect the normal operation of equipment at the Customer's site.

Level A: (>99.9% Uptime)

This level of Service is DataNet's standard offering, and is suitable for most commercial users. With this Service, the Customer is provided access through a fiber optic or copper cable connection to DataNet's network. There is no physical, electrical, or optical redundancy or diversity in this standard class of service. Minimum Customer premise facility requirements for 99.9% circuit reliability are:

Secure, dust-free equipment location in a dedicated utilities room.

- Dedicated 20-Amp electrical circuit
- Temperature control (40 to 80-deg F)
- Battery backup

Level AA: (>99.99% Uptime)

DataNet provides this level of Service to commercial users who place a very high priority in maintaining continuity of Service. Examples of these users are e-businesses, surveillance and alarm Services, emergency medical systems, etc. With AA-level Service, the user is provided two circuits for network redundancy. Minimum Customer premise facility requirements for 99.99% circuit reliability are:

- Secure, DataNet-controlled equipment location with 24x7x365 access.
- NEBS-1 compliant equipment (all Customer equipment connecting to the DataNet terminal).
- Dedicated 20-Amp electrical circuit.
- Battery backup (four hour minimum).
- Environmental control – HVAC, dust-free, 72-deg F with less than 10% variance, and controlled humidity.

Level AAA: (>99.999% Uptime)

AAA Service is provided to users that require extremely high levels of system reliability. These users may be telephone companies, ISP's, local radio and TV stations, emergency medical systems, etc. Level-AAA Service must be defined in a dialog between the Customer and DataNet's technical staff based on the Customer's specific needs. The users of this Service receive divergent path redundant circuits for the greatest network reliability. Minimum Customer premise facility requirements for 99.999% circuit reliability are:

- Secure, DataNet controlled equipment location with 24x7x365 access.
- NEBS-3 compliant equipment (all Customer equipment connecting to the DataNet terminal).
- Dual Dedicated 20-Amp AC electrical circuits.
- Battery Backup with emergency power generation.
- Customer equipment has dual-card redundancy for copper interfaces (DS1, DS3 etc.) to the DataNet network.
- Customer equipment has dual-card and drop redundancy for optical interfaces to the DataNet network.
- Environmental control – HVAC, dust-free, 72-deg F with less than 2% variance, and controlled humidity.

These Level AAA networks, by definition, are custom designed circuits that require close interaction between the Customer and DataNet. If DataNet is to provide these circuits, a Non-Recurring Engineering (NRE) charge for design may be required of the Customer. Special construction charges may also apply. DataNet will define all such charges in a written quotation in response to a Customer request.

APPENDIX D

ACCESS AGREEMENT

This Agreement between Hudson Valley DataNet, LLC, a Delaware limited liability company, with its principal place of business at 900 Corporate Blvd, Newburgh NY 12550, hereinafter known as DataNet, and _____, hereinafter known as "Landlord/Building Owner", with a principal place of business at:

(Address)

grants DataNet the right of ingress and egress to both the building(s) and grounds (installation address), along with an easement to install, upgrade, maintain, or remove conduit, manholes, cables and equipment for the purpose of providing any and all Services DataNet is legally able to deliver & requested by business entities or tenants located at:

(Installation Address)

DataNet agrees to install any required conduit, manholes, cable and equipment in a businesslike and professional manner, in a location mutually agreed upon by both Parties. DataNet also agrees that any damage done to other facilities during the course of installation or removal of its facilities will be effectively restored to "as before" condition, less normal wear and tear, at DataNet's expense. Any conduit and manholes installed by DataNet will become the property of the Landlord/Building Owner once installed by DataNet. Spare conduit shall not be considered abandoned unless DataNet is no longer serving Customers at this location or complex.

Landlord/Building Owner agrees to provide access to utility rooms and all other common areas required to install and service equipment. It is further agreed that DataNet may have, if required, a separate, dedicated 20 Amp electrical circuit for its equipment, and a secure area accessible only to DataNet employees or representatives.

This Agreement shall be binding upon and be for the benefit of Parties, their respective successors and assigns. Upon written notice, either Party may assign this Agreement to any subsidiary, parent or affiliated company, or pursuant to any reorganization or merger of its business, or pursuant to any sale or transfer of all or substantially all of its assets. No other assignment by either Party will be permitted without the prior written consent of the other Party, which consent shall not be unreasonably withheld or denied. The Landlord/Building Owner consents to any and all recordation of the Agreement, which DataNet may deem advisable to protect the access and easement granted to it hereunder.

Hudson Valley DataNet, LLC

Landlord/Building Owner

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX E

ACCEPTABLE USE POLICY (AUP) Hudson Valley DataNet Internet Service

INTRODUCTION AND SCOPE

General:

The Internet is a semi-public network, the effectiveness of which is dependent upon both the good will and voluntary good behavior of its users. To define expected good behavior, most Internet Service Providers (ISP's) have developed Acceptable Use Policies (AUP). Internet users are expected to comply with these AUPs as a condition to their being granted use of the ISP's network. AUP-compliant behavior helps assure that Internet service will remain a reliable and useful communications medium. Accordingly, DataNet's Acceptable Use Policy sets forth user guidelines defining acceptable use of the Hudson Valley DataNet, LLC Internet Network. All users of the Hudson Valley DataNet, LLC Internet Network are expected to comply with this policy. Users must also comply with all terms and conditions of the applicable service agreements, and with any additional policies that may be applicable to a specific service offered by Hudson Valley DataNet, LLC.

Definitions:

As used in this Acceptable Use Policy, the following terms shall have the respective meanings set forth below:

"Client" or "Clients" shall mean any person or entity executing an agreement with DataNet pursuant to which such person or entity subscribes for DataNet Internet Network services from DataNet and any user permitted by such person or entity to utilize the DataNet Internet Network to access the Internet. "DataNet" includes, without limitation, Hudson Valley DataNet, LLC and any division, subsidiary, affiliate, or parent corporation of any of the foregoing. "DataNet Internet Network" includes, without limitation, Hudson Valley DataNet, LLC networks that provide access to the Internet, and all systems, services, and products that utilize, or are utilized in connection with the Internet access portion of Hudson Valley DataNet, LLC networks.

Conformance With Policies of Other ISPs:

In situations where data communications are carried across networks of other Internet Service Providers (ISPs), users of the DataNet Internet Network must also conform to the applicable acceptable use policies of such other ISPs.

Responsibilities of Hudson Valley DataNet, LLC (DataNet):

DataNet is responsible for designing and providing an Internet access network that will support the needs of DataNet's Clients. This network will be designed for reliability (uptime) in excess of 99.9%, and will have sufficient Internet access bandwidth, including reasonable oversubscription, to meet the normal business bandwidth needs of all DataNet clients. DataNet may make changes in its AUP from time to time, and will post all such changes on its website. Use of the DataNet Internet Network services after changes to the AUP are posted on the DataNet's web site, www.hvdata.net, shall be deemed to constitute Client's acceptance of such new or additional terms of the AUP.

DataNet does not monitor, verify, warrant, or vouch for the accuracy and quality of the information that Clients may acquire over the Internet. For this reason, the Client must exercise his or her best judgment in relying on information obtained from the Internet. Clients also should be aware that some material posted to the Internet is sexually explicit or otherwise potentially offensive to some or all Clients. Because DataNet does not monitor or censor the Internet, and will not attempt to do so, DataNet cannot accept any responsibility for injury to its Clients that results from inaccurate, unsuitable, offensive, or illegal Internet communications.

DataNet does not review, edit, censor, or take responsibility for any information its Clients may create on the Internet. DataNet is not responsible for the privacy or security of the websites or on-line communications of its Clients, or for the security of information transmitted over DataNet facilities. Accordingly, DataNet urges its Clients to take appropriate measures to safeguard their Internet communications.

DataNet will not intentionally monitor private electronic mail messages sent or received by its subscribers unless required to do so by law, governmental authority, or when public safety is at stake. DataNet may, however, monitor its service electronically to determine that its facilities are operating satisfactorily. Use of the DataNet Internet Network by Client constitutes Client's authorization to DataNet to monitor its services consistent with the foregoing sentence.

DataNet may disclose information, including but not limited to, information concerning a Client, a transmission made using our network, or a web site, in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request. DataNet assumes no obligation to inform the Client that Client-specific information has been

provided to any person or entity. DataNet will continuously operate its DataNet Internet Network in conformity with applicable laws.

DataNet may disclose Client information or information transmitted over its network where necessary to protect DataNet and others from harm, or where such disclosure is necessary to the proper operation of the system.

Responsibilities of Users – Prohibited Uses of DataNet's Internet Access:

When Clients place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information they create is carried over DataNet's Internet Network and may reach a large number of people, including both subscribers and non-subscribers of DataNet, Clients' postings to the Internet may affect other subscribers and may harm DataNet's goodwill, business reputation, and operations. For these reasons Clients violate DataNet policy and the Service Agreement when they, engage in the following prohibited activities:

Spamming: -- Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). This practice is not only harmful because of its negative impact on consumer attitudes toward Hudson Valley DataNet, LLC, but also because it can potentially overload the DataNet's network and disrupt service to DataNet subscribers. Also, maintaining an open SMTP relay is prohibited. When a complaint is received, DataNet will determine, based upon all available evidence, whether the email recipients were from an "opt-in" email list.

Intellectual Property Violations -- Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, engaging in activity that violates privacy, publicity, or other personal rights of others. DataNet is required by law to remove or block access to Customer content upon receipt of a proper notice of copyright infringement. It is also DataNet policy to terminate the privileges of Clients who commit repeat violations of copyright laws.

Obscene Speech or Materials -- Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. Using DataNet's network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. DataNet does not prohibit any material allowed by law or protected by the First Amendment to the United States Constitution. DataNet is required by law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through the DataNet's Internet Network.

Defamatory or Abusive Language -- Using DataNet's network as a means to transmit or post defamatory, harassing, abusive, or threatening language.

Forging of Headers or Content -- Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message. Forging or misrepresenting any data with false or misleading content.

Illegal or Unauthorized Access to Other Computers or Networks -- Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).

Exploitation of Vulnerabilities in Hardware or Software for Malignant purposes -- Exploitation of scripts presented on web pages (i.e. forms for answering questions or entering data.). Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any

connected network, system, service, or equipment by utilizing programs, scripts, or commands to abuse a website (i.e. DDOS, SYN Floods or similar attacks.)

Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities -- Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, flooding, mail bombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.

Facilitating a Violation of this AUP -- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to SPAM, initiation of pinging, flooding, mail bombing, denial of service attacks, and piracy of software.

Export Control Violations -- Exporting encryption software over the Internet or otherwise, to points outside the United States.

Other Illegal Activities -- Engaging in activities that are determined to be illegal, including advertising, transmitting, pyramid schemes, fraudulently charging credit cards, and pirating software.

Other Activities -- Engaging in activities, whether lawful or unlawful, that DataNet determines to be harmful to its subscribers, operations, reputation, goodwill, or Customer relations.

CONSEQUENCES OF NON-COMPLIANCE:

Violation of this Acceptable Use Policy is strictly prohibited. DataNet maintains the right to terminate a Customer service that violates this acceptable use policy. Upon such a termination of service pursuant to this AUP, Clients will still be financially responsible for any early termination fees that apply.

In the event of any actual or potential violation, DataNet reserves the right to suspend or terminate, either temporarily or permanently, any or all services provided by DataNet, to block any abusive activity, or to take any other actions as deemed appropriate by DataNet in its sole discretion. Clients who violate this Acceptance Use Policy may incur criminal or civil liability. DataNet may refer violators to civil or criminal authorities for prosecution, and will cooperate fully with applicable government authorities in connection with the civil or criminal investigations of violations.

DataNet expects that its subscribers who provide Internet services to others will comply fully with all applicable laws concerning the privacy of on-line communications. A Client's failure to comply with those laws will violate DataNet policy. Finally, DataNet wishes to emphasize that by using the DataNet Internet Network, Clients agree to indemnify DataNet for any violation of this AUP, law, or DataNet policy that results in loss to DataNet or the bringing of any claim against DataNet by any third-party. That is, if DataNet is sued because of a Client's activity, the Client will pay any damages awarded against DataNet, plus costs and reasonable attorneys' fees.

Responsibilities of Resellers and Downstream Service Providers:

Some users may be Customers of Internet Service Providers (ISPs) that receive Internet connectivity through DataNet. Such ISPs (also known as resellers or downstream service providers) are responsible for informing their Customers of this Acceptable Use Policy and for enforcing its restrictions with regard to their

Customers' actions. Complaints about Customers of any such reseller or downstream service provider shall be forwarded to such reseller or downstream service provider for resolution. If at any time DataNet determines that such reseller or downstream service provider is not taking appropriate action in accordance with this Acceptable Use Policy, DataNet shall work with such reseller or downstream service provider to review their policies and enforcement procedures. If the reseller or downstream service provider continues to fail to take appropriate action, DataNet will take any action, as it deems appropriate, up to and including termination proceedings.

Additional Terms and Conditions:
The use of the DataNet Network by a Client is subject to the terms and conditions of any agreements entered into by such Client with DataNet. This Acceptable Use Policy is incorporated into such agreements by reference.

Limitation of Liability:

DATANET SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, LOSS OF USE, ETC., EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES BY VIRTUE OF OR AS A RESULT OF TAKING ANY ACTION PURSUANT TO THIS AUP. DATANET SHALL NOT BE LIABLE FOR ANY DIRECT OR ACTUAL DAMAGES, EXCEPT TO THE EXTENT SPECIFIED IN A WRITTEN OR ELECTRONIC AGREEMENT ENTERED INTO BETWEEN DATANET AND CLIENT. DATANET MAKES NO WARRANTIES OR REPRESENTATIONS HEREIN, EITHER EXPRESS OR IMPLIED, CONCERNING THE DATANET NETWORK, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY AND ANY OTHER WARRANTY IMPLIED BY LAW.

Questions, Comments, or Complaints

We hope this Acceptable Use Policy is helpful in clarifying the obligations of Internet users, including DataNet and its Clients, as responsible members of the Internet.

If you are unsure whether any contemplated use or action is permitted, please send questions or comments to DataNet at:

admin@hvdata.net

Any complaints regarding prohibited use or other abuse of the DataNet Network, including violations of this Acceptable Use Policy, should be sent to DataNet at:

abuse@hvdata.net

Sites experiencing live attacks from DataNet Customers should call 845-567-6367 to submit a complaint as quickly as possible.

For further information about this Acceptable Use Policy, please contact:

Network Administrator
Hudson Valley DataNet
900 Corporate Blvd.
Newburgh, NY 12550

The DataNet Internet Network may be used only for lawful purposes. As a provider of Internet access, and other Internet-related services, DataNet offers its subscribers and their Customers and users, the means to acquire and disseminate a wealth of public, private, commercial, and non-commercial information. DataNet respects the fact that the Internet provides a forum for free and open discussion and dissemination of information. However, when there are competing interests at issue, DataNet reserves the right to take certain preventative or corrective actions for the benefit of the majority of the users of DataNet's network.

Acknowledged and Agreed: _____ Date: _____
(Signature)

Name _____ Title: _____
(Print Name)

Customer Name and Organization: _____

RESOLUTION NO.: 19 - 2011

OF

JANUARY 24, 2011

**RESOLUTION AMENDING RESOLUTION NO: 185-2009,
THE 2010 BUDGET OF THE CITY OF NEWBURGH,
TO REFLECT THE REVENUES AND EXPENDITURES
IN THE GRANT FUND (CG) AND THE GENERAL FUND
FOR THE IMPLEMENTATION OF THE OPERATION IMPACT VII GRANT**

WHEREAS, the City Council by Resolution No. 135-2010 dated June 14, 2010 authorized the City Manager to apply for and if awarded accept a \$950,050.00 grant from the NYS Department of Criminal Justice Services ("NYSDCJS"), with no City Match required, to be used to enhance law enforcement crime reduction efforts within the City; and

WHEREAS, the NYSDCJS has awarded the City \$319,058.00 with a local match of \$122,544.00 required for use to enhance law enforcement crime reduction efforts during the fiscal period July 1, 2010 through June 30, 2011; and

BE IT RESOLVED, that Resolution No: 185-2009, the 2010 Budget of the City of Newburgh, is hereby amended to reflect the Revenues and Expenditures in the Grant Fund (CG) and the 2010 General Fund Budget which is required to implement the Grant as awarded as set forth on the attached Schedule "A".

Councilwoman Bello moved and Councilman Dillard seconded that the resolution be adopted.

**Ayes - Councilwoman Bell, Councilwoman Bello, Councilman Dillard,
Mayor Valentine - 4**

ADOPTED

IMPACT VII = 7-1-10 to 6-30-11

<u>Grant Fund</u>	<u>Expenditures</u>	<u>Revenues</u>	<u>Fund</u>	<u>Dept</u>	<u>Item</u>	<u>Proj</u>	<u>Location</u>
Salaries - 4 Officers	\$ 277,205		CG	3120	0101	3303	2010
Holidays	10,877		CG	3120	0105	3303	2010
Longevity	3,775		CG	3120	0107	3303	2010
CSEA Retirement	12,101		CG	3120	0810	3303	2010
Police Retirement	44,991		CG	3120	0815	3303	2010
Social Security	22,327		CG	3120	0830	3303	2010
MTA	992		CG	3120	0835	3303	2010
Health Insurance	63,933		CG	3120	0860	3303	2010
Life DBL	266		CG	3120	0870	3303	2010
Employee Benefits	2,614		CG	3120	0880	3303	2010
Life Insurance	421		CG	3120	0890	3303	2010
EAP	100		CG	3120	0891	3303	2010
Travel-Training	2,000		CG	3120	0463	3303	2010
NYS-DJCS		\$ 319,058	CG	3120	3323	3303	2010
Transfer from General Fund		122,544	CG	3120	5031	3303	2010
	<u>441,602</u>	<u>441,602</u>					

General Fund

Transfer to Grant Fund	\$ 122,544	-	A	9901	0009	3303	2010
Contingency	-	\$ 122,544	A	1900	1990	3303	2010
	<u>\$ 122,544</u>	<u>\$ 122,544</u>					

Details Supporting Transfer

<u>Account</u>	<u>Title</u>	<u>Personnal Budget</u>	<u>Impact Grant</u>	<u>General Fund Transfer</u>
Salary:				
101	Salary (4)	\$ 277,205	\$ 253,645	\$ 23,560
105	Holiday	10,877	-	10,877
107	Longevity	3,775	-	3,775
	Total 100s	<u>291,857</u>	<u>253,645</u>	<u>38,212</u>
Benefits:				
810	CSEA Ret.	12,101	6,347	5,754
815	P/F Ret.	44,991	18,046	26,945
830	Social Security	22,327	17,316	5,011
835	MTA	992	-	992
860	Health Ins.	63,933	21,704	42,229
870	Life DBL	266	-	266
880	Empl Benefits	2,614	-	2,614
890	Life Insurenace	421	-	421
891	EAP	100	-	100
	Total 800s	<u>147,745</u>	<u>63,413</u>	<u>84,332</u>
Contractual:				
461	Travel - Trng	-	2,000	(2,000)
TOTAL		<u>\$ 439,602</u>	<u>\$ 319,058</u>	<u>\$ 120,544</u>

RESOLUTION NO.: 20 - 2011

OF

JANUARY 24, 2011

**RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A
GRANT FROM THE UNITED STATES DEPARTMENT OF HOMELAND
SECURITY FOR A SECURITY FIRE PREVENTION AND SAFETY GRANT
IN AN AMOUNT UP TO ONE MILLION (\$1,000.00.00) DOLLARS
WITH NO MATCHING FUNDS**

WHEREAS, , the City of Newburgh Fire Department wishes to apply for a grant from the United States Department of Homeland Security in an amount up to One Million (\$1,000,000.00) Dollars with no matching funds; and

WHEREAS, the grant seeks to address innovative strategies or unique proposals that reach for a higher level of safety for the public with respect to fire and fire related hazards which include public education campaigns, risk assessments, improved code enforcement and arson prevention; and

WHEREAS, this Council has determined that making such application 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 submit an application to the United States Department of Homeland Security for a Security Fire Prevention and Safety Grant in an amount of up to One Million (\$1,000,000.00) Dollars with no matching funds.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

**Ayes - Councilwoman Bell, Councilwoman Bello, Councilman Dillard,
Mayor Valentine - 4**

ADOPTED

RESOLUTION NO.: 21 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT DONATIONS IN SUPPORT OF THE
CITY OF NEWBURGH'S JULY 4th 2011 CELEBRATION**

WHEREAS, various businesses, firms and individuals are making contributions of money and in-kind assistance to support the City of Newburgh's July 4th 2011 Celebration; and

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

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 said donations with the appreciation and thanks of the City of Newburgh on behalf of its children, families and citizens, for their support and sponsorship of this event.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

**Ayes - Councilwoman Bell, Councilwoman Bello, Councilman Dillard,
Mayor Valentine - 4**

ADOPTED

RESOLUTION NO.: 22 - 2011

Of

JANUARY 24, 2011

**A RESOLUTION AUTHORIZING THE APPLICATION TO
THE HUDSON RIVER VALLEY COUNCIL ON BEHALF
OF THE GREENWAY COMMUNITIES PROGRAM FOR A GRANT
FOR THE PURPOSE OF PURSUING A LAND USE PLANNING
AND EVALUATION PROCESS FOR THE NEWBURGH
FOOD & URBAN GARDENS COMMUNITY PLANNING PROJECT**

WHEREAS, a community group, along with experts from the City of Newburgh staff, Glynwood, PathStone and the Orange County Land Trust, has convened to plan for an increase in food production and availability in the City of Newburgh and to implement a series of community gardens and urban agriculture projects in the City of Newburgh on existing vacant land; and

WHEREAS, a critical part of this project is land use planning where the necessary tasks involved include extensive surveying, evaluation and data entry, research, community outreach and planning activities, and the sampling and analysis of soil and materials in order to identify and plan the best sites for community gardening that will yield the healthiest food for the greatest number of citizens; and

WHEREAS, in order to ensure the effective identification and planning of these sites, the City intends to request a grant for Ten Thousand (\$10,000) Dollars, to fund PathStone Community Improvement of Newburgh to coordinate this effort, to develop appropriate evaluation tools, organize public events, enlist Cornell University's soil testing services, seek the counsel of Glynwood and Orange County Land Trust, and coordinate volunteer work; and

WHEREAS, the result of this project will be a more visually, physically, and environmentally healthy City; and

WHEREAS, this Council has determined that making such application is in the best interests of the City of Newburgh; and

WHEREAS, the City was the first designated Greenway Community in the Hudson Valley;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the grant application be submitted to the Greenway Communities Program in the amount of Ten Thousand (\$10,000) Dollars, and if awarded, the City Manager be and he is hereby authorized to accept said grant and execute an agreement with the Hudson River Valley Greenway Communities Council.

Acting City Manager, Richard Herbek said that this is not related to any particular parcel. This would be a planning exercise which PathStone has offered to spearhead and it will also involve the Orange County Land Trust by trying to increase food production and availability in the city by implementing down the road a series of community gardens and agriculture projects on vacant land.

Mayor Valentine asked if this is at no cost to the City.

Councilman Dillard said that he believes that there is a cost and his concern is that the grant from last year has not been closed out. It appears as though before you go after this grant we should close out the other grant to see what the outcome was. Also he doesn't think that the City can spearhead this project without consulting with PACE because we have an agreement with them.

Acting City Manager, Richard Herbek said that he doesn't see any problem with closing out the previous grant and this is certainly something that can be coordinated with the PACE Project. These grants are applied on an annual basis and with the time frame he believes that this has to be applied for in February.

Councilman Dillard asked if that would be before the next Council meeting.

Councilwoman Bell said that she is very much in favor of this because this brings community gardening to a whole different level. There was a group of young people who did the community garden last year and she applauded them because she knows that some of them have really struggled. For them to come out and plant and get mentoring was really incredible. It was a first attempt but it was a good start. With this one she hears about Urban Farming and the idea of Community Supported Agriculture which

could be incredibly wonderful and green for our city. Why would we not want it?

Councilman Dillard said that it is the due diligence of the Council to adhere to their fiduciary responsibility and he doesn't think that this project can go forward without consulting with PACE.

Councilwoman Bell said that she doesn't see what PACE has to do with this. She thinks it could be wonderful for our community.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

Ayes - Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 3

Nays - Councilman Dillard - 1

ADOPTED

RESOLUTION NO.: 23 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION ADOPTING
RULES OF ORDER AND PROCEDURE
FOR THE COUNCIL OF THE CITY OF NEWBURGH
FOR THE YEAR 2011**

BE IT RESOLVED, that the Council of the City of Newburgh, New York adopts for use during the year 2011 the Rules of Conduct and Procedure: By Laws, a copy of which is attached hereto and made a part of this Resolution; and

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

Councilwoman Bell moved and Councilman Dillard seconded that the resolution be tabled.

Ayes -Councilwoman Bell, Councilwoman Bello, Councilman Dillard-3

Nays - Mayor Valentine - 1

TABLED

City of Newburgh City Council
Rules of Order and Procedure

Rule I: General Rules of Procedure

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

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

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

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

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

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

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

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

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

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

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

Rule II. Order of Business

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

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

Rule III. Voting

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

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

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

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

~~Rule IV. Executive Session~~

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

Rule IV. Participation of City Manager and Staff

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

~~Rule VI. Suspension of the Rules~~

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

Rule ~~VII~~V. Guidelines for Public Comment

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

B. Speakers must adhere to the following guidelines:

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

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

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

Rule ~~VIII~~ VI. Use of Recording Equipment

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

Rule ~~IX~~ VII. Rules for Public Hearings

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

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

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

(c) Speakers must limit their remarks to ~~five (5)~~ three (3) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.

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

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

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

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

Rule ~~X~~ VIII. Work Sessions

There shall be regular work sessions of the Council ~~to be conducted by the City Manager and~~ held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at ~~7:30~~ 6:00 p.m. in the ~~activity center~~ Council Chambers unless the Council by majority vote cancels or changes the time or place of such session. The Rules ~~IV, V, & VI, and VIII~~ of the Rules of Order of the Council shall apply to all work sessions.

Rule ~~XI~~ IX. Robert's Rules of Order

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

| **Rule ~~XII~~X. Adoption of Ordinances**

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on agenda items before Council action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

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

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)

Further Amendments: January 24, 2011 (by track change)

RESOLUTION NO.: 24 - 2011

OF

JANUARY 24, 2011

**RESOLUTION DIRECTING THE CITY MANAGER TO SERVE
A NOTICE TO CURE ON PRIMO CONTRACTING, LLC
REGARDING THE SALE AND REDEVELOPMENT OF THE CITY-OWNED
PROPERTIES LOCATED AT 128 DUBOIS STREET (SECTION 18, BLOCK 1,
LOT 27) AND 251 THIRD STREET (SECTION 22, BLOCK 1, LOT 17)**

WHEREAS, the City of Newburgh ("City") and Primo Contracting, LLC ("Primo") executed a Land Purchase Agreement dated December 7, 2007 ("LPA") for sale and redevelopment of the City-owned properties located at 128 Dubois Street (Section 18, Block 1, Lot 27) and 251 Third Street (Section 22, Block 1, Lot 17) (collectively the "Remaining Properties"); and

WHEREAS, Primo has failed to obtain all necessary approvals and permits to undertake improvements and has failed to closed title on the Remaining Properties, as required under the LPA;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that the City Manager is hereby directed to serve a fourteen (14) day Notice to Cure on Primo regarding the sale and redevelopment of the Remaining Properties, as required under the LPA and in the general form attached hereto, together with such other terms and conditions as are satisfactory to the Corporation Counsel, all in accordance with the LPA.

Mayor Valentine said that if we get these two properties back he would like staff to approach Habitat on both of these buildings because he believes that they could definitely do these. These are tough buildings but he believes that Habitat would be up to the challenge.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

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

ADOPTED

NOTICE TO CURE

DATE: JANUARY 25, 2011

TO: BENEDETTO PAPALEO, MANAGING MEMBER
PRIMO CONTRACTING, LLC
259 ANN STREET
NEWBURGH, NEW YORK 12550

RE: SALE AND REDEVELOPMENT OF CITY-OWNED PROPERTIES
LOCATED AT 128 DUBOIS STREET (18-1-27) AND
251 THIRD STREET (22-1-17)

PLEASE BE ADVISED, pursuant to Section 5 of that Land Purchase Agreement dated December 7, 2007 by and between the City of Newburgh ("City") and Primo Contracting, LLC ("Primo"), a copy of which is attached hereto, that

YOU ARE HEREBY NOTIFIED that you are in default of the Land Purchase Agreement regarding those two (2) City-owned properties located at 128 Dubois Street (18-1-27) and 251 Third Street (22-1-17) (collectively the "Remaining Properties"), by having failed to obtain all necessary approvals and permits to undertake improvements and having failed to close title on the Remaining Properties, as required under Sections 4 and 7 of the Land Purchase Agreement;

THE CITY HEREBY DEMANDS that you fully and satisfactorily cure such default within fourteen (14) days of receipt of this Notice of Cure, as required under Section 5 of the Land Purchase Agreement; and

PLEASE BE FURTHER ADVISED that if you do not fully and satisfactorily cure such default, the City shall have the right to notify you of the City's cancellation of the Land Purchase Agreement regarding the Remaining Properties, and all further rights and obligations of the City and Primo regarding the Remaining Properties shall cease and terminate, and the City shall pursue what remedies it has under the Land Purchase Agreement regarding the Remaining Properties, including but not limited to those under Section 17 thereof.

CITY OF NEWBURGH

By _____

Richard F. Herbek
Acting City Manager

cc: Mayor Nicholas Valentine
Councilmember Regina Angelo
Councilmember Marge Bell
Councilmember Christine Bello
Councilmember Curlie Dillard
Lorene Vitek, City Clerk
Bernis Nelson, Corporation Counsel
Edward Lynch, Director of Planning and Development
Craig Marti, City Engineer
Cheryl Gross, Director of Finance/Comptroller
Michael Ferrara, Acting Police Chief
Michael Vatter, Fire Chief
Steven Hunter, Building Inspector

24-11

LAND PURCHASE AGREEMENT

AGREEMENT made this 7th day of December, 2007 (the "Effective Date"), between THE CITY OF NEWBURGH, a municipality organized and existing under the laws of the State of New York, with offices at 83 Broadway, City Hall, Newburgh, New York 12550, (hereinafter "City" or "Seller"), and Primo Contracting, LLC, having an address of 259 Ann Street, Newburgh, New York 10701 (hereinafter "Primo" or "Purchaser").

WITNESSETH

WHEREAS, the Seller is the owner of certain improved real property located at 223 Third Street, 227 Third Street, 251 Third Street and 128 Dubois Street, City of Newburgh, New York, and identified on the official Tax Map of the City of Newburgh as Section 22, Block 2, Lot 10, Section 22, Block 2, Lot 8, Section 22, Block 1, Lot 17 and Section 18, Block 1, Lot 27, respectively, County of Orange, and State of New York (hereinafter referred to as the "Premises"), and

WHEREAS, the Purchaser is desirous of acquiring and the Seller is desirous of selling the Premises, upon and subject to the terms and conditions set forth below,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. SALE. Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase and acquire from Seller, on and subject to the terms, covenants and conditions hereinafter set forth, the Premises, described at Paragraph "2" below.

2. PREMISES. The Premises are bounded and described as set forth in Schedule "A" annexed. This sale includes all of Seller's right, title and interest in and to:

- a. all easements, rights of way or use, privileges, licenses, permits and right to the same belonging to or appertaining to the Premises, subject to zoning and other ordinances, codes and regulations of the City; and
- b. all rights, title, and interest of the Seller in and to any unpaid award for damage to the Premises by reason of change in grade of any street. Seller will execute to the Purchaser on the closing date all proper instruments for the conveyance of such title and assignment and collection of any such award.

3. PURCHASE PRICE. The purchase price for the Premises (the "Purchase Price") is the sum of Two Thousand and 00/100 (\$2,000.00) Dollars for 223 Third Street, the sum of Two Thousand and 00/100 (\$2,000.00) for 227 Third Street, the sum of Five Hundred and 00/00 (\$500.00) for 251 Third Street and the sum of Two Thousand and 00/100 (\$2,000.00) Dollars for 128 Dubois Street for a total of Six Thousand, Five Hundred and 00/100 (\$6,500.00) Dollars, which shall be paid as follows:

Paid

- a. One Thousand and 00/100 (\$1,000.00) Dollars (the "Deposit") shall be paid by Purchaser upon the execution of this Agreement, to the City of Newburgh. The Deposit shall be applied against the Purchase Price at closing.
- b. Five Thousand, Five Hundred and 00/100 (\$5,500.00) Dollars shall be paid to the Seller by Purchaser at closing by good certified check of Purchaser, or official check of a bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Seller.

4. QUALIFICATIONS

Within ninety (90) days of the execution of this Agreement, Purchaser shall submit to the Director of the Department of Planning and Development of the City of Newburgh, New York 12550, evidence that Purchaser has applied for and received from the City of Newburgh Planning Board, Zoning Board of Appeals, Architectural Review Commission, and any and all other City boards and agencies with jurisdiction and power of approval over the premises, such approvals and permits as may be legally required to undertake the improvements to the premises as described in this Agreement. Purchaser shall not be deemed to be in violation of this condition if Purchaser can demonstrate that it has diligently pursued all such approvals and permits, and that any delays in securing same has occurred in the normal and regular course of events and is the result of natural and unforeseeable causes, and is not due to the neglect or failure of Purchaser to properly pursue same.

Purchaser shall be deemed to be in compliance with the requirements set forth in this Section 4 if any delay in meeting the time limits and requirements as set forth herein is caused by a force majeure or other reasonably unforeseeable event, and not by the negligence or failure of Purchaser to conduct the development of the premises as described herein with due diligence.

5. SELLERS RIGHT TO RECAPTURE

- a. In the event Purchaser fails to provide Seller with any of the plans, descriptions, qualifications, materials or other information as called for in Paragraph 4; and/or in the event Purchaser fails to diligently undertake the clean-up of the premises and the improvement thereof as called for in this Agreement, Seller shall have the right to serve upon Purchaser by regular mail a Notice to Cure. Said Notice to Cure shall specify such terms, conditions and requirements as Seller contents that Purchaser has failed to satisfy. Purchaser shall have fourteen (14) days from the date said Notice to Cure was received to satisfy Seller's demands to comply with the requirements of this Agreement, unless further extended by Seller in writing.
- b. In the event that Purchaser remains out of compliance with the terms and conditions of this Agreement following the serving of such Notice to Cure and the time frame for compliance therewith and any extensions thereof, then Seller shall have the right to notify Purchaser of Seller's cancellation of this contract, and all further rights and obligations of the parties hereunder shall cease and terminate, in keeping with Section 17 of this Agreement.

6. SUBDIVISION APPROVAL AND CONDITIONS.

- a. The Purchaser has reviewed each and all of the conditions imposed by the City upon the City's approval of the Project by City Council Resolution No.: 37-2007, of March 26, 2007, and the Purchaser agrees to purchase the property subject to the terms and conditions set forth in said resolution, including but not limited to obtaining the approval of all necessary regulatory agencies. The Seller shall have no obligation to take any further steps to satisfy the requirements of the project, nor shall Seller be obligated to incur any expense in connection therewith. A certified copy of Resolution No.: 37-2007 of March 26, 2007 is annexed hereto and made a part hereof.
- b. Purchaser will make its own evaluation and will not rely upon Seller concerning applicable regulations or requirements of any governmental authority or otherwise pertaining to the Premises including without limitations, zoning, buildings, traffic and environmental regulations or other requirements, and the availability of sewer, water and utilities, and Seller makes no representations or warranties with respect to any of the foregoing.
- c. Provided there is no cost or expense to the Seller, Seller shall cooperate fully with the Purchaser, as may be reasonably required, in any and all applications, proceedings and appeals made or prosecuted by or on behalf of Purchaser in connection with and consistent with the terms of this Agreement, and Seller agrees to execute and deliver all documents, consents or authorizations reasonably required by any governmental authority with respect thereto.
- d. Purchaser warrants and Seller relies upon the promise of the Purchaser that the Premises shall be used in connection with the construction of the Project of the Purchaser, to wit: To re-habilitate the existing buildings on the parcels designated as 223 Third Street, 227 Third Street and 251 Third Street as two-family dwellings and to rehabilitate the existing building on 128 Dubois Street as a three-family dwelling, with all buildings to be re-sold to an owner-occupant who shall establish his/her domicile and principal residence at said premises and maintain his/her domicile and principal residence at said premises for a period of at least five (5) years thereafter.

7. CLOSING. The "Closing" means the settlement of the obligations of the Seller and Purchaser to each other under this Agreement, including the payment by Purchaser to Seller of the purchase price and other sums due, in the manner set forth in this Agreement, and the delivery to Purchaser of the deed referred to in Paragraph "11 (b)" herein in proper statutory form for recording so as to transfer and convey to Purchaser, fee simple ownership to the property, free of all encumbrances except as provided herein (see Paragraph "11"). The deed will contain the covenant of Seller as required by Section 13 of the Lien Law of the State of New York. The closing of title to the property will occur at the office of Seller's attorney, within thirty (30) days after the issuance of all necessary government approvals, including a Building Permit issued by the City of Newburgh to Purchaser or its designee, if required, or at any other location agreed upon and convenient to both parties.

8. INSPECTION PERIOD. The Purchaser shall have a period of thirty (30) days (the "Inspection Period") commencing on the Effective Date, and ending at 4:00 p.m. on the thirtieth (30th) day thereafter, to conduct any and all tests, reviews, investigations, inquiries, research and analysis of the subject Premises, including environmental audits, engineering studies, planning and zoning reviews, which in the discretion of the Purchaser are necessary and desirable. Purchaser shall notify seller, in advance, of its desire to inspect the premises, and perform any tests and will arrange the same with Seller. In the event Purchaser is not satisfied with any aspect of the subject Premises, the Purchaser may elect to cancel this Agreement upon written notice to both Seller and the Escrow Agent given not later than the date and time the Inspection Period expires with time of the essence as to that date and time. In the event Purchaser elects to cancel this Agreement pursuant to this Paragraph, the Purchaser agrees to provide Seller with copies of any and all studies, reports, tests, applications, approvals, and documents prepared for the purpose of evaluation of the Premises, whereupon this Agreement shall be deemed null and void, without further force or effect. Time shall be of the essence as to the time periods provided in this paragraph.

9. ACCESS AND INSPECTIONS.

- a. Seller hereby grants to Purchaser, its agents, servants, employees and consultants, a license to enter in and upon the Premises throughout the term of this Agreement for the purpose of inspecting the Premises which inspections may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and evaluations as are reasonably required for the full and complete evaluation of the Premises and the full and complete prosecution of any applications for governmental approvals. Purchaser shall notify Seller of the date and time of such inspections and tests. The Purchaser agrees to conduct such inspections in such manner so as to cause a minimum of disturbance to the Premises. In connection with the exercise of the license granted to Purchaser herein, Purchaser agrees to hold Seller harmless from any loss, cost, damages, lawsuit, damage to person or property, and the cost of litigation (including attorneys fees) caused solely by Purchaser or its agents, servants or employees in the use of said licensing. After such access, Purchaser agrees to return the Premises to substantially the same condition as existed prior to said access. The provisions of this paragraph shall survive the closing of title.

[THIS SPACE INTENTIONALLY LEFT BLANK]

- b. Purchaser shall, at its sole expense, keep and maintain a policy of commercial public liability insurance which shall include coverage for their actions upon the Property during the term of this Agreement. This insurance policy shall name Seller as an additional insured and afford protection in limits of not less than \$1,000,000.00 for bodily injury or death in any one accident, and not less than \$500,000.00 for property damage. All insurance shall be effected under standard form policies, issued by insurers of recognized responsibility authorized to do business in the State of New York and having a national rating of A-9 or better, provided that, at the option of the Purchaser, such coverage may be effectuated through a blanket policy of insurance so long as the risks in respect of the Property are separately scheduled or identified. Purchasers will deliver to Seller within seven (7) days after the Effective Date, and prior to entry onto the Property, certificates of this insurance coverage and, not less than thirty (30) days prior to the expiration of the coverage, a certificate of the new policy accompanied by evidence reasonably satisfactory to Seller of payment of premiums therefor. Purchaser covenants, and this insurance coverage shall include, an agreement by the insurer that the policy shall not be canceled prior to the Closing or earlier termination of this Contract.

10. APPORTIONMENTS.

- a. At Closing, real property taxes, and water and sewer charges and rents, if applicable, will be apportioned and adjusted as of midnight preceding the Closing date, except that the parcels known as 223 Third Street and 251 Third Street are sold subject to city real property taxes for the first and second installments of 2007.
- b. The properties are sold subject to unpaid school taxes for the tax year of 2006-2007. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2006-2007.
- c. In the event that any time subsequent to the closing of title hereunder the Premises shall be charged with an assessment, penalty, interest as the result of the loss of a tax exemption whether for agriculture, veteran, senior citizen, or other exemption (which said assessment, penalty and/or interest is collectively referred to as "Roll-Back Taxes"), any such Roll-Back Taxes shall be the sole obligation of the Purchasers. This provision shall survive delivery of the deed.

11. TITLE.

- a. If, at the date of a closing there may be any taxes or other liens or encumbrances on the Premises which may be satisfied or discharged by the payment of money ("Monetary Liens") the Seller shall be obligated to pay and discharge the same. Seller may use the portion of the Purchase Price payable at or prior to the closing, to satisfy the Monetary Liens, provided the Seller shall simultaneously either (a) deliver to the Purchaser at the closing of title, instruments in recordable form and sufficient to satisfy such Monetary Liens of

record together with the cost or recording or filing said instruments; or (b) provided that the Seller has made arrangements with the title company of the Purchaser in advance of closing, Seller will deposit with said title company sufficient monies, acceptable to and required by it to insure obtaining and recording such satisfactions, and the issuance of title insurance to the Purchaser free of any exception for such Monetary Liens. The Purchaser, if request is made within a reasonable time prior to the closing of title, agree to provide at the closing separate bank or certified checks, aggregating the amount of any such Monetary Liens. The existence of any such Monetary Liens shall not be deemed objections to title if the Seller shall comply with the foregoing requirements.

- b. At the closing of title, the Seller will convey title to the Premises by standard City Quitclaim Deed, free and clear of all exceptions, liens and encumbrances, other than those shown on Schedule "B" attached hereto (collectively, "Permitted Exceptions"), said title to be insurable (subject to the Permitted Exceptions) by a Title Insurance Company licensed to do business within the State of New York at ordinary rates payable by Purchaser unless Purchaser shall have waived such objections as hereinafter provided. The payment of the New York State Transfer Tax shall be the obligation of the Purchaser.
- c. Within thirty (30) days of the Effective Date, the Purchaser shall deliver to the Seller a copy of the preliminary title insurance report, including the exception sheets, tax search, survey and survey reading, if any, and property description together with a written notice setting forth any and all objections to the Seller's title and if the written notice of objections is not given within such period, such title objections shall be deemed waived by Purchaser except for any objections which shall arise of record subsequent to the date of the preliminary title report of the Purchaser ("Subsequent Objections") and Purchaser shall, if possible, give Seller written notice of Subsequent Objections at least ten (10) days prior to the date set for closing. With respect to any objections, other than a Permitted Exception, Seller, shall have a period of forty-five (45) days, commencing with the receipt by Seller of Purchaser's notice of objections, within which to cause such objections to be cured or discharged to the satisfaction of Purchaser and its title company. If Seller attempts to cure or discharge the said objections but is unable or fails to do so by the end of the Cure Period, then upon the expiration of the Cure Period this Agreement shall be deemed canceled, unless Purchaser, no later than ten (10) days following the end of the Cure Period, shall notify Seller of their waiver of the said objections. If this Agreement is canceled pursuant to the provisions of this Paragraph the Deposit paid by the Purchaser pursuant to Paragraph "3(a)" above, shall be returned to Purchaser, whereupon this Agreement shall terminate and neither party shall have any liability to or claim against the other, whether at law or in equity.

12. REPRESENTATIONS OF SELLER. The Seller makes the following representations with respect to this transaction to the best of Seller's knowledge, same not to survive closing unless specifically noted to the contrary.

- a. There are no tenancies, written or oral, affecting the Premises, and no other persons have any right to occupy the same. No new tenancies are to be created or existing tenancies modified after execution of this Agreement without Purchasers' consent. The Premises will be conveyed vacant.
- b. Seller is not aware of any claims or conditions which would affect Seller's title to the Premises, or prevent Seller from conveying the quality of title described above.
- c. Seller has the authority to enter into this Agreement and to deliver the Deed to the Premises.
- d. Seller has no actual knowledge of any environmental constraints which would create a reporting or cleanup obligation under any local, regional, state or federal environmental regulation or statute, or the presence of any hazardous substances or spills on the Premises as defined by any local, regional state, or federal environmental regulation or statute.
- e. Seller has no actual knowledge of any threatened, anticipated, or pending eminent domain or condemnation action.

In the event Seller receives any information which would cause the above noted statements to be untrue or incomplete, Seller agrees to immediately notify Purchaser of such state of facts.

13. FIRPTA. Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined in IRC §1445, as amended, and the regulations issued thereunder ("Code Withholding Section"). At the Closing, Seller shall deliver to Purchaser a certification stating that Seller is not a foreign person, which certification shall be in the form then required by the Code Withholding Section.

14. PREMISES SOLD "AS IS". Purchaser has inspected the Premises and is thoroughly familiar with the physical condition thereof. Seller has not made and does not make any representations as to the physical condition thereof other than as heretofore set forth herein. Seller has not made and does not make any representations as to the physical condition, topography, drainage, or soil conditions, subdivisions, zoning, acreage, expense of operations or any other matter or thing affecting or related to the Premises except as herein specifically set forth, and Purchaser hereby expressly acknowledge that no such representations have been made, and Purchaser further acknowledges that they have inspected the Premises and agrees to take the property in its present condition "AS IS."

15. BROKER. Each party hereby represents and warrants to the other that there was no broker, finder or person acting as such in any way instrumental or having any part in bringing about this transaction. Each party covenants and agrees to indemnify and hold the other party harmless from and against any loss, cost, damage, expense (including reasonable attorneys fees and expenses) or liability resulting from any claims that may be made against the other by any other broker, finder or other person claiming a fee or other compensation in connection with this transaction arising from the acts of the indemnifying party. The provisions of this Paragraph shall survive delivery of the deed hereunder or the earlier termination of this Agreement.

16. CONDEMNATION.

- a. If after the date this Agreement becomes effective and prior to the Closing date there is a taking of less than ten percent (10%) of the Premises in eminent domain proceedings or under threat of condemnation, and such taking will not, in the reasonable opinion of Purchaser, prevent or interfere in a material way with the development of the Premises as described in "Schedule C" below, Purchaser shall perform their obligations under this Agreement and purchase the Premises.

If during such period of time there is a taking of ten percent (10%) or more of the Premises as aforesaid, or if such taking will prevent or interfere with the development of the Premises as described in "Schedule C" below, Purchaser shall have the option of complying with the terms of or terminating this Agreement. If Purchaser is obligated hereunder to purchase the Premises or, if granted an option to terminate, elects not to terminate this Agreement, Purchaser shall remain obligated to perform their obligations under this Agreement, and Seller shall at the Closing deliver to Purchaser any part of the condemnation award collected by Seller and assign to Purchaser rights to any part of the award not yet collected, in each case attributable to Seller's interest in the Premises. For the purposes of this Agreement, a taking in condemnation shall mean the vesting of fee title to any part of the Premises in governmental entity pursuant to the exercise of the power of eminent domain or pursuant to a deed delivered in lieu or in contemplation thereof.

- b. Purchaser agrees that the election granted to Purchaser under this Paragraph to terminate this Agreement shall be conclusively waived by Purchaser and of no force or effect unless Purchaser elect to terminate this Agreement by notice to Seller within sixty (60) days after Purchaser is notified by Seller of a taking that authorizes such election, such notification to include a specific description of the parcels to be taken and whether the taking is in fee, easement or otherwise.

17. REMEDIES UPON DEFAULT.

- a. In the event of Purchaser's default, it is agreed by the parties that it will be impossible to determine the exact amount of Seller's damages and therefore it is agreed that Seller's sole remedy in the event of Purchaser's default shall be for the Seller to receive any and all sums delivered by the Purchaser to the City through the date of the default, as and for liquidated damages.

- b. In the event of Seller's default, than Purchaser may elect to either:
 - i. waive such default, whereupon Purchaser shall perform all of their obligations under this Agreement, and the Closing shall occur in accordance with the terms of this Agreement with no abatement of the Purchase Price, and no liability on the part of the Seller; or
 - ii. terminate this Agreement, without any other further claim, liability or obligation of either party to the other.

18. MISCELLANEOUS.

- a. Benefits. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, the Seller and the Purchaser, and their respective successors and assigns.
- b. Entire Agreement. This Agreement and the Schedules and Exhibits hereto contain the entire Agreement between the Purchaser and the Seller with respect to the transactions contemplated herein; and no party shall be bound by nor shall be deemed to have made any representations, warranties or covenants except those contained herein. This Agreement cannot be modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom the enforcement or any modification, change, discharge or termination is sought.
- c. Captions. The captions of the Paragraphs and subparagraphs of this Agreement are for convenience and reference only, and are not to be considered in construing this Agreement.
- d. Notices. Any notices, request, instrument or other document to be given hereunder shall be in writing and, shall be delivered personally or sent by certified, registered or express mail, return receipt requested, as follows:

If to the Purchaser: Benedetto Papaleo
Primo Contracting, LLC
259 Ann Street
Newburgh, New York 12550

If to the Seller: The City of Newburgh
Office of the Corporation Counsel
83 Broadway, City Hall
Newburgh, New York 12550

Each party may change its address for the purposes of this Paragraph by giving written notice of such change to the other party in the manner herein provided. If this Agreement provides for a designated period after a Notice within which to perform an act, such period shall commence on the date of receipt or tender of the Notice. If this Agreement requires the exercise of a right by Notice on or before a certain date or within a designated period, such right shall be deemed exercised on the date of mailing or tender of the Notice pursuant to which such right is exercised.

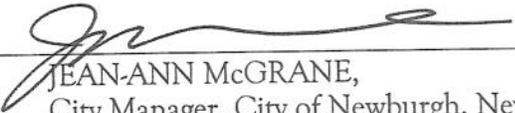
- e. Severability. In case any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement.
- f. Governing Law. This Agreement has been negotiated and executed in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York.
- g. No Waiver. The failure of Seller or Purchasers to seek redress for violation of, or to insist on the strict performance of, any term, covenant or condition of this Agreement, shall not be deemed a waiver of any such party's rights hereunder nor prevent a similar subsequent act from constituting a default under this Agreement.
- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- i. Expenses. The Purchaser and the Seller shall pay its respective legal, accounting and other fees in connection with this Agreement, including expenses incurred in connection with the purchase of the real property.
- j. Assignment. This Agreement may not be assigned by the Purchaser without the prior written consent of the Seller, which consent shall not be unreasonably withheld. The Seller may assign this agreement to a third party, provided such third party assumes each and all obligations of the Seller, and further provided that such assignment shall not release Seller from this Agreement.

- k. Merger. Seller is not liable or bound in any manner by express or implied warranties, guaranties, promises, statements, representations or information pertaining to the Premises, made or furnished by any agent, employee, servant, or other person representing or purporting to represent the Seller, unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth herein. It is understood and agreed that all understandings and Agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their Agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other party or any other person.

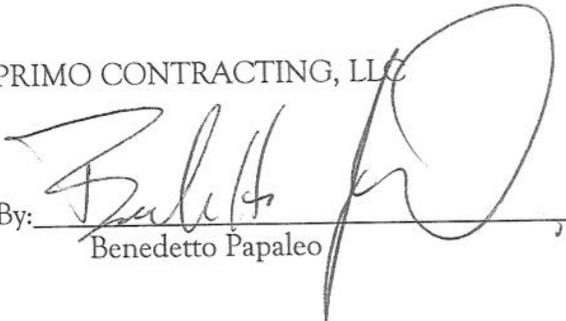
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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

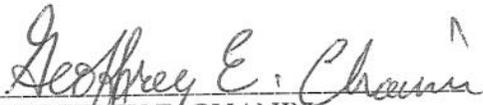
Seller: THE CITY OF NEWBURGH

By: 
JEAN-ANN McGRANE,
City Manager, City of Newburgh, New York

Purchaser: PRIMO CONTRACTING, LLC

By: 
Benedetto Papaleo

Approved as to form:


GEOFFREY E. CHANIN
Corporation Counsel


CHARLES EMBERGER
Comptroller

SCHEDULE "A"

All that certain lot, piece or parcel of land, with buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County of Orange and State of New York, known as 223 Third Street, 227 Third Street, 251 Third Street and 128 Dubois Street, City of Newburgh, New York, and identified as Section 22, Block 2, Lot 10, Section 22, Block 2, Lot 8, Section 22, Block 1, Lot 17 and Section 18, Block 1, Lot 27, City of Newburgh, New York, respectively, on the Official Tax Map of The City of Newburgh.

SCHEDULE "B"

PERMITTED EXCEPTIONS

1. Current taxes not yet due and payable.
2. Any state of facts which an accurate survey would show.
3. Any laws, regulations or ordinances (including, but not limited to zoning, building and environmental protection) as to use, occupancy, subdivision or improvement of the Premises adopted or imposed by any governmental body, or the effect of any noncompliance or violation thereof.
4. Any special assessment affecting the property.

SCHEDULE "C"

TERMS AND CONDITIONS

As a term and condition of the sale of the Premises by the City of Newburgh as Seller, to Primo Contracting, LLC as Purchaser, the parties hereby further agree to the terms and conditions set forth in this Schedule "C", which is made a part of the Agreement between the parties.

1. Purchaser warrants and Seller relies upon Purchaser's promise that the Premises shall be used in connection with the Purchaser's project proposal, to wit: To re-habilitate the existing buildings on the parcels designated as 223 Third Street, 227 Third Street and 251 Third Street as two-family dwellings and the building on the parcel designated as 128 Dubois Street as a three-family dwelling. The Premises shall be re-developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York.

2. Purchaser warrants and Seller relies on the promise of the Purchaser that all buildings shall be re-sold to an owner-occupant who shall establish his/her domicile and principal residence at said premises and maintain his/her domicile and principal residence at said premises for a period of at least five (5) years thereafter. The Purchaser shall have one year after obtaining a certificate of occupancy for each building as provided in Term No. 4 below to complete such re-sale to an owner-occupant. Nothing contained herein shall preclude the Purchaser from requesting from Seller additional time to complete the re-sale to an owner-occupant.

3. Purchasers agree to fully repair, renovate and improve all other areas and portions of the Premises. The Premises must conform to all City ordinances, codes and other requirements.

4. The deed will contain provisions stating that the Purchaser is required to rehabilitate any buildings located on the property known as 128 Dubois Street and 227 Third Street bring them into compliance with all State, County and Local standards for occupancy within twelve (12) months of the date of the deed. The deed will contain provisions stating that the Purchaser is required to rehabilitate any building located on the property known as 223 Third Street bring it into compliance with all State, County and Local standards for occupancy within fourteen (14) months of the date of the deed. The deed will contain provisions stating that the Purchaser is required to rehabilitate any building located on the property known as 251 Third Street bring it into compliance with all State, County and Local standards for occupancy within eighteen (18) months of the date of the deed. Within such month time periods specified herein, the Purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the respective time periods. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. Purchaser agrees to notify the Seller's Community Development Coordinator of the issuance of a Certificate of Occupancy or Certificate of Completion by the Seller's Code Compliance Office.

5. The parties hereto agree that all the terms and conditions of Resolution 37 - 2007, of March 26, 2007, and all subsequent resolutions duly adopted by the City Council pertaining to the premises shall remain in full force and effect and shall be considered a part of the Agreement between the parties.

RESOLUTION NO.: 25 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION TO RATIFY A SETTLEMENT IN THE MATTER OF
THE MEDIATION BETWEEN T.M. BRENNAN CONTRACTORS
AND THE CITY OF NEWBURGH**

WHEREAS, T.M. Brennan Contractors ("TMB") and the City of Newburgh ("CITY") entered into a contracts dated November 1, 2007 for General Construction work and November 26, 2007 for HVAC work in connection with the construction of a new Court House; and

WHEREAS, TMB has finished the work under both contracts; and

WHEREAS, TMB served the CITY with a notice of intention to arbitrate its claims under the General Construction contract; and

WHEREAS, the parties wish to resolve the claims and desire to settle all the disputes to avoid the time and expense of further legal proceedings; and

WHEREAS, the City shall pay TMB a sum of \$160,000.00 no later than January 28, 2011 as the final payment; and

WHEREAS, such funds shall be secured by "H" Funds, Account H.1100.2004 City Court; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the terms of the settlement agreement are hereby ratified and that City Manager be and he hereby is authorized to execute a written settlement agreement and general release, and any other documents as may required, to effectuate the settlement as herein described.

Acting City Manager, Richard Herbek said that this is related to the construction of the Courthouse. They are trying to settle some of the outstanding matters with respect to the Courthouse and TM Brennan was the general construction and HVAC contractor. The City has engaged with Rick

Goldin to help with matters related to the Courthouse and this has gone on for many, many months now. We were able to get a very excellent settlement in the amount of \$160,000.00.

City Comptroller, Cheryl A. Gross explained that this started out at \$269,000.00 but they felt there was a discrepancy with a duplication of some invoices which brought it down to about \$185,000.00 and through negotiations it is now at \$160,000.00. If we don't take this, it will go into arbitration and we will have to pay interest.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

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

ADOPTED

RESOLUTION NO.: 26 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT
AND THE EXECUTION OF A CONTRACT
FROM THE NEW YORK DEPARTMENT OF STATE
FOR NEWBURGH WATER QUALITY IMPROVEMENT
AS PART OF THE STATE GRANT NUMBER DOS054
TO RECEIVE A TOTAL AMOUNT OF \$500,000.00
WITH AN EQUAL MATCH**

WHEREAS, by Resolution No. 228-2007 of December 17, 2007 the City Council authorized the City Manager to apply and accept a grant up to \$500,000.00 from the New York State Department of State Environmental Protection Fund to undertake the assessment and planning of the enlargement and relocation of the combined storm and sanitary main to protect the Hudson River from pollution and to enhance the development of the waterfront lands; and

WHEREAS, the City of Newburgh is authorized to accept said grant and execute a contract from the New York State Department of State for the Newburgh Waterfront Quality Improvements in the amount of \$500,000.00 with an equal City match; and

WHEREAS, the Newburgh Water Quality Improvements will consist of contractual services for preparing the Hudson River Impact Assessment and Sewer Interceptor Planning Study; and

WHEREAS, this Council has determined that accepting such grant and executing such contract 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 is authorized to accept the grant from the New York State Department of State in the amount of \$500,000.00 with the City's matching contribution to be derived from in-kind services and available funds from the 2009 Bond Authorization as set forth in Resolution No. 180-2009 of November 16, 2009; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute State Contract Number C006848 entitled "Newburgh Water Quality Improvements."

Councilwoman Bell moved and Councilwoman Bello seconded that the resolution be adopted.

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

ADOPTED

RESOLUTION NO.: 27 - 2011

OF

JANUARY 24, 2011

**A RESOLUTION AMENDING RESOLUTION NO. 108-2010
WHICH AUTHORIZED THE CITY MANAGER TO ENTER
INTO AN AGREEMENT WITH STANTEC CONSULTING SERVICES, INC.
TO PROVIDE PROFESSIONAL SERVICES RELATED
TO THE COMPLETION OF THE FIRST STREET IMPROVEMENT PROJECT**

WHEREAS, the City Council by Resolution No. 108-2010 authorized the City Manager to enter into an agreement with Stantec Consulting Services, Inc. to provide professional services related to the completion of the First Street Improvement Project; and

WHEREAS, it is now necessary for Stantec Consulting Services, Inc. to perform additional services to the existing agreement as related to the Damage Assessment and Repair Design to the First Street Fishing Pier; and

WHEREAS, the funding for these repairs are included in the New York State Department of State Waterfront Public Access Improvements Grant which was accepted pursuant to Resolution No. 16-2011 of January 10, 2011; and

WHEREAS, the project budget will be reviewed based on projected construction costs; and

WHEREAS, the City Council has reviewed the annexed proposal from Stantec Consulting Services, Inc. for said additional services and has determined that such work would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement with Stantec Consulting Services, Inc. for additional professional services related to the Damage Assessment and Repair Design to repair the damage to the First Street Fishing Pier.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

**Ayes - Councilwoman Bell, Councilwoman Bello, Councilman Dillard,
Mayor Valentine - 4**

ADOPTED

27-11



Stantec

Stantec Consulting Services Inc.
5020 Rt. 9W, Suite 103
PO Box 3228
Newburgh, NY 12550
Tel: (845) 562-3430

January 13, 2011

Mr. Craig M. Marti, PE
City Engineer
City of Newburgh
123 Grand Street
Newburgh, New York 12550

**Reference: First Street Improvements – Pier Damage Assessment
City of Newburgh, Orange County, New York**

Dear Mr. Marti:

Stantec Consulting Services, Inc. appreciates the opportunity to submit this proposal to render professional engineering services in connection with the assessment and design of repairs associated with the ice damage to the First Street Fishing Pier. These services would be performed as an 'additional service' to the First Street Improvement project currently under design. Our Services consist of the items as outlined below.

PROJECT UNDERSTANDING

The First Street Fishing Pier was designed and permitted by Stantec (Dufresne-Henry at the time) and subsequently constructed. Following construction, the pier, along with many other shore facilities on both sides of the river, was damaged by reportedly unusually strong ice flows. For continuity, Stantec proposed to utilize Bourne Engineering, our sub-consultant from the original design, to assist with this work.

ASSUMPTIONS

The following assumptions have been anticipated by Stantec in preparing this proposal:

- Since it's our understanding that punch list work remains to be completed on the pier construction project, we have assumed that the existing permits obtained for the original construction are still in effect and that no additional permitting services will be required.
- We have assumed the construction of the repairs would be executed by the original contractor by processing of a construction change order to the original construction contract.

DESCRIPTION OF PROFESSIONAL SERVICES:

The professional services to be provided by are as follows:

Reference: First Street Improvements – First Street Pier Damage Assessment

Task 100 – Damage Assessment

- Perform an above and below water assessment of the pier by engineer-divers by visual and tactile methods to review and document the extent and nature of the damage.
- Prepare a letter report describing the nature of the damage and the recommended repairs and estimated construction cost.

Task 200 – Design Repairs

- Perform design of necessary repairs.
- Prepare construction drawing(s) of proposed repairs to include material specifications and construction details.

Task 300 – Prepare Construction Contract Change Order

- Stantec will assist the City with review of and preparation of the construction change order for the repairs.

Not Included

The following work is not included, but could be provided as an additional service if or when necessary.

- Permitting of any work associated with pier repairs
- Construction phase services (e.g. shop drawing review, construction observation, payment application review, etc.)

This Scope of Services will be completed on a Lump Sum basis for \$ 11,500. The client will be billed monthly based upon percent of work completed. Extra Work beyond the Scope of Services will be billed on a time and material basis using Stantec's Standard Hourly Billing Rates. It is agreed that compensation for services provided is not contingent upon any approvals.

We expect to start our services after your acceptance of this proposal and subject to suitable conditions on the river for underwater inspection. If there are any protracted project delays, for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of our compensation taking into consideration the impact of such delays, including, but not limited to, changes in price indices and pay scales applicable to the period when services are in fact being rendered.

This proposal, including the attached Authorization for Additional Services, and our existing agreement for the First Street Improvement project (executed by the city 8/10/2010) contract represents the entire understanding between City of Newburgh and Stantec Consulting Inc. in respect to the project and may only be modified in writing and signed by both parties. If it satisfactorily sets forth your understanding of our agreement, we would appreciate execution of the Authorization for Additional Services attached. This proposal will be open for acceptance until May 30, 2011 unless changed by us in writing.

Stantec

January 13, 2011
Craig M. Marti
Page 3 of 3

Reference: First Street Improvements – First Street Pier Damage Assessment

Sincerely,

STANTEC CONSULTING SERVICES INC.



R. Mark Dempf, PE
Senior Principal
Tel: (518) 452-4358
Fax: (518) 452-9234
mark.dempf@stantec.com



James H. Fitzsimmons, PE
Senior Project Manager
Ph: (845) 562-3430
Fx: (518) 452-9234
jim.fitzsimmons@stantec.com

Attachment: Authorization for Additional Services

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Stantec Consulting Services Inc.
5020 Rt. 9W, Suite 103
PO Box 3228
Newburgh, NY 12550
Tel: (845) 562-3430

Stantec

January 13, 2011

Mr. Craig M. Marti, PE
City Engineer
City of Newburgh
123 Grand Street
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The following assumptions have been anticipated by Stantec in preparing this proposal:

- Since it's our understanding that punch list work remains to be completed on the pier construction project, we have assumed that the existing permits obtained for the original construction are still in effect and that no additional permitting services will be required.
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We expect to start our services after your acceptance of this proposal and subject to suitable conditions on the river for underwater inspection. If there are any protracted project delays, for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of our compensation taking into consideration the impact of such delays, including, but not limited to, changes in price indices and pay scales applicable to the period when services are in fact being rendered.

This proposal, including the attached Authorization for Additional Services, and our existing agreement for the First Street Improvement project (executed by the city 8/10/2010) contract represents the entire understanding between City of Newburgh and Stantec Consulting Inc. in respect to the project and may only be modified in writing and signed by both parties. If it satisfactorily sets forth your understanding of our agreement, we would appreciate execution of the Authorization for Additional Services attached. This proposal will be open for acceptance until May 30, 2011 unless changed by us in writing.

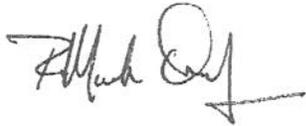
Stantec

January 13, 2011
Craig M. Marti
Page 3 of 3

Reference: First Street Improvements – First Street Pier Damage Assessment

Sincerely,

STANTEC CONSULTING SERVICES INC.



R. Mark Dempf, PE
Senior Principal
Tel: (518) 452-4358
Fax: (518) 452-9234
mark.dempf@stantec.com



James H. Fitzsimmons, PE
Senior Project Manager
Ph: (845) 562-3430
Fx: (518) 452-9234
jim.fitzsimmons@stantec.com

Attachment: Authorization for Additional Services

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AUTHORIZATION FOR ADDITIONAL SERVICES

Consultant:	STANTEC CONSULTING SERVICES INC. 5020 Rt 9W, Suite 103 Newburgh, NY 12550 Ph: (845) 562-3430 Fx: (518) 452-9234 email: jim.fitzsimmons@frontiernet.net	Date:	1 January 2009
Client:	CITY OF NEWBURGH 123 Grand Street Newburgh, NY 12550 Ph: (845) 569-7446 Fx: (845) 569-0188 email: CMarti@cityofnewburgh-ny.gov	Stantec Project #:	190710417
Project Name and Location:	First Street Improvements, City of Newburgh	Stantec Opportunity Pipeline #:	347122
		Client Project #:	NA
		Change Order #:	NA

This is authorization for STANTEC to perform additional services on the project as noted above.

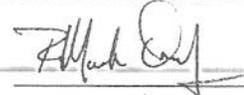
- A. STANTEC agrees to perform the following additional service(s):
First Street Pier Damage Assessment as outlined January 13, 2011 proposal.
- B. CLIENT agrees to compensate STANTEC for such additional services in accordance with the terms of the initial agreement for additional amount(s) stated below:
\$11,500 as outlined in January 13, 2011 proposal.
- C. All other terms and conditions of the original Agreement shall remain in full force and effect.

By signing below, the parties agree and affirm that each has reviewed and understands the provisions set out above and that each party shall be bound by each and all of said provisions. A copy of this agreement shall serve and may be relied upon as an original.

CITY OF NEWBURGH

Per: _____
Name: Richard F. Herbek
Title: Acting City Manager
Date Signed: _____

STANTEC CONSULTING SERVICES INC.

Per: 
Name: R. Mark Dempf, P.E.
Title: Senior Principal
Date Signed: January 13, 2011

RESOLUTION NO.: 28 - 2011

OF

JANUARY 24, 2011

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH EXPRESSING CONCEPTUAL SUPPORT FOR THE APPLICATION OF MOUNTCO CONSTRUCTION AND DEVELOPMENT CORP. AND SAFE HARBORS OF THE HUDSON HOUSING DEVELOPMENT FUND COMPANY, INC., TO NEW YORK STATE HOMES AND COMMUNITY RENEWAL FOR FEDERAL, STATE, AND LOCAL FINANCIAL ASSISTANCE TO DEVELOP AND CONSTRUCT A PROPOSED MIXED-USE AFFORDABLE HOUSING PROJECT KNOWN AS LIBERTY HOUSE TO BE SITUATED ON NOW VACANT LANDS LOCATED ON THE WESTERLY SIDE OF LIBERTY STREET BETWEEN BROADWAY AND ANN STREET (Section 36, Block 3, Lots 12 and 14.1) IN THE CITY OF NEWBURGH

WHEREAS, Mountco Construction and Development Corp. and Safe Harbors of the Hudson Housing Development Fund Company, Inc. (collectively the "Applicant") have proposed the development and construction of a proposed mixed-use affordable housing project known as Liberty House, consisting of approximately sixty-eight (68) affordable rental housing units and approximately ten thousand (10,000) square feet of day care and related community facility space, to be situated on now vacant lands located on the westerly side of Liberty Street between Broadway and Ann Street (Section 36, Block 3, Lots 12 and 14.1)) in the City of Newburgh (the "Proposed Project") ; and

WHEREAS, the Applicant has proposed that this City Council consider granting a real property tax exemption and the acceptance of payments in lieu of taxes ("PILOT") for the Proposed Project, both for thirty-two (32) years pursuant to Section 577 of the Private Housing Finance Law, together with the payment of a lump sum Municipal Impact Fee to the City for the Proposed Project, on the following proposed general terms and conditions:

1. A thirty-two (32) year PILOT Agreement with a payment of Thirty-One Thousand (\$31,000) Dollars in the first year following closing of the construction loan for the Proposed Project, with annual cumulative increases thereafter of three (3%) percent each year for the second through seventeenth years, with an increase of the PILOT payment in the eighteenth year to an amount equal to the sum of the PILOT payment for the seventeenth year plus Ten Thousand (\$10,000) Dollars, with annual cumulative increases thereafter of three (3%) percent each

year for the nineteenth through thirty-second years (collectively the "Proposed PILOT Agreement"), and with all PILOT payments to be distributed to the City of Newburgh, the Newburgh Enlarged City School District, and the County of Orange in proportion to their then respective percentages of real property taxes (collectively the "Proposed PILOT Agreement"); and

2. A Municipal Impact Fee lump sum payment of Sixty-Two Thousand (\$62,500) Dollars, to be paid to the City of Newburgh simultaneous on closing of the construction loan for the Proposed Project (the "Proposed Municipal Impact Fee"); now, therefore

BE IT RESOLVED, that the City Council of the City of Newburgh expresses its conceptual support for the application of Mountco Construction and Development Corp. and Safe Harbors of the Hudson Housing Development Fund Company, Inc., to New York State Homes and Community Renewal for Federal, State, and local financial assistance to develop and construct the Proposed Project; and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh expresses its willingness to consider the Proposed PILOT Agreement and the Proposed Municipal Impact Fee, if the Applicant is successful in obtaining construction financing for the project, and to expedite coordinated review of the Proposed Project under the State Environmental Quality Review Act ("SEQRA"), as lead agency in coordination with the Planning Board, Zoning Board, Architectural Review Commission, and any other involved agencies, so as to fully review the environmental impacts of the Proposed Project including but not limited to its fiscal and economic impacts on the City of Newburgh.

Ed Lynch, Director of Planning & Development explained the PILOT agreement and said that the applicant needs this resolution of support in order to make an application. They have no guarantee that they will be successful in obtaining this grant but they believe that this is a positive sign of the willingness to move forward with these kinds of projects.

Councilwoman Bello asked if the City has a formula for a PILOT.

Ed Lynch, Director of Planning & Development responded with a "no".

Councilwoman Bello asked if these PILOT's are set by the person receiving the PILOT.

Ed Lynch said that it is requested by the individual applicant based on the unique circumstances of the project. In the case of this application, the

ground floor is not being conceived as retail commercial and there is a difference in terms of the structure. It is also sometimes related to the amount of the financing that is being sought. In the case of the IDA, right now they don't have a uniform policy but at some time in the future they might consider that.

Councilwoman Bello believes it would make more sense for the city to have its own formula to determine a PILOT according to our needs rather than the people asking for them.

Ed Lynch said that it depends on the uniqueness of the project and the financing they are able to obtain.

Councilwoman Bello asked if the payment is free and clear to the city.

Ed Lynch said that it represent payments being made to the city, county and school board as well as a percentage to the city. There would be development at the site with jobs created and the developer has agreed to allow for participation by residents.

Councilwoman Bello asked if he means jobs like construction and building.

Ed Lynch said it would also include staffing.

Councilwoman Bello noted that we had a stimulus project with the 9W construction that didn't work out too well for us as far as local hiring.

Councilwoman Bell said that she knows that Safe Harbors is an example of what happens when it is done right. The development itself is beautiful and she knows that most of the people who work there are City of Newburgh residents.

Mayor Valentine said that they have twenty-five employees right now and twenty of them live in the city.

Councilwoman Bell continued that the work with the theatre is huge and the Ann Street Gallery, which is a show piece, is phenomenal so we know the work of Safe Harbors. Based on that, she is delighted that they are willing to make this kind of investment at this challenging time. What really impressed her is that on the ground floor they are planning to put a children's museum which could be so enhancing. We know their track record and that they have one of the best managed operations that she has ever seen. She wholeheartedly supports this.

Mayor Valentine read a list of who gets a PILOT right now: The Bourne & Kenney Apartments, Burton Towers, Corwin Management (1 Corwin Court) and Elant. The Maple Building was but then it was purchased by Orange County for the College. We were collecting for that building \$57,000.00 a year which we lost when that was taken over. There is also Safe Harbors, Varick Homes, Voisins and Lake Street. There was a question about the waterfront development and that had what was called ten years ago a 485B which is a commercial development sliding scale with a pay in percentages of full value and they are now at the tenth year so they are paying 100%. That same type of 485B is available to anyone who does new commercial construction and for residential there is the 485A which we could also implement if we wanted to. If you implement a 485A, then everyone is available for it where a PILOT is selective to us as an entity. The 485A is aggressive but we have no say. He said that he is in favor of both of these projects. It is upwards of over twenty million dollars of new construction in the City of Newburgh on two corners. Those properties have been empty for thirty years and he doesn't see a lot of people jumping in to take them over. The economic value of the construction has a ripple effect because this adds to the assessments of the city. Where every year we are fighting with our assessments going down this is an influx which is huge. We have to look at all of this and it can't be developed in a vacuum. Although we are voting on this support in order to move them to at least get the chance to get funding two projects like this could spur other development in our city because people will be watching this.

Councilwoman Bell asked if we could find out if those PILOT's are current.

Mayor Valentine said that it is all on the sheet. Which ones are current and which ones are in arrears.

Councilwoman Bell said that we obviously cannot afford to have anyone in arrears.

Councilwoman Bello said that without speaking to the merits of the projects she sees a lot of the short-term benefits but what is incredibly troubling to her is that these PILOT's are extremely low. While there is short-term benefit there is tremendous long-term impact especially on future Council with dealing with Budgets. This one is thirty-two years and the next one is forty years so she can see why we are in the shape that we are in today. This is traditionally what has been done and as a result there is a larger burden on the taxpayers that pay the full bill. She added that we currently have businesses in this city that are prepared to leave and take hundreds of local jobs away from here because they can't sustain the taxes. Are we offering

them PILOT's? Is anyone doing anything to help the businesses that are here that are providing jobs for our people?

Ed Lynch, Director of Planning & Development said in the case of businesses that will be eligible under IDA PILOT's there are several that have already approached the Board and we will be discussing them in the future.

Councilwoman Bell said that there is a tremendous long-term benefit to revitalizing downtown Newburgh. Main Street in Beacon used to be a bomb zone and she can remember that when it got dark you got out of there. But now we see how beautiful it is. They have hundreds of wonderful shops and galleries and things that are taking place. At night, people walk and the streets are filled which is wonderful. We need to fill up these vacant lots because they make the City look so run down.

Councilwoman Bello said that she does not disagree with that but she is speaking about these incredibly low PILOT's with incredibly long periods of time which is very troubling to her.

Councilwoman Bello moved and Councilwoman Bell seconded that the resolution be adopted.

Ayes - Councilwoman Bell, Councilman Dillard, Mayor Valentine - 3

Nays - Councilwoman Bello - 1

ADOPTED

RESOLUTION NO.: 29 - 2011

OF

JANUARY 24, 2011

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
EXPRESSING CONCEPTUAL SUPPORT FOR THE APPLICATION
OF HUDSON VALLEY PROPERTY GROUP LLC
TO NEW YORK STATE HOMES AND COMMUNITY RENEWAL
FOR FEDERAL, STATE, AND LOCAL FINANCIAL ASSISTANCE TO
DEVELOP AND CONSTRUCT A PROPOSED MIXED-USE AFFORDABLE
HOUSING PROJECT KNOWN AS CITY CENTER TO BE SITUATED ON
NOW VACANT LANDS LOCATED ON THE SOUTHEASTERLY CORNER
OF BROADWAY AND LIBERTY STREET
IN THE CITY OF NEWBURGH**

WHEREAS, Hudson Valley Property Group LLC (the "Applicant") has proposed the development and construction of a proposed mixed-use affordable housing project known as City Center, consisting of approximately fifteen (15) affordable rental housing units and approximately three thousand five hundred (3,500) square feet of retail space (the "Proposed Project"), to be situated on now vacant lands located at 91 Broadway on the southeasterly corner of Broadway and Liberty Street known as Section 37, Block 1, Lot 1 on the tax assessment maps of the City of Newburgh (the "Property") ; and

WHEREAS, the Applicant has proposed that this City Council consider granting a real property tax exemption and the acceptance of payments in lieu of taxes ("PILOT") for the Proposed Project, pursuant to Section 577 of the Private Housing Finance Law, on the following proposed general terms and conditions (collectively the "Proposed PILOT Agreement"):

1. PILOT payments for the initial two (2) years (the "Initial Period"), to commence on the granting of the real property tax exemption simultaneous on the Applicant's Housing Development Fund Company affiliate closing title and acquiring ownership of the Property, each of such two (2) annual payments to be calculated according to the following formula: Two Hundred Thousand (\$200,000) Dollars multiplied by an amount equal to the combined City, School, and County non-homestead property tax rates in effect at the beginning of such year. For example, if title were to close on June 1, 2011 with the combined City (\$18.81), School (\$20.60), and County (\$3.09) non-homestead property tax rates being \$42.50/thousand as of June 1, 2011, the first year PILOT payment would be Eight Thousand Five Hundred (\$8,500) Dollars ($200 \times \$42.50 = \$8,500$);

2. PILOT payments for the forty (40) years following the second anniversary of the commencement of the Initial Period (the "Forty-Year Period"), with payments for the residential and commercial portions of the Proposed Project during the Forty-Year Period to be respectively as follows:

a) Residential portion of Proposed Project: a PILOT payment of Seven Thousand Five Hundred (\$7,500) Dollars in the first year of the Forty-Year Period, with annual cumulative increases thereafter of two (2%) percent each year for the second through fortieth years; and

b) Commercial portion of Proposed Project: a PILOT payment in the first year of the Forty-Year Period equal to fifty (50%) percent of the combined City, School, and County real property taxes which would be levied and attributable against the commercial portion of the Proposed Project were it on the taxable assessment roll; with a ten (10%) percent annual increase of such first year PILOT payment for each of the second through tenth years; with the PILOT payments for the eleventh through the fortieth years being equal to one hundred (100%) percent of the combined City, School, and County real property taxes which would be levied and attributable against the commercial portion of the Proposed Project were it on the taxable assessment roll; and

3. PILOT payments for the Initial Period and the Forty-Year Period to be distributed among the City of Newburgh, the Newburgh Enlarged City School District, and the County of Orange in proportion to their then respective percentages of non-homestead real property taxes; now, therefore

BE IT RESOLVED, that the City Council of the City of Newburgh expresses its conceptual support for the application of Hudson Valley Property Group LLC to New York State Homes and Community Renewal for Federal, State, and local financial assistance to develop and construct the Proposed Project; and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh expresses its willingness to consider the Proposed PILOT Agreement, if the Applicant is successful in obtaining construction financing for the project, and to expedite review of the Proposed PILOT Agreement for the Proposed Project under the State Environmental Quality Review Act ("SEQRA"), including but not limited to its fiscal and economic impacts on the City of Newburgh.

Mayor Valentine said that the public will see these projects as they go and the most important wording in both of these resolutions is expressing conceptual support. They have a long way to go before there is a shovel in the ground so there is going to be time that you will be seeing this. It is not like we are hiding it. It is just in order for them to get in the round and they need it now which is why it is done this way.

Ed Lynch explained the PILOT agreement. He said that this one is a little more complicated because they have the retail commercial component which they are structuring as part of the PILOT to be similar to the 485B Program. The City Council will do the lead agency declaration and same review with a SEQRA on the fiscal impacts of this PILOT.

Councilwoman Bell moved and Councilman Dillard second that the resolution be adopted.

Ayes - Councilwoman Bell, Councilman Dillard, Mayor Valentine - 3

Nays - Councilwoman Bello - 1

ADOPTED

GENERAL COMMENTS

Gay Lee, Forsythe Place said that there are some residents who will possibly lose their properties with the In-Rem tax foreclosure and the goal of the property tax repayment plan in her mind was to stop people from losing their homes. She hasn't heard anything from the Council regarding any kind of plan for residents whose properties are currently in foreclosure. She asked that they be offered an opportunity to pay in installments and she doesn't know if there is any reason that such a policy can't be implemented.

Mayor Valentine said that he doesn't have an answer right now but he knows that they are looking at a few different things that have to do with incentives this year.

Ed Lynch, Directory of Planning & Development said that they had a meeting recently where the CDBG programs could assist with foreclosure and tax lien prevention initiatives. They have to identify a way to structure that program and then they will issue an RFP to move forward. Usually when there is a tax problem there is also a mortgage problem associated with the property so they have thought of trying to get the banks to restructure their entire mortgage on the property so that they could pay the tax and rework that mortgage payment. There are ways to do this.

Councilwoman Bell said that the CDBG tax foreclosure prevention program was not to take the property away and then fix it up to sell.

Ed Lynch said that there will be opportunity in terms of some individuals who would be able to have a restructured mortgage and extend their period of payments with terms from their bank. It is not just taxes that people owe because many times it is the mortgage payments that are in arrears so we will have to work with the banks.

Councilwoman Bell said that some residents are on fixed incomes and they may not have a mortgage.

Ed Lynch said that they have equity in their property and there may be a way to restructure the equity in their property to address the tax issue. Each case will be individual.

Councilwoman Bell asked if they could get public input on this because she thinks it would be important. Staff sees things from almost every angle

but those who are under that weight may have additional info to make it an outstanding RFP.

Councilman Dillard added that he thinks the CDBG Advisory Committee should be in on this. How much money is there?

Ed Lynch said that it is not a whole lot. He believes it is \$50,000.00

Gay Lee continued that as Councilwoman Bell mentioned some people don't have a mortgage and one of the big problems is that if they try to pay their taxes and they owe a water bill then they can't pay their taxes. In a sense that is how people fell behind. She noted that on her own she applied for a mortgage modification and got it so she would be happy to assist in any way that she can. It is a long, drawn out, tedious and frightening experience.

Mayor Valentine said that that there are a lot of ways now that you can go to the lending institutions because they don't want these buildings either. If there are mortgages on them, they are willing to adapt and make it happen.

Gay Lee said that what the mortgage companies are doing is that if you owe back taxes then they are paying those taxes and adding it to the end of the mortgage. She added that she would like to be part of the development of this plan.

Aquanetta Wright, City of Newburgh said she appreciated the snow removal with the amount of snow we have been getting and the cuts in staff. She has started on the Newburgh Jazz Series for 2011 and received her first sponsorship check. This will be their fifth year and she hopes it will be bigger and better. There needs to be some sort of procedural change when it comes to permits with some sort of conditional permit put in place. When she applied back in September, she was denied because she didn't have the insurance policy already in place. The bottom line is dollar bills. She doesn't want to spend the money that people give her in these trying times when she doesn't have some sort of almost guarantee that the City is going to allow her to have the Newburgh Jazz Series. She thinks that the City Manager should look at the idea of a conditional permit where at thirty to sixty days out she would have to provide the city with the necessary insurance documentation. That way she could in good faith and clear heart go ask people for their hard earned money. Right now it is difficult because she doesn't know if someone is going to tell her that they don't want her to have this.

Acting City Manager, Richard Herbek told Aquanetta that they would like to get together with her and talk about the Jazz Series.

Aquanetta added that when Verizon came on board they promised us that we could have our own station. She has had five years worth of music that she has provided to the city residents absolutely free and it would be great if we could do something about getting that station from Verizon.

Mayor Valentine agreed that Verizon needs to step up to the plate. We did a really good deal for them coming to the City of Newburgh and we haven't seen much in response so we need to do a follow up on our end. They have not been inclusive in all parts of the City of Newburgh with service although they promised that everyone would have that chance so that there would be some competitiveness between Time Warner and Verizon. Their public access portion has not been pursued and we need to get on that because it is part of the package.

Kippy Boyle, 400 Grand Street reminded the Council that a few meetings ago Mr. Hadley stated that revenue for the city needs to be our number one focus. It is now the end of January and on the agenda tonight she doesn't see anything about what is being done to improve revenues or telling us where we are at. We are going to be talking about the Budget soon and she would like to hear what some of the ideas are on what should be addressed. She still wants to know why we are not collecting parking fees for the lot across from the courthouse. These projects sound wonderful but they aren't putting money into our pockets right now. She wants to know what money is coming in on a day to day basis.

Jonathan, a resident at Safe Harbors said that it has been a place of much hope and stability for him personally. It is an example of what can be done in a positive way to make the city work and involve people. He is encouraged by the promise of using local people for the construction and with the Kaplan center and other things throughout the city he can understand Councilwoman Bello's concerns. He applauds this project moving forward and he is very excited about it.

Ben Weiss, Town of Newburgh said that he wished to speak in relation to the *Newburgh Four* case. He knows that it is a back burner issue but he has been working with a group of people who are concerned with how that case unfolded. In their opinion, there were many levels of injustices involved and improper actions taken by government agencies. One that might concern the Council is the reputation done to the City of Newburgh. Newburgh has a huge number of real problems and crimes to deal with. They request that the Council write an opinion to the Department of Justice and the FBI requesting that they think twice before cutting into a city like Newburgh.

Brigidanne Flynn, City of Newburgh said that she was encouraged by the sanitation goals and objectives because it is a positive step. She thinks that the goals and objectives for Planning & Economic Development were light on the Economic Development side. We need to see some kind of more immediate action plan that will take place in the coming year to attract entrepreneurs to open businesses as well as help sustain some of the small existing businesses. She thanked DPW for doing a great job with the snow storms but she has noticed that there seems to be a lack of property owners digging out the fire hydrants. Save lives now by digging out the fire hydrants.

Irene Scott-Bethea, City of Newburgh said that here concern tonight is with the tax increase. She was flabbergasted when she learned that her taxes were going to be increased by 99%. She doesn't understand it and she needs some answers. How can she and other citizens of Newburgh that work hard every day survive if they are taxed 99%? She doesn't know of any other area that is taxed that much. She already pays over \$6,000.00 for her property taxes and including her school taxes she is paying almost \$14,000.00 in the City of Newburgh. She said that Newburgh is a mess. She has been here since she was a kid and stayed because she kept hearing that Newburgh was going to get better but here it is about thirty years later and she doesn't see it. As much as she used to love it here in the City of Newburgh, now she hates it because there is nothing here. She is paying the same taxes as they do in Westchester County which doesn't make sense to her. She doesn't understand what she is getting here and it is just ridiculous. She would like someone to explain to her after the meeting why we have all of these increases. She knows we can do a modification and she is in the process of doing that but why did it even come to this? What happened to Newburgh? What is everyone doing with the money? Newburgh used to be gorgeous and now she hates to have friends come here because they talk about how horrible Newburgh looks. She doesn't understand. She wants to stay here but there is nothing here. Her plan is that if something doesn't happen in the next few years then she is out of Newburgh because there is no point in staying here. She wants to see her hard earned tax money being put to good use and giving herself and other people in the community something to look for and to be proud of.

Pauline Dillard, City of Newburgh said that the Urban Garden Grant is for \$10,000.00 and then the City takes another \$10,000.00 and someone's friend has \$20,000.00 for the summer. People from that neighborhood are being exploited and the project is not good. The young man that worked on it took all of the weeds and threw them on the curb where they stayed almost the whole summer. No matter where you go in Newburgh it looks like people just don't want to do their job. On harvest day, they harvested one tiny tomato. The neighborhood complained because it wasn't a good project and it is things like this that give this city a black eye. She added that the people from those

communities need to start coming to the City Council meetings to understand that the people they voted in really don't care about them. There is no love here in this city.

Brian Flannery, 5 Norton Street said in regard to Rules and Procedures that at the Work Session Councilwoman Bell was correct about the need to let the public vent their frustration. At that time they were faced with tremendous pressures and this is a healthy thing. People feel powerless and are angry. He knows that the Council is under tremendous pressure too but while they might get frustrated with the public at times he pointed out that they are lucky to have so many smart people getting up to contribute.

Sean O'Shea, City of Newburgh apologized to the Council for when he spoke at the last Council meeting because he was very angry about the idea of not being able to address the Council individually. He still thinks that is a rule that should be adjusted and he doesn't understand why they can't address individual Council people but it is a rule and he will go along with that. He wanted to bring up the way a Council person addressed an individual person of this community. This person did not address that individual Council person when he addressed the Council during public comments but what was brought to that individual person was slanderous. If the Council is going to be addressed as one whole body then he thinks that that individual should be given a public apology by this Council. The action of a single Council person affects all of them on the Council and he thinks that the individual should receive an apology for the actions of that one Council person. This person was asked, "*What does he do for the community*"? He has know this person for at least ten years and he knows that he is not only a divert business person but he has sat on several boards and he has been active in this community for as long as he can remember. He didn't deserve that disrespect and collectively he should get an apology.

Michelle Basch, City of Newburgh reminded everyone that with the commercial spaces in the new building at Liberty and Broadway you will also get sales tax which will help the city too. It is not just property and school taxes and the property taxes will go up again. On a sliding scale she is wondering if when the taxes do go up will the percentage that needs to be paid change at all or is it based on the value of the property.

Ed Lynch, Director of Planning & Development said that it will grow with the tax rate.

Michelle asked if the Ann Street parking lot will be altered in any way for these two buildings because there will be a need for parking. There will be an added weight to fire, police and DPW but these fees will not be paid

because of the PILOT which she understands. It is important that the fees that are paid are the false alarms. If it is not an emergency, it must be paid for immediately on a sliding scale. That is one way to stop the false alarms.

Acting City Manager, Richard Herbek said that the alarms are on a sliding scale. They have made some modifications to the law and he believes that only the first two are free.

Mayor Valentine noted that in regard to fees that sanitation for Safe Harbors is private so it will not have an effect on our sanitation because they pay for their own.

Ed Lynch, Director of Planning & Development said in regard to the Ann Street Parking lot that they are looking in to that to see what can be done.

Mary Ann Prokosch, City of Newburgh said that the \$31,000.00 with a 3% increase per year she assumes will be compounded. Also on the water and sewer she heard it mentioned that it would be \$21,000.00 and she asked if that is an estimate on what they will pay.

Ed Lynch, Directory of Planning & Development said that it is estimated.

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

COMMENTS FROM THE COUNCIL

Councilwoman Bell said in regard to the Rules of Order that at the Work Session she suggested that the Council members are the leaders and they have to show decorum and respect and demonstrate for the public how to be. If they are shouting, grimacing, demeaning and not respecting someone's opinion then it is unfair of us to ask that of the public. On a personal note, some of the issues that come up are very contentious but for her it is never personal and she thinks that we all have to be that way. She has had some of the worst battles with Mr. Herbek, the Mayor and Mr. Dillard but she still respects them as human beings. She doesn't take these things with a mean spirit because that is not appropriate. Each one of us is doing business for this city that we think is best and she would never vote no on something because someone she couldn't stand voted yes. If we are not open to hear one another then we are not going to move forward so she challenges herself each time she sits at this table and she challenges her colleagues to do the same. You can't be that mad and angry. We need to put our collective shoulders to the wheel and move this wagon and we can't do that if we are mad, angry and fighting. There was also an idea that came up to limit public comment but she feels that we need everybody's input because the problems are huge. Everyone needs to be part of the conversation because there are people here who are really bright and they have ideas that we haven't even thought of. If we shut them down, then we are doomed to keep repeating the same old patterns over and over again. She wished to make a vow to her colleagues and to everyone who takes the time and works hard to make this city run to be respectful and kind. She urged everyone to be generous and to move forward. She thanked everyone for coming tonight.

Councilwoman Bello thanked everyone for coming out tonight and said that she appreciates their comments and concerns.

Councilman Dillard said that he is very concerned and afraid of 2012 because it is approaching and we will be in the same predicament that we are in for 2011. Ms. Boyle talked about generating revenue which is what we need to do so that we will not see another 71% tax increase. Time is ticking away and we better get on the job of generating some revenue here in the city. He doesn't know what we are going to do but we need to come alive. He thanked everyone for coming and for being concerned.

Mayor Valentine said that it was asked earlier with the approval of these two projects what else is on the cusp? At the Provan site on Mill Street that has just gone through its cleanup, there are two different developers dying to get over there and start developing and to pay us back by creating

jobs on both of those sites. There is a project that is being proposed on Colden Street for condominiums. They will also be looking for some kind of financial help. He believes they are looking for some IDA help right now as they are 100% residential buildings. This is another piece of property that is overgrown and has never been developed. If we don't do something on mid-Broadway this year, we should be ashamed of ourselves. How long do we sit and stare at that empty piece of property and say it is not ready yet because we need to study it more? There are expansion possibilities on the old Consolidated Site that has been cleaned up and is sitting there. We shelled out two and a half million dollars and he thinks it would be nice to get that back and have some development there. Lastly is the expansion being done with the condominiums and apartments at the Regal Bag site which could happen almost immediately. There is also the brewery expansion being done off Colden Street and the old 26 Front Street that has now been reopened as a new restaurant. We are talking about almost four million dollars of private development money that has been put into that site in the last three to six months with almost seventy-five jobs. They didn't ask us for anything; they just went in there and did. He said not to pick on the waterfront so much because there are a lot of people with a lot of jobs down there at a time when nobody was coming here. Don't be jealous of people who go out with their own money to build things and they are successful at it. That is where the jobs start. Many people that started there started out by doing dishes and then became bartenders and waiters and moved up to Managers. It is important and it should not be overlooked. We need to move these projects fast to show that this is the amount of money we generate this year. He told everyone to make it home safely.

There being no further business to come before the Council, the meeting adjourned at 9:15 p.m.

LORENE VITEK
CITY CLERK

